

Subchapter 3009.4 Debarment, Suspension, and Ineligibility

3009.402 Policy.

(c) Components shall follow the DHS Management Directive (MD) 146-01 and DHS Instruction Number 146-01-001 (available at: <http://dhsconnect.dhs.gov/Policy/directives-instructions#k=suspension>) concerning procedures, documentation, and process for each referral to consider for potential suspension and debarment. Referrals for contractor suspension and debarment and possible criminal or fraudulent activities shall be made to the Office of the Inspector General.

3009.405 Effect of listing.

(a) The Chief Procurement Officer (CPO) shall approve the determination under FAR 9.405(a), (e)(2), and (e)(3). This authority is not delegable below the Deputy Chief Procurement Officer (DCPO). The CPO authority does not extend to waivers under FAR 23.506(e). The contracting officer shall submit the compelling reason determination to the Component HCA [See format at HSAR 3001.7, Determinations and Findings (D&F)]. The compelling reason determination shall include a legal sufficiency review by the responsible Component Legal Counsel. If the HCA concurs, the compelling reason determination shall be submitted to the CPO for approval. The Component shall also submit the notification and explanation required by 6 U.S.C 341(b) (see HSAM 3009.405(a)(70)). If approved, the CPO will then promptly forward the compelling reason determination to the SDO. Award to the debarred, suspended, or proposed for debarment contractor shall be considered only in those emergency circumstances in which the contractor is able to timely provide the supplies or services or when national security is an overriding consideration.

(70) Notification to Congress and the DHS Office of Inspector General. As required by 6 U.S.C. 341(b), no later than five days after the CPO approves a compelling reason determination, the CPO shall submit to Congress, through the Office of Legislative Affairs, and the Office of Inspector General notice of the determination and an explanation of the findings that a compelling reason exists for making such a determination. Components shall also submit the notice required by 6 U.S.C. 341(b) concurrent with its request for the CPO's approval of the compelling reason determination.

3009.405-1 Continuation of current contracts.

(a) *Contractors debarred, suspended, or proposed for debarment.* (1) The CPO is delegated the authority under FAR 9.405-1(a). This authority is not delegable below the DCPO. (See HSAM 3009.405(a)). The CPO authority does not extend to waivers under FAR 23.506(e).

(2) The CPO is the approval authority for the compelling reason determination under FAR 9.405-1(a)(2). This authority is not delegable below the DCPO. (See HSAM 3009.405 and (a)(70) for submission procedures). The CPO authority does not extend to waivers under FAR 23.506(e).

(b) *Ineligible contractors.* The CPO authority does not extend to contractors determined ineligible pursuant to 10 U.S.C. 983 (see FAR 9.110).

3009.405-2 Restrictions on subcontracting.

(a) The CPO is the approval authority under FAR 9.405-2(a). This authority is not delegable below the DCPO. (See HSAM 3009.405(a) and (a)(70) for submission procedures). The CPO authority does not extend to waivers under FAR 23.506(e).

3009.406 Debarment.

3009.406-1 General.

(c) The CPO is the approval authority under FAR 9.406-1(c), except under FAR 23.506(e). This authority is not delegable below the DCPO. (See HSAM 3009.405(a) and (a)(70) for submission procedures). The CPO authority does not extend to waivers under FAR 23.506(e).

3009.407 Suspension.

3009.407-1 General.

(d) The CPO is the approval authority under FAR 9.407-1(d). This authority is not delegable below the DCPO. The CPO authority does not extend to waivers under FAR 23.506(e). For procedures on preparing a compelling reason determination, see HSAM 3009.405(a) and (a)(70).