

SUBCHAPTER H—PROCUREMENT SYSTEM FOR THE U.S. POSTAL SERVICE: INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

PART 601—PURCHASING OF PROPERTY AND SERVICES

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AUTHORITY: 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

SOURCE: 72 FR 58252, Oct. 15, 2007, unless otherwise noted.

§ 601.100 Purchasing policy.

The Postal Service acquires property and services pursuant to the authority of 39 U.S.C. 410.

§ 601.101 Effective date.

These regulations are effective November 14, 2007. Solicitations issued and resulting contracts entered into prior to that date will be governed by the regulations in effect at the time the solicitation was issued.

§ 601.102 Revocation of prior purchasing regulations.

All previous postal purchasing regulations, including the *Postal Contracting Manual*, *Procurement Manual*, the *Purchasing Manual* (Issues 1, 2 and 3), and procurement handbooks, circulars, and instructions, are revoked and are superseded by the regulations contained in this part.

§ 601.103 Applicability and coverage.

The regulations contained in this part apply to all Postal Service acqui-

sition of property (except real property) and services.

§ 601.104 Postal purchasing authority.

Only the Postmaster General/CEO; the Postal Service's vice president, Supply Management; contracting officers with written statements of specific authority; and others designated in writing or listed in this part have the authority to bind the Postal Service with respect to entering into, modifying, or terminating any contract regarding the acquisition of property, services, and related purchasing matters. The Postal Service's vice president, Supply Management, or his or her designee, may also delegate in writing local buying authority throughout the Postal Service.

§ 601.105 Business relationships.

(a) *General.* A person or organization wishing to have a continuing business relationship with the Postal Service in purchasing matters is expected to treat the Postal Service in the same manner as it would other valued customers of similar size and importance. The Postal Service reserves the right to decline to accept or consider proposals from a person or organization when that person or organization fails to meet reasonable business expectations or provide a high level of confidence regarding quality, prompt service, and overall professionalism.

(b) *Declining to accept or consider proposals.* The Postal Service may decline to accept or consider proposals when a person or organization exhibits unacceptable conduct or business practices that do not meet reasonable business expectations or does not provide a high level of confidence about the entity's current or future business relations. Unacceptable conduct or business practices include, but are not limited to:

(1) Marginal or dilatory contract performance;

(2) Failure to deliver on promises made in the course of dealings with the Postal Service;

(3) Providing false or misleading information regarding financial condition, ability to perform, or other material matters, including any aspect of performance on a contract; and

(4) Engaging in other questionable or unprofessional conduct or business practices.

(c) *Notice.* If the Postal Service elects to decline to accept or consider proposals from a person or organization, the vice president, Supply Management, or his or her designee, will provide a written notice to the person or organization by *Certified Mail, return receipt requested*, explaining:

(1) The reasons for the decision;

(2) The effective date of the decision;

(3) The scope of the decision;

(4) The period of time the decision will be in effect, (a matter at the Postal Service's discretion consistent with the circumstances); and

(5) The supplier's right to contest the decision.

(d) *Contesting Decisions.* If a person or organization believes the decision not to accept or consider proposals is not merited, it may contest the matter in accordance with § 601.108. The Postal Service may reconsider the matter and, if warranted, rescind or modify the decision to decline to accept or consider proposals.

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§ 601.107 Initial disagreement resolution.

(a) *Definitions*—(1) *Days.* Calendar days; however, any time period will run until a day that is not a Saturday, Sunday, or legal holiday.

(2) *Disagreements.* All disputes, protests, claims, disagreements, or demands of whatsoever nature arising in connection with the acquisition of property and services within the scope of § 601.103 of this chapter, except those:

(i) That arise pursuant to a contract under the Contract Disputes Act under § 601.109;

(ii) That concern debarment, suspension, or ineligibility under § 601.113; or

(iii) That arise out of the nonrenewal of transportation contracts containing other provisions for the review of such decisions.

(3) *Interested parties.* Actual or prospective offerors whose direct eco-

nomic interests would be affected by the award of, or failure to award, the contract.

(4) *Lodge.* A disagreement is lodged on the date it is received by the contracting officer or the Supplier Disagreement Resolution Official, as appropriate.

(5) *SDR Official.* The Supplier Disagreement Resolution Official, a contracting officer designated by the Postal Service to perform the functions established under § 601.108.

(b) *Policy.* It is the policy of the Postal Service and in the interest of its suppliers to resolve disagreements by mutual agreement between the supplier and the responsible contracting officer. All disagreements must be lodged with the responsible contracting office in writing via facsimile, e-mail, hand delivery, or U.S. Mail. For disagreements that concern the award of a contract, the disagreement shall be lodged within 10 days of the date the supplier received notification of award or 10 days from the date the supplier received a debriefing, whichever is later. For disagreements that concern alleged improprieties in a solicitation, the contracting officer must receive the disagreement before the time set for the receipt of proposals, unless the disagreement concerns an alleged impropriety that does not exist in the initial solicitation but which is subsequently incorporated into the solicitation, in which event the contracting officer must receive the disagreement no later than the next closing time for the receipt of proposals following the incorporation. The resolution period shall last 10 days from the date when the disagreement is lodged with the contracting officer. During the supplier-contracting officer 10-day resolution period, the responsible contracting officer's management may help to resolve the disagreement. At the conclusion of the 10-day resolution period, the contracting officer must communicate, in writing, to the supplier his or her resolution of the disagreement.

(c) *Alternative dispute resolution.* Alternative dispute resolution (ADR) procedures may be used to resolve a disagreement. If the use of ADR is agreed upon, the 10-day limitation is suspended. If agreement cannot be

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reached, the supplier has 10 days to lodge its disagreement with the SDR Official.

[75 FR 1542, Jan. 12, 2010]

§ 601.108 SDR Official disagreement resolution.

(a) *General.* If a disagreement under § 601.107 is not resolved within 10 days after it was lodged with the contracting officer, if the use of ADR fails to resolve it at any time, if the supplier is not satisfied with the contracting officer's resolution of the disagreement, or if the decision not to accept or consider proposals under § 601.105 is contested, the SDR Official is available to provide final resolution of the matter. The Postal Service desires to resolve all such matters quickly and inexpensively in keeping with the regulations in this part.

(b) *Scope and applicability.* This procedure is established as the sole and exclusive means to resolve disagreements under § 601.107 and contests of decisions under § 601.105. This procedure is intended to expeditiously resolve disagreements that are not resolved at the responsible contracting officer level; to reduce litigation expenses, inconvenience, and other costs for all parties; to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons; and to develop further the basis for the Postal Service's purchasing decisions and the administrative records concerning those decisions. All disagreements under § 601.107 and contests of decisions under § 601.105 will be lodged with and resolved, with finality, by the SDR Official under and in accordance with the sole and exclusive procedure established in this section.

(c) *Lodging.* The disagreement under § 601.107 or contest of decision under § 601.105 must be lodged with the SDR Official in writing via facsimile, email, hand delivery, or U.S. Mail. The disagreement under § 601.107 or contest of decision under § 601.105 must state the factual circumstances relating to it and the remedy sought. A disagreement under § 601.107 must also state the scope and outcome of the initial disagreement resolution attempt with the contracting officer. The address of the

SDR Official is: Supply Management, Room 1141 (Attn: SDR Official), United States Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260-1141; email Address: SDROfficial@usps.gov; Fax Number: (202) 268-0075.

(d) *Lodging timeframes.* Disagreements under § 601.107 or contests of decisions under § 601.105 must be lodged with the SDR Official within the following timeframes:

(1) Disagreements under § 601.107 not resolved with the contracting officer must be lodged with the SDR Official within 20 days after they were lodged with the contracting officer (unless ADR had been used to attempt to resolve them);

(2) Disagreements under § 601.107 for which ADR had been agreed to be used must be lodged with the SDR Official within 10 days after the supplier knew or was informed by the contracting officer or otherwise that the matter was not resolved;

(3) Where a supplier is dissatisfied with the contracting officer's resolution of a disagreement under § 601.107, the supplier must lodge the disagreement with the SDR Official within 10 days after the supplier first receives notification of the contracting officer's resolution; and

(4) Contests of decisions under § 601.105 to decline to accept or consider proposals must be lodged with the SDR Official within 10 days of the supplier's receipt of the written notice explaining the decision.

