

debar is presented in actions not based upon a conviction or civil judgment, the PE shall evaluate the formal notice of proposal to debar and the submission in opposition and shall determine, with the advice of the GC, if the submission raises a genuine dispute over any facts material to the proposed debarment. If it does not, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(ii) If, however, the PE determines, in consultation with the GC, that a timely submission in opposition to a formal notice of proposal to debar in actions not based upon a conviction or civil judgment raises a genuine dispute over any fact material to the proposed debarment, the PE shall so advise the contractor, named individual or affiliate, and shall inquire whether a fact-finding hearing is desired. If a fact-finding hearing is not requested by the contractor, named individual or affiliate, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(iii) If a fact-finding hearing is requested, the PE shall appoint a fact-finding official to whom all matters involving disputed material facts shall be referred. The PE will provide the fact-finding official with a copy of the entire administrative record including the submission in opposition. The fact-finding official shall study the Commission's notice(s) of proposal to debar and the submission(s) in opposition, and shall identify specifically the material facts in genuine dispute and so advise the pertinent contractor, named individual or affiliate, as well as the Commission's designated advocate in the Office of General Counsel. A fact-finding hearing shall be scheduled and conducted by the fact-finding official, and shall take place in a Commission facility in Panama unless the fact-finding official determines that fundamental fairness compels the use of another location. The rules governing the fact-finding hearing shall be established by the fact-finding official but

shall conform fully with FAR 9.406-3(b)(2) and (d)(2) and (3).

(5) The fact-finding official shall present written findings of fact and the transcribed record of the hearing, if made, to the debarring official within 21 calendar days from his receipt of the transcript or from the final day of the hearing if no transcript is ordered. The findings shall resolve each material fact previously determined to be in genuine dispute based on a preponderance of the evidence presented.

(6) Upon receiving the complete administrative record and the evaluation and recommendation of the PE or, if there was a fact-finding hearing, upon receiving the hearing record and the findings of fact of the fact-finding official and the evaluation and recommendation of the PE, the debarring official shall, considering fully the provisions of FAR 9.402 and 9.406-1(a), make a final decision whether to impose debarment. If debarment is chosen, the debarring official shall also determine the period of debarment.

(e) *Notice of debarring official's decision.* The debarring official shall promptly notify the contractor and any named individual or affiliate of the final decision in writing by certified mail, return receipt requested.

3509.406-70 Settlement.

(a) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to perform, accomplish or implement such remedial measures or mitigating factors as are listed at FAR 9.406-1(a). The contractor, individual or affiliate shall also agree that its failure to observe any term or condition of the agreement shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a settlement agreement if the proposed debarment is based on a

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conviction of or civil judgment for any of the causes in FAR 9.406-2(a).

3509.406-71 Voluntary exclusion.

(a)(1) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to voluntarily refrain, for a specified period of time, from attempting to obtain, and from entering into, any contract, purchase agreement or other form of contractual relationship, regardless of dollar amount, with, as the debarring official may determine, either: (i) the Commission; or (ii) the Commission and one or more, or all, other agencies, departments or entities of the U.S. Government.

(2) A voluntary exclusion will not be reported to the GSA nor appear in the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," and if the contractor, individual or affiliate is currently listed due to a Commission notice of proposal to debar the PE will advise the GSA of the voluntary exclusion and request the immediate cessation of the listing. The contractor, individual or affiliate shall agree that its failure to observe any term or condition of the voluntary exclusion shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a voluntary exclusion agreement if the proposed debarment is based on a conviction of or civil judgment for any of the causes in FAR 9.406-2(a).

3509.407 Suspension.

3509.407-2 Causes for suspension.

In addition to the causes listed in FAR 9.407-2, the cause for debarment identified in 48 CFR (PAR) 3509.406-2 also applies to suspension actions.

3509.407-3 Procedures.

(a) The procedures set forth in 48 CFR (PAR) 3509.406-3 for debarment also apply, insofar as they are compatible with the procedures set forth in FAR 9.407-3, to suspension actions except those procedures identified in paragraph (b) of this subsection.

(b) The following procedures in 48 CFR (PAR) 3509.406-3 do *not* apply to suspension actions: 3509.406-3(b)(1)(i), 3509.406-3(b)(2) through (4) and 3509.406-3(c).

(c) *Notice of suspension.* In addition to the matters listed at FAR 9.407-3(c), in actions not based on an indictment, a notice of suspension shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the suspension.

3509.407-70 Settlement.

Where a suspension is being considered, the suspending official may enter into a settlement agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406-70.

3509.407-71 Voluntary exclusion.

Where a suspension is being considered, the suspending official may enter into a voluntary exclusion agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406-71.

3509.470 Special notice.

The Commander in Chief, United States Southern Command, shall be notified by the Procurement Executive of the issuance of any Commission notice of proposal to debar and of any debarment or suspension decision made by the debarring or suspending official.

3509.471 Equal application.

These procedures for debarment and suspension apply equally to all firms, individuals and affiliates doing business with the Panama Canal Commission regardless of their nationality, residence or location.