

## 2909.407

in accordance with the procedures in FAR 9.406-3(e).

### 2909.407 Suspension.

(a) The Senior Procurement Executive is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407-2, using the procedures in 2909.406-3.

(b) The Senior Procurement Executive is authorized to make an exception, regarding suspension by another agency suspending official under the conditions in FAR 9.407-1(d).

### 2909.407-1 General.

(a) *Investigation and referral.* Whenever a DOL employee knows of a cause for suspension, as listed in FAR 9.407-2, the appropriate HCA affected must be notified. The HCA must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for suspension, to the Senior Procurement Executive.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Senior Procurement Executive will initiate suspension by taking the actions listed in FAR 9.407-3(c) and advising the contractor of DOL's rules under this subpart.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407-3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at informal proceedings, as required by FAR 9.407-3(b)(2)(i). Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed suspension.

(d) *Suspension decisions.* The Senior Procurement Executive must make a final decision on suspension as prescribed in FAR 9.407-3(d). Notice of the decision must be provided to the contractor and any affiliates involved, in accordance with the provisions in FAR 9.407-3(d)(4).

## 48 CFR Ch. 29 (10-1-07 Edition)

### Subpart 2909.5—Organizational and Consultant Conflicts of Interest

#### 2909.503 Waiver.

(a) The Senior Procurement Executive is delegated authority by the Assistant Secretary for Administration and Management to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's best interest.

(b) Requests for waivers must be made by the HCA to the PE. Each request must include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR 9.5 to be waived.

(c) In making determinations under this subpart the Senior Procurement Executive must request the opinion of the Office of the Solicitor, Division of Legislation and Legal Counsel.

#### 2909.506 Procedures.

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest and requests higher level review as referred to in FAR 9.506, the matter must be referred to the Office of the Solicitor, Associate Solicitor for Legislation and Legal Counsel, and the Director, Division of Acquisition Management Services.

(b) Referrals must be made by the HCA concerned and include the contracting officer's decision and the position of the prospective contractor.

## PART 2910—MARKET RESEARCH

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### 2910.002 Procedures.

(a) In accordance with FAR 6.302-1(c), purchase descriptions must not specify a product, or specific feature of a product, peculiar to a manufacturer unless they are justified to the contracting officer in writing by the office initiating

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the purchase request. The justification must state that the product, or specific product feature, is essential to the Government's requirements and other similar products or features will not meet these requirements. This determination must be signed by a representative of the office originating the request and must accompany the purchase requisition submitted to the appropriate contracting office. If such a justification is not made, the contracting officer may assume that another make and model or a generic product could equally meet the DOL requirement.

(b) In accordance with FAR 10.002(b), the requisitioning office must submit to the contracting officer information demonstrating that a variety of products from various commercial sources have been considered. This requirement is not necessary for required sources (See FAR 8.001). Orders to be placed against non-mandatory sources, such as the Federal Supply Schedules, or other Governmentwide Acquisition Contracts, should include product information concerning multiple sources based on research from *www.contractdirectory.gov* site or other sources. When documented in this manner, the contracting officer may rely on this information in developing a procurement strategy, or for documenting the comparison of catalogs or pricelists.

[69 FR 22991, Apr. 27, 2004]

### **PART 2911—DESCRIBING AGENCY NEEDS**

#### **Subpart 2911.1—Selecting And Developing Requirements Documents**

Sec.

2911.103 Market acceptance.

#### **Subpart 2911.5—Liquidated Damages**

2911.501 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

#### **Subpart 2911.1—Selecting And Developing Requirements Documents**

##### **2911.103 Market acceptance.**

The authority of the Head of an Agency under FAR 11.103(a), to require offerors to demonstrate that the items offered have either achieved commercial market acceptance or been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements, and otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation, is delegated to the HCA.

#### **Subpart 2911.5—Liquidated Damages**

##### **2911.501 Policy.**

In accordance with FAR 11.501(d), the authority of the Head of Agency to recommend to the Department of Treasury, Commissioner, Financial Management Services, that the amount of a contractor's liquidated damages be waived or reduced in whole or in part, is delegated to the HCA.

### **PART 2912—ACQUISITION OF COMMERCIAL ITEMS**

#### **Subpart 2912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

Sec.

2912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

#### **Subpart 2912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

##### **2912.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

In accordance with FAR 12.302(c), a request for waiver to tailor terms inconsistent with customary commercial