



JUN 20 2008

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM: DAVID A. DRABKIN  06/20/08
ACTING CHIEF ACQUISITION OFFICER AND SENIOR
PROCUREMENT EXECUTIVE

SUBJECT: Changes to Procedures for Conducting Fact-Finding in a
Debarment/Suspension Case under GSAM Subpart 509.4

Purpose. The purpose of this acquisition letter is to revise the definition of “fact-finding official” in GSAM § 509.403, as well as to provide additional procedures governing fact-finding.

1. Background. The current GSAM § 509.403 provides that GSA's fact-finding official is the Chairman of the Debarment and Suspension Board within the General Services Board of Contract Appeals (GSBCA). The GSBCA no longer exists, having been replaced by the Civilian Board of Contract Appeals (CBCA); accordingly, this GSA regulation must be updated. The CBCA’s operating procedures do not encompass this function. Therefore, GSA has elected to designate the Suspension and Debarment Official, in accordance with FAR 9.406-3(d)(2)(ii), as the individual who can appoint a fact-finding official, should one become necessary.
2. Effective Date. Date of signature.
3. Termination Date. This Acquisition Letter will expire one year from issuance unless cancelled or extended, or upon incorporation into the General Services Administration Acquisition Manual, whichever occurs first.
4. Applicability. This Acquisition Letter applies to all GSA Suspension and Debarment cases.
5. References. FAR 9.406, 9.407, GSAM §§ 509.403, 509.406-3, 509.407-3
6. Action. I hereby grant a class deviation to the provision of GSAM 509-406 which provides for fact-finding by the GSBCA.

7. Instructions.

- a. Replace the definition of fact-finding official at GSAM § 509.403 with the following definition:

509.403 Definitions

“Fact-finding official,” means the Suspension and Debarment Official, or a designee.

- b. Replace GSAM § 509.406-3(d)(3) with the following:

(3) Following a review of the record and, if needed, a presentation by the contractor in opposition to the proposed debarment or suspension action, the Suspension and Debarment Official will determine whether there is a genuine dispute of material fact. If so, the Suspension and Debarment Official will initiate the fact-finding process. The fact-finder will:

- (i) Establish the date for a fact-finding proceeding, normally to be held within 45 days of the determination of who will function as the fact-finder.
- (ii) Grant extensions for good cause.
- (iii) Provide notice of the scheduled hearing.
- (iv) Provide the parties with a schedule for exchange of documents and witness lists.
- (v) Develop an official transcript of the fact-finding proceeding.
- (vi) Provide the Government’s representative and the contractor with an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative in the fact-finding proceeding.
- (vii) Conduct hearings under rules consistent with FAR 9.406-3 pertaining to fact-finding. Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact-finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.
- (viii) Provide for witness testimony. Witnesses may testify in person. Witnesses are subject to cross-examination.
- (ix) Prepare written findings of fact based on a preponderance of the evidence and submit them to both the Suspension and Debarment Official and the contractor within 20 calendar days following the conclusion of the fact-finding proceeding.