

§ 25.311

§ 25.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 25.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

- (a) That debarment is being considered;
- (b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;
- (c) Of the cause(s) relied upon under § 25.305 for proposing debarment;
- (d) Of the provisions of §§ 25.311 through 25.314, and any other Military Departments and Defense Agencies procedures, if applicable, governing debarment decisionmaking; and
- (e) Of the potential effect of a debarment.

[53 FR 19190 and 19204, May 26, 1988. Redesignated and amended at 57 FR 6199 and 6200, Feb. 21, 1992]

§ 25.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon re-

32 CFR Ch. I (7-1-03 Edition)

quest, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 25.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The 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.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

- (i) Referring to the notice of proposed debarment;
- (ii) Specifying the reasons for debarment;