

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in 9.409 , insert the following clause:

Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for *Debarment* (Nov 2021)

(a) *Definition.*

Commercially available off-the-shelf (COTS) item, as used in this clause—

(1) Means any item of supply (including *construction* material) that is—

(i) A *commercial product* (as defined in paragraph (1) of the definition of "*commercial product*" in Federal Acquisition Regulation (FAR)2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural *products* and petroleum *products*.

(b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor *shall* not enter into any subcontract, in excess of the threshold specified in FAR 9.405-2(b) on the date of subcontract award, with a Contractor that is debarred, suspended, or proposed for *debarment* by any *executive agency* unless there is a compelling reason to do so.

(c) The Contractor *shall* require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR 9.405-2(b) on the date of subcontract award, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, *in writing*, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for *debarment* by the Federal Government.

(d) A corporate officer or a designee of the Contractor *shall* notify the *Contracting Officer*, *in writing*, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for *debarment* (see FAR 9.404 for information on the *System for Award Management (SAM)* Exclusions). The notice *must* include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in

SAM.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's *debarment, suspension, or proposed debarment*.

(e) *Subcontracts*. Unless this is a contract for the *acquisition of commercial products or commercial services*, the Contractor *shall* include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

(1) Exceeds the threshold specified in FAR 9.405-2(b) on the date of subcontract award; and

(2) Is not a subcontract for commercially available off-the-shelf items.

(End of clause)

Parent topic: 52.209 [Reserved]