

## SUBCHAPTER B—COMPETITION ACQUISITION PLANNING

### PART 905—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

#### Subpart 905.5—Paid Advertisements

##### 905.502 Authority.

(a) *Newspapers.* When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication shall be obtained from the Head of the Contracting Activity or designee.

[49 FR 11943, Mar. 28, 1984]

### PART 906—COMPETITION REQUIREMENTS

#### Subpart 906.1—Full and Open Competition

Sec.

906.102 Use of competitive procedures.

#### Subpart 906.2—Full and Open Competition After Exclusion of Sources

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906.304 Approval of the justification.

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906.501 Requirement.

AUTHORITY: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

SOURCE: 50 FR 12183, Mar. 27, 1985, unless otherwise noted.

#### Subpart 906.1—Full and Open Competition

##### 906.102 Use of competitive procedures.

(d) *Other competitive procedures.* (1) Professional architect-engineer services shall be negotiated in accordance with subpart 936.6 and 48 CFR subpart 36.6.

(4) Program research and development announcements shall follow the

competitive selection procedures for the award of research proposals in accordance with subpart 917.73 and 48 CFR part 35.

(5) Program opportunity notices for commercial demonstrations shall follow the competitive selection procedures for award of these proposals in accordance with subpart 917.72.

[50 FR 12183, Mar. 27, 1985, as amended at 76 FR 7690, Feb. 11, 2011]

#### Subpart 906.2—Full and Open Competition After Exclusion of Sources

##### 906.202 Establishing or maintaining alternative sources.

(b)(1) Every proposed contract action under the authority of 48 CFR 6.202(a) shall be supported by a determination and finding (D&F) signed by the Senior Procurement Executive.

[50 FR 12183, Mar. 27, 1985, as amended at 74 FR 36378, July 22, 2009; 76 FR 7690, Feb. 11, 2011]

#### Subpart 906.3—Other Than Full and Open Competition

##### 906.304 Approval of the justification.

(c) Class justifications within the delegated authority of a Head of the Contracting Activity may be approved for:

(1) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source;

(2) Contracts under the authority cited in 48 CFR 6.302-4 or 6.302-5; or

(3) Contracts for educational services from nonprofit institutions. Class justifications for classes of actions that may exceed \$10,000,000 require the approval of the Senior Procurement Executive.

[50 FR 12183, Mar. 27, 1985, as amended at 74 FR 36378, July 22, 2009; 76 FR 7690, Feb. 11, 2011]

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### Subpart 906.5—Competition Advocates

#### 906.501 Requirement.

The Secretary of Energy and NNSA Administrator have delegated the authority for appointment of the agency and contracting activity competition advocates to the respective DOE and NNSA Senior Procurement Executives. The Senior Procurement Executives have redelegated authority to the Head of the Contracting Activity to appoint contracting activity competition advocates.

[76 FR 7690, Feb. 11, 2011]

### PART 907 [RESERVED]

## PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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AUTHORITY: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

SOURCE: 49 FR 11945, Mar. 28, 1984, unless otherwise noted.

### Subpart 908.8—Acquisition of Printing and Related Supplies

#### 908.802 Policy.

(b) Inclusion of printing requirements (limited exceptions are set forth in paragraphs 35-2 through 35-4 of the Government Printing and Binding Regulations) in contracts for supplies and services is prohibited unless specifically approved by the Director, Office of Administrative Services, Headquarters. Contracting officers shall insert the clause at 952.208-70, Printing, in all contracts.

[61 FR 41705, Aug. 9, 1996, as amended at 74 FR 36362, July 22, 2009]

#### Subpart 908.11—Leasing of Motor Vehicles

SOURCE: 61 FR 41705, Aug. 9, 1996, unless otherwise noted.

#### 908.1102 Presolicitation requirements.

#### 908.1102-70 Vehicle leasing.

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program. All subsequent lease renewals or extensions may be exercised only when GSA has advised that it cannot furnish the vehicle(s) as prescribed herein.

[77 FR 74386, Dec. 14, 2012]

**908.1104 Contract clauses.**

(f) The clause at 952.208–7, Tagging of Leased Vehicles, shall be inserted whenever a vehicle(s) is to be leased over 60 days, except for those vehicles exempted by Federal Management Regulation (FMR) 41 CFR 102–34.160, 102–34.175, and 102–34.180.

[61 FR 41705, Aug. 9, 1996, as amended at 74 FR 36362, July 22, 2009; 77 FR 74386, Dec. 14, 2012]

**908.1170 Leasing of fuel-efficient vehicles.**

(a) All sedans and station wagons and certain types of light trucks, as specified by GSA, that are acquired by lease for 60 continuous days or more for official use by DOE or its authorized contractors, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 and of Executive Order 12003 and subsequent implementing regulations.

