

debarment, the contracting officer must first submit a complete statement of facts (including a copy of any criminal indictments, if applicable) and a recommendation for action to the Head of the Contracting Activity. If the contracting officer's statement of facts indicates misconduct on the part of the contractor in regard to an NRC contract, the Head of the Contracting Activity will refer the matter of misconduct to the Inspector General to determine if an investigation is required prior to referring the case to the debarment official.

(2) To the extent the Head of the Contracting Activity believes that sufficient grounds for debarment exist, independent of any pending investigation by the Inspector General, the Head of the Contracting Activity shall immediately forward the case, without reference to any pending investigation, and a recommendation for action to the Senior Procurement Executive for review. In such circumstances, the Head of the Contracting Activity will take no additional action in regard to a specific matter of misconduct referred to the Inspector General prior to consulting with the Inspector General.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarment official determines debarment is justified, the debarment official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the Head of the Contracting Activity of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.406-3(c)(4), the debarment official may notify the contractor in accordance with FAR 9.406-3(d) that the contractor is debarred.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named af-

filates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407-3 Procedures.

(a) *Investigation and referral.* (1) When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the contracting officer must first submit a complete statement of facts (including a copy of any criminal indictments, if applicable) and a recommendation for action to the Head of the Contracting Activity. If the contracting officer's statement of facts indicates misconduct on the part of the contractor in regard to an NRC contract, the Head of the Contracting Activity will refer the matter of misconduct to the Inspector General to determine if an investigation is required prior to referring the case to the suspension official.

(2) To the extent the Head of the Contracting Activity believes that sufficient grounds for debarment exist, independent of any pending investigation by the Inspector General, the Head of the Contracting Activity shall immediately forward the case, without reference to any pending investigation, and a recommendation for action to the Senior Procurement Executive for review. In such circumstances, the Head of the Contracting Activity will take no additional action in regard to a specific matter of misconduct referred to the Inspector General prior to consulting with the Inspector General.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407-3(b)(2). The contractor shall be given the opportunity to appear at an informal

hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406-3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.407-3(c)(5), the suspending official may notify the contractor in accordance with FAR 9.407-3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570-1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the con-

tractor conflict of interest situations that might arise. However, examples are provided in the regulations in this chapter to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by the regulations in this chapter. This rule does not apply to the acquisition of consulting services through the personnel appointment process. NRC agreements with other Government agencies, international organizations, or state, local, or foreign Governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570-2 Definitions.

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in 2009.570-1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or prospective contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or