

## 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 *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) 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](#).)

**Parent topic:** [9.406 Debarment](#).