(b) Leased vehicles will meet the miles-per-gallon criteria of, and be incorporated in, the approved plan of the fiscal year in which leases are initiated, reviewed, extended, or increased in scope. Vehicle leases will specify the vehicle model type to be provided.

**Subpart 908.71—Acquisition of Special Items****908.7100 Scope of subpart.**

This subpart sets forth requirements and procedures for the acquisition of special items by DOE and contractors authorized to use special sources of supply to the extent indicated herein.

**908.7101 Motor vehicles.****908.7101–1 Scope of section.**

Acquisitions by purchase of motor vehicles shall be in accordance with this section.

**908.7101–2 Consolidated acquisition of new vehicles by General Services Administration.**

(a) New vehicles shall be procured in accordance with Federal Property Management Regulations (FPMR) 41 CFR 101–26.501, and 41 CFR 102–1 through 102–220, and Department of En-

ergy Property Management Regulations (DOE–PMR) 41 CFR 109–26.501. Orders for all motor vehicles must be placed utilizing GSA's online vehicle purchasing system (AutoChoice).

(b) Orders for all motor vehicles shall be submitted utilizing GSA's on-line system (Auto Choice), in accordance with FPMR 41 CFR 101–26.501. Requisitions for sedans, station wagons, and certain light trucks as specified by GSA, should contain a certification that the acquisition is in conformance with Pub. L. 94–163, and Executive Order 12003 and 12375 and subsequent implementations.

(c) The schedule of dates for submission of orders is contained in FPMR 41 CFR 101–26.501–4. The Heads of Contracting Activities shall consolidate and submit their requirements for passenger automobiles early in the fiscal year. Requisitions for sedans, station wagons and certain types of light trucks shall be submitted through Headquarters as outlined in 908.7101–6. Requisitions for all other types of vehicles shall be submitted directly to GSA.

[49 FR 11945, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 77 FR 74386, Dec. 14, 2012]

**908.7101–3 Direct acquisition.**

Vehicles may be acquired by DOE activities directly rather than through GSA when a waiver has been granted by GSA. A copy of the activity's request to GSA for a waiver shall be forwarded to the Director, Personal Property Policy Division, within the Headquarters procurement organization. In cases involving general purpose vehicles where GSA refuses to grant a waiver and where it is believed that acquisition through GSA would adversely affect or otherwise impair the program, authority for direct acquisition shall be obtained from the above-mentioned Headquarters official, prior to acquisition. In the acquisition of special purpose vehicles for use by DOE and its authorized contractors, the Head of the Contracting Activity may authorize direct purchases. The purchase price for sedans and station wagons, shall not

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exceed any statutory limitation in effect at the time the acquisition is made. (See 41 CFR 109-26.501-1).

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 77 FR 74386, Dec. 14, 2012]

### 908.7101-4 Replacement of motor vehicles.

(a) The replacement of motor vehicles shall be in accordance with the replacement standards prescribed in 41 CFR 102-34.270 and 109-38.402.

(b) The Heads of Contracting Activities may arrange to sell, as exchange sales, used motor vehicles being replaced and to apply the proceeds to the purchase of similar new vehicles. However, in the event personnel are not available to make such sales, or it is in the best interest of the DOE office, GSA may be requested to sell the used vehicles.

[49 FR 11945, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 77 FR 74386, Dec. 14, 2012]

### 908.7101-5 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used vehicles. However, the Heads of Contracting Activities may authorize the purchase of used vehicles where justified by special circumstances; e.g., when new vehicles are in short supply, the vehicles are to be used for experimental or test purposes, or the vehicles are acquired from exchange sale. In accordance with 41 CFR 109-26.501-50 and 109-26.501-51, the statutory passenger vehicle allocation requirements for DOE shall apply to any purchase of used vehicles except in the case of vehicles to be used exclusively for experimental or test purposes.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 77 FR 74386, Dec. 14, 2012]

### 908.7101-6 Acquisition of fuel-efficient vehicles.

(a) All purchases of sedans and station wagons, and certain types of light trucks as specified by GSA, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163, and of Executive Orders 12003 and 12375 and subse-

quent implementing regulations. Accordingly, the Director of Administration and the Heads of Contracting Activities will submit annually to the Director, Personal Property Policy Division, within the Headquarters procurement organization, for approval, a forecast of plans for the purchase of such vehicles during the fiscal year. Such forecast shall be submitted to the Property Executive, or designee.

(b) Approved sedans, station wagons, and light trucks requisitioned, but not contracted for by GSA until the subsequent fiscal year, shall be included in the acquisition plan for the miles-per-gallon criteria of the year in which GSA signs the purchase contract along with the new vehicles planned for acquisition that year.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 77 FR 74386, Dec. 14, 2012]

### 908.7101-7 Government license tags.

(a) Government license tags shall be procured and assignments recorded by DOE offices in accordance with 41 CFR 102-34.140.

(b) The letter "E" has been designated as the prefix symbol for all DOE official license tags. Assignment of new tag numbers will be made by UNICOR via the UNICOR online vehicle license tag ordering data base. Contractors must obtain approval from their Federal fleet manager or OPMO for authorization to utilize the UNICOR data base. Director, Personal Property Policy Division, within the Headquarters procurement organization will maintain tag assignment records issued by UNICOR.

(c) Special license tags for security purposes shall be purchased in accordance with state and local laws, regulations, and procedures.

(d) In the District of Columbia, official Government tags shall be obtained from the Department of Transportation, Motor Vehicles Services Branch, District of Columbia, for all motor vehicles (except vehicles exempt for security purposes) based or housed in the District.

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(e) See 41 CFR 109–38.202–2 and 109–38.202–3 for additional guidance.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 77 FR 74387, Dec. 14, 2012]

### 908.7102 Aircraft.

Acquisition of aircraft shall be in accordance with 41 CFR 102–33, subpart B and DOE Order 440.2B latest revision.

[77 FR 74387, Dec. 14, 2012]

### 908.7103 Office machines.

Acquisitions of office machines by DOE offices and its authorized contractors shall be in accordance with FPMR 41 CFR 101–25.104, 101–25.302, and DOE-PMR 41 CFR 109–25.302, and 109–25.4.

[49 FR 11945, Mar. 28, 1984, as amended at 77 FR 74387, Dec. 14, 2012]

### 908.7104 Office furniture and furnishings.

Acquisitions of office furniture and furnishings by DOE offices shall be in accordance with FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–5, 101–25.302–7, 101–25.404 and 101–26.505, and DOE-PMR 41 CFR 109–25.302, and 109–25.350.

[49 FR 11945, Mar. 28, 1984, as amended at 77 FR 74387, Dec. 14, 2012]

### 908.7105 Filing cabinets.

Acquisitions of filing cabinets shall be in accordance with FPMR 41 CFR 101–26.308 and 101–25.302–2 and DOE-PMR 41 CFR 109–25.302.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 74 FR 36362, July 22, 2009]

### 908.7106 Security cabinets.

(a) Acquisitions of security cabinets shall be in accordance with FPMR 41 CFR 101–26.507 and the “prerequisites to ordering” criteria contained in FPMR 41 CFR 101–25.302–2 and DOE-PMR 41 CFR 109–25.302.

(b) Fixed-price prime contractors and lower tier subcontractors may use GSA acquisition sources for security cabinets in accordance with 48 CFR part 51.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 74 FR 36362, July 22, 2009; 76 FR 7691, Feb. 11, 2011]

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### 908.7107 Procurement and use of industrial alcohol.

(a) This section covers the procurement of industrial alcohol by DOE or authorized contractors and the applicable policies and delegations of authority to submit industrial alcohol user application to procure and use tax-free alcohol or specially denatured spirits. To the fullest extent practicable, industrial alcohol for use by DOE or its contractors shall be procured on a tax-free basis.

(b) The procurement of tax-free alcohol or specially denatured spirits shall be conducted in accordance with the regulations, policy, and procedures of the Alcohol and Tobacco Tax and Trade Bureau (TTB), of the Department of Treasury. The applicable TTB regulations and forms may be accessed at the following Web site: <http://www.ttb.gov/foia/err.shtml#regulations>.

For further information, contact the Alcohol and Tobacco Tax and Trade Bureau, Director, National Revenue Center, 550 Main St., Suite 8002, Cincinnati, OH 45202–5215 or toll free at 1–877–882–3277.

(c) The applying office should coordinate, as necessary, with the local State Alcohol Control Board, or its equivalent, to obtain the appropriate State license.

(1) *Tax-free alcohol.* TTB regulations relating to the procurement and use of alcohol free of tax, by Government agencies, are set forth in 27 CFR part 22, subpart N, §§22.171 to 22.176.

(2) *Specially denatured spirits.* TTB regulations relating to the acquisition and use of alcohol free of tax, by Government agencies, are set forth in 27 CFR part 20, subpart N, §§20.241 to 20.245.

(d) For the user permits to procure and use tax-free alcohol and specially denatured spirits submit the application on the TTB Form 5150.22, “Application for Industrial Alcohol User Permit,” (or the current TTB form). When permits are no longer required, they should be forwarded to the Alcohol and Tobacco Tax and Trade Bureau for cancellation. Industrial alcohol procured by use of the TTB form referred to in this subsection shall be used exclusively on DOE work.

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(e) The Senior Procurement Executive (SPE) has the authority to sign the TTB application, Form 5150.22. The SPE may delegate this authority to sign the application to specifically named DOE personnel. Requests for new authorizations or changes to existing authorizations shall be submitted by letter to the SPE. A copy of the TTB approved permit shall be sent to the SPE.

(f) Abandoned and forfeited alcohol which has come into the custody or control of a Federal agency may be obtained by following the procedure set forth in the FMR at 41 CFR part 102-41.

[76 FR 7691, Feb. 11, 2011]

### 908.7108 [Reserved]

### 908.7109 Fuels and packaged petroleum products.

Acquisitions of fuel and packaged petroleum products by DOE offices shall be in accordance with FPMR 41 CFR 101-26.602. When contractors are authorized, consistent with 951, to acquire such products from Defense sources, they shall do so in accordance with FPMR 41 CFR 101-26.602.

### 908.7110 Coal.

DOE offices and authorized contractors may participate in the Defense Fuel Supply Center (DFSC) coal contracting program for carload or larger lots. If participation is desired, estimates shall be submitted to DFSC in accordance with FPMR 41 CFR 101-26.602.

### 908.7111 Arms and ammunition.

Pursuant to 10 U.S.C. 4655, the Secretary of the Army is authorized to furnish arms, suitable accouterments for use therewith, and ammunition for the protection of public money and property.

(a) The Department of the Army has granted clearance for Federal agencies to procure, without further reference to or clearance from that Department, all arms and ammunition of types which are not peculiar to the military services, and which are readily procurable in the civilian market.

(b) Acquisition of arms and ammunition readily procurable in the civilian

market shall be made in accordance with regular acquisition procedures.

(c) Acquisition of arms and ammunition which are peculiar to the military services shall be made by submission of order form to the Commanding General, Headquarters, U.S. Army Materiel Command, 9301 Chapek Road, Fort Belvoir, VA 22060-5527.

[49 FR 11945, Mar. 28, 1984, as amended at 49 FR 38950, Oct. 2, 1984; 74 FR 36362, July 22, 2009]

### 908.7112 Materials handling equipment replacement standards.

Materials handling equipment shall be purchased for replacement purposes in accordance with the standards in FPMR 41 CFR 101-25.405 and DOE-PMR 41 CFR 109-25.4. The Heads of Contracting Activities are authorized to replace an item earlier than the date specified in such standards under unusual circumstances. A written justification shall be placed in the purchase file.

[49 FR 11945, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

### 908.7113 Calibration services.

Orders for calibration services may be placed with the National Institute of Standards and Technology, 100 Bureau Drive, Stop 2300, Gaithersburg, MD 20899-2300, by either DOE acquisition offices or its authorized contractors. Copies of the letters authorizing contractors to order calibration services on behalf of DOE shall be sent to the National Institute of Standards and Technology, Attention: "Calibration Services."

[74 FR 36362, July 22, 2009]

### 908.7114 Wiretapping and eavesdropping equipment.

Acquisition by DOE offices and contractors of devices primarily designed to be used surreptitiously to overhear or record conversations is prohibited.

### 908.7115 Forms.

(a) DOE forms shall be obtained by DOE offices in accordance with the DOE Guide 242.1-1, DOE Forms Management, for use with DOE Order 200.1, Information Management Program.

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(b) Standard, optional, and certain other agency forms as listed in the GSA Supply Catalog will be obtained by DOE offices in accordance with FPMR 41 CFR 101-26.302.

(c) Marginally punched continuous forms shall be obtained in accordance with FPMR 41 CFR 101-26.703.

[49 FR 11945, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994; 74 FR 36362, July 22, 2009]

**908.7116 Electronic data processing tape.**

(a) Acquisitions of electronic data processing tape by DOE offices shall be in accordance with FPMR 41 CFR 101-26.508.

(b) Acquisitions of electronic data processing tape by authorized contractors shall be in accordance with FPMR 41 CFR 101-26.508-1. However, if adequate justification exists, the Heads of Contracting Activities may authorize contractors to obtain their tape from other sources. When such an authorization is granted, a copy of the authorization and justification shall be retained in the contract file.

[49 FR 11945, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

**908.7117 Tabulating machine cards.**

DOE offices shall acquire tabulating machine cards in accordance with FPMR 41 CFR 101-26.509.

**908.7118 Rental of post office boxes.**

DOE offices and authorized contractors may rent post office boxes on an annual basis, or for shorter periods by quarters, where necessary. Payments for annual rentals are to be made in advance at the beginning of the fiscal year, and for periods of less than a year, either in advance for the whole period or at the beginning of each quarter in which the box is to be used.

**908.7119-908.7120 [Reserved]**

**908.7121 Special materials.**

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials may be unclassified, the specific quantities, destination or use may be classified (see appropriate sections of the Classification Guide). Contracting

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officers shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the following procedures:

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Request for orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* (1) NNSA, Y-12 National Security Complex in Oak Ridge, TN is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. The NNSA Y-12 National Security Complex has assigned management of these precious metals to its Management and Operating (M&O) contractor. DOE and NNSA offices and authorized contractors shall coordinate with the Y-12 M&O contractor regarding the availability of these metals prior to purchasing in the open market.

(2) For contractor inventory containing precious metals or possessing precious metals excess, see 945.604-1 for contractor identification and reporting.

(c) *Lithium.* Lithium is available from Y-12 at no cost other than normal packing, handling, and shipping charges from Oak Ridge. The excess quantities at Y-12 are the first source of supply prior to procurement of lithium compounds from any other source.

[77 FR 74387, Dec. 14, 2012]

**PART 909—CONTRACTOR QUALIFICATIONS**

**Subpart 909.1—Responsible Prospective Contractors**

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- 904.104 Standards.
- 909.104-1 General standards.
- 909.104-3 Application of standards.

**Subpart 909.4—Debarment, Suspension, and Ineligibility**

- 909.400 Scope of subpart.
- 909.401 Applicability.
- 909.403 Definitions.
- 909.405 Effect of listing.

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- 909.406 Debarment.
- 909.406-2 Causes for debarment.
- 909.406-3 Procedures.
- 909.406-70 Requests for reconsideration of debarment.
- 904.407 Suspension.
- 909.407-2 Causes for suspension.
- 909.407-3 Procedures.

### Subpart 909.5—Organizational and Consultant Conflicts of Interest

- 909.503 Waiver.
- 909.504 Contracting officer's responsibility.
- 909.507 Solicitation provisions and contract clause.
- 909.507-1 Solicitation provisions.
- 909.507-2 Contract clause.

AUTHORITY: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

SOURCE: 49 FR 11949, Mar. 28, 1984, unless otherwise noted.

### Subpart 909.1—Responsible Prospective Contractors

#### 909.104 Standards.

##### 909.104-1 General standards.

(h) For solicitations for contract work subject to the provisions of 10 CFR part 707, Workplace Substance Abuse Programs at DOE sites, the prospective contractor must agree, in accordance with 970.5223-3., Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, to provide the contracting officer with its written workplace substance abuse program in order to be determined responsible and, thus, eligible to receive the contract award.

[57 FR 32675, July 22, 1992, as amended at 62 FR 42074, Aug. 5, 1997; 65 FR 81006, Dec. 22, 2000; 74 FR 36362, July 22, 2009]

##### 909.104-3 Application of standards.

(e) *Guaranteeing corporate entities.* The Department of Energy (DOE) may select an entity which was newly created to perform the prospective contract, including, but not limited to, a joint venture or other similarly binding corporate partnership. In such instances when making the determination of responsibility pursuant to 48 CFR 9.103, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally

if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

[64 FR 16651, Apr. 6, 1999, as amended at 74 FR 36362, July 22, 2009]

### Subpart 909.4—Debarment, Suspension, and Ineligibility

SOURCE: 61 FR 39857, July 31, 1996, unless otherwise noted.

#### 909.400 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures governing the debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contracts, procurement sales contracts, and real property purchase agreements, and from participating in DOE and, NNSA approved subcontracts and sub-agreements;

(b) Sets forth the causes, procedures, and requirements for determining the scope, duration, and effect of DOE and NNSA debarment and suspension actions; and

(c) Implements and supplements 48 CFR subpart 9.4 with respect to the exclusion of organizations and individuals from procurement contracting and Government approved subcontracting.

[61 FR 39857, July 31, 1996, as amended at 74 FR 36362, July 22, 2009; 76 FR 7691, 7692, Feb. 11, 2011]

#### 909.401 Applicability.

The provisions of this subpart apply to all procurement debarment and suspension actions initiated by DOE and NNSA on or after the effective date of this subpart. Nonprocurement debarment and suspension rules are codified in 2 CFR part 901.

[61 FR 39857, July 31, 1996, as amended at 76 FR 7691, Feb. 11, 2011]

## 909.403

### 909.403 Definitions.

In addition to the definitions set forth at 48 CFR 9.403, the following definitions apply to this subpart:

*Debarring and suspending official*, for the DOE, the designees are:

(1) *Debarring Official* means the Debarring Official for DOE contracts is the Director, Office of Procurement and Assistance Management, DOE, or designee. The Debarring Official for NNSA contracts is the Director, Office of Acquisition and Supply Management, NNSA, or designee.

(2) *Suspending Official* means the Suspending Official for DOE contracts is the Director, Office of Procurement and Assistance Management, DOE, or designee. The Suspending Official for NNSA contracts is the Director, Office of Acquisition and Supply Management, NNSA, or designee.

[69 FR 75003, Dec. 15, 2004, as amended at 74 FR 36362, July 22, 2009; 76 FR 7692, Feb. 11, 2011]

### 909.405 Effect of listing.

(e) The Department of Energy may not solicit offers from, award contracts to or consent to subcontracts with contractors debarred, suspended, or proposed for debarment unless the Senior Procurement Executive makes a written determination justifying that there is a compelling reason for such action in accordance with 48 CFR 9.405(a). For NNSA, the Head of the Contracting Activity (HCA) makes the written determination justifying the compelling reason.

(f) DOE or NNSA may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is listed in the Excluded Parties List System (EPLS).

(g) DOE or NNSA shall not conduct business with an agent or representative of a contractor if the agent's or representative's name is listed in the EPLS.

(h) DOE or NNSA shall review the EPLS before conducting a pre-award survey or soliciting proposals, awarding contracts, renewing or otherwise

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extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

[76 FR 7691, Feb. 11, 2011]

### 909.406 Debarment.

#### 909.406–2 Causes for debarment.

(c) The DOE and NNSA Debarring Official may debar a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor. Such cause may include but is not limited to:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private contract or subcontract.

(2) Inexcusable, prolonged, or repeated failure to pay a debt (including disallowed costs and overpayments) owed to DOE, provided the contractor has been notified of the determination of indebtedness, and further provided that the time for initiating any administrative or legal action to oppose or appeal the determination of indebtedness has expired or that such action, if initiated, has been concluded.

(d) The Debarring Official may debar a contractor:

(1) On the basis that an individual or organization is an affiliate of a debarred contractor, subject to the requirements of 48 CFR 9.406–1(b) and 9.406–3(c).

(2) For failure to observe the material provisions of a voluntary exclusion (see 10 CFR 1036.315 for discussion of voluntary exclusion).

[61 FR 39857, July 31, 1996, as amended at 74 FR 36362, July 22, 2009; 76 FR 7691, Feb. 11, 2011]

#### 909.406–3 Procedures.

(a) *Investigation and referral.* (1) Offices responsible for the award and administration of contracts are responsible for reporting to the appropriate Senior Procurement Executive and the DOE Inspector General information about possible fraud, waste, abuse, or other wrongdoing which may constitute or contribute to a cause(s) for debarment under this subpart. Circumstances that involve possible criminal or fraudulent activities must

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be reported to the Office of the Inspector General in accordance with 10 CFR part 1010, Conduct of Employees, §1010.103, Reporting Wrongdoing.

(2) At a minimum, referrals for consideration of debarment action should be in writing and should include the following information—

(i) The recommendation and rationale for the referral;

(ii) A statement of facts;

(iii) Copies of documentary evidence and a list of all witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of parties including the contractor, principals, and affiliates (including last known home and business addresses, zip codes and DUNS Number or other identifying number for an individual);

(v) DOE's and NNSA's acquisition history with the contractor, including recent experience under contracts and copies of pertinent contracts;

(vi) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Civilian Board of Contract Appeals or other fact-finding body; and

(vii) A statement regarding the impact of the debarment action on DOE and NNSA programs. This statement is not required for referrals by the Inspector General.

(3) Referrals may be returned to the originator for further information or development.

(b) *Decisionmaking process.* Contractors proposed for debarment shall be afforded an opportunity to submit information and argument in opposition to the proposed debarment.

(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 submissions made by the contractor. If the respondent fails to submit a timely written response to a notice of proposed debarment, the Debarring Official shall notify the re-

spondent in accordance with FAR 9.406-3(e) that the contractor is debarred.

(2) In actions not based upon a conviction or civil judgment, the contractor may request a fact-finding hearing to resolve a genuine dispute of material fact. In its request, the contractor must identify the material facts in dispute and the basis for disputing the facts. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official shall appoint, and refer the matter to, a Fact-Finding Official for a fact-finding conference.

(3) *Meeting.* Upon receipt of a timely request from a contractor proposed for debarment, the Debarring Official shall schedule a meeting between the Debarring Official and the respondent, to be held no later than 30 days from the date the request is received. The Debarring Official may postpone the date of the meeting if the respondent requests a postponement in writing. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may present and explain evidence that causes for debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, or duration of a proposed debarment or debarment.

(4) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts through the submission of oral and written evidence; resolve facts in dispute; and provide the Debarring Official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. The fact-finding conference shall be conducted in accordance with rules consistent with 48 CFR 9.406-3(b). The Fact-Finding Official will notify the affected parties of the schedule for the hearing. The Fact-Finding Official shall deliver written findings of fact to the Debarring Official (together with a transcription of the proceeding, if made) within a certain time period after the hearing record closes as specified by the Fact-Finding Official. The findings shall resolve any disputes over

material facts based upon a preponderance of the evidence, if the case involves a proposal to debar, or on adequate evidence, if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments.

(d) *Debarring Official's decision.* (4) The Debarring Official's final decision shall be based on the administrative record. In those actions where additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall be those findings prepared by the Fact-Finding Official. Findings of fact shall be final and conclusive unless, within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, or unless set aside by a court of competent jurisdiction. The Fact-Finding Official shall be provided a copy of the Debarring Official's final decision.

[61 FR 39857, July 31, 1996, as amended at 76 FR 7691, Feb. 11, 2011]

**909.406-70 Requests for reconsideration of debarment.**

(a) At any time during a period of debarment, a respondent may submit to the Debarring or Suspending Official a written request for reconsideration of the scope, duration, or effects of the suspension/debarment action because of new information or changed circumstances, as discussed at 48 CFR 9.406-4(c).

(b) In reviewing a request for reconsideration, the Debarring or Suspending Official may, in his or her discretion, utilize any of the procedures (meeting and fact-finding) set forth in 909.406-3 and 909.407-3. The Debarring or Suspending Official's final disposition of the reconsideration request shall be in writing and shall set forth the reasons why the request has been granted or denied. A notice transmitting a copy

of the disposition of the request for reconsideration shall be sent to the respondent.

[61 FR 39857, July 31, 1996, as amended at 74 FR 36362, July 22, 2009; 76 FR 7692, Feb. 11, 2011]

**909.407 Suspension.**

**909.407-2 Causes for suspension.**

(d) The Suspending Official may suspend an organization or individual—

(1) Indicted for or suspected, upon adequate evidence, of the causes described in 909.406-2(c)(1);

(2) On the basis of the causes set forth in 909.406-2(d)(2); or

(3) On the basis that an organization or individual is an affiliate of a suspended or debarred contractor.

[61 FR 39857, July 31, 1996, as amended at 74 FR 36363, July 22, 2009]

**909.407-3 Procedures.**

(b) *Decisionmaking process.* (1) In actions based on an indictment, the Suspending Official shall make a decision based upon the administrative record, which shall include submissions made by the contractor in accordance with 909.406-3(b)(1) and 909.406-3(b)(3).

(2) For actions not based on an indictment, the procedures in 909.406-3(b)(2) and 48 CFR 9.407-3(b)(2) apply.

(3) Coordination with Department of Justice. Whenever a meeting or fact-finding conference is requested, the Suspending Official's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such Department of Justice official requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall—

(i) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(ii) Deny the request for a meeting or fact-finding and base the suspension decision solely upon the information in the administrative record, including

any submission made by the respondent.

(e) *Notice of suspending official's decision.* In actions in which additional proceedings have been held, following such proceedings, the Suspending Official shall notify respondent, as applicable, in accordance with paragraphs (e)(1) or (e)(2) of this section.

(1) Upon deciding to sustain a suspension, the Suspending Official shall promptly send each affected respondent a notice containing the following information:

(i) A reference to the notice of suspension, the meeting and the fact-finding conference;

(ii) The Suspending Official's findings of fact and conclusions of law;

(iii) The reasons for sustaining a suspension;

(iv) A reference to the Suspending Official's waiver authority under 909.405;

(v) A statement that the suspension is effective throughout the Executive Branch as provided in 48 CFR 9.407-1(d);

(vi) Modifications, if any, of the initial terms of the suspension;

(vii) A statement that the respondent's name and address will be added to the EPLS; and

(viii) If less than an entire organization is suspended, specification of the organizational element(s) or individual(s) included within the scope of the suspension.

(2) If the Suspending Official decides to terminate a suspension, the Suspending Official shall promptly send, by certified mail, return receipt requested, each affected respondent a copy of the final decision required under this section.

[61 FR 39857, July 31, 1996; 61 FR 41684, Aug. 9, 1996, as amended at 74 FR 36363, July 22, 2009; 76 FR 7692, Feb. 11, 2011]

### Subpart 909.5—Organizational and Consultant Conflicts of Interest

SOURCE: 62 FR 40751, July 30, 1997, unless otherwise noted.

#### 909.503 Waiver.

Heads of Contracting Activities are delegated the authorities in 48 CFR 9.503 regarding the waiver of organiza-

tional and consultant conflicts of interest requirements.

[74 FR 36363, July 22, 2009]

#### 909.504 Contracting officer's responsibility.

(d) The contracting officer shall evaluate the statement by the apparent successful offeror or, where individual contracts are negotiated with all firms in the competitive range, all such firms for interests relating to a potential organizational conflict of interest in the performance of the proposed contract. Using that information and any other credible information, the contracting officer shall make written determination of whether those interests create an actual or significant potential organizational conflict of interest and identify any actions that may be taken to avoid, neutralize, or mitigate such conflict. In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated. Before determining to withhold award based on organizational conflict of interest considerations, the contracting officer shall notify the offeror, provide the reasons therefor, and allow the offeror a reasonable opportunity to respond. If the conflict of interest cannot be avoided, neutralized, or mitigated to the contracting officer's satisfaction, the contracting officer may disqualify the offeror from award and undertake the disclosure, evaluation, and determination process with the firm next in line for award. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 909.503. The waiver request and decisions shall be included in the contract file.

[62 FR 40751, July 30, 1997, as amended at 74 FR 36363, July 22, 2009]

## 909.507

### 909.507 Solicitation provisions and contract clause.

#### 909.507-1 Solicitation provisions.

(e) The contracting officer shall insert the provision at 952.209-8, Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services, in solicitations for advisory and assistance services expected to exceed the simplified acquisition threshold. In individual procurements, the Head of the Contracting Activity may increase the period subject to disclosure in 952.209-8 (c)(1) up to 36 months.

[62 FR 40751, July 30, 1997, as amended at 74 FR 36363, July 22, 2009]

#### 909.507-2 Contract clause.

(a)(1) The contracting officer shall insert the clause at 952.209-72, Organizational Conflicts of Interest, in each solicitation and contract for advisory and assistance services expected to exceed the simplified acquisition threshold.

(2) Contracting officers may make appropriate modifications where necessary to address the potential for organizational conflicts of interest in individual contracts. Contracting officers shall determine the appropriate term of the bar of paragraph (b)(1)(i) of the clause at 952.209-72 and enter that term in the blank provided. In the usual case of a contract for advisory and assistance services a period of three, four, or five years is appropriate; however, in individual cases the contracting officer may insert a term of greater or lesser duration.

(3) The contracting officer shall include Alternate I with the clause in instances in which a meaningful amount of subcontracting for advisory and assistance services is expected.

(b) Contracts, which are not subject to part 970 but provide for the operation of a DOE site or facility or environmental remediation of a specific DOE site or sites, shall contain the organizational conflict of interest clause at 952.209-72. The organizational conflicts of interest clause in such contracts shall include Alternate I to that clause.

[62 FR 40751, July 30, 1997, as amended at 74 FR 36363, July 22, 2009]

## 48 CFR Ch. 9 (10-1-15 Edition)

### PART 911—DESCRIBING AGENCY NEEDS

#### Subpart 911.6—Priorities and Allocations

Sec.

911.600 Scope of subpart.

911.602 General.

911.604 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

#### Subpart 911.6—Priorities and Allocations

##### 911.600 Scope of subpart.

This subpart implements and supplements 48 CFR part subpart 11.6, Priorities and Allocations, and implements the regulations and procedures of the Defense Priorities and Allocations System (DPAS) in solicitations and contracts in support of authorized national defense programs. (See 15 CFR part 700).

[52 FR 38422, Oct. 16, 1987, as amended at 59 FR 9105, Feb. 25, 1994. Redesignated and amended at 61 FR 21976, May 13, 1996; 61 FR 30823, June 18, 1996; 73 FR 10985, Feb. 29, 2008; 76 FR 7692, Feb. 11, 2011]

##### 911.602 General.

(e) The Heads of Contracting Activities shall ensure that members of their staffs and contractors under their jurisdiction are advised of the provisions of the DPAS regulation and that the related procedures are followed to ensure adherence to the regulation throughout the industrial supply chain. Under DPAS, it is mandatory that the priority rating be extended through the industrial chain from supplier to supplier.

[52 FR 38422, Oct. 16, 1987, as amended at 59 FR 9105, Feb. 25, 1994. Redesignated at 61 FR 21976, May 13, 1996, as amended at 73 FR 10985, Feb. 29, 2008]

##### 911.604 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 952.211-70, Priorities and Allocations (Atomic Energy), in solicitations that will result in the placement of rated orders for authorized DOE atomic energy programs.

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(b) The contracting officer shall insert the clause at 952.211-71, Priorities and Allocations (Atomic Energy), in contracts that are placed in support of authorized DOE atomic energy programs.

(c) The use of the provisions at 952.211-70 and the clause at 952.211-71 is optional for industrial delivery orders of \$5,000 or less.

[52 FR 38422, Oct. 16, 1987, as amended at 59 FR 9105, Feb. 25, 1994. Redesignated and amended at 61 FR 21976, May 13, 1996; 65 FR 81006, Dec. 22, 2000; 73 FR 10985, Feb. 29, 2008; 74 FR 36363, July 22, 2009]

**PART 912—ACQUISITION OF  
COMMERCIAL ITEMS**

AUTHORITY: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

**Subpart 912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

**912.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

(c) The waiver required by 48 CFR 12.302(c) shall be in writing and approved by the local procurement manager or individual appointed for that purpose by the local procurement manager.

[74 FR 36363, July 22, 2009]