



March 24, 2020

Class Deviation CD-2020-04

MEMORANDUM FOR WILLIAM S. SCHMIDT
GSA SUSPENSION AND DEBARMENT OFFICIAL

FROM: JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: FAR and GSAR Class Deviation - Flexibilities for Debarring Official
Notification to Contractors

1. Purpose.

This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) and General Services Acquisition Regulation (GSAR) to provide flexibilities for Debarring Officials who need to notify contractors of being suspended, proposed for debarment, or debarred.

2. Background.

FAR 9.406-3 and FAR 9.407-3 currently require contractors to be notified of a suspension, proposed debarment, or debarment action from GSA's Suspension and Debarment Official (SDO) via certified mail, return receipt requested. Unfortunately, as written the FAR precludes any other type of notification such as an electronic means of notification that may be beneficial during times of emergency or crisis such as those presented by the Novel Coronavirus 2019 (COVID-19) pandemic.

This class deviation will allow greater flexibility for Debarring Officials by providing a means of electronic delivery of notices of suspension, proposed debarment, and debarment to contractors in addition to certified mail, return receipt requested as required under FAR 9.406-3 and FAR 9.407-3. In addition, though GSAR 509.406-3(d)(ii) and 509.406-3(d)(iii) are silent on the notification means to contractors

being suspended, proposed for debarment, or debarred, this deviation language is being included for purposes of consistency. The areas of the FAR and GSAR that are being amended by this class deviation are: FAR 9.406-3(c) and (e); FAR 9.407-3(c) and (d); and GSAR 509.406-3(d)(ii) and (d)(iii).

3. Authority.

This class deviation is issued under the authority of FAR 1.404 and General Services Administration Acquisition Manual (GSAM) 501.404. This deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).

4. Deviation.

See Attachment A for the changes in the FAR text as revised by this deviation. See Attachment B for the changes in the GSAR text as revised by this deviation.

5. Effective Date.

This deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR and GSAR.

6. Point of Contact.

Questions regarding this class deviation may be directed to GSARPolicy@gsa.gov.

Attachments	Attachment A – Line-In/Line-Out: FAR Text
	Attachment B – Line-In/Line-Out: GSAR Text
	Attachment C – Business Case

**ATTACHMENT A
FAR DEVIATION LINE-IN/LINE-OUT TEXT
FOR CLASS DEVIATION CD-2020-04**

FAR Baseline: FAC 2020-04 effective 01/15/2020

- **Additions to baseline made by deviation are indicated by [bold text in brackets]**
- **Deletions to baseline made by deviation are indicated by strikethroughs**
- **Five asterisks (*****) indicate that there are no revisions between the preceding and following parts or sections**
- **Three asterisks (***) indicate that there are no revisions between the material shown within a section and subsection or subsection**

Subpart 9.4 - Debarment, Suspension, and Ineligibility

9.406 Debarment.

9.406-3 Procedures.

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

(1) [(1) The notice shall be sent by—

- (i) Certified mail, return receipt requested; or
- (ii) Written notice by a means reasonably calculated to reach the recipient at the last known street address, facsimile number, or e-mail address (with a request for a read receipt).

(2) The notice shall be sent--

- (i) To the contractor, the contractor's identified counsel, and (if known) the contractor's agent for service of process; and

(ii) For each specifically named affiliate, to the affiliate itself, the affiliate's identified counsel, and (if known) the affiliate's agent for service if process.]

~~(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;~~

~~[(i)]¹ Be sent by certified mail, return receipt requested; or]~~

~~[(ii)] Or By written notice by a means reasonably calculated to reach the contractor to the last known street address, facsimile number, or e-mail address of—~~

~~(1) The contractor or the contractor's identified counsel; or~~

~~(2) The contractor's agent for service of process, or any of the contractor's partners, officers, directors, owners, or joint ventures. The notice is effective if sent to any of those identified above.]~~

[(3) The notice shall state--]

[(i)]⁴ That debarment is being considered;

[(ii)]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;

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

[(iv)]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;

[(v)]⁵ Of the agency's procedures governing debarment decisionmaking;

[(vi)]⁶ Of the effect of the issuance of the notice of proposed debarment; and

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

* * *

(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~~**[means of delivery set forth in 9.406-3(c)]**—

(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~~**[means of delivery set forth in 9.406-3(c)]**.

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9.407 Suspension.

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9.407-3 Procedures.

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(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~~**[means of delivery set forth in 9.406-3(c)]**—

(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.*

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(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~~ **[means of delivery set forth in 9.406-3(c)]**.

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ATTACHMENT B
GSAR DEVIATION LINE-IN/LINE-OUT TEXT
FOR CLASS DEVIATION CD-2020-04

GSAM Baseline: Change 106 effective 02/19/2020

- Additions to baseline made by deviation are indicated by **[bold text in brackets]**
- Deletions to baseline made by deviation are indicated by ~~strikethroughs~~
- Five asterisks (*** * * * ***) indicate that there are no revisions between the preceding and following sections
- Three asterisks (*** * ***) indicate that there are no revisions between the material shown within a subsection

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509.406-3 Procedures.

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(b) Reports. Include in referrals to the Suspension and Debarment Official a report that contains at least the following:

- (1) The recommendation and supporting rationale.
- (2) A list of parties to be considered for possible debarment, including the contractor, principals, and affiliates. Include **[email addresses,]** last known home and business addresses, zip codes, and DUNS Numbers. **[Also include for each party the email address and business address for any identified attorney and (if known) the agent for service of process.]**
- (3) A statement of facts.
- (4) Copies of documentary evidence and a list of witnesses. Include addresses and telephone numbers. Determine their availability to appear at a fact-finding proceeding and identify the subject matter of their testimony.
- (5) GSA's acquisition history with the contractor. Include recent experience, copies of the pertinent contracts, and an explanation of impact debarment would have on GSA programs. OIG referrals do not require this explanation; the Suspension and Debarment Official will obtain the information directly from the contracting activity(s).
- (6) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals.

(c) Review. The Suspension and Debarment Official will review the report, and after coordinating with assigned legal counsel—

- (1) Initiate debarment action;
- (2) Decline debarment action.;
- (3) Request additional information; or
- (4) Refer the matter to the OIG for further investigation and development of a case file.

(d) Decisionmaking process.

(1) The Suspension and Debarment Official will provide:

(i) Notice of declinations, proposed debarments, and decisions to the referring activity.

(ii) Notice of proposed debarment to each party being considered for debarment **[via the method in FAR 9.406-3(c)]** ~~[via certified mail, return receipt requested, written notice to the last known street address, facsimile number or e-mail address of the contractor or contractor's identified counsel, or contractor's identified agent for service of process, any of the contractor's partners, officers, directors, owners, or joint ventures. The notice is effective if sent to any of those identified above.]~~

(iii) Decision notices to each party after considering information in the administrative record and information and argument submitted by the affected party or parties **[by means of delivery set forth in 509.406-3(d)(1)(ii) d(ii)]**

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