

## 9.407-3 Procedures.

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

(b) Decisionmaking process.

(1) Agencies shall establish procedures governing the *suspension* 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, following the imposition of *suspension*, to submit, in person, *in writing*, or through a representative, information and argument in opposition to the *suspension*.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the *suspension* and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the *suspension* would be prejudiced, 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 suspension.* When a contractor and any specifically named *affiliates* are suspended, they shall be immediately advised by certified mail, return receipt requested-

(1) That they have been suspended and that the *suspension* is based on an indictment or other *adequate evidence* that the contractor has committed irregularities-

(i) Of a serious nature in business dealings with the Government or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor-any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the *suspension* is for a temporary period pending the completion of an investigation and such legal proceedings as *may* ensue;

(3) Of the cause(s) relied upon under 9.407-2 for imposing *suspension*;

(4) Of the effect of the *suspension*;

(5) 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 *suspension*, including any additional specific information that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless-

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the *suspension* would be prejudiced.

(d) *Suspending official's decision.*

(1) In actions—

(i) Based on an indictment;

(ii) In which the contractor's submission does not raise a genuine dispute over material facts; or

(iii) In which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision *shall* be based on all the information in the administrative record, including any submission made by the contractor.

(2)

(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact *shall* be prepared. The suspending 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 suspending official *may* refer matters involving disputed material facts to another official for findings of fact. The suspending 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 suspending official's decision *shall* be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending official *may* modify or terminate the *suspension* or leave it in force (for example, see 9.406-4(c) for the reasons for reducing the period or extent of *debarment*). However, a decision to modify or terminate the *suspension shall* be without prejudice to the subsequent imposition of-

(i) *Suspension* by any other agency; or

(ii) *Debarment* by any agency.

(4) Prompt written notice of the suspending official's decision *shall* be sent to the contractor and any *affiliates* involved, by certified mail, return receipt requested.

(e)

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

(2) The suspending 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 suspending official *shall* follow the procedures at 9.105-2(b)(2)(iv).

**Parent topic:** 9.407 Suspension.