(5) The SDR Official may grant an extension of time to lodge a disagreement under § 601.107 or contest of decision under § 601.105 or to provide supporting information when warranted. Any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the SDR Official on or before the time to lodge a disagreement lapses.

(e) *Disagreement decision process.* The SDR Official will promptly provide a copy of a disagreement to the contracting officer, who will promptly notify other interested parties. The SDR Official will consider a disagreement and any response by other interested parties and appropriate Postal Service

officials within a time frame established by the SDR Official. The SDR Official may also meet individually or jointly with the person or organization lodging the disagreement, other interested parties, and/or Postal Service officials, and may undertake other activities in order to obtain materials, information, or advice that may help to resolve the disagreement. The person or organization lodging the disagreement, other interested parties, or Postal Service officials must promptly provide all relevant, nonprivileged materials and other information requested by the SDR Official. If a submission contains trade secrets or other confidential information, it should be accompanied by a copy of the submission from which the confidential matter has been redacted. The SDR Official will determine whether any redactions are appropriate and will be solely responsible for determining the treatment of any redacted materials. After obtaining such information, materials, and advice as may be needed, the SDR Official will promptly issue a written decision resolving the disagreement and will deliver the decision to the person or organization lodging the disagreement, other interested parties, and appropriate Postal Service officials. When resolving a disagreement raised under §601.107, the SDR Official may grant remedies including, but not limited to, the following:

- (1) Directing the contracting officer to revise the solicitation or to issue a new solicitation;
- (2) Directing the contracting officer to recompile the requirement;
- (3) Directing the contracting officer to reevaluate the award on the basis of current proposals and the evaluation factors contained in the solicitation; and
- (4) Directing the contracting officer to terminate the contract or to refrain from exercising options under the contract.

(f) *Guidance.* The SDR Official will be guided by the regulations contained in this part and all applicable public laws enacted by Congress. Non-Postal Service procurement rules or regulations and revoked Postal Service regulations will not apply or be taken into account. Failure of any party to provide

requested information may be taken into account by the SDR Official in the decision.

(g) *Final resolution by the SDR Official and final contract award of the Postal Service.* A resolution by the SDR Official will be final and binding. If the SDR Official's final resolution affirms the original contract award of the contracting officer, the contracting officer's original contract award becomes the Postal Service's final contract award, and may be subject to judicial review as described in paragraph (h) of this section. If the SDR Official's final resolution directs that the Postal Service terminate the contract award and issue a new solicitation, recompile the requirement, or reevaluate the current award, the contracting officer shall implement promptly the SDR Official's final resolution. However, any contract award made by the contracting officer after a resolicitation, recompetition, or reevaluation directed by the SDR Official is not a final contract award of the Postal Service that may be subject to judicial review unless and until disagreements concerning that contract award have been lodged and resolved with finality by the SDR Official.

(h) *Judicial review.* The Postal Service's final contract award, as described in paragraph §601.108(g), may be appealed to a Federal court with jurisdiction based only upon an alleged violation of the regulations contained in this part or an applicable public law enacted by Congress. The party lodging the disagreement may seek review of the Postal Service's final contract award only after the mandatory administrative remedies provided under §601.107 and §601.108 have been exhausted.

(i) *Resolution timeframe.* It is intended that this procedure generally will resolve disagreements under §601.107 or contests of decisions under §601.105 within approximately 30 days after receipt by the SDR Official. The time may be shortened or lengthened depending on the complexity of the issues and other relevant considerations.

[75 FR 1542, Jan. 12, 2010, as amended at 79 FR 65343, Nov. 4, 2014]

§ 601.109 Contract claims and disputes.

(a) *General.* This section implements the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101-7109).

(b) *Policy.* The Postal Service intends and seeks to resolve contractual claims and disputes by mutual agreement at the level of an authorized contracting officer whenever possible. The contracting officer may also consider holding informal discussions between the parties in order to resolve the conflict before issuing any final decision.

(c) *Applicability.* This section shall apply to all claims arising out of, or relating to, any contract, including any agreement entered into under authority delegated pursuant to § 601.104 for:

- (1) The procurement of property, including license or leasehold interests in real property, other than fee simple title to real property in being;
- (2) The procurement of services;
- (3) The procurement of construction, alteration, repair, or maintenance of real property; or
- (4) The disposal of personal property.

(d) *Supplier claim initiation.* Supplier claims must be submitted in writing to the contracting officer for final decision within six years after accrual of a claim unless the parties agreed in writing to a shorter time period.

(e) *Postal Service claim initiation.* The contracting officer must issue a written decision on any Postal Service claim against a supplier within six years after accrual of a claim unless the parties agreed in writing to a shorter time period. The six-year time period does not apply to a Postal Service claim based on supplier fraud.

(f) *Certified claims.* Each supplier claim exceeding \$100,000 must be accompanied by a certification in accordance with the supplier's contract.

(g) *Misrepresentation or fraud.* When the contracting officer determines that the supplier is unable to support any part of the claim and there is evidence or reason to believe the inability is attributable to either misrepresentation of fact or fraud on the supplier's part, the contracting officer must deny that part of the claim and refer the matter to the Office of Inspector General.

(h) *Decision and appeal*—(1) *Contracting officer's authority.* A contracting officer, within the limitations

of his or her delegated authority, is authorized to decide or settle all claims arising under or relating to a contract subject to the Contract Disputes Act, except for:

- (i) Claims or disputes for penalties or forfeitures prescribed by statutes or regulation that a Federal agency administers; or
- (ii) Claims involving fraud.

(2) *Contracting officer's final decision.* The contracting officer must review the facts pertinent to the claim and issue a final decision in writing. The decision must include a description of the claim or dispute with references to the pertinent contract terms, a statement of the factual areas of agreement and disagreement, and a statement of the contracting officer's final decision with supporting rationale.

(3) *Insufficient information.* When the contracting officer cannot issue a decision because the supplier has not provided sufficient information, the contracting officer should request the required information. A supplier's failure to timely provide the requested information is an adequate reason to deny the claim.

(4) *Furnishing decisions.* The contracting officer must furnish a copy of the written decision to the supplier, and delivery may be by any method that provides evidence of receipt.

(5) *Decisions on claims for \$100,000 or less.* If the supplier has asked for a decision within 60 days on a claim of \$100,000 or less, the contracting officer must issue a final decision within 60 calendar days of its receipt. The supplier may consider the contracting officer's failure to issue a decision within the applicable time period as a denial of its claim and may file a lawsuit or appeal on the claim.

(6) *Decisions on certified claims.* For a certified claim over \$100,000, the contracting officer must either issue a final decision within 60 days of its receipt, or notify the supplier within the 60-day period of the time when a decision will be issued. The time period established must be reasonable, taking into account the size and complexity of the claim, the adequacy of the supplier's supporting data, and any other relevant factors.

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(7) *Wording of decisions.* The contracting officer's final decision must contain the following paragraph: "This is the final decision of the contracting officer pursuant to the Contract Disputes Act of 1978 and the clause of your contract entitled *Claims and Disputes*. You may appeal this decision to the Postal Service Board of Contract Appeals by filing a notice of appeal within ninety days from the date you receive this decision. You may file the notice of appeal online through the USPS Judicial Officer Department's Electronic Filing System website located at <https://usps-judicialoffice.journaltech.com/public-portal>, or by mailing or otherwise furnishing the notice of appeal to the Postal Service Board of Contract Appeals. You also may appeal by mailing or otherwise furnishing the written notice of appeal to the contracting officer within 90 days from the date you receive this decision. The notice should identify the contract by number, reference this decision, and indicate that an appeal is intended. Alternatively, you may bring an action directly in the United States Court of Federal Claims within 12 months of the date you receive this decision."

(8) *Additional wording for decisions of \$50,000 or less.* When the claim, or claims, denied total \$50,000 or less, the contracting officer must add the following to the paragraph: "In taking an appeal to the Postal Service Board of Contract Appeals, you may include in your notice of appeal (1) an election to proceed under the Board's small claims (expedited) procedure, which provides for a decision within approximately 120 days, or (2) an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter."

(9) *Additional wording for decisions over \$50,000 up to \$100,000.* When the claim or claims denied total \$100,000 or less, but more than \$50,000, the contracting officer must add the following to the paragraph: "In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's accelerated procedure, which provides

for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter."

[90 FR 17011, Apr. 23, 2025]

§ 601.110 Payment of claims.

Any claim amount determined in a final decision to be payable, less any portion previously paid, should be promptly paid to the supplier without prejudice to either party in the event of appeal or action on the claim. In the absence of appeal by the Postal Service, a board or court decision favorable in whole or in part to the supplier must be implemented promptly. In cases when only the question of entitlement has been decided and the matter of amount has been remanded to the parties for negotiation, a final decision of the contracting officer must be issued if agreement is not reached promptly.

§ 601.111 Interest on claim amounts.

Interest on the amount found due on the supplier's claim must be paid from the date the contracting officer received the claim (properly certified, if required) or from the date payment would otherwise be due, if that date is later, until the date of payment. Simple interest will be paid at the rate established by the Secretary of the Treasury for each 6-month period in which the claim is pending. Information on the rate at which interest is payable is announced periodically in the *Postal Bulletin*.

§ 601.112 Review of adverse decisions.

Any party may seek review of an adverse decision of the Board of Contract Appeals in the Court of Appeals for the Federal Circuit or in any other appropriate forum.

§ 601.113 Suspension, debarment, and ineligibility.

(a) *General.* Except as provided otherwise in this part, contracting officers may not solicit proposals from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with suspended, debarred, or ineligible suppliers.

(b) *Definitions*—(1) *Affiliate*. A business, organization, person, or individual connected by the fact that one controls or has the power to control the other or by the fact that a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, contractual relationships, common use of employees, or a business entity organized following the suspension, debarment, or proposed debarment of a supplier which has the same or similar management, ownership, or principal employees as the supplier that was suspended, debarred, or proposed for debarment. Franchise agreements are not conclusive evidence of affiliation if the franchisee has a right to profit in proportion to its ownership and bears the risk of loss or failure.

(2) *Debarment*. An exclusion from contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

(3) *General Counsel*. This includes the General Counsel's authorized representative.

(4) *Indictment*. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

(5) *Ineligible*. An exclusion from contracting and subcontracting by an entity other than the Postal Service under statutes, executive orders, or regulations, such as the Davis-Bacon Act, the Service Contract Act, the Equal Employment Opportunity Acts, the Walsh-Healy Public Contracts Act, or the Environmental Protection Acts and related regulations or executive orders, to which the Postal Service is subject or has adopted as a matter of policy.

(6) *Suspension*. An exclusion from contracting and subcontracting for a reasonable period of time due to specified reasons or the pendency of a debarment proceeding.

(7) *Supplier*. For the purposes of this part, a supplier is any individual, person, or other legal entity that:

(i) Directly or indirectly (e.g., through an affiliate) submits offers for, is awarded, or reasonably may be expected to submit offers for or be awarded, a Postal Service contract, including a contract for carriage under Postal Service or commercial bills of lading, or a subcontract under a Postal Service contract; or

(ii) Conducts business or reasonably may be expected to conduct business with the Postal Service as a subcontractor, an agent, or as a representative of another supplier.

(c) *Suspension, debarment, and ineligible list*. (1) The Postal Service uses the General Services Administration's System for Award Management (SAM) to determine if suppliers are suspended, debarred, or proposed for debarment.

(2) SAM maintains a consolidated database of all persons and entities suspended, debarred, proposed for debarment, or declared ineligible by Federal agencies or the Government Accountability Office. SAM is accessible by the public on GSA's Web site at <https://www.sam.gov>.

(3) Through a representative, the vice president, Supply Management will use the SAM Exclusions database to report Postal Service suspensions, debarments and proposed debarment decisions; including changes in the status of suppliers and any of their affiliates. Inquiries concerning listed suppliers should be directed to the agency or other authority that took the action.

(d) *Treatment of suppliers included in the SAM Exclusions database*. (1) Contracting officers will review the SAM Exclusions database before making a contract award.

(2) Suppliers included in the SAM Exclusions database are excluded from receiving contracts and subcontracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with such suppliers, unless the vice president, Supply Management, or his or her designee, after consultation with the General Counsel, has approved such action.

(3) Suppliers included in the SAM Exclusions database may not provide goods or services to other persons or entities for resale, in whole or part, to

the Postal Service and such other persons or entities are obligated to review the consolidated GSA list in order to exclude suppliers suspended or debarred by the Postal Service from performing any part of a Postal Service contract.

(4) The suspension, debarment, or ineligibility of a supplier does not, of itself, affect the rights and obligations of the parties to any valid, pre-existing contract. The Postal Service may terminate for default a contract with a supplier that is suspended, debarred, or determined to be ineligible. Contracting officers may not add new work to any contract with a supplier that is suspended, debarred, or determined to be ineligible by supplemental agreement, by exercise of an option, or otherwise (unless the work is classified as an insignificant or significant minor service change to a mail transportation contract), except with the approval of the vice president, Supply Management, or designee after consultation with the General Counsel.

(e) *Causes for suspension.* (1) The vice president, Supply Management, may suspend any supplier, including any of its affiliates, for causes such as the following:

(i) If the supplier commits, is indicted for, or is convicted of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a government contract, violates a Federal antitrust statute arising out of the submission of bids and proposals, or commits or engages in embezzlement, theft, forgery, bribery, falsification or destruction of records, or receipt of stolen property, or any other offense indicating a lack of business integrity or business honesty;

(ii) For any other cause of such serious and compelling nature that suspension is warranted; or

(iii) If the Postal Service has notified a supplier of its proposed debarment under this part.

(f) *Period of suspension.* A suspension will not exceed one year in duration, except a suspension may be extended for reasonable periods of time beyond one year by the vice president, Supply Management. The termination of a suspension will not prejudice the Postal Service's position in any debarment

proceeding. A suspension will be superseded by a decision rendered by the vice president, Supply Management, under paragraph (k)(5) of this section.

(g) *Procedural requirements for suspension.* (1) The vice president, Supply Management will notify a supplier of a suspension or an extension of a suspension and the reason(s) for the suspension or extension in writing sent to the supplier by Certified Mail, return receipt requested, within ten days after the effective date of the suspension or extension. A copy of the notice will be furnished to the Office of the Inspector General.

(2) The notice will state the cause(s) for the suspension or extension.

(3) Within thirty days of notice of suspension or an extension, a supplier may submit to the vice president, Supply Management, in writing, any information or reason(s) the supplier believes makes a suspension or an extension inappropriate, and the vice president, Supply Management, in consultation with the General Counsel, will consider the supplier's submission, and, in their discretion, may revoke a suspension or an extension of a suspension. If a suspension or extension is revoked, the revocation will be in writing and a copy of the revocation will be sent to the supplier by Certified Mail, return receipt requested. A copy of the revocation will be furnished to the Office of the Inspector General.

(h) *Causes for debarment.* (1) The vice president, Supply Management, with the concurrence of the General Counsel, may debar a supplier, including its affiliates, for cause such as the following:

(i) Conviction of a criminal offense incidental to obtaining or attempting to obtain contracts or subcontracts, or in the performance of a contract or subcontract.

(ii) Conviction under a Federal antitrust statute arising out of the submission of bids or proposals.

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.

(iv) Violation of a Postal Service contract so serious as to justify debarment, such as willful failure to perform

a Postal Service contract in accordance with the specifications or within the time limit(s) provided in the contract; a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Postal Service contracts occurring within a reasonable period of time preceding the determination to debar (except that failure to perform or unsatisfactory performance caused by acts beyond the control of the supplier may not be considered a basis for debarment); violation of a contractual provision against contingent fees; or acceptance of a contingent fee paid in violation of a contractual provision against contingent fees.

(v) Any other offense indicating a lack of business integrity or business honesty.

(vi) Any other cause of a serious and compelling nature that debarment is warranted.

