

**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
- National Imagery and Mapping 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.

(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).

[56 FR 36313, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 59 FR 27669, May 27, 1994; 60 FR 61593, Nov. 30, 1995; 61 FR 50452, Sept. 26, 1996; 63 FR 11528, Mar. 9, 1998; 64 FR 51075, Sept. 21, 1999; 64 FR 62985, Nov. 18, 1999; 68 FR 7439, Feb. 14, 2003; 70 FR 14573, Mar. 23, 2005]

**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 contractors that are declared ineligible for award of a contract or subcontract 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 40 CFR 32.215(b), the agency head may grant an exception permitting award to a Code "H" ineligible contractor if it is in the paramount interest of the United States.

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

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(B) The official granting the exception must provide written notice to the Environmental Protection Agency debarbing official.

[65 FR 52955, Aug. 31, 2000]

**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.

[60 FR 29497, June 5, 1995, as amended at 60 FR 61593, Nov. 30, 1995]

**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.

[63 FR 14837, Mar. 27, 1998]

**209.406 Debarment.**

**209.406-1 General.**

(a)(i) When the debarbing 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 debarbing official considers appropriate.

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

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and integrity are in place and are working.

[57 FR 14992, Apr. 23, 1992]

**209.406-2 Causes for debarment.**

(a) 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 debarbing 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 debarbing official decides not to debar, the debarbing 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.

[58 FR 28464, May 13, 1993, as amended at 68 FR 7439, Feb. 14, 2003; 70 FR 35544, June 21, 2005]

**§ 209.406-3 Procedures.**

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

[69 FR 74990, Dec. 15, 2004]

**209.407 Suspension.**

**§ 209.407-3 Procedures.**

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

[69 FR 74990, Dec. 15, 2004]