AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

a fixed-price contract is contemplated, but excluding—

(1) The clause at 52.211–16, Variation in Quantity;

(2) The clause at 52.232–1, Payments;

(3) The clause at 52.222–20, Contracts for Materials, Supplies, Articles, and Equipment; and

(4) The clause at 52.246–16, Responsibility for Supplies.

[48 FR 42129, Sept. 19, 1983, as amended at 51 FR 19714, May 30, 1986; 60 FR 48237, Sept. 18, 1995; 68 FR 28080, May 22, 2003; 79 FR 24199, Apr. 29, 2014; 84 FR 19844, May 6, 2019; 85 FR 27090, May 6, 2020]

PART 9—CONTRACTOR QUALIFICATIONS

Sec.
9.000 Scope of part.

Subpart 9.1—Responsible Prospective Contractors

9.100 Scope of subpart.
9.101 Definitions.
9.102 Applicability.
9.103 Policy.
9.104 Standards.
9.104–1 General standards.
9.104–2 Special standards.
9.104–3 Application of standards.
9.104–4 Subcontractor responsibility.
9.104–5 Representation and certifications regarding responsibility matters.
9.104–6 Federal Awardee Performance and Integrity Information System.
9.104–7 Solicitation provisions and contract clauses.
9.105 Procedures.
9.105–1 Obtaining information.
9.105–2 Determinations and documentation.
9.105–3 Disclosure of preaward information.
9.106 Preaward surveys.
9.106–1 Conditions for preaward surveys.
9.106–2 Requests for preaward surveys.
9.106–3 Interagency preaward surveys.
9.106–4 Reports.
9.107 Surveys of nonprofit agencies participating in the AbilityOne Program.
9.108 Prohibition on contracting with inverted domestic corporations.
9.108–1 Definitions.
9.108–2 Prohibition.
9.108–3 Representation by the offeror.
9.108–4 Waiver.
9.108–5 Solicitation provision and contract clause.
9.109 Prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States.
9.109–1 Authority.
9.109–2 Prohibition.
9.109–3 Exception.
9.109–4 Certification by the offeror.
9.109–5 Solicitation provision.
9.110 Reserve Officer Training Corps and military recruiting on campus.
9.110–1 Definitions.
9.110–2 Authority.
9.110–3 Policy.
9.110–4 Procedures.
9.110–5 Contract clause.

Subpart 9.2—Qualifications Requirements

9.200 Scope of subpart.
9.201 Definitions.
9.202 Policy.
9.203 QPL's, QML's, and QBL's.
9.204 Responsibilities for establishment of a qualification requirement.
9.205 Opportunity for qualification before award.
9.206 Acquisitions subject to qualification requirements.
9.206–1 General.
9.206–2 Contract clause.
9.206–3 Competition.
9.207 Changes in status regarding qualification requirements.

Subpart 9.3—First Article Testing and Approval

9.301 Definition.
9.302 General.
9.303 Use.
9.304 Exceptions.
9.305 Risk.
9.306 Solicitation requirements.
9.307 Government administration procedures.
9.308 Contract clauses.
9.308–1 Testing performed by the contractor.
9.308–2 Testing performed by the Government.

Subpart 9.4—Debarment, Suspension, and Ineligibility

9.400 Scope of subpart.
9.401 Applicability.
9.402 Policy.
9.403 Definitions.
9.404 Exclusions in the System for Award Management.
9.405 Effect of listing.
9.405–1 Continuation of current contracts.
9.405–2 Restrictions on subcontracting.
9.406 Debarment.
9.406–1 General.
9.406–2 Causes for debarment.
9.406–3 Procedures.
9.406–4 Period of debarment.
9.406–5 Scope of debarment.
9.407 Suspension.
9.407–1 General.

9.407–2 Causes for suspension.
9.407–3 Procedures.
9.407–4 Period of suspension.
9.407–5 Scope of suspension.
9.408 [Reserved]
9.409 Contract clause.

Subpart 9.5—Organizational and Consultant Conflicts of Interest

9.500 Scope of subpart.
9.501 Definition.
9.502 Applicability.
9.503 Waiver.
9.504 Contracting officer responsibilities.
9.505 General rules.
9.505–1 Providing systems engineering and technical direction.
9.505–2 Preparing specifications or work statements.
9.505–3 Providing evaluation services.
9.505–4 Obtaining access to proprietary information.
9.506 Procedures.
9.507 Solicitation provisions and contract clause.
9.507–1 Solicitation provisions.
9.507–2 Contract clause.
9.508 Examples.

Subpart 9.6—Contractor Team Arrangements

9.601 Definition.
9.602 General.
9.603 Policy.
9.604 Limitations.

Subpart 9.7—Defense Production Pools and Research and Development Pools

9.701 Definition.
9.702 Contracting with pools.
9.703 Contracting with individual pool members.

AUTHORITY: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

SOURCE: 48 FR 42142, Sept. 19, 1983, unless otherwise noted.

9.000 Scope of part.

This part prescribes policies, standards, and procedures pertaining to prospective contractors' responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; defense production pools and research and development pools; and organizational conflicts of interest.

Subpart 9.1—Responsible Prospective Contractors

9.100 Scope of subpart.

This subpart prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

9.101 Definitions.

Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and state level but only in connections with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

Surveying activity, as used in this subpart, means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

[48 FR 42142, Sept. 19, 1983, as amended at 66 FR 2128, Jan. 10, 2001; 75 FR 14065, Mar. 23, 2010]

9.102 Applicability.

(a) This subpart applies to all proposed contracts with any prospective contractor that is located—

(1) In the United States or its outlying areas; or

(2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with—

(1) Foreign, State, or local governments;

(2) Other U.S. Government agencies or their instrumentalities; or

(3) Agencies for people who are blind or severely disabled (see subpart 8.7).

[48 FR 42142, Sept. 19, 1983, as amended at 68 FR 28080, May 22, 2003; 79 FR 24199, Apr. 29, 2014; 84 FR 19844, May 6, 2019]

9.103 Policy.

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with subpart 19.6, Certificates of Competency and Determinations of Responsibility. (If Section 8(a) of the Small Business Act (15 U.S.C. 637) applies, see subpart 19.8.)

(c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

[48 FR 42142, Sept. 19, 1983, as amended at 61 FR 67410, Dec. 20, 1996; 62 FR 44819, Aug. 22, 1997; 62 FR 48921, Sept. 17, 1997; 65 FR 80264, Dec. 20, 2000; 66 FR 17755, Apr. 3, 2001; 66 FR 66986, 66989, Dec. 27, 2001]

9.104 Standards.

9.104–1 General standards.

To be determined responsible, a prospective contractor must—

(a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104–3(a));

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) Have a satisfactory performance record (see 9.104-3(b) and subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104–2;

(d) Have a satisfactory record of integrity and business ethics (for example, see subpart 42.15);

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors) (see 9.104–3(a));

(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see 9.104–3(a)); and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations (see also inverted domestic corporation prohibition at 9.108).

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 27119, July 29, 1986; 56 FR 55374, Oct. 25, 1991; 60 FR 16718, Mar. 31, 1995; 61 FR 67410, Dec. 20, 1996; 65 FR 80264, Dec. 20, 2000; 66 FR 17756, Apr. 3, 2001; 66 FR 66986, 66989, Dec. 27, 2001; 73 FR 67091, Nov. 12, 2008; 74 FR 31563, July 1, 2009; 76 FR 31413, May 31, 2011; 84 FR 19844, May 6, 2019]

9.104–2 Special standards.

(a) When it is necessary for a particular acquisition or class of acquisitions, the contracting officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors.

(b) Contracting officers shall award contracts for subsistence only to those prospective contractors that meet the general standards in 9.104–1 and are approved in accordance with agency sanitation standards and procedures.

9.104–3 Application of standards.

(a) *Ability to obtain resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources (see 9.104–1(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel. Consideration of a prime contractor's compliance with limitations on subcontracting shall take into account the time period covered by the contract base period or quantities plus option periods or quantities, if such options are considered when evaluating offers for award.

(b) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, The Small Business Subcontracting Program, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

(c)(1) *Affiliated concerns.* Affiliated concerns (see *Concern* in 19.001 and *Small business concern* in 2.101) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the contracting officer shall consider the affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.

(2) *Joint ventures.* For a prospective contractor that is a joint venture, the contracting officer shall consider the past performance of the joint venture. If the joint venture does not demonstrate past performance for award, the contracting officer shall consider the past performance of each party to the joint venture.

(d)(1) *Small business concerns.* Upon making a determination of nonresponsibility with regard to a small business concern, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether to issue a Certificate of Competency (see subpart 19.6).

(2) *Limitations on subcontracting.* A small business that is unable to comply with the limitations on subcontracting may be considered nonresponsible (see 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award; 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns; 52.219–14, Limitations on Subcontracting; 52.219–27, Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program; 52.219–29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns; and 52.219–30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program). A small business that has not agreed to comply with the limitations on subcontracting may be considered nonresponsive.

[48 FR 42142, Sept. 19, 1983, as amended at 53 FR 27463, July 20, 1988; 53 FR 34226, Sept. 2, 1988; 56 FR 55378, Oct. 25, 1991; 60 FR 48260, Sept. 18, 1995; 61 FR 67410, Dec. 20, 1996; 62 FR 44820, Aug. 22, 1997; 63 FR 70267, Dec. 18, 1998; 65 FR 80264, Dec. 20, 2000; 66 FR 66989, Dec. 27, 2001; 67 FR 13068, Mar. 20, 2002; 75 FR 14065, Mar. 23, 2010; 85 FR 11756, Feb. 27, 2020; 85 FR 67616, Oct. 23, 2020; 87 FR 58223, Sept. 23, 2022; 89 FR 13956, Feb. 23, 2024]

9.104–4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 9.405 and 9.405–2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

[48 FR 42142, Sept. 19, 1983, as amended at 81 FR 58638, Aug. 25, 2016; 81 FR 91638, Dec. 16, 2016; 82 FR 51529, Nov. 6, 2017]

9.104–5 Representation and certifications regarding responsibility matters.

(a) When an offeror provides an affirmative response in paragraph (a)(1) of the provision at 52.209–5, Certification Regarding Responsibility Matters, or paragraph (h) of provision 52.212–3, the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406–3(a) and 9.407–3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds $15,000.

(b) The provision at 52.209–11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, implements sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) (and similar provisions in subsequent appropriations acts). When an offeror provides an affirmative response in paragraph (b)(1) or (2) of the provision at 52.209–11 or paragraph (q)(2)(i) or (ii) of provision 52.212–3, the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see 9.405);

(2) Notify, in accordance with agency procedures (see 9.406–3(a) and 9.407–3(a)), the agency official responsible for initiating debarment or suspension action; and

(3) Not award to the corporation unless an agency suspending and debarring official has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

(c) If the provision at 52.209–12, Certification Regarding Tax Matters, is applicable (see 9.104–7(e)), then the contracting officer shall not award any contract in an amount greater than $7 million, unless the offeror affirmatively certified in its offer, as required by paragraph (b)(1), (2), and (3) of the provision.

(d) Offerors who do not furnish the representation or certifications or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the representation or certifications or such information may render the offeror nonresponsible.

[73 FR 21798, Apr. 22, 2008, as amended at 80 FR 38296, July 2, 2015; 80 FR 75906, Dec. 4, 2015; 81 FR 58638, Aug. 25, 2016; 81 FR 91638, Dec. 16, 2016; 82 FR 51529, Nov. 6, 2017; 85 FR 40067, July 2, 2020; 85 FR 62488, Oct. 2, 2020; 90 FR 511, Jan. 3, 2025; 90 FR 41877, Aug. 27, 2025]

9.104–6 Federal Awardee Performance and Integrity Information System.

(a)(1) Before awarding a contract in excess of the simplified acquisition threshold, the contracting officer shall

review the performance and integrity information available in the Federal Awardee Performance and Integrity Information System (FAPIIS), (available at *https://www.cpars.gov* , including FAPIIS information from the System for Award Management (SAM) Exclusions and the Contractor Performance Assessment Reporting System (CPARS)

(2) In accordance with 41 U.S.C. 2313(d)(3), FAPIIS also identifies—

(i) An affiliate that is an immediate owner or subsidiary of the offeror, if any (see 52.204–17, Ownership or Control of Offeror); and

(ii) All predecessors of the offeror that held a Federal contract or grant within the last three years (see 52.204–20, Predecessor of Offeror).

(b)(1) When making a responsibility determination, the contracting officer shall consider all the information available through FAPIIS with regard to the offeror and any immediate owner, predecessor, or subsidiary identified for that offeror in FAPIIS, as well as other past performance information on the offeror (see subpart 42.15).

(2) For evaluation of information available through FAPIIS relating to an affiliate of the offeror, see 9.104–3(c).

(3) For source selection evaluations of past performance, see 15.305(a)(2). Contracting officers shall use sound judgment in determining the weight and relevance of the information contained in FAPIIS and how it relates to the present acquisition.

(4) Since FAPIIS may contain information on any of the offeror's previous contracts and information covering a 5-year period, some of that information may not be relevant to a determination of present responsibility, *e.g.*, a prior administrative action such as debarment, suspension, voluntary exclusion, or administrative agreement, that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.

(5) Because FAPIIS is a database that provides information about prime contractors, the contracting officer posts information required to be posted about a subcontractor, such as trafficking in persons violations, to the record of the prime contractor (see 42.1503(h)(1)(v)). The prime contractor has the opportunity to post in FAPIIS any mitigating factors. The contracting officer shall consider any mitigating factors posted in FAPIIS by the prime contractor, such as degree of compliance by the prime contractor with the terms of FAR clause 52.222–50.

(c) If the contracting officer obtains relevant information from FAPIIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; terminations for default or cause; determinations of nonresponsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics; or comparable information relating to a grant, the contracting officer shall, unless the contractor has already been debarred, suspended, or has agreed to a voluntary exclusion—

(1) Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see 9.405); and

(2) Notify, prior to proceeding with award,in accordance with agency procedures (see 9.406–3(a) and 9.407–3(a)), the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for the official's consideration.

(d) The contracting officer shall document the contract file for each contract in excess of the simplified acquisition threshold to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that was taken as a result of the information. A contracting officer who makes a nonresponsibility determination is required to document that information in FAPIIS in accordance with 9.105–2(b)(2).

[75 FR 14065, Mar. 23, 2010, as amended at 80 FR 4986, Jan. 29, 2015; 81 FR 11990, Mar. 7, 2016; 81 FR 58638, Aug. 25, 2016; 81 FR 91638, Dec. 16, 2016; 82 FR 51530, Nov. 6, 2017; 84 FR 47865, Sept. 10, 2019; 90 FR 511, Jan. 3, 2025]

9.104–7 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.209–5, Certification Regarding Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 52.209–7, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed $750,000.

(c) The contracting officer shall insert the clause at 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters—

(1) In solicitations where the resultant contract value is expected to exceed $750,000; and

(2) In contracts in which the offeror checked ''has'' in paragraph (b) of the provision at 52.209–7.

(d) The contracting officer shall insert the provision 52.209–11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, in all solicitations.

(e) For agencies receiving funds subject to section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and similar provisions in subsequent appropriations acts, the contracting officer shall insert the provision 52.209–12, Certification Regarding Tax Matters, in solicitations for which the resultant contract (including options) may have a value greater than $7 million. Division B of the Consolidated and Continuing Further Appropriations Act, 2015 appropriates funds for the following agencies: the Department of Commerce, the Department of Justice, the National Aeronautics and Space Administration, the Office of Science and Technology Policy, the National Science Foundation, the Commission on Civil Rights, the Equal Employment Opportunity Commission, the U.S. International Trade Commission, the Legal Services Corporation, the Marine Mammal Commission, the Office of the United States Trade Representative, and the State Justice Institute.

[73 FR 21798, Apr. 22, 2008. Redesignated and amended at 75 FR 14065, Mar. 23, 2010;77 FR 201, Jan. 3, 2012; 80 FR 38296, July 2, 2015; 80 FR 75906, Dec. 4, 2015; 84 FR 19844, May 6, 2019; 85 FR 62488, Oct. 2, 2020; 90 FR 41877, Aug. 27, 2025]

9.105 Procedures.

9.105–1 Obtaining information.

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

(b)(1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see 9.106), promptly after a bid opening or receipt of offers. However, in negotiated contracting, especially when research and development is involved, the contracting officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning—

(i) The low bidder; or

(ii) Those offerors in range for award.

(2) Preaward surveys shall be managed and conducted by the surveying activity.

(i) If the surveying activity is a contract administration office—

(A) That office shall advise the contracting officer on prospective contractors' financial competence and credit needs; and

(B) The administrative contracting officer shall obtain from the auditor any information required concerning the adequacy of prospective contractors' accounting systems and these systems' suitability for use in administering the proposed type of contract.

(ii) If the surveying activity is not a contract administration office, the contracting officer shall obtain from the auditor any information required concerning prospective contractors' financial competence and credit needs, the adequacy of their accounting systems, and these systems' suitability for

use in administering the proposed type of contract.

(3) Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award.

(c) In making the determination of responsibility, the contracting officer shall consider information available through FAPIIS (see 9.104–6) with regard to the offeror and any immediate owner, predecessor, or subsidiary identified for that offeror in FAPIIS, including information that is linked to FAPIIS such as from SAM, and CPARS, as well as any other relevant past performance information on the offeror (see 9.104–1(c) and subpart 42.15). In addition, the contracting officer should use the following sources of information to support such determinations:

(1) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(2) The prospective contractor—including bid or proposal information (including the certification at 52.209–5 or 52.212–3(h) (see 9.104–5)), questionnaire replies, financial data, information on production equipment, and personnel information.

(3) Commercial sources of supplier information of a type offered to buyers in the private sector.

(4) Preaward survey reports (see 9.106).

(5) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

(d) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 27119, July 29, 1986; 52 FR 9038, Mar. 20, 1987; 54 FR 19813, May 8, 1989; 60 FR 16718, Mar. 31, 1995; 60 FR 33065, June 26, 1995; 61 FR 39201, July 26, 1996; 69 FR 76349, Dec. 20, 2004; 73 FR 21798, Apr. 22, 2008; 74 FR 31560, July 1, 2009; 75 FR 14066, Mar. 23, 2010; 78 FR 37678, June 21, 2013; 81 FR 11991, Mar. 7, 2016; 81 FR 58638, Aug. 25, 2016; 81 FR 91638, Dec. 16, 2016; 82 FR 51530, Nov. 6, 2017; 84 FR 19844, May 6, 2019; 84 FR 47866, Sept. 10, 2019]

9.105–2 Determinations and documentation.

(a) *Determinations.* (1) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(2) If the contracting officer determines that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in subpart 19.6. When a Certificate of Competency is issued for a small business concern (see subpart 19.6), the contracting officer shall accept the Small Business Administration's decision to issue a Certificate of Competency and award the contract to the concern.

(b) *Support documentation.* (1) Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports, the use of FAPIIS information (see 9.104–6), and any applicable Certificate of Competency, must be included in the contract file.

(2)(i) The contracting officer shall document the determination of nonresponsibility in FAPIIS (available at *https://www.cpars.gov*'' if—

(A) The contract is valued at more than the simplified acquisition threshold;

(B) The determination of nonresponsibility is based on lack of satisfactory performance record or satisfactory

record of integrity and business ethics; and

(C) The Small Business Administration does not issue a Certificate of Competency.

(ii) The contracting officer is responsible for the timely submission, within 3 working days, and sufficiency, and accuracy of the documentation regarding the nonresponsibility determination.

(iii) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(A) The non-public segment, into which Government officials and contractors post information, which can only be viewed by—

(*1*) Government personnel and authorized users performing business on behalf of the Government; or

(*2*) An offeror or contractor, when viewing data on itself; and

(B) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(*1*) Past performance reviews required by subpart 42.15;

(*2*) Information that was entered prior to April 15, 2011; or

(*3*) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (b)(2)(iv) of this section.

(iv) The contracting officer, or any other Government official, shall not post any information in the non-public segment of FAPIIS that is covered by a disclosure exemption under the Freedom of Information Act. If the contractor asserts within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information Act procedures, prior to reposting the releasable information.

[48 FR 42142, Sept. 19, 1983, as amended at 75 FR 14066, Mar. 23, 2010; 77 FR 201, Jan. 3, 2012; 79 FR 24253, Apr. 29, 2014; 84 FR 47866, Sept. 10, 2019]

9.105–3 Disclosure of preaward information.

(a) Except as provided in subpart 24.2, Freedom of Information Act, information (including the preaward survey report) accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Government.

(b) The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. After award, the contracting officer or, if it is appropriate, the head of the surveying activity or a designee may discuss the findings of the preaward survey with the company surveyed.

(c) Preaward survey information may contain proprietary or source selection information and should be marked with the appropriate legend and protected accordingly (see 3.104–4).

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 20496, May 11, 1989; 62 FR 232, Jan. 2, 1997; 67 FR 13063, Mar. 20, 2002; 81 FR 58638, Aug. 25, 2016; 82 FR 51530, Nov. 6, 2017]

9.106 Preaward surveys.

9.106–1 Conditions for preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. In addition, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial products or commercial services (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

(b) When a cognizant contract administration office becomes aware of a prospective award to a contractor about which unfavorable information exists

and no preaward survey has been requested, it shall promptly obtain and transmit details to the contracting officer.

(c) Before beginning a preaward survey, the surveying activity shall ascertain whether the prospective contractor is debarred, suspended, or ineligible (see subpart 9.4). If the prospective contractor is debarred, suspended, or ineligible, the surveying activity shall advise the contracting officer promptly and not proceed with the preaward survey unless specifically requested to do so by the contracting officer.

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 27489, July 31, 1986; 60 FR 48237, Sept. 18, 1995; 61 FR 39201, July 26, 1996; 86 FR 61021, Nov. 4, 2021]

9.106–2 Requests for preaward surveys.

The contracting officer's request to the surveying activity (Preaward Survey of Prospective Contractor (General), SF 1403) shall—

(a) Identify additional factors about which information is needed;

(b) Include the complete solicitation package (unless it has previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(c) State whether the contracting office will participate in the survey;

(d) Specify the date by which the report is required. This date should be consistent with the scope of the survey requested and normally shall allow at least 7 working days to conduct the survey; and

(e) When appropriate, limit the scope of the survey.

9.106–3 Interagency preaward surveys.

When the contracting office and the surveying activity are in different agencies, the procedures of this section 9.106 and subpart 42.1 shall be followed along with the regulations of the agency in which the surveying activity is located, except that reasonable special requests by the contracting office shall be accommodated (also *see* subpart 17.5).

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 20496, May 11, 1989; 55 FR 36795, Sept. 6, 1990; 62 FR 232, Jan. 2, 1997, 75 FR 77735, Dec. 13, 2010]

9.106–4 Reports.

(a) The surveying activity shall complete the applicable parts of SF 1403, Preaward Survey of Prospective Contractor (General); SF 1404, Preaward Survey of Prospective Contractor—Technical; SF 1405, Preaward Survey of Prospective Contractor—Production; SF 1406, Preaward Survey of Prospective Contractor—Quality Assurance; SF 1407, Preaward Survey of Prospective Contractor—Financial Capability; and SF 1408, Preaward Survey of Prospective Contractor—Accounting System; and provide a narrative discussion sufficient to support both the evaluation ratings and the recommendations.

(b) When the contractor surveyed is a small business that has received preferential treatment on an ongoing contract under Section 8(a) of the Small Business Act (15 U.S.C. 637) or has received a Certificate of Competency during the last 12 months, the surveying activity shall consult the appropriate Small Business Administration field office before making an affirmative recommendation regarding the contractor's responsibility or nonresponsibility.

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity shall specify the extent to which the prospective contractor plans, or has taken, corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance. The narrative shall report any persistent pattern of need for costly and burdensome Government assistance (e.g., engineering, inspection, or testing) provided in the Government's interest but not contractually required.

(d) When the surveying activity possesses information that supports a recommendation of complete award without an on-site survey and no special areas for investigation have been requested, the surveying activity may

provide a short-form preaward survey report. The short-form report shall consist solely of the Preaward Survey of Prospective Contractor (General), SF 1403. Sections III and IV of this form shall be completed and block 21 shall be checked to show that the report is a short-form preaward report.

9.107 Surveys of nonprofit agencies participating in the AbilityOne Program.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by 41 U.S.C. chapter 85, determines what supplies and services Federal agencies are required to purchase from AbilityOne participating nonprofit agencies serving people who are blind or have other severe disabilities (see Subpart 8.7). The Committee is required to find an AbilityOne participating nonprofit agency capable of furnishing the supplies or services before the nonprofit agency can be designated as a mandatory source under the AbilityOne Program. The Committee may request a contracting office to assist in assessing the capabilities of a nonprofit agency.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the AbilityOne participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the AbilityOne participating nonprofit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

[59 FR 67029, Dec. 28, 1994, as amended at 73 FR 53995, Sept. 17, 2008; 79 FR 24199, Apr. 29, 2014; 84 FR 19844, May 6, 2019]

9.108 Prohibition on contracting with inverted domestic corporations.

9.108–1 Definitions.

As used in this section—

Inverted domestic corporation means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

Subsidiary means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

[76 FR 31413, May 31, 2011, as amended at 79 FR 74556, Dec. 15, 2014]

9.108–2 Prohibition.

(a) Section 745 of Division D of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) prohibit, on a Governmentwide basis, the use of appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of such a corporation, except as provided in paragraph (b) of this section and in 9.108–4 Waiver.

(b)(1) Section 745 and its successor provisions include the following exception: This section shall not apply to any Federal Government contract entered into before the date of the enactment of this Act, or to any task order issued pursuant to such contract.

(2) To ensure appropriate application of the prohibition and this exception, contracting officers should consult with legal counsel if, during the performance of a contract, a contractor becomes an inverted domestic corporation or a subsidiary of one.

[79 FR 74556, Dec. 15, 2014]

9.108–3 Representation by the offeror.

(a) In order to be eligible for contract award, an offeror must represent that it is neither an inverted domestic corporation, nor a subsidiary of an inverted domestic corporation. Any offeror that cannot so represent is ineligible for award of a contract, unless waived in accordance with the procedures at 9.108–4.

(b) The contracting officer may rely on an offeror's representation that it is not an inverted domestic corporation unless the contracting officer has reason to question the representation.

[76 FR 31413, May 31, 2011, as amended at 77 FR 27548, May 10, 2012; 79 FR 74556, Dec. 15, 2014]

9.108–4 Waiver.

Any agency head may waive the prohibition in subsection 9.108–2 and the requirement of subsection 9.108–3 for a specific contract if the agency head determines in writing that the waiver is required in the interest of national security, documents the determination, and reports it to the Congress.

[76 FR 31413, May 31, 2011]

9.108–5 Solicitation provision and contract clause.

The contracting officer shall—

(a) Include the provision at 52.209–2, Prohibition on Contracting with Inverted Domestic Corporations—Representation, in each solicitation for the acquisition of products or services (including construction); and

(b) Include the clause at 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations, in each solicitation and contract for the acquisition of products or services (including construction).

[76 FR 31413, May 31, 2011, as amended at 77 FR 27548, May 10, 2012; 79 FR 74556, Dec. 15, 2014]

9.109 Prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States.

9.109–1 Authority.

This section implements 22 U.S.C. 2593e.

[83 FR 28148, June 15, 2018]

9.109–2 Prohibition.

Contracting officers shall not award, renew, or extend a contract for the procurement of products or services with an entity identified as excluded in the System for Award Management, specifically for this subpart, on the basis of involvement in activities that violate arms control treaties or agreements with the United States.

[83 FR 28148, June 15, 2018, as amended at 83 FR 48696, Sept. 26, 2018]

9.109–3 Exception.

The prohibition in 9.109–2 does not apply to contracts for the procurement of products or services along a major route of supply to a zone of active combat or major contingency operation, as specified in statute or by the cognizant Combatant Commander, in consultation with the Chief of Mission. As of May 10, 2018, countries along the major route of supply to support operations in Afghanistan are Afghanistan, Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, and Turkmenistan.

[83 FR 28148, June 15, 2018]

9.109–4 Certification by the offeror.

(a) In order to be eligible for contract award, an offeror is required to—

(1)(i) Certify that it does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available at *https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-*

control-verification-and-compliance/''; and

(ii) Similarly certify with regard to any entity owned or controlled by the offeror; or

(2) Provide with its offer information that the President of the United States has—

(i) Waived application under 22 U.S.C. 2593e(d) or (e); or

(ii) Determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C. 2593e(b).

(b) If certifying in accordance with 52.209–13(b)(1), the Offeror is required to submit the certification with the offer. It is not included in the annual representations and certifications in the System for Award Management.

(c) The contracting officer may rely on an offeror's certification unless the contracting officer has reason to question the certification.

(d) Upon the determination of a false certification under 52.209–13, an offeror will be subject to such remedies as suspension or debarment under subpart 9.4, or termination of any contract resulting from the false certification. Debarments pursued as a remedy under subpart 9.4 shall be for a period of not less than 2 years, inclusive of any suspension period, if suspension precedes a debarment (see 9.406–4(a)(1)(iii) and (a)(2)).

[83 FR 28148, June 15, 2018, as amended at 83 FR 48696, Sept. 26, 2018; 85 FR 40076, July 2, 2020; 86 FR 3678, Jan. 14, 2021]

9.109–5 Solicitation provision.

Unless the exception at 9.109–3 applies, the contracting officer shall include the provision at 52.209–13, Violation of Arms Control Treaties or Agreements—Certification, in each solicitation for the acquisition of products or services (including construction) that exceeds the simplified acquisition threshold, other than solicitations for the acquisition of commercial products or commercial services.

[83 FR 28148, June 15, 2018, as amended at 86 FR 61021, Nov. 4, 2021]

9.110 Reserve Officer Training Corps and military recruiting on campus.

9.110–1 Definitions.

As used in this section—

Covered agency means—

(1) The Department of Defense;

(2) Any department or agency for which regular appropriations are made in a Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act;

(3) The Department of Homeland Security;

(4) The National Nuclear Security Administration of the Department of Energy;

(5) The Department of Transportation; or

(6) The Central Intelligence Agency.

Institution of higher education means an institution that meets the requirements of 20 U.S.C. 1001 and includes all sub-elements of such an institution.

[85 FR 67621, Oct. 23, 2020]

9.110–2 Authority.

This section implements 10 U.S.C. 983.

[85 FR 67621, Oct. 23, 2020]

9.110–3 Policy.

(a) Except as provided in paragraph (b) of this section, 10 U.S.C. 983 prohibits the covered agency from providing funds by contract 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—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses

and to students that is provided to any other employer; or

(4) Military recruiters from accessing certain information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name, address, and telephone listings.

(ii) Date and place of birth, educational level, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(b) The prohibition in paragraph (a) of this section does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (a) of this section; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

[85 FR 67621, Oct. 23, 2020]

9.110–4 Procedures.

If the Secretary of Defense determines, pursuant to the procedures at 32 CFR part 216, that an institution of higher education is ineligible to receive funds from a covered agency because of a policy or practice described in 9.110–3—

(a) The Secretary of Defense will create an active exclusion record for the institution in the System for Award Management; and

(b) A covered agency shall not solicit offers from, award contracts to, or consent to subcontracts with the institution. The prohibition in this paragraph (b) does not apply to acquisitions at or below the simplified acquisition threshold or to acquisitions of commercial products and commercial services, including commercially available off-the-shelf items.

[85 FR 67621, Oct. 23, 2020, as amended at 86 FR 61021, Nov. 4, 2021]

9.110–5 Contract clause.

The contracting officer shall insert the clause at 52.209–14, Reserve Officer Training Corps and Military Recruiting on Campus, in solicitations and contracts that are expected to exceed the simplified acquisition threshold, with institutions of higher education, when using funds from a covered agency. The clause is not prescribed for solicitations and contracts using part 12 for the acquisition of commercial products and commercial services.

[85 FR 67621, Oct. 23, 2020, as amended at 86 FR 61021, Nov. 4, 2021]

Subpart 9.2—Qualifications Requirements

SOURCE: 50 FR 35476, Aug. 30, 1985, unless otherwise noted.

9.200 Scope of subpart.

This subpart implements 10 U.S.C. 3243 and 41 U.S.C. 3311 and prescribes policies and procedures regarding qualification requirements and the acquisitions that are subject to such requirements.

[79 FR 24199, Apr. 29, 2014, as amended at 87 73896, Dec. 1, 2022]

9.201 Definitions.

As used in this subpart—

Qualified bidders list (QBL) means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

Qualified manufacturers list (QML) means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988; 66 FR 2128, Jan. 10, 2001]

9.202 Policy.

(a)(1) The head of the agency or designee shall, before establishing a qualification requirement, prepare a written justification—

(i) Stating the necessity for establishing the qualification requirement and specifying why the qualification requirement must be demonstrated before contract award;

(ii) Estimating the likely costs for testing and evaluation which will be incurred by the potential offeror to become qualified; and

(iii) Specifying all requirements that a potential offeror (or its product) must satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the qualification requirements shall be specified.

(2) Upon request to the contracting activity, potential offerors shall be provided—

(i) All requirements that they or their products must satisfy to become qualified; and

(ii) At their expense (but see 9.204(a)(2) with regard to small businesses), a prompt opportunity to demonstrate their abilities to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned, or of another agency obtained through interagency agreements, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency).

(3) If the services in (a)(2)(ii) of this section are provided by contract, the contractors selected to provide testing and evaluation services shall be—

(i) Those that are not expected to benefit from an absence of additional qualified sources; and

(ii) Required by their contracts to adhere to any restriction on technical data asserted by the potential offeror seeking qualification.

(4) A potential offeror seeking qualification shall be promptly informed as to whether qualification is attained and, in the event it is not, promptly furnished specific reasons why qualification was not attained.

(b) When justified under the circumstances, the agency activity responsible for establishing a qualification requirement shall submit to the advocate for competition for the procuring activity responsible for purchasing the item subject to the qualification requirement, a determination that it is unreasonable to specify the standards for qualification which a prospective offeror (or its product) must satisfy. After considering any comments of the advocate for competition reviewing the determination, the head of the procuring activity may waive the requirements of 9.202(a)(1)(ii) through (4) of this section for up to 2 years with respect to the item subject to the qualification requirement. A copy of the waiver shall be furnished to the head of the agency or other official responsible for actions under paragraph (a)(1) of this section). The waiver authority provided in this paragraph does not apply with respect to qualification requirements contained in a QPL, QML, or QBL.

(c) If a potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror (or its product) meets the standards established for qualification or can meet them before the date specified for award of the contract, a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror—

(1) Is not on a QPL, QML, or QBL maintained by the Department of Defense (DoD) or the National Aeronautics and Space Administration (NASA); or

(2) Has not been identified as meeting a qualification requirement established after October 19, 1984, by DoD or NASA; or

(3) Has not been identified as meeting a qualification requirement established by a civilian agency (not including NASA).

(d) The procedures in subpart 19.6 for referring matters to the Small Business Administration are not mandatory on the contracting officer when the basis for a referral would involve a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(e) The contracting officer need not delay a proposed award in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification. In addition, when approved by the head of an agency or designee, a procurement need not be delayed in order to comply with paragraph (a) of this section.

(f) Within 7 years following enforcement of a QPL, QML, or QBL by DoD or NASA, or within 7 years after any

qualification requirement was originally established by a civilian agency other than NASA, the qualification requirement shall be examined and revalidated in accordance with the requirements of paragraph (a) of this section. For DoD and NASA, qualification requirements, other than QPL's, QML's, and QBL's, shall be examined and revalidated within 7 years after establishment of the requirement under paragraph (a) of this section. Any periods for which a waiver under paragraph (b) of this section is in effect shall be excluded in computing the 7 years within which review and revalidation must occur.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988; 79 FR 24199, Apr. 29, 2014; 84 FR 19844, May, 6, 2019]

9.203 QPL's, QML's, and QBL's.

(a) Qualification and listing in a QPL, QML, or QBL is the process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, or manufacturers or potential offerors, are provided an opportunity to demonstrate their abilities to meet the standards specified for qualification. The names of successful products, manufacturers, or potential offerors are included on lists evidencing their status. Generally, qualification is performed in advance and independently of any specific acquisition action. After qualification, the products, manufacturers, or potential offerors are included in a Federal or Military QPL, QML, or QBL. (See 9.202(a)(2) with regard to any product, manufacturer, or potential offeror not yet included on an applicable list.)

(b) Specifications requiring a qualified product are included—

(1) In the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions; and

(2) On the Department of Defense Acquisition Streamlining and Standardization Information System (ASSIST) website at *https://assist.dla.mil*.

(c) Instructions concerning qualification procedures are included in the following publications:

(1) Federal Standardization Manual, FSPM–0001.

(2) Department of Defense Manual 4120.24, Defense Standardization Program (DSP) Procedures, (*www.esd.whs.mil/Directives/Issuances/dodm*) as amended by Military Standards 961 and 962 (*https://assist.dla.mil*).

(d) The publications in paragraphs (b)(1) and (c)(1) of this section may be obtained from the address in 11.201(d)(1).

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 17857, May 18, 1988; 63 FR 34062, June 22, 1998; 67 FR 6120, Feb. 8, 2002; 71 FR 227, Jan. 3, 2006; 79 FR 24253, Apr. 29, 2014; 88 FR 57355, Aug. 8, 2023]

9.204 Responsibilities for establishment of a qualification requirement.

The responsibilities of agency activities that establish qualification requirements include the following:

(a) Arranging publicity for the qualification requirements. If active competition on anticipated future qualification requirements is likely to be fewer than two manufacturers or the products of two manufacturers, the activity responsible for establishment of the qualification requirements must—

(1) Periodically furnish through the Governmentwide point of entry (GPE) a notice seeking additional sources or products for qualification unless the contracting officer determines that such publication would compromise the national security.

(2) Bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement. However, such costs may be borne only if it is determined in accordance with agency procedures that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time, considering the duration and dollar value of anticipated

future requirements. A prospective contractor requesting the United States to bear testing and evaluation costs must certify as to its status as a small business concern under section 3 of the Small Business Act in order to receive further consideration.

(b) Qualifying products that meet specification requirements.

(c) Listing manufacturers and suppliers whose products are qualified in accordance with agency procedures.

(d) Furnishing QPL's, OML's, or QBL's or the qualification requirements themselves to prospective offerors and the public upon request(see 9.202(a)(2)(i)).

(e) Clarifying, as necessary, qualification requirements.

(f) In appropriate cases, when requested by the contracting officer, providing concurrence in a decision not to enforce a qualification requirement for a solicitation.

(g) Withdrawing or omitting qualification of a listed product, manufacturer or offeror, as necessary.

(h) Advising persons furnished any list of products, manufacturers or offerors meeting a qualification requirement and suppliers whose products are on any such list that—

(1) The list does not constitute endorsement of the product, manufacturer, or other source by the Government;

(2) The products or sources listed have been qualified under the latest applicable specification;

(3) The list may be amended without notice;

(4) The listing of a product or source does not release the supplier from compliance with the specification; and

(5) Use of the list for advertising or publicity is permitted. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that the Government in any way recommends or endorses the products or the sources listed.

(i) Reexamining a qualified product or manufacturer when—

(1) The manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of previous qualification is questionable;

(2) The requirements in the specification have been amended or revised sufficiently to affect the character of the product; or

(3) It is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification.

[50 FR 35476, Aug. 30, 1985, as amended at 66 FR 27413, May 16, 2001; 68 FR 56679, Oct. 1, 2003; 84 FR 19844, May 6, 2019]

9.205 Opportunity for qualification before award.

(a) If an agency determines that a qualification requirement is necessary, the agency activity responsible for establishing the requirement must urge manufacturers and other potential sources to demonstrate their ability to meet the standards specified for qualification and, when possible, give sufficient time to arrange for qualification before award. The responsible agency activity must, before establishing any qualification requirement, furnish notice through the GPE. The notice must include—

(1) Intent to establish a qualification requirement;

(2) The specification number and name of the product;

(3) The name and address of the activity to which a request for the information and opportunity described in 9.202(a)(2) should be submitted;

(4) The anticipated date that the agency will begin awarding contracts subject to the qualification requirement;

(5) A precautionary notice that when a product is submitted for qualification testing, the applicant must furnish any specific information that may be requested of the manufacturer before testing will begin; and

(6) The approximate time period following submission of a product for qualification testing within which the applicant will be notified whether the product passed or failed the qualification testing (see 9.202(a)(4)).

(b) The activity responsible for establishing a qualification requirement must keep any list maintained of those already qualified open for inclusion of

additional products, manufacturers, or other potential sources.

[50 FR 35476, Aug. 30, 1985, as amended at 64 FR 72418, Dec. 27, 1999; 66 FR 27413, May 16, 2001; 68 FR 56679, Oct. 1, 2003; 69 FR 77872, Dec. 28, 2004]

9.206 Acquisitions subject to qualification requirements.

9.206–1 General.

(a) Agencies may not enforce any QPL, QML, or QBL without first complying with the requirements of 9.202(a). However, qualification requirements themselves, whether or not previously embodied in a QPL, QML, or QBL, may be enforced without regard to 9.202(a) if they are in either of the following categories:

(1) Any qualification requirement established by statute prior to October 30, 1984, for civilian agencies (not including NASA); or

(2) Any qualification requirement established by statute or administrative action prior to October 19, 1984, for DOD or NASA. Qualification requirements established after the above dates must comply with 9.202(a) to be enforceable.

(b) Except when the agency head or designee determines that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement may not thereafter be enforced unless the agency complies with 9.202(a).

(c) If a qualification requirement applies, the contracting officer need consider only those offers identified as meeting the requirement or included on the applicable QPL, QML, or QBL, unless an offeror can satisfactorily demonstrate to the contracting officer that it or its product or its subcontractor or its product can meet the standards established for qualification before the date specified for award.

(d) If a product subject to a qualification requirement is to be acquired as a component of an end item, the contracting officer must assure that all such components and their qualification requirements are properly identified in the solicitation since the product or source must meet the standards specified for qualification before award.

(e) In acquisitions subject to qualification requirements, the contracting officer shall take the following steps:

(1) Use presolicitation notices in appropriate cases to advise potential suppliers before issuing solicitations involving qualification requirements. The notices shall identify the specification containing the qualification requirement and establish an allowable time period, consistent with delivery requirements, for prospective offerors to demonstrate their abilities to meet the standards specified for qualification. The notice shall be publicized in accordance with 5.204. Whether or not a presolicitation notice is used, the general synopsizing requirements of subpart 5.2 apply.

(2) Distribute solicitations to prospective contractors whether or not they have been identified as meeting applicable qualification requirements.

(3) When appropriate, request in accordance with agency procedures that a qualification requirement not be enforced in a particular acquisition and, if granted, so specify in the solicitation (see 9.206–1(b)).

(4) Forward requests from potential suppliers for information on a qualification requirement to the agency activity responsible for establishing the requirement.

(5) Allow the maximum time, consistent with delivery requirements, between issuing the solicitation and the contract award. As a minimum, contracting officers shall comply with the time frames specified in 5.203 when applicable.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988]

9.206–2 Contract clause.

The contracting officer shall insert the clause at 52.209–1, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

[53 FR 34227, Sept. 2, 1988]

9.206–3 Competition.

(a) *Presolicitation.* If a qualification requirement applies to an acquisition, the contracting officer shall review the

applicable QPL, QML, or QBL or other identification of those sources which have met the requirement before issuing a solicitation to ascertain whether the number of sources is adequate for competition. (See 9.204(a) for duties of the agency activity responsible for establishment of the qualification requirement.) If the number of sources is inadequate, the contracting officer shall request the agency activity which established the requirement to—

(1) Indicate the anticipated date on which any sources presently undergoing evaluation will have demonstrated their abilities to meet the qualification requirement so that the solicitation could be rescheduled to allow as many additional sources as possible to qualify; or

(2) Indicate whether a means other than the qualification requirement is feasible for testing or demonstrating quality assurance.

(b) *Postsolicitation.* The contracting officer shall submit to the agency activity which established the qualification requirement the names and addresses of concerns which expressed interest in the acquisition but are not included on the applicable QPL, QML, or QBL or identified as meeting the qualification requirement. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a) (2) and (4)).

[50 FR 35476, Aug. 30, 1985, as amended at 60 FR 34737, July 3, 1995]

9.207 Changes in status regarding qualification requirements.

(a) The contracting officer shall promptly report to the agency activity which established the qualification requirement any conditions which may merit removal or omission from a QPL, QML, or QBL or affect whether a source should continue to be otherwise identified as meeting the requirement. These conditions exist when—

(1) Products or services are submitted for inspection or acceptance that do not meet the qualification requirement;

(2) Products or services were previously rejected and the defects were not corrected when resubmitted for inspection or acceptance;

(3) A supplier fails to request reevaluation following change of location or ownership of the plant where the product which met the qualification requirement was manufactured (see the clause at 52.209–1, Qualification Requirements);

(4) A manufacturer of a product which met the qualification requirement has discontinued manufacture of the product;

(5) A source requests removal from a QPL, QML, or QBL;

(6) A condition of meeting the qualification requirement was violated; e.g., advertising or publicity contrary to 9.204(h)(5);

(7) A revised specification imposes a new qualification requirement;

(8) Manufacturing or design changes have been incorporated in the qualification requirement;

(9) The source is listed in the System for Award Management Exclusions (see Subpart 9.4); or

(10) Performance of a contract subject to a qualification requirement is otherwise unsatisfactory.

(b) After considering any of the above or other conditions reasonably related to whether a product or source continues to meet the standards specified for qualification, an agency may take appropriate action without advance notification. The agency shall, however, promptly notify the affected parties if a product or source is removed from a QPL, QML, or QBL, or will no longer be identified as meeting the standards specified for qualification. This notice shall contain specific information why the product or source no longer meets the qualification requirement.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988; 56 FR 15149, Apr. 15, 1991; 60 FR 33065, June 26, 1995; 69 FR 76349, Dec. 20, 2004; 78 FR 37678, June 21, 2013]

Subpart 9.3—First Article Testing and Approval

9.301 Definition.

Approval, as used in this subpart, means the contracting officer's written notification to the contractor accepting the test results of the first article.

[48 FR 42142, Sept. 19, 1983, as amended at 66 FR 2128, Jan. 10, 2001]

9.302 General.

First article testing and approval (hereafter referred to as testing and approval) ensures that the contractor can furnish a product that conforms to all contract requirements for acceptance. Before requiring testing and approval, the contracting officer shall consider the—

(a) Impact on cost or time of delivery;

(b) Risk to the Government of foregoing such test; and

(c) Availability of other, less costly, methods of ensuring the desired quality.

9.303 Use.

Testing and approval may be appropriate when—

(a) The contractor has not previously furnished the product to the Government;

(b) The contractor previously furnished the product to the Government, but—

(1) There have been subsequent changes in processes or specifications;

(2) Production has been discontinued for an extended period of time; or

(3) The product acquired under a previous contract developed a problem during its life.

(c) The product is described by a performance specification; or

(d) It is essential to have an approved first article to serve as a manufacturing standard.

9.304 Exceptions.

Normally, testing and approval is not required in contracts for—

(a) Research or development;

(b) Products requiring qualification before award (e.g., when an applicable qualified products list exists (see subpart 9.2));

(c) Products normally sold in the commercial market; or

(d) Products covered by complete and detailed technical specifications, unless the requirements are so novel or exacting that it is questionable whether the products would meet the requirements without testing and approval.

9.305 Risk.

Before first article approval, the acquisition of materials or components, or commencement of production, is normally at the sole risk of the contractor. To minimize this risk, the contracting officer shall provide sufficient time in the delivery schedule for acquisition of materials and components, and for production after receipt of first article approval. When Government requirements preclude this action, the contracting officer may, before approval of the first article, authorize the contractor to acquire specific materials or components or commence production to the extent essential to meet the delivery schedule (see Alternate II of the clause at 52.209–3, First Article Approval—Contractor Testing, and Alternate II of the clause at 52.209–4, First Article Approval—Government Testing. Costs incurred based on this authorization are allocable to the contract for—

(a) Progress payments; and

(b) Termination settlements if the contract is terminated for the convenience of the Government.

[48 FR 42142, Sept. 19, 1983, as amended at 84 FR 19844, May 6, 2019]

9.306 Solicitation requirements.

Solicitations containing a testing and approval requirement shall—

(a) Provide, in the circumstance where the contractor is to be responsible for the first article approval testing—

(1) The performance or other characteristics that the first article must meet for approval;

(2) The detailed technical requirements for the tests that must be performed for approval; and

(3) The necessary data that must be submitted to the Government in the first article approval test report;

(b) Provide, in the circumstance where the Government is to be responsible for the first article approval testing—

(1) The performance or other characteristics that the first article must meet for approval; and

(2) The tests to which the first article will be subjected for approval;

(c) Inform offerors that the requirement may be waived when supplies identical or similar to those called for have previously been delivered by the offeror and accepted by the Government (see 52.209-3(h) and 52.209-4(i));

(d) Permit the submission of alternative offers, one including testing and approval and the other excluding testing and approval (if eligible under paragraph (c) of this section);

(e) State clearly the first article's relationship to the contract quantity (see paragraph (e) of the clause at 52.209–3, First Article Approval—Contractor Testing, or 52.209–4, First Article Approval—Government Testing);

(f) Contain a delivery schedule for the production quantity (see 11.403). The delivery schedule may—

(1) Be the same whether or not testing and approval is waived; or

(2) Provide for earlier delivery when testing and approval is waived and the Government desires earlier delivery. In the latter case, any resulting difference in delivery schedules shall not be a factor in evaluation for award. The clause at 52.209–4, First Article Approval—Government Testing, shall contain the delivery schedule for the first article;

(g) Provide for the submission of contract numbers, if any, to document the offeror's eligibility under paragraph (c) of this section;

(h) State whether the approved first article will serve as a manufacturing standard;

(i) Include, when the Government is responsible for first article testing, the Government's estimated testing costs as a factor for use in evaluating offers (when appropriate); and

(j) Inform offerors that the prices for first articles and first article tests in relation to production quantities shall not be materially unbalanced (see 15.404–1(g)) if first article test items or tests are to be separately priced.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 34753, Aug. 21, 1989; 55 FR 25527, June 21, 1990; 60 FR 48237, Sept. 18, 1995; 62 FR 51270, Sept. 30, 1997; 84 FR 19845, May 6, 2019]

9.307 Government administration procedures.

(a) Before the contractor ships the first article, or the first article test report, to the Government laboratory or other activity responsible for approval at the address specified in the contract, the contract administration office shall provide that activity with as much advance notification as is feasible of the forthcoming shipment, and—

(1) Advise that activity of the contractual requirements for testing and approval, or evaluation, as appropriate;

(2) Call attention to the notice requirement in paragraph (b) of the clause at 52.209–3, First Article Approval—Contractor Testing, or 52.209–4, First Article Approval—Government Testing; and

(3) Request that the activity inform the contract administration office of the date when testing or evaluation will be completed.

(b) The Government laboratory or other activity responsible for first article testing or evaluation shall inform the contracting office whether to approve, conditionally approve, or disapprove the first article. The contracting officer shall then notify the contractor of the action taken and furnish a copy of the notice to the contract administration office. The notice shall include the first article shipment number, when available, and the applicable line item number. Any changes in the drawings, designs, or specifications determined by the contracting officer to be necessary shall be made under the Changes clause, and not by the notice of approval, conditional approval, or disapproval furnished the contractor.

[48 FR 42142, Sept. 19, 1983, as amended at 82 FR 4713, Jan. 13, 2017]

9.308 Contract clauses.

9.308–1 Testing performed by the contractor.

(a)(1) The contracting officer shall insert the clause at 52.209–3, First Article Approval—Contractor Testing, in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require—

(i) First article approval; and

(ii) That the contractor be required to conduct the first article testing.

(2) If it is intended that the contractor be required to produce the first

article and the production quantity at the same facility, the contracting officer shall use the clause with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use the clause with its Alternate II.

(b)(1) The contracting officer shall insert a clause substantially the same as the clause at 52.209–3, First Article Approval—Contractor Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require—

(i) First article approval; and

(ii) That the contractor be required to conduct the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209–3, First Article Approval—Contractor Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209–3, First Article Approval—Contractor Testing, with its Alternate II.

[48 FR 42142, Sept. 19, 1983, as amended at 84 FR 19845, May 6, 2019]

9.308–2 Testing performed by the Government.

(a)(1) The contracting officer shall insert the clause at 52.209–4, First Article Approval—Government Testing, in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require first article approval and that the Government will be responsible for conducting the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use the basic clause with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use the basic clause with its Alternate II.

(b)(1) The contracting officer shall insert a clause substantially the same as the clause at 52.209–4, First Article Approval—Government Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require first article approval and that the Government be responsible for conducting the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209–4, First Article Approval—Government Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209–4, First Article Approval—Government Testing, with its Alternate II.

Subpart 9.4—Debarment, Suspension, and Ineligibility

9.400 Scope of subpart.

(a) This subpart—

(1) Prescribes policies and procedures governing the debarment and suspension of contractors by agencies for the causes given in 9.406–2 and 9.407–2;

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of *ineligible* in 2.101); and

(3) Sets forth the consequences of this listing.

(b) Although this subpart does cover the listing of ineligible contractors (9.404) and the effect of this listing (9.405), it does not prescribe policies and procedures governing declarations of ineligibility except for contractors that have been declared ineligible pursuant to 10 U.S.C. 983 (see 9.110, and 9.405–1(b)).

(c) For Federal Acquisition Supply Chain Security Act (FASCSA) orders, see subpart 4.23.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 19814, May 8, 1989; 66 FR 2128, Jan. 10, 2001; 85 FR 67621, Oct. 23, 2020; 86 FR 3678, Jan. 14, 2021; 88 FR 69513, Oct. 5, 2023]

9.401 Applicability.

In accordance with Public Law 103–355, Section 2455 (31 U.S.C. 6101, note), and Executive Order 12689, any debarment, suspension or other Governmentwide exclusion initiated under the Nonprocurement Common Rule implementing Executive Order 12549 on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed debarment or other Governmentwide exclusion initiated on or after August 25, 1995 under this subpart shall also be recognized by and effective for those agencies and participants as an exclusion under the Nonprocurement Common Rule.

[60 FR 33065, June 26, 1995, as amended at 84 FR 19845, May 6, 2019]

9.402 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these remedies be imposed only in the public interest for the Government's protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures in this subpart.

(c) Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) When more than one agency has an interest in the debarment or suspension of a contractor, the Interagency Suspension and Debarment Committee, established under Executive Order 12549, and authorized by section 873 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) (31 U.S.C. 6101 note), shall resolve the lead agency issue and coordinate such resolution among all interested agencies prior to the initiation of any suspension, debarment, or related administrative action by any agency.

(e) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 19814, May 8, 1989; 74 FR 31565, July 1, 2009; 79 FR 24199, Apr. 29, 2014; 90 FR 511, Jan. 3, 2025]

9.403 Definitions.

As used in this subpart—

Administrative agreement means an agreement between an agency suspending and debarring official and the contractor used to resolve a suspension or debarment proceeding, or a potential suspension or debarment proceeding.

Affiliates. (1) Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly—

(i) Either one controls or has the power to control the other; or

(ii) A third party controls or has the power to control both.

(2) Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

Agency means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition that creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

Contractor means any individual or other legal entity that—

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

(2) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

Conviction means—

(1) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(2) Any other resolution that is the functional equivalent of a judgment establishing a criminal offense by a court of competent jurisdiction, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

Indictment means 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.

Legal proceedings means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

Nonprocurement Common Rule means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements. See 2 CFR part 180 and agency enacting regulations in 2 CFR subtitle B.

Pre-notice letter means a written correspondence issued to a contractor in a suspension or debarment matter, which does not immediately result in an exclusion or ineligibility. The letter is issued at the discretion of the suspending and debarring official. The letter is not a mandatory step in the suspension or debarment process.

Unfair trade practices means the commission of any of the following acts by a contractor:

(1) A violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the ''Coordination Committee'' for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

Voluntary exclusion means a contractor's written agreement to be excluded for a period under the terms of a settlement between the contractor and the suspending and debarring official of one or more agencies. A voluntary exclusion must have Governmentwide effect.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 19814, May 8, 1989; 56 FR 15149, Apr. 15, 1991; 59 FR 11372, Mar. 10, 1994; 60 FR 33065, June 26, 1995; 66 FR 2128, Jan. 10, 2001; 84 FR 19845, May 6, 2019; 90 FR 511, Jan. 3, 2025]

9.404 Exclusions in the System for Award Management.

(a) The General Services Administration (GSA)—

(1) Operates the web-based System for Award Management (SAM), which contains exclusion records; and

(2) Provides technical assistance to Federal agencies in the use of SAM.

(b) An exclusion record in SAM contains the—

(1) Names and addresses of the entities debarred, suspended, proposed for debarment, voluntarily excluded, declared ineligible, or excluded or disqualified under the nonprocurement common rule, with cross-references

when more than one name is involved in a single action;

(2) Name of the agency or other authority taking the action;

(3) Cause for the action (see 9.406–2 and 9.407–2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) Effect of the action;

(5) Termination date for each listing;

(6) Unique Entity Identifier;

(7) Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available; and

(8) Name and telephone number of the agency point of contact for the action.

(c) Each agency shall—

(1) Identify the individual(s) responsible for entering and updating exclusions data in SAM and assign the appropriate roles;

(2) Remove the exclusion roles in SAM when the individual leaves the organization or changes functions;

(3) For each exclusion, including each voluntary exclusion, accomplished by the agency—

(i) Enter the information required by paragraph (b) of this section within 3 working days after the action becomes effective;

(ii) Determine whether it is legally permitted to enter the SSN, EIN, or other TIN, under agency authority to suspend or debar; and

(iii) Update the exclusion record in SAM, generally within 5 working days after modifying or rescinding an action;

(4) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, proposed debarment, or voluntary exclusion taken or entered into by the agency;

(5) Establish procedures to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors who have an active exclusion record in SAM, except as otherwise provided in this subpart;

(6) Direct inquiries concerning listed contractors and other entities to the agency or other authority that took the action; and

(7) Contact GSA for technical assistance with SAM, via the support email address or on the technical support phone line.

(d) SAM is available via *https://www.sam.gov*

[78 FR 37678, June 21, 2013, as amended at 81 FR 67739, Sept. 30, 2016; 83 FR 48696, Sept. 26, 2018; 90 FR 512, Jan. 3, 2025]

9.405 Effect of listing.

(a) Contractors debarred, suspended, proposed for debarment, or voluntarily excluded, are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (see 9.405–1(a)(2), 9.405–2, 9.406–1(d), 9.407–1(d), and 26.505(e)). Contractors debarred, suspended, proposed for debarment, or voluntarily excluded, are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors and other entities that have an active exclusion record in SAM because they have been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Agencies shall not enter into, renew, or extend contracts with contractors that have been declared ineligible pursuant to 22 U.S.C. 2593e.

(d) Contractors debarred, suspended, proposed for debarment, or voluntarily excluded, are excluded from acting as individual sureties (see part 28).

(e)(1) After the opening of bids or receipt of proposals or quotes, the contracting officer shall review the exclusion records in SAM.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the agency head determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the agency head determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the exclusion records in SAM to ensure that no award is made to a listed contractor.

[48 FR 42142, Sept. 19, 1983, as amended at 52 FR 9038, Mar. 20, 1987; 54 FR 19814, May 8, 1989; 54 FR 48982, Nov. 28, 1989; 55 FR 21707, May 25, 1990; 56 FR 29127, June 25, 1991; 59 FR 67033, Dec. 28, 1994; 60 FR 33065, June 26, 1995; 65 FR 16286, Mar. 27, 2000; 68 FR 69251, Dec. 11, 2003; 69 FR 76349, Dec. 20, 2004; 78 FR 37678, June 21, 2013; 83 FR 28148, June 15, 2018; 83 FR 48696, Sept. 26, 2018; 85 FR 67621, Oct. 23, 2020; 86 FR 3678, Jan. 14, 2021; 89 FR 30237, Apr. 22, 2024; 90 FR 512, Jan. 3, 2025]

9.405–1 Continuation of current contracts.

(a) *Contractors debarred, suspended, proposed for debarment, or voluntarily excluded.* (1) Notwithstanding the debarment, suspension, proposed debarment, or voluntary exclusion, of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, proposed for debarment, or voluntarily excluded, unless unless the agency head directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(2) For contractors debarred, suspended, proposed for debarment, or voluntarily excluded, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

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

(ii) Place orders under Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or

(iii) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

(b) *Ineligible contractors.* A covered agency, as defined in 9.110–1, shall terminate existing contracts and shall not place new orders or award new contracts with contractors that have been declared ineligible pursuant to 10 U.S.C. 983 (see 9.110), except for contracts at or below the simplified acquisition threshold or contracts for the acquisition of commercial products and commercial services.

[85 FR 67621, Oct. 23, 2020, as amended at 86 FR 61021, Nov. 4, 2021; 90 FR 512, Jan. 3, 2025]

9.405–2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, proposed for debarment, or voluntarily excluded, is proposed as a subcontractor for any subcontract subject to Government consent (see subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the agency head states in writing the compelling reasons for this approval action. (See 9.405 concerning declarations of ineligibility affecting subcontracting.)

(b) The Government suspends or debars contractors to protect the Government's interests. Contractors are prohibited from entering into any subcontract in excess of $45,000, other than a subcontract for a commercially available off-the-shelf item, with a contractor that has been debarred, suspended, proposed for debarment, or voluntarily excluded, unless there is a compelling reason to do so. If a contractor intends to enter into a subcontract in excess of $45,000, other than a subcontract for a commercially available off-the-shelf item, with a party that is debarred, suspended, proposed for debarment, or voluntarily excluded, as evidenced by the party's having an active exclusion record in SAM (*see* 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209–6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded, to

notify the contracting officer, in writing, before entering into such subcontract. For contracts for the acquisition of commercial products, the notification requirement applies only for first-tier subcontracts. For all other contracts, the notification requirement applies to subcontracts at any tier. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor having an active exclusion record in SAM;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its having an active exclusion record in SAM; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, proposed debarment, or voluntary exclusion.

(c) The contractor's compliance with the requirements of 52.209–6 will be reviewed during Contractor Purchasing System Reviews (see subpart 44.3).

[54 FR 19815, May 8, 1989, as amended at 56 FR 29127, June 25, 1991; 59 FR 67033, Dec. 28, 1994; 60 FR 33066, June 26, 1995; 60 FR 48237, Sept. 18, 1995; 68 FR 69251, Dec. 11, 2003; 69 FR 76349, Dec. 20, 2004; 71 FR 57366, Sept. 28, 2006; 75 FR 77740, Dec. 13, 2010; 76 FR 39238, July 5, 2011; 78 FR 37678, June 21, 2013; 80 FR 38296, July 2, 2015; 83 FR 48696, Sept. 26, 2018; 85 FR 27090, May 6, 2020; 86 FR 3678, Jan. 14, 2021; 86 FR 61021, Nov. 4, 2021; 90 FR 512, Jan. 3, 2025; 90 FR 41877, Aug. 27, 2025]

9.406 Debarment.

9.406–1 General.

(a) It is the suspending and debarring official's responsibility to determine whether debarment is in the Government's interest. The suspending and debarring official may, in the public interest, debar a contractor for any of the causes in 9.406–2, using the procedures in 9.406–3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures, mitigating factors, or aggravating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the suspending and debarring official should consider factors such as the following (some of the factors below could apply to individuals such as contractors that are individuals, and are so marked):

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor (including an individual) brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment (or the individual cooperated with the investigation) and, if so, made the result of the investigation available to the suspending and debarring official.

(4) Whether the contractor (including an individual) cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor (including an individual) has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor (including an individual) has implemented or agreed to implement remedial measures, including any identified by the Government.

(8)(i) Whether the contractor has instituted or agreed to institute new or revised review and control procedures, ethics training, or other relevant training programs.

(ii) For an individual, whether the individual has attended relevant remediation training.

(9) Whether the contractor (including an individual) has had adequate time

to eliminate the circumstances that led to the cause for debarment.

(10)(i) Whether the contractor's management recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(ii) For an individual, whether the individual recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for debarment and has adopted practices to prevent recurrence.

(11) Whether the contractor (including an individual) has a pattern or prior history of wrongdoing, the frequency of incidents and/or duration of the wrongdoing, and the actual or potential harm or impact that results, or may result, from the wrongdoing.

(12) Whether and to what extent the contractor (including an individual) planned, initiated, or carried out the wrongdoing, and the kind of positions within the contractor's organization held by the individual involved in the wrongdoing.

(13) Whether the wrongdoing was pervasive within the contractor's organization.

(14) Whether the individual or the contractor's principals tolerated the offense.

(15) Whether the contractor (including an individual) is or has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this subpart.

(16) Whether the contractor (including an individual) has entered into an administrative agreement with a Federal agency or a similar agreement with a State or local government that is not Governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this subpart.

(17) Whether there are any other factors to consider for the contractor (including an individual) appropriate to the circumstances of a particular case.

(b) The existence or nonexistence of any aggravating or mitigating factors or remedial measures such as set forth in paragraph (a) of this section is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the suspending and debarring official, its present responsibility and that debarment is not necessary.

(c) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending and debarring official may extend the debarment decision to include any affiliates of the contractor if they are—

(1) Specifically named; and

(2) Given written notice of the proposed debarment and an opportunity to respond (see 9.406–3(c)).

(d) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see 26.505(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)(1) When the suspending and debarring official has authority to debar contractors from both contracts pursuant to the Federal Acquisition Regulation in this chapter and contracts for the purchase of Federal personal property pursuant to the Federal Management Regulation (FMR) in 41 CFR part 102–38, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FMR citations shall be included.

[90 FR 512, Jan. 3, 2025]

9.406–2 Causes for debarment.

The suspending and debarring official may debar—

(a) A contractor for a conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with—

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(4) Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)); or

(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b)(1) A contractor, based upon a preponderance of the evidence, for any of the following—

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of 41 U.S.C. chapter 81, Drug-Free Workplace, as indicated by—

(A) Failure to comply with the requirements of the clause at 52.226–7, Drug-Free Workplace; or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 26.504).

(iii) Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)).

(iv) Commission of an unfair trade practice as defined in 9.403 (see Section 201 of the Defense Production Act (Public Law 102–558)).

(v) Delinquent Federal taxes in an amount that exceeds the threshold at 9.104–5(a)(2).

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(*1*) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(*2*) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(B) *Examples.* (*1*) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(*2*) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(*3*) *The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159.* The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(*4*) *The taxpayer has filed for bankruptcy protection.* The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(vi) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of—

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. 3729–3733); or

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in 32.001.

(vii) Determination of a false certification under 52.209–13, Violation of Arms Control Treaties or Agreements-Certification.

(2) A contractor, based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989, as amended by Executive Order 13286). Such determination is not reviewable in the debarment proceedings.

(c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 4968, Jan. 31, 1989; 54 FR 19815, May 8, 1989; 55 FR 21707, May 25, 1990; 59 FR 11372, Mar. 10, 1994; 61 FR 2633, Jan. 26, 1996; 61 FR 41473, Aug. 8, 1996; 61 FR 69291, Dec. 31, 1996; 68 FR 28080, May 22, 2003; 69 FR 34230, June 18, 2004; 73 FR 21798, Apr. 22, 2008; 73 FR 67091, Nov. 12, 2008; 79 FR 24199, Apr. 29, 2014; 80 FR 38296, July 2, 2015; 84 FR 19845, May 6, 2019; 85 FR 40067, July 2, 2020; 86 FR 3679, Jan. 14, 2021; 89 FR 30237, Apr. 22, 2024; 90 FR 513, Jan. 3, 2025]

9.406–3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending and debarring official of matters appropriate for that official's consideration.

(b) *Decision-making process.* (1) Agencies shall establish procedures governing the debarment decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. If the suspending and debarring official extends the opportunity for the contractor to submit material in opposition, then the official should also give a deadline for submission of materials. The suspending and debarring official may use flexible procedures to allow a contractor to present matters in opposition in person or remotely through appropriate technology; if so, the suspending and debarring official should change the notice in paragraph (c)(3)(iv) of this section to include those flexible procedures.

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at

cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the suspending and debarring official to the contractor and any specifically named affiliates.

(1) The written notice shall be sent—

(i) By U.S. mail or private delivery service to the last known street address, with delivery notification service;

(ii) By email to the point of contact email address in the contractor's SAM registration, if any, or to the last known email address as confirmed by the agency; or

(iii) By certified mail to the last known street address with return receipt requested.

(2) The notice shall be sent—

(i) To the contractor, the contractor's identified counsel for purposes of the administrative proceedings, or the contractor's agent for service of process; and

(ii) For each specifically named affiliate, to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agent for service of process.

(3) The notice shall state—

(i) That debarment is being considered;

(ii) The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(iii) The cause(s) relied upon under 9.406–2 for proposing debarment;

(iv) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(v) The agency's procedures governing debarment decision making;

(vi) The effect of the issuance of the notice of proposed debarment;

(vii) The potential effect of an actual debarment;

(viii) That in addition to any information and argument in opposition to a proposed debarment, the contractor must identify—

(A) Specific facts that contradict the statements contained in the notice of proposed debarment. Include any information about any of the factors listed in 9.406–1(a). A general denial is insufficient to raise a genuine dispute over facts material to the proposed debarment;

(B) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(C) All criminal and civil proceedings not included in the notice of proposed debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(D) All of the contractor's affiliates; and

(ix) That if the contractor fails to disclose the information in paragraph (c)(3)(viii) of this section, or provides false information, the agency taking the action may seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official's decision.* (1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the suspending and debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 45 days from the date that the official administrative record is closed, unless the suspending and debarring official extends this period for good cause. The official record closes upon the expiration of the contractor's time to submit information and argument in opposition, including any extensions (see paragraph (b)(1) of this section).

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending and debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The suspending and debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The suspending and debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of suspending and debarring official's decision.* (1) If the suspending and debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice using the procedures in paragraphs (c)(1) and (2) of this section—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective throughout the executive branch of the Government unless the head of an agency or a designee makes the statement called for by 9.406–1(d).

(2) If debarment is not imposed, the suspending and debarring official shall promptly notify the contractor and any affiliates involved, using the procedures in paragraphs (c)(1) and (2) of this section.

(f) *Administrative agreements.* (1) If the contractor enters into an administrative agreement with the Government in order to resolve a debarment or potential debarment proceeding, the suspending and debarring official shall access the website (available at *https://www.cpars.gov*, then select FAPIIS), enter the requested information, and upload documentation reflecting the administrative agreement.

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission should be made within 3 working days.

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

(g) *Voluntary exclusions.* (1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a debarment or potential debarment matter, the suspending and debarring official shall access the website (available at *https://www.sam.gov*) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission should be made within 3 working days.

(3) Regarding information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

(h) *Pre-notice letters.* Prior to initiating a proposed debarment, a pre-notice letter may be issued at the discretion of the agency suspending and debarring official. A pre-notice letter is not required to initiate debarment under this subpart. (See 9.403.)

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 19815, May 8, 1989; 59 FR 67033, Dec. 28, 1994; 75 FR 14066, Mar. 23, 2010; 77 FR 201, Jan. 3, 2012; 83 FR 42572, Aug. 22, 2018; 84 FR 19845, May 6, 2019; 90 FR 514, Jan. 3, 2025]

9.406–4 Period of debarment.

(a)(1) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that—

(i) Debarment for violation of the provisions of 41 U.S.C. chapter 81, Drug-Free Workplace (see 26.505) may be for a period not to exceed 5 years;

(ii) Debarments under 9.406–2(b)(2) shall be for 1 year unless extended pursuant to paragraph (b) of this section; and

(iii) Debarments under 9.406–2(b)(1)(vii) shall be for a period of not less than 2 years, inclusive of any suspension period, if suspension precedes a

debarment (see paragraph (a)(2) of this section).

(2) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The suspending and debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. Debarments under 9.406–2(b)(2) may be extended for additional periods of one year if the Secretary of Homeland Security or the Attorney General determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If debarment for an additional period is determined to be necessary, the procedures of 9.406–3 shall be followed to extend the debarment.

(c) The suspending and debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the suspending and debarring official deems appropriate.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 4968, Jan. 31, 1989; 54 FR 19815, May 8, 1989; 55 FR 21707, May 25, 1990; 61 FR 41473, Aug. 8, 1996; 69 FR 34231, June 18, 2004; 79 FR 24199, Apr. 29, 2014; 83 FR 28148, June 15, 2018; 84 FR 19845, May 6, 2019; 86 FR 3679, Jan. 14, 2021; 89 FR 30237, Apr. 22, 2024; 90 FR 514, Jan. 3, 2025]

9.406–5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

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

9.407 Suspension.

9.407–1 General.

(a) The suspending and debarring official may, in the public interest, suspend a contractor for any of the causes in 9.407–2, using the procedures in 9.407–3.

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In deciding whether immediate action is necessary to protect the Government's interest, the suspending and debarring official has wide discretion. The suspending and debarring official may infer the necessity for immediate action to protect the Government's interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the

circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence. An indictment or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending and debarring official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures, mitigating factors, or aggravating factors, such as those in 9.406–1(a). A contractor has the burden of promptly presenting to the suspending and debarring official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or aggravating or mitigating factors is not necessarily determinative of a contractor's present responsibility.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending and debarring official may extend the suspension decision to include any affiliates of the contractor if they are—

(1) Specifically named; and

(2) Given written notice of the suspension and an opportunity to respond (see 9.407–3(c)).

(d) A contractor's suspension shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see 26.505(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)(1) When the suspending and debarring official has authority to suspend contractors from both contracts pursuant to the Federal Acquisition Regulation in this chapter and contracts for the purchase of Federal personal property pursuant to Federal Management Regulation (FMR) in 41 CFR part 102–38, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When suspending a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the suspension notice shall so indicate and the appropriate FAR and FMR citations shall be included.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 4968, Jan. 31, 1989; 54 FR 19816, May 8, 1989; 56 FR 67130, Dec. 27, 1991; 59 FR 67033, Dec. 28, 1994; 84 FR 19845, May 6, 2019; 89 FR 30237, Apr. 22, 2024; 90 FR 514, Jan. 3, 2025]

9.407–2 Causes for suspension.

(a) The suspending and debarring official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with—

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(4) Violations of 41 U.S.C. chapter 81, Drug-Free Workplace, as indicated by—

(i) Failure to comply with the requirements of the clause at 52.226–7, Drug-Free Workplace; or

(ii) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 26.504);

(5) Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not

made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558));

(6) Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Pub. L. 102–558));

(7) Delinquent Federal taxes in an amount that exceeds the threshold at 9.104–5(a)(2). See the criteria at 9.406–2(b)(1)(v) for determination of when taxes are delinquent;

(8) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of—

(i) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(ii) Violation of the civil False Claims Act (31 U.S.C. 3729–3733); or

(iii) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in 32.001; or

(9) Determination of a false certification under 52.209–13, Violation of Arms Control Treaties or Agreements-Certification.

(10) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) of this section constitutes adequate evidence for suspension.

(c) The suspending and debarring official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 4968, Jan. 31, 1989; 55 FR 21707, May 25, 1990; 59 FR 11373, Mar. 10, 1994; 61 FR 2633, Jan. 26, 1996; 61 FR 69291, Dec. 31, 1996; 68 FR 28081, May 22, 2003; 73 FR 21798, Apr. 22, 2008; 73 FR 67091, Nov. 12, 2008; 79 FR 24199, Apr. 29, 2014; 80 FR 38296, July 2, 2015; 84 FR 19845, May 6, 2019; 85 FR 40067, July 2, 2020; 86 FR 3679, Jan. 14, 2021; 89 FR 30237, Apr. 22, 2024; 90 FR 515, Jan. 3, 2025]

9.407–3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending and debarring official of matters appropriate for that official's consideration.

(b) *Decision-making process.* (1) Agencies shall establish procedures governing the suspension decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. If the suspending and debarring official extends the opportunity for the contractor to submit material in opposition, then the official should also give a deadline for submission of materials. The suspending and debarring official may use the flexible procedures in 9.406–3(b)(1); if so, the suspending and debarring official should change the notice in paragraph (c)(5) of this section to include those flexible procedures.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of advice from the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised using the procedures in 9.406–3(c)(1) and (2)—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities—

(i) Of a serious nature in business dealings with the Government; or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Of the cause(s) relied upon under 9.407–2 for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts;

(6) That additional proceedings to determine disputed material facts will be conducted unless—

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of advice by the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced;

(7) That, in addition to any information and argument in opposition to a suspension, the contractor must identify—

(i) Specific facts that contradict the statements contained in the notice of suspension. Include any information about any of the factors listed in 9.406–1(a). A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(ii) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(iii) All criminal and civil proceedings not included in the notice of suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(iv) All of the contractor's affiliates; and

(8) That if the contractor fails to disclose the information in paragraph (c)(7) of this section or provides false information, the agency taking the action may seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official's decision.* (1) The suspending and debarring official's decision shall be based on all the information in the administrative record, including any submission made by the contractor, for actions—

(i) Based on an indictment;

(ii) In which the contractor's submission does not raise a genuine dispute over material facts; or

(iii) In which additional proceedings to determine disputed material facts have been denied on the basis of advice from the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending and debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The suspending and debarring official may refer matters involving disputed material facts to another official for findings of fact. The suspending and debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The suspending and debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending and debarring official may modify or terminate the suspension or leave it in force (for example, see 9.406–4(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of—

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) Prompt written notice of the suspending and debarring official's decision shall be sent to the contractor and any affiliates involved, using the procedures in 9.406–3(c)(1) and (2).

(e) *Administrative agreement.* (1) If the contractor enters into an administrative agreement with the Government in order to resolve a suspension or potential suspension proceeding, the suspending and debarring official shall access the website (available at *https://www.cpars.gov*, then select FAPIIS), enter the requested information, and upload documentation reflecting the administrative agreement.

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission should be made within 3 working days.

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

(f) *Voluntary exclusion.* (1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a suspension or potential suspension proceeding, the suspending and debarring official shall access the website (available at *https://www.sam.gov*) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission should be made within 3 working days.

(3) Regarding information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

(g) *Pre-notice letter.* Prior to initiating a suspension, a pre-notice letter may be issued at the discretion of the agency suspending and debarring official. A pre-notice letter is not required to initiate suspension under this subpart. (See 9.403.)

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 2649, Jan. 17, 1986; 75 FR 14066, Mar. 23, 2010; 77 FR 201, Jan. 3, 2012; 83 FR 42572, Aug. 22, 2018; 90 FR 515, Jan. 3, 2025]

9.407–4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation and any ensuing legal proceedings, unless sooner terminated by the suspending and debarring official or as provided in this section.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending and debarring official shall notify the Department of Justice or other responsible prosecuting official of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that official an opportunity to request an extension on the Government's behalf.

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 2649, Jan. 17, 1986; 90 FR 516, Jan. 3, 2025]

9.407–5 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see 9.406–5), except that the procedures of 9.407–3 shall be used in imposing suspension.

9.408 [Reserved]

9.409 Contract clause.

The contracting officer shall insert the clause at 52.209–6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded, in solicitations and contracts where the contract value exceeds $45,000.

[60 FR 34748, July 3, 1995, as amended at 71 FR 57366, Sept. 28, 2006; 73 FR 21798, Apr. 22, 2008, as amended at 80 FR 38297, July 2, 2015; 90 FR 516, Jan. 3, 2025; 90 FR 41877, Aug. 27, 2025]

Subpart 9.5—Organizational and Consultant Conflicts of Interest

9.500 Scope of subpart.

This subpart:

(a) Prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest;

(b) Provides examples to assist contracting officers in applying these rules and procedures to individual contracting situations; and

(c) Implements section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100–463, 102 Stat. 2270–47 (1988).

[55 FR 42685, Oct. 22, 1990, as amended at 65 FR 36014, June 6, 2000]

9.501 Definition.

Marketing consultant, as used in this subpart, means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a Government contract by that offeror. An independent contractor is not a marketing consultant when rendering—

(1) Services excluded in subpart 37.2;

(2) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);

(3) Routine legal, actuarial, auditing, and accounting services; and

(4) Training services.

[55 FR 42685, Oct. 22, 1990, as amended at 66 FR 2128, Jan. 10, 2001]

9.502 Applicability.

(a) This subpart applies to contracts with either profit or nonprofit organizations, including nonprofit organizations created largely or wholly with Government funds.

(b) The applicability of this subpart is not limited to any particular kind of acquisition. However, organizational conflicts of interest are more likely to occur in contracts involving—

(1) Management support services;

(2) Consultant or other professional services;

(3) Contractor performance of or assistance in technical evaluations; or

(4) Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

(c) An organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required.

(d) Acquisitions subject to unique agency organizational conflict of interest statutes are excluded from the requirements of this subpart.

[48 FR 42142, Sept. 19, 1983, as amended at 55 FR 42686, Oct. 22, 1990; 56 FR 55377, Oct. 25, 1991; 84 FR 19845, May 6, 2019]

9.503 Waiver.

The agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency

heads shall not delegate waiver authority below the level of head of a contracting activity.

9.504 Contracting officer responsibilities.

(a) Using the general rules, procedures, and examples in this subpart, contracting officers shall analyze planned acquisitions in order to—

(1) Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and

(2) Avoid, neutralize, or mitigate significant potential conflicts before contract award.

(b) Contracting officers should obtain the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and contract clauses (see 9.506).

(c) Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting activity a course of action for resolving the conflict (see 9.506).

(d) In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The contracting officer's judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 9.503. The waiver request and decision shall be included in the contract file.

[48 FR 42142, Sept. 19, 1983, as amended at 55 FR 42686, Oct. 22, 1990; 56 FR 55377, Oct. 25, 1991]

9.505 General rules.

The general rules in 9.505–1 through 9.505–4 prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest that might otherwise exist in the stated situations. Some illustrative examples are provided in 9.508. Conflicts may arise in situations not expressly covered in this section 9.505 or in the examples in 9.508. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are—

(a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

(b) Preventing unfair competitive advantage. In addition to the other situations described in this subpart, an unfair competitive advantage exists where a contractor competing for award of any Federal contract possesses—

(1) Proprietary information that was obtained from a Government official without proper authorization; or

(2) Source selection information (as defined in 2.101) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

[48 FR 42142, Sept. 19, 1983, as amended at 55 FR 42686, Oct. 22, 1990; 56 FR 55377, Oct. 25, 1991; 62 FR 232, Jan. 2, 1997; 64 FR 32748, June 17, 1999; 67 FR 13063, Mar. 20, 2002; 84 FR 19845, May 6, 2019]

9.505–1 Providing systems engineering and technical direction.

(a) A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for

its development, its integration, assembly, and checkout, or its production shall not—

(1) Be awarded a contract to supply the system or any of its major components; or

(2) Be a subcontractor or consultant to a supplier of the system or any of its major components.

(b) Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore this contractor should not be in a position to make decisions favoring its own products or capabilities.

[48 FR 42142, Sept. 19, 1983, as amended at 84 FR 19846, May 6, 2019]

9.505–2 Preparing specifications or work statements.

(a)(1) If a contractor prepares and furnishes complete specifications covering nondevelopmental items, to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract. The restriction in this paragraph (a)(1) shall not apply to—

(i) Contractors that furnish at Government request specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

(ii) Situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

(2) If a single contractor drafts complete specifications for nondevelopmental equipment, it should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of production contracts.

(3) In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair; hence no prohibition should be imposed.

(b)(1) If a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services unless—

(i) It is the sole source;

(ii) It has participated in the development and design work; or

(iii) More than one contractor has been involved in preparing the work statement.

(2) Agencies should normally prepare their own work statements. When contractor assistance is necessary, the contractor might often be in a position to favor its own products or capabilities. To overcome the possibility of bias, contractors are prohibited from supplying a system or services acquired

on the basis of work statements growing out of their services, unless excepted in paragraph (b)(1) of this section.

(3) For the reasons given in paragraph (a)(3) of this section, no prohibitions are imposed on development and design contractors.

[48 FR 42142, Sept. 19, 1983, as amended at 84 FR 19846, May 6, 2019]

9.505–3 Providing evaluation services.

Contracts for the evaluation of offers for products or services shall not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government's interests.

[62 FR 12694, Mar. 17, 1997]

9.505–4 Obtaining access to proprietary information.

(a) When a contractor requires proprietary information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information—

(1) Furnished voluntarily without limitations on its use; or

(2) Available to the Government or contractor from other sources without restriction.

(b) A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The contracting officer shall obtain copies of these agreements and ensure that they are properly executed.

(c) Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has provided no unfair competitive advantage.

[48 FR 42142, Sept. 19, 1983, as amended at 55 FR 42686, Oct. 22, 1990; 56 FR 55377, Oct. 25, 1991; 62 FR 235, Jan. 2, 1997; 84 FR 19846, May 6, 2019]

9.506 Procedures.

(a) If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, contracting officers should first seek the information from within the Government or from other readily available sources. Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

(b) If the contracting officer decides that a particular acquisition involves a significant potential organizational conflict of interest, the contracting officer shall, before issuing the solicitation, submit for approval to the chief of the contracting office (unless a higher level official is designated by the agency)—

(1) A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict, based on the general rules in 9.505 or on another basis not expressly stated in that section;

(2) A draft solicitation provision (see 9.507–1); and

(3) If appropriate, a proposed contract clause (see 9.507–2).

(c) The approving official shall—

(1) Review the contracting officer's analysis and recommended course of action, including the draft provision and any proposed clause;

(2) Consider the benefits and detriments to the Government and prospective contractors; and

(3) Approve, modify, or reject the recommendations in writing.

(d) The contracting officer shall—

(1) Include the approved provision(s) and any approved clause(s) in the solicitation or the contract, or both;

(2) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations; and

(3) Before awarding the contract, resolve the conflict or the potential conflict in a manner consistent with the approval or other direction by the head of the contracting activity.

(e) If, during the effective period of any restriction (see 9.507), a contracting office transfers acquisition responsibility for the item or system involved, it shall notify the successor contracting office of the restriction, and send a copy of the contract under which the restriction was imposed.

[55 FR 42686, Oct. 22, 1990, as amended at 62 FR 235, Jan. 2, 1997]

9.507 Solicitation provisions and contract clause.

9.507–1 Solicitation provisions.

As indicated in the general rules in 9.505, significant potential organizational conflicts of interest are normally resolved by imposing some restraint, appropriate to the nature of the conflict, upon the contractor's eligibilityfor future contracts or subcontracts. Therefore, affected solicitations shall contain a provision that—

(a) Invites offerors' attention to this subpart;

(b) States the nature of the potential conflict as seen by the contracting officer;

(c) States the nature of the proposed restraint upon future contractor activities; and

(d) Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation.

[55 FR 42687, Oct. 22, 1990, as amended at 56 FR 55377, Oct. 25, 1991; 60 FR 34748, July 3, 1995; 60 FR 49721, Sept. 26, 1995; 62 FR 235, Jan. 2, 1997; 84 FR 19846, May 6, 2019]

9.507–2 Contract clause.

(a) If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation shall contain a proposed clause that specifies both the nature and duration of the proposed restraint. The contracting officer shall include the clause in the contract, first negotiating the clause's final terms with the successful offeror, if it is appropriate to do so (see 9.506(d)).

(b) The restraint imposed by a clause shall be limited to a fixed term of reasonable duration, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the contractor's specifications or work statement is awarded, or it might extend through the entire life of a system for which the contractor has performed systems engineering and technical direction. In every case, the restriction shall specify termination by a specific date or upon the occurrence of an identifiable event.

[55 FR 42687, Oct. 22, 1990, as amended at 84 FR 19846, May 6, 2019]

9.508 Examples.

The examples in paragraphs (a) through (i) of this section illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive, but are intended to help the contracting officer apply the general rules in 9.505 to individual contract situations.

(a) Company A agrees to provide systems engineering and technical direction for the Navy on the powerplant for a group of submarines (i.e., turbines, drive shafts, propellers, etc.). Company A should not be allowed to supply any powerplant components. Company A can, however, supply components of the submarine unrelated to the powerplant (e.g., fire control, navigation, etc.). In this example, the system is the powerplant, not the submarine, and the ban on supplying components is limited to those for the system only.

(b) Company A is the systems engineering and technical direction contractor for system X. After some progress, but before completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the systems engineering and technical direction contractor for system Y. Company A may supply system Y or its components.

(c) Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.

(d) XYZ Tool Company and PQR Machinery Company, representing the American Tool Institute, work under Government supervision and control to refine specifications or to clarify the requirements of a specific acquisition. These companies may supply the item.

(e) Before an acquisition for information technology is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on information technology hardware acquisition.

(f) Company A receives a contract to define the detailed performance characteristics an agency will require for purchasing rocket fuels. Company A has not developed the particular fuels. When the definition contract is awarded, it is clear to both parties that the agency will use the performance characteristics arrived at to choose competitively a contractor to develop or produce the fuels. Company A may not be awarded this follow-on contract.

(g) Company A receives a contract to prepare a detailed plan for scientific and technical training of an agency's personnel. It suggests a curriculum that the agency endorses and incorporates in its request for proposals to institutions to establish and conduct the training. Company A may not be awarded a contract to conduct the training.

(h) Company A is selected to study the use of lasers in communications. The agency intends to ask that firms doing research in the field make proprietary information available to Company A. The contract must require Company A to—

(1) Enter into agreements with these firms to protect any proprietary information they provide; and

(2) Refrain from using the information in supplying lasers to the Government or for any purpose other than that for which it was intended.

(i) An agency that regulates an industry wishes to develop a system for evaluating and processing license applications. Contractor X helps develop the system and process the applications. Contractor X should be prohibited from acting as a consultant to any of the applicants during its period of performance and for a reasonable period thereafter.

[48 FR 42142, Sept. 19, 1983. Redesignated at 55 FR 42687, Oct. 22, 1990; 61 FR 41469, Aug. 8, 1996; 84 FR 19846, May 6, 2019]

Subpart 9.6—Contractor Team Arrangements

9.601 Definition.

Contractor team arrangement, as used in this subpart, means an arrangement in which—

(1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

[48 FR 42142, Sept. 19, 1983, as amended at 66 FR 2128, Jan. 10, 2001]

9.602 General.

(a) Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to—

(1) Complement each other's unique capabilities; and

(2) Offer the Government the best combination of performance, cost, and delivery for the system or product being acquired.

(b) Contractor team arrangements may be particularly appropriate in complex research and development acquisitions, but may be used in other appropriate acquisitions, including production.

(c) The companies involved normally form a contractor team arrangement before submitting an offer. However, they may enter into an arrangement later in the acquisition process, including after contract award.

[48 FR 42142, Sept. 19, 1983, as amended 84 FR 19846, May 6, 2019]

9.603 Policy.

The Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective. The Government will not normally require or encourage the dissolution of contractor team arrangements.

9.604 Limitations.

Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to—

(a) Require consent to subcontracts (see subpart 44.2);

(b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see subpart 9.1);

(c) Provide to the prime contractor data rights owned or controlled by the Government;

(d) Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time; and

(e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

Subpart 9.7—Defense Production Pools and Research and Development Pools

9.701 Definition.

Pool, as used in this subpart, means a group of concerns (see 19.001) that have—

(1) Associated together in order to obtain and perform, jointly or in conjunction with each other, defense production or research and development contracts;

(2) Entered into an agreement governing their organization, relationship, and procedures; and

(3) Obtained approval of the agreement by either—

(i) The Small Business Administration (SBA) under section 9 or 11 of the Small Business Act (15 U.S.C. 638 or 640) (see 13 CFR part 125); or

(ii) A designated official under Part V of Executive Order 10480, August 14, 1953 (18 FR 4939, August 20, 1953) and section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 2649, Jan. 17, 1986; 66 FR 2128, Jan. 10, 2001]

9.702 Contracting with pools.

(a) Except as specified in this subpart, a pool shall be treated the same as any other prospective or actual contractor.

(b) The contracting officer shall not award a contract to a pool unless the offer leading to the contract is submitted by the pool in its own name or by an individual pool member expressly stating that the offer is on behalf of the pool.

(c) Upon receipt of an offer submitted by a group representing that it is a pool, the contracting officer shall verify its approved status with the SBA District Office Director or other approving agency and document the contract file that the verification was made.

(d) Pools approved by the SBA under the Small Business Act are entitled to the preferences and privileges accorded to small business concerns. Approval under the Defense Production Act does not confer these preferences and privileges.

(e) Before awarding a contract to an unincorporated pool, the contracting officer shall require each pool member participating in the contract to furnish a certified copy of a power of attorney identifying the agent authorized to sign the offer or contract on that member's behalf. The contracting officer shall attach a copy of each power of attorney to each signed copy of the contract retained by the Government.

[48 FR 42142, Sept. 19, 1983, as amended at 61 FR 67410, Dec. 20, 1996]

9.703 Contracting with individual pool members.

(a) Pool members may submit individual offers, independent of the pool. However, the contracting officer shall not consider an independent offer by a pool member if that pool member participates in a competing offer submitted by the pool.

(b) If a pool member submits an individual offer, independent of the pool, the contracting officer shall consider the pool agreement, along with other factors, in determining whether that pool member is a responsible prospective contractor under subpart 9.1.

PART 10—MARKET RESEARCH

Sec.

10.000 Scope of part.
10.001 Policy.
10.002 Procedures.
10.003 Contract clause.

AUTHORITY: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

SOURCE: 60 FR 48237, Sept. 18, 1995, unless otherwise noted.

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements the requirements of 41 U.S.C. 3306(a)(1), 41 U.S.C. 3307, 10 U.S.C. 3453, and 6 U.S.C. 796.

[60 FR 48237, Sept. 18, 1995, as amended at 74 FR 52849, Oct. 14, 2009; 79 FR 24199, Apr. 29, 2014; 87 FR 73896, Dec. 1, 2022]

10.001 Policy.

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to consolidation or bundling (15 U.S.C. 644(e)(2)(A) and 15 U.S.C. 657q);

(v) Before awarding a task or delivery order under an indefinite-delivery-indefinite-quantity (ID/IQ) contract (*e.g.*, GWACs, MACs) for other than a commercial product or commercial service in excess of the simplified acquisition threshold 10 U.S.C. 3453(c)); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (see 26.205); and

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial products or commercial services, or, to the extent commercial products suitable to