

GENERAL SERVICES ADMINISTRATION

48 CFR Part 509

GSAR 2004–G502

RIN 3090–AH97

General Services Acquisition Regulation; Debarment, Suspension, and Ineligibility

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule with request for comments.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to add an additional procedure to the decision-making process for the debarment and suspension of parties.

DATES: Interested parties should submit comments in writing on or before August 17, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit printed comments to General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to the U.S. Government's rulemaking website at <http://www.regulations.gov>, or to GSA's e-mailbox at gsarcase.2004-G502@gsa.gov.

Please submit comments only and cite GSAR case 2004–G502 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775, or by e-mail at ernest.woodson@gsa.gov. Please cite GSAR case 2004–G502.

SUPPLEMENTARY INFORMATION:

A. Background

GSAR 509.406–3(d) and 509.407–3 provide the decision-making processes for determining whether parties should be suspended or proposed for debarment, including contractors, principles, and affiliates. The procedures supplement Federal Acquisition Regulation (FAR) Subpart 9.4, Debarment, Suspension, and Ineligibility, that prescribes policies and procedures governing the suspension and debarment of contractors who are determined not to be responsible by Federal agencies. It is the Government's policy to solicit offers from, award

contracts to, award task or delivery orders against existing contracts, and consent to subcontracts with responsible contractors only. The serious nature of suspension or debarment requires that agencies impose the sanctions only in the public interest for the Government's protection. Suspension or debarment is not to be imposed as punishment for prior bad acts.

The proposed rule would provide parties who are being considered for suspension or debarment with a Show Cause Notice. Currently, there is no requirement to notify a contractor that GSA is considering a suspension or debarment action. In some recent cases, contractors obtained information through leaked information to the press about recommendations to suspend or debar them, giving them the advantage of being able to come in and talk to the GSA Suspension/Debarment Official, while others found out that they were being considered for suspension/debarment when they received either the suspension or the proposed debarment by mail or fax. It is important to note that GSA encourages any of its private sector partners to come in and discuss with the Suspension/Debarment Official instances they have discovered where their responsibility may be placed in question and what steps they have taken to remedy the situation. We encourage a proactive approach by our industry partners in dealing with matters that put their responsibility in question.

The Show Cause Notice would be sent before issuance of a Notice of Suspension or a Notice of Proposed Debarment except in those cases where the government would be harmed by waiting any period of time to suspend or propose the debarment of the contractor. The additional period of time will not impact a party's right to respond to a Notice of Suspension or a Notice of Proposed Debarment within 30 calendar days after its receipt; these two notices trigger placement of a party on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, but the Show Cause Notice would not.

By providing the additional time period, GSA intends to give parties who are being considered for possible suspension or debarment, the ability to informally respond to allegations that affect the responsibility of the contractor.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule primarily supplements existing GSAR procedures that provide the decision-making process for determining the suspension or debarment of parties. One hundred and thirteen contractors were suspended or debarred by GSA in 2003, and this included both large and small businesses. GSA will consider comments from small entities concerning the affected GSAR Subpart 509.4 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite GSAR case 2004–G502, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 509

Government procurement.

Dated: June 10, 2004.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

Therefore, GSA proposes changes to 48 CFR part 509 as set forth below:

PART 509—DEBARMENT, SUSPENSION, AND ELIGIBILITY

1. The authority citation for 48 CFR part 509 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Amend section 509.406–3 by redesignating paragraphs (d)(2) and (d)(3) as (d)(3) and (d)(4), by adding a new paragraph (d)(2), and in newly designated (d)(3) by redesignating (d)(3)(i) through (iv) as (d)(3)(ii) through (v), and adding a new (d)(3)(i) to read as follows:

509.406–3 Procedures.

* * * * *

(d) *Decision-making process.* * * *

(2) The debarring official must provide a Show Cause Notice to each party being considered for debarment, before issuing a Notice of Proposed Debarment. However, a Show Cause Notice need not be provided if—

(i) The debarring official, in her/his sole discretion, has determined that any delay in issuing the Notice of Proposed Debarment would cause imminent harm to the Government; or,

(ii) A suspension is already in effect.

(3) * * *

(i) May informally respond to a Show Cause Notice, but has no obligation to do so.

* * * * *

509.407-3 [Amended]

3. Amend 509.407-3(b)(2)(ii) by removing the reference “509.406-3(d)(3)” and adding “509.406-3(d)(4)” in its place.

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