

§ 1404.225

under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in §1404.215.

[60 FR 33041, 33045, June 26, 1995]

§ 1404.225 Failure to adhere to restrictions.

(a) Except as permitted under §1404.215 or §1404.220, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

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Subpart C—Debarment

§ 1404.300 General.

The debarring official may debar a person for any of the causes in §1404.305, using procedures established in §§1404.310 through 1404.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

21 CFR Ch. III (4–1–03 Edition)

§ 1404.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §1404.300 through §1404.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in §1404.215 or §1404.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed