

## 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](mailto: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](mailto: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.

[FR Doc. 04-13762 Filed 6-17-04; 8:45 am]

**BILLING CODE 6820-61-S**