

SUBPART 209.4—DEBARMENT, SUSPENSION, AND INELIGIBILITY
(Revised October 1, 2010)

209.402 Policy.

(d) The suspension and debarment procedures in Appendix H are to be followed by all debarring and suspending officials.

(e) The department or agency shall provide a copy of Appendix H, Debarment and Suspension Procedures, to contractors at the time of their suspension or when they are proposed for debarment, and upon request to other interested parties.

209.403 Definitions.

“Debarring and suspending official.”

(1) For DoD, the designees are—

Army—Commander, U.S. Army Legal Services Agency

Navy—The General Counsel of the Department of the Navy

Air Force—Deputy General Counsel (Contractor Responsibility)

Defense Advanced Research Projects Agency—The Director

Defense Information Systems Agency—The General Counsel

Defense Logistics Agency—The Special Assistant for Contracting Integrity

Defense Intelligence Agency—The Senior Procurement Executive

National Geospatial Intelligence Agency—The General Counsel

Defense Threat Reduction Agency—The Director

National Security Agency—The Senior Acquisition Executive

Missile Defense Agency—The General Counsel

Overseas installations—as designated by the agency head

(2) Overseas debarring and suspending officials—

(i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR Subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

Defense Federal Acquisition Regulation Supplement

Part 209—Contractor Qualifications

(iii) In addition to the bases for debarment in FAR 9.406-2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

(3) The Defense Logistics Agency Special Assistant for Contracting Integrity is the exclusive representative of the Secretary of Defense to suspend and debar contractors from the purchase of Federal personal property under the Federal Property Management Regulations (41 CFR 101-45.6) and the Defense Materiel Disposition Manual (DoD 4160.21-M).

209.405 Effect of listing.

(a) Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(i) Only a debarred or suspended contractor can provide the supplies or services;

(ii) Urgency requires contracting with a debarred or suspended contractor;

(iii) The contractor and a department or agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the department or agency decision not to debar or suspend the contractor; or

(iv) The national defense requires continued business dealings with the debarred or suspended contractor.

(b)(i) The Procurement Cause and Treatment Code "H" annotation in the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs identifies contractor facilities where no part of a contract or subcontract may be performed because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

(ii) Under the authority of Section 8 of Executive Order 11738, the agency head may grant an exemption permitting award to a contractor using a Code "H" ineligible facility if the agency head determines that such an exemption is in the paramount interest of the United States.

(A) The agency head may delegate this exemption authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exemption—

Defense Federal Acquisition Regulation Supplement

Part 209—Contractor Qualifications

(1) Shall promptly notify the Environmental Protection Agency suspending and debarring official of the exemption and the corresponding justification; and

(2) May grant a class exemption only after consulting with the Environmental Protection Agency suspending and debarring official.

(C) Exemptions shall be for a period not to exceed one year. The continuing necessity for each exemption shall be reviewed annually and, upon the making of a new determination, may be extended for periods not to exceed one year.

(D) All exemptions must be reported annually to the Environmental Protection Agency suspending and debarring official.

(E) See PGI 209.405 for additional procedures and information.

209.405-1 Continuation of current contracts.

(b) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

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

(ii) When the agency is an optional user, place orders against Federal Supply Schedule contracts.

(c) This includes exercise of options.

209.405-2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a terrorist country unless the agency head states in writing the compelling reasons for the subcontract.

209.406 Debarment.

209.406-1 General.

(a)(i) When the debarring official decides that debarment is not necessary, the official may require the contractor to enter into a written agreement which includes—

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by Subpart 203.70; and

(B) Other requirements the debarring official considers appropriate.

(ii) Before the debarring official decides not to suspend or debar in the case of an indictment or conviction for a felony, the debarring official must determine that the contractor has addressed adequately the circumstances that gave rise to the

Part 209—Contractor Qualifications

misconduct, and that appropriate standards of ethics and integrity are in place and are working.

209.406-2 Causes for debarment.

(1) Any person shall be considered for debarment if criminally convicted of intentionally affixing a label bearing a “Made in America” inscription to any product sold in or shipped to the United States or its outlying areas that was not made in the United States or its outlying areas (10 U.S.C. 2410f).

(i) The debarring official will make a determination concerning debarment not later than 90 days after determining that a person has been so convicted.

(ii) In cases where the debarring official decides not to debar, the debarring official will report that decision to the Director of Defense Procurement and Acquisition Policy, who will notify Congress within 30 days after the decision is made.

(2) Any contractor that knowingly provides compensation to a former DoD official in violation of Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) may face suspension and debarment proceedings in accordance with 41 U.S.C. 423(e)(3)(A)(iii).

209.406-3 Procedures.

Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official. Follow the procedures at PGI 209.406-3.

209.407 Suspension.

209.407-3 Procedures.

Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official. Follow the procedures at PGI 209.407-3.

209.409 Solicitation provision and contract clause.

Use the clause at 252.209-7004, Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country, in solicitations and contracts with a value of \$150,000 or more.

209.470 Reserve Officer Training Corps and military recruiting on campus.

209.470-1 Definition.

"Institution of higher education," as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

209.470-2 Policy.

Defense Federal Acquisition Regulation Supplement

Part 209—Contractor Qualifications

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits DoD from providing funds by contract or grant 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 Transportation from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection 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 subsection; or

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

209.470-3 Procedures.

If the Secretary of Defense determines that an institution of higher education is ineligible to receive DoD funds because of a policy or practice described in 209.470-2(a)—

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration (also see FAR 9.404 and 32 CFR Part 216); and

(b) DoD components—

(1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

209.470-4 Contract clause.

Use the clause at 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

209.471 Congressional Medal of Honor.

Defense Federal Acquisition Regulation Supplement

Part 209—Contractor Qualifications

In accordance with Section 8118 of Pub. L. 105-262, do not award a contract to, extend a contract with, or approve the award of a subcontract to any entity that, within the preceding 15 years, has been convicted under 18 U.S.C. 704 of the unlawful manufacture or sale of the Congressional Medal of Honor. Any entity so convicted will be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration.