

PART 909-CONTRACTOR QUALIFICATIONS

Subpart 909.1-Responsible Prospective Contractors

909.104 Standards.

909.104-1 General standards.

(h) For solicitations involving contract work covered by 10 CFR part 707, Workplace Substance Abuse Programs at DOE sites, the prospective contractor is required to agree—consistent with 970.5226-4, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites—to provide the contracting officer with its written workplace substance abuse program. The contractor is required to do so to be considered responsible and eligible for contract award.

909.104-3 Application of standards.

(e) Guaranteeing corporate entities. The Department of Energy (DOE) may select an entity newly created to perform the prospective contract, such as a joint venture or similar binding corporate partnership. When determining responsibility under FAR 9.103, the financial resources of other entities may be evaluated only when those entities are legally bound—jointly and severally if more than one—through a performance guarantee or other enforceable commitment. Those entities is required to guarantee they will provide the necessary resources and assume all contractual obligations of the prospective contractor. The guaranteeing corporate entity or entities are required to have sufficient resources to satisfy the guarantee.

Subpart 909.4-Debarment, Suspension, and Ineligibility

Source: 61 FR 39857, July 31, 1996, unless otherwise noted.

909.400 Scope of subpart.

This subpart—

(a) Establishes the policies and procedures governing DOE and National Nuclear Security Administration (NNSA) debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contracts, procurement sales contracts, and real property purchase agreements, as well as DOE- and NNSA-approved subcontracts and subagreements;

(b) Identifies the causes, procedures, and requirements for determining the scope, duration, and effect of DOE and NNSA debarment and suspension actions; and

(c) Implements and supplements 48 CFR subpart 9.4 regarding the exclusion of organizations and individuals from procurement contracting and Government-approved subcontracting.

909.401 Applicability.

This subpart applies to all DOE and NNSA procurement debarment and suspension actions initiated on or after the subpart's effective date. Nonprocurement debarment and suspension rules appear in 2 CFR part 901.

909.403 Definitions.

In addition to the definitions in 48 CFR 9.403, the following apply to this subpart:

Debarment and suspending official. For DOE, the designees are:

(1) Debarment Official means. The Debarment Official for DOE contracts is the Director, Office of Acquisition Management, DOE, or designee. The Debarment Official for NNSA contracts is the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, or designee.

(2) Suspending Official means. The Suspending Official for DOE contracts is the Director, Office of Acquisition Management, DOE, or designee. The Suspending Official for NNSA contracts is the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, or designee.

909.405 Effect of listing.

(e) DOE may not solicit offers from, award contracts to, or consent to subcontracts with contractors who are debarred, suspended, or proposed for debarment unless the Senior Procurement Executive makes a written determination that a compelling reason for such action exists, consistent with 48 CFR 9.405(a). For NNSA, the Head of the Contracting Activity (HCA) makes this written determination.

(f) DOE or NNSA may reject or withhold consent for a contractor's selection of a principal investigator, project manager, individual responsible for administering Federal funds, or other key personnel if that individual is listed in the System for Award Management (SAM) exclusions.

(g) DOE or NNSA will not conduct business with a contractor's agent or representative who has an active SAM exclusion.

(h) DOE or NNSA will review SAM before conducting a pre-award survey; soliciting proposals; awarding, renewing, or extending contracts; or approving or consenting to the award, extension, or renewal of subcontracts.

909.406 Debarment.

909.406-2 Causes for debarment.

(c) The DOE and NNSA Debarment Official may debar a contractor for any cause serious or compelling enough to affect the contractor's present responsibility. Such causes may include, but are not limited to:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private contract or subcontract.

(2) Repeated, prolonged, or inexcusable failure to pay a debt owed to DOE (including disallowed costs and overpayments) after receiving notice of indebtedness and after the period for initiating any administrative or legal action to oppose or appeal the determination of indebtedness has expired or that such action, if initiated, has been any appeal has concluded.

(d) The Debarment Official may also debar a contractor:

(1) Because an individual or organization is an affiliate of a debarred contractor, subject to 48 CFR 9.406-1(b) and 9.406-3(c); or

(2) For failing to comply with the material terms of a voluntary exclusion (see 10 CFR § 1036.315).

909.406-3 Procedures.

(a) Investigation and referral.

(1) Offices responsible for awarding and administering contracts are required to report information about possible fraud, waste, abuse, or other wrongdoing to the Senior Procurement Executive and the DOE Inspector General when such conduct may constitute or contribute to a cause(s) for debarment. Offices are required to report possible criminal or fraudulent activity to the Office of Inspector General consistent with 10 CFR part 1010, §1010.103.

(2) At a minimum, referrals for consideration debarment should be in writing and include:

(i) The recommendation and rationale;

(ii) A statement of facts;

(iii) Copies of documentary evidence, a list of witnesses, including addresses and telephone numbers, together with a statement concerning their contact information, statements on availability to appear at a fact-finding proceeding and testify, and subject matter of testimony;

(iv) A list of parties involved, including contractors, principals, and affiliates (with last known addresses and identifying numbers);

(v) DOE's and NNSA's acquisition history with the contractor, including recent contract performance and copies of pertinent relevant contracts;

(vi) Any known ongoing or potential criminal investigations, civil, or administrative proceedings; and

(vii) A statement on the potential impact of debarment on DOE and NNSA programs (not required for Inspector General referrals).

(3) Referrals may be returned for additional information.

(b) Decisionmaking process. Contractors proposed for debarment will be afforded an opportunity to may submit information and arguments opposing the action.

(1) If the action is based on a conviction or civil judgment, or if no genuine dispute of material fact exists, the Debarring Official will decide the matter based on the administrative record, including any contractor submissions. If the contractor does not submit a timely response, the Debarring Official will notify the contractor under FAR 9.406-3(e) that it is debarred.

(2) If the action is not based on a conviction or civil judgment, the contractor may request a fact-finding hearing and is required to identify the disputed material facts and the basis for the dispute. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official will appoint, and, they will refer the matter to a Fact-Finding Official for a fact-finding conference.

(3) Meeting. Upon receiving a timely request, the Debarring Official will schedule a meeting with the respondent, to be held no later than 30 days from the date the request is received. The Debarring Official may postpone the date of the meeting with the contractor if the contractor requests a postponement in writing within 30 days of receiving the meeting schedule notification. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, contractor, or its attorney, may present and explain evidence that causes for debarment do not exist, evidence of any, mitigating factors, and arguments on the imposition, scope, or duration of a proposed debarment.

(4) Fact-finding conference. The purpose of the conference is to allow the contractor to dispute material facts with oral and written evidence. The Fact-Finding Official will conduct the proceeding under rules consistent with FAR 9.406-3(b), notify parties of the schedule, and deliver written findings to the Debarring Official within the specified timeline. The findings will resolve any disputes over material facts. Findings will be based on a preponderance of the evidence for debarment cases or on adequate evidence for suspensions. Convictions or civil judgments usually establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments and generally eliminate the need for fact-finding.

(c) Debarring Official's decision.

(4) The Debarring Official's final decision is required to rely on the administrative record. In those actions where additional proceedings addressed disputed material facts, written findings of fact will be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact will be those findings prepared by the Fact-Finding Official. If a fact-finding conference occurred, the Debarring Official shall adopt the Fact-Finding Official's findings. Findings

are final unless reconsideration is requested within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, or unless set aside by or unless a court of competent jurisdiction overturns them. The Fact-Finding Official shall receive a copy of the final decision.

909.406-70 Requests for reconsideration of debarment.

(a) A respondent may request reconsideration of a debarment's scope, duration, or effects at any time during the debarment period by submitting new information or describing changed circumstances, consistent with 48 CFR 9.406-4(c).

(b) When reviewing a reconsideration request, the Debarring or Suspending Official may use any procedures in 909.406-3 and 909.407-3. The final written decision will explain the reasons for granting or denying the request. A copy of the decision will be sent to the respondent.

909.407 Suspension.

909.407-2 Causes for suspension.

(d) The Suspending Official may suspend an organization or individual—

- (1) Indicted for, or suspected (based on adequate evidence) of, the causes described in 909.406-2(c)(1);
- (2) For the causes listed in 909.406-2(d)(2); or
- (3) Because an organization or individual is an affiliate of a suspended or debarred contractor.

909.407-3 Procedures.

(b) Decisionmaking process.

(1) If the action is based on an indictment, the Suspending Official will decide the matter based on the administrative record, including contractor submissions consistent with 909.406-3(b)(1) and (b)(3).

(2) For actions not based on an indictment, the procedures in 909.406-3(b)(2) and FAR 9.407-3(b)(2) apply.

(3) Coordination with the Department of Justice (DOJ). When a meeting or fact-finding conference is requested, the Suspending Official's legal representative is required to consult with the DOJ to determine whether disclosure of evidence could affect an ongoing investigation or proceeding. If DOJ requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed, the Suspending Official shall—

- (i) Decline to rely on that evidence and withdraw the suspension or proposed debarment without prejudice until disclosure is authorized; or
- (ii) Deny the request for a meeting or fact-finding and base the suspension solely on the administrative record.