(2) The existence of a conviction in paragraph (h)(1)(i) or (ii) of this section can be established by proof of a conviction in a court of competent jurisdiction. If an appeal taken from such conviction results in a reversal of the conviction, the debarment may be removed upon the request of the supplier, unless another cause or another basis for debarment exists.

(3) The existence of any of the other causes in paragraphs (h)(1)(iii), (iv), (v), or (vi) of this section can be established by a preponderance of the evidence, either direct or indirect, in the judgment of the vice president of Supply Management.

(4) The criminal, fraudulent, or improper conduct of an individual may be imputed to the firm with which he or she is or has been connected when an impropriety was committed. Likewise, when a firm is involved in criminal, fraudulent, or other improper conduct, any person who participated in, knew of, or had reason to know of the impropriety may be debarred.

(5) The criminal, fraudulent, or other improper conduct of one supplier participating in a joint venture or similar arrangement may be imputed to other participating suppliers if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acqui-

escence of the supplier. Acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval, or acquiescence.

(i) *Mitigating factors.* (1) The existence of any cause for debarment does not necessarily require that a supplier be debarred. The decision to debar is within the discretion of the vice president, Supply Management, with the concurrence of the General Counsel, and must be made in the best interest of the Postal Service. The following factors may be assessed in determining the seriousness of the offense, failure, or inadequacy of performance, and may be taken into account in deciding whether debarment is warranted:

(i) Whether the supplier had established written standards of conduct and had published internal control systems at the time of the activity that constitutes cause for debarment or had adopted such procedures prior to any Postal Service investigation of the activity cited as a cause for debarment.

(ii) Whether the supplier brought the activity cited as a cause for debarment to the attention of the Postal Service in a prompt, timely manner.

(iii) Whether the supplier promptly and fully investigated the circumstances involving debarment and, if so, made the full results of the investigation available to appropriate officials of the Postal Service.

(iv) Whether the supplier cooperated fully with the Postal Service during its investigation into the matter.

(v) Whether the supplier paid or agreed to pay all criminal, civil and administrative liability, and other costs arising out of the improper activity, including any investigative or administrative costs incurred by the Postal Service, and made or agreed to make full restitution.

(vi) Whether the supplier took appropriate disciplinary action against the individual(s) responsible for the activity that could cause debarment.

(vii) Whether the supplier implemented and/or agreed to implement remedial measures, including those identified by the Postal Service.

(viii) Whether the supplier instituted and/or agreed to institute new and/or revised review and control procedures and ethics programs.

(ix) Whether the supplier had adequate time to eliminate circumstances within the supplier's organization that could lead to debarment.

(x) Whether the supplier's senior officers and mid-level management recognize and understand the seriousness of the misconduct giving rise to debarment.

(2) The existence or nonexistence of mitigating factors or remedial measures such as those above is not determinative whether or not a supplier should be debarred. If a cause for debarment exists, the supplier has the burden of demonstrating, to the satisfaction of the vice president, Supply Management that debarment is not warranted or necessary.

(j) *Period of debarment.* (1) When an applicable statute, executive order, or controlling regulation of other agencies provides a specific period of debarment, that period applies. In other cases, debarment by the Postal Service should be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment should not exceed three years. When debarment for an additional period is deemed necessary, notice of the proposed additional period of debarment must be furnished to the supplier as in the case of original debarment.

(2) Except as precluded by an applicable statute, executive order, or controlling regulation of another agency, debarment may be removed or the period may be reduced by the vice president, Supply Management when requested by the debarred supplier and when the request is supported by a reasonable justification, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The vice president, Supply Management may, at his or her discretion, deny any request or refer it to the Judicial Officer for a hearing and for findings of fact, which the vice president, Supply Management will consider when deciding the matter. When a debarment is removed or the debarment period is reduced, the vice president, Supply Management must state in writing the

reason(s) for the removal of the debarment or the reduction of the period of debarment.

(k) *Procedural requirements for debarment.* (1) After securing the concurrence of the General Counsel, the vice president, Supply Management will initiate a debarment proceeding by sending the supplier a written notice of proposed debarment. The notice will be served by sending it to the last known address of the supplier by Certified Mail, return receipt requested. A copy of the notice will be furnished to the Office of Inspector General. The notice will state that debarment is being considered; the reason(s) for the proposed debarment; the anticipated period of debarment and the proposed effective date; and that, within thirty days of the notice, the supplier, individually or through a representative, may submit in person or in writing information and argument in opposition to the proposed debarment. In the event a supplier does not submit information or argument in opposition to the proposed debarment to the vice president, Supply Management within the time allowed, the debarment will become final with no further review or appeal.

(2) If the proposed debarment is based on a conviction or civil judgment, the vice president, Supply Management, with the concurrence of the General Counsel, may decide whether debarment is merited based on the conviction or judgment, including any information received from the supplier. If the debarment is based on other circumstances or if there are questions regarding material facts, the vice president, Supply Management may seek additional information from the supplier and/or other persons, and may request the Judicial Officer to hold a fact-finding hearing on such matters. The hearing will be governed by rules of procedure promulgated by the Judicial Officer. The vice president, Supply Management may reject any findings of fact, in whole or in part, when they are clearly erroneous.

(3) Questions of fact to be resolved by a hearing before the Judicial Officer will be based on the preponderance of the evidence.

(4) After consideration of the circumstances and any information and

argument submitted by the supplier, the vice president, Supply Management, with the concurrence of the General Counsel, will issue a written decision regarding whether the supplier is debarred, and, if so, for the period of debarment. The decision will be mailed to the supplier by Certified Mail, return receipt requested. A copy of the decision will be furnished to the Office of the Inspector General. The decision will be final and binding, unless the decision was procured by fraud or other criminal misconduct, or the decision was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

[79 FR 65343, Nov. 4, 2014]

PART 602—INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

Sec.

602.1 General principles.

602.2 Office of Licensing, Philatelic and Retail Services Department.

602.3 Requests for use.

AUTHORITY: 39 U.S.C. 401(5).

SOURCE: 43 FR 42250, Sept. 20, 1978, unless otherwise noted.

§ 602.1 General principles.

It is the policy of the Postal Service to secure full ownership rights for its intellectual properties other than patents (hereinafter, intellectual properties) having significant economic or other business value, except when to do so would be contrary to the best interest of the Postal Service. Intellectual property rights shall be acquired and managed so as to:

(a) Promote the economic, operational, and competitive well-being of the Postal Service;

(b) Limit restrictions on the use of Postal Service intellectual property to a minimum consistent with its statutory obligations;

(c) Assure that all potential users are treated fairly;

(d) Give due regard to other relevant considerations.

§ 602.2 Office of Licensing, Philatelic and Retail Services Department.

In accordance with the foregoing policy, the Postal Service Office of Licens-

ing, Philatelic and Retail Services Department, formulates the program for the management of the Postal Service's rights in intellectual property (except patents and technical data rights in Postal Service contracts, which is the responsibility of Postal Service contracting officers). The Office of Licensing and the contracting officers identify intellectual properties in which the Postal Service should secure its rights. It receives and makes recommendations for the disposition of applications for use of Postal Service intellectual property. It periodically reviews the intellectual property rights portfolio to determine the extent of the utilization of protected properties and to recommend relinquishment of ownership when it considers ownership no longer desirable. It is advised by the Office of Procurement of performance under license agreements and makes recommendations for corrective measures when necessary. In consultation with the Law Department, it recommends appropriate action against unauthorized use of intellectual property.

[56 FR 58859, Nov. 22, 1991]

§ 602.3 Requests for use.

(a) Inquiries concerning licenses to use Postal Service trademarks or service marks, copyright materials and intellectual property other than patents and technical data rights in Postal Service contracts must be sent to: Office of Licensing, Philatelic and Retail Services Department, US Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-6700.

(b) Requests for the use of intellectual property should be submitted on the form provided by the Office of Licensing to the licensing advisor designated by that Office. Each request is considered in a timely fashion in accordance with the policy established in this section. Requests favorably considered are forwarded to the Office of Licensing for approval.

(c) Approved requests contemplating a permissive (no fee) use of the intellectual property are evidenced by a letter of permission furnished to the requester.