

## 9.406-3 Procedures.

(a) *Investigation and referral.* Agencies *shall* establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) Decisionmaking process.

(1) Agencies *shall* establish procedures governing the *debarment* decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures *shall* afford the contractor (and any specifically named *affiliates*) an opportunity to submit, in person, *in writing*, or through a representative, information and argument in opposition to the proposed *debarment*.

(2) In actions not based upon a *conviction* or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed *debarment*, agencies *shall* also-

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* A notice of proposed *debarment shall* be issued by the debarring official advising the contractor and any specifically named *affiliates*, by certified mail, return receipt requested-

(1) That *debarment* is being considered;

(2) Of the reasons for the proposed *debarment* in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under [9.406-2](#) for proposing *debarment*;

(4) That, within 30 days after receipt of the notice, the contractor *may* submit, in person, *in writing*, or through a representative, information and argument in opposition to the proposed *debarment*, including any additional specific information that raises a genuine dispute over the material facts;

(5) Of the agency's procedures governing *debarment* decisionmaking;

(6) Of the effect of the issuance of the notice of proposed *debarment*; and

(7) Of the potential effect of an actual *debarment*.

(d) *Debarring official's decision.*

(1) 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 contractor. If no *suspension* is in effect, the decision *shall* be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2)

(i) In actions in which additional proceedings are necessary as to 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 contractor and any other information in the administrative record.

(ii) The debarring official *may* refer matters involving 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.

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

(3) In any action in which the proposed *debarment* is not based upon a *conviction* or civil judgment, the cause for *debarment* *must* be established by a *preponderance of the evidence*.

(e) Notice of debarring official's decision.

(1) If the debarring official decides to impose *debarment*, the contractor and any *affiliates* involved *shall* be given prompt notice by certified mail, return receipt requested-

(i) Referring to the notice of proposed *debarment*;

(ii) Specifying the reasons for *debarment*;

(iii) Stating the period of *debarment*, including effective dates; and

(iv) Advising that the *debarment* is effective throughout the executive branch of the Government unless the head of an agency or a designee makes the statement called for by 9.406-1(c).

(2) If *debarment* is not imposed, the debarring official *shall* promptly notify the contractor and any *affiliates* involved, by certified mail, return receipt requested.

(f)

(1) If the contractor enters into an administrative agreement with the Government in order to resolve a *debarment* proceeding, the debarring official *shall* access the website (available at <https://www.cpars.gov>, then select FAPIIS) and enter the requested information.

(2) The debarring official is responsible for the timely submission, within 3 working days, and accuracy of the documentation regarding the administrative agreement.

(3) With regard to information that *may* be covered by a disclosure exemption under the Freedom of Information Act, the debarring official *shall* follow the procedures at 9.105-2(b)(2)(iv).

**Parent topic:** 9.406 Debarment.