

9.406-1 General.

(a) It is the debarring official's responsibility to determine whether *debarment* is in the Government's interest. The 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 or mitigating factors *should* be considered in making any *debarment* decision. Before arriving at any *debarment* decision, the debarring official *should* consider factors such as the following:

(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 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* and, if so, made the result of the investigation available to the debarring official.

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

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

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

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for *debarment*.

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

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) 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 debarring official, its present responsibility and that *debarment* is not necessary.

(b) *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 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)).

(c) 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.

(d)

(1) When the debarring official has authority to debar contractors from both *acquisition* contracts pursuant to this regulation and contracts for the purchase of Federal *personal property* pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, 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 FPMR citations shall be included.

Parent topic: 9.406 Debarment.