(e) Notice of suspending official's decision. After any additional proceedings, the Suspending Official shall notify the respondent under paragraphs (e)(1) or (e)(2):

(1) If sustaining a suspension, the Suspending Official shall promptly send a notice containing:

- (i) A reference to the suspension notice, meeting, and fact-finding conference;
- (ii) Findings of fact and conclusions of law;
- (iii) The reasons for sustaining the suspension;
- (iv) A reference to waiver authority under 909.405;
- (v) A statement that the suspension applies throughout the Executive Branch per 48 CFR 9.407-1(d);
- (vi) Any modification of initial suspension terms;
- (vii) Notice that the respondent's name and address will be entered into the SAM exclusion list; and
- (viii) Identification of any individuals or organizational elements covered if the suspension applies to less than the entire organization.

(2) If terminating a suspension, the Suspending Official will promptly send, by certified mail, return receipt requested each affected respondent a copy of the final decision by certified mail.

Subpart 909.5-Organizational and Consultant Conflicts of Interest

Source: 62 FR 40751, July 30, 1997, unless otherwise noted.

909.503 Waiver.

Heads of Contracting Activities are delegated the authority in FAR 9.503 to waive organizational and consultant conflict-of-interest requirements.

909.504 Contracting officer's responsibility.

(d) Will evaluate the statement (See 952.209-8) submitted by the apparent successful offeror—or by all firms in the competitive range—for potential organizational conflicts of interest in performing the contract. Using that information and other credible sources, the contracting officer shall determine in writing whether an actual or significant potential conflict exists and identify actions to avoid, neutralize, or mitigate it.

Contracting officers should perform these responsibilities without causing unnecessary delay, excessive documentation, or burdensome information requirements.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest exists that cannot be avoided, neutralized, or mitigated. Before withholding an award on these grounds, the contracting officer shall notify the offeror, explain the reasons, and allow time for a response. If the conflict cannot be addressed satisfactorily, the contracting officer may disqualify the offeror and begin evaluation with the next firm in line for award. If awarding the contract despite the conflict is in the best interest of the United States, the contracting officer shall request a waiver under 909.503. The waiver request and decision is required to be documented in the contract file.

909.507 Solicitation provisions and contract clause.

909.507-1 Solicitation provisions.

(e) The contracting officer shall include the provision at 952.209-8, Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services, in solicitations for advisory and assistance services expected to exceed the simplified acquisition threshold. For individual procurements, the Head of the Contracting Activity may extend the disclosure period in 952.209-8(c)(1) up to 36 months.

909.507-2 Contract clause.

(a)

(1) The contracting officer shall include the clause at 952.209-72, Organizational Conflicts of Interest, in each solicitation and contract for advisory and assistance services expected to exceed the simplified acquisition threshold.

(2) Contracting officers may modify the clause to address specific potential conflicts. They shall determine the appropriate term for the bar in paragraph (b)(1)(i) of the clause at 952.209-72 and insert it in the blank. For most advisory and assistance service contracts, three to five years is appropriate, but longer or shorter terms may be used.

(3) The contracting officer Include Alternate I with the clause when significant subcontracting for advisory and assistance services is expected.

(b) Contracts that are not subject to part 970 but involve operation of a DOE site or facility, or environmental remediation of a DOE site, will include the organizational conflict-of-interest clause at 952.209-72, including Alternate I.

PART 952-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.209 Clauses related to contractor's qualifications.

952.209-8 Organizational conflicts of interest-disclosure.

As prescribed in 909.507-1(e), insert the following provision:

Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services (DEVIATION MAY 2026)

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror will provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.

(c) The statement is required to contain the following:

(1) A statement of any past (within the past 12 months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement is required to include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered is required to also be included, if applicable. For financial interests, the statement is required to include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information is required to be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

(End of provision)

952.209-71 [Reserved]

952.209-72 Organizational conflicts of interest.

As prescribed at 909.507-2, insert the following clause:

Organizational Conflicts of Interest DEVIATION MAY 2026)

- (a) Purpose. The purpose of this clause is to ensure that the Contractor
 - (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
 - (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
 - (1) Use of contractor's work product.
 - (i) The Contractor will be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor will not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
 - (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor will not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph do not apply.
 - (iii) Nothing in this paragraph will preclude the Contractor from offering or selling its standard and commercial items to the Government.
 - (2) Access to and use of information.
 - (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it will not-
 - (A) Use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) Compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) Submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) Release such information unless such information has previously been released or otherwise made available to the public by the Department.
 - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it will treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it will make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause will be directed in writing to the Contracting Officer and include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

(End of clause)

Alternate I: In accordance with 909.507-2 and 970.0905, include the following alternate in the specified types of contracts.

(f) Subcontracts.

(1) The Contractor is required to include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "contract," "Contractor," and "contracting officer" will be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor is required to obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor will take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor is required to obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

(End of alternate)