

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 (Pub.L.102-558)).

(v) Delinquent Federal taxes in an amount that exceeds \$10,000.

(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.

Parent topic: [9.406 Debarment](#).