

FAR Class Deviation from the Federal Acquisition Regulation Regarding Flexibilities for the Suspending or Debaring Official's Correspondence with Contractors

Purpose: This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to allow greater flexibilities for Suspending or Debaring Officials (SDOs) who need to correspond with contractors being suspended, proposed debarment, or debarred.

Authority: This class deviation is issued under the authority of FAR 1.404 and through consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) via the [CAAC Letter 2020-01](#).

Background: FAR 9.406-3 and 9.407-3 require that a debaring official notify contractors being suspended, proposed for debarment, or debarred via certified mail, return receipt requested. This mandatory requirement precludes any other type of notification such as an electronic means of notification, which would allow USDA to carry out its mission of protecting the Government from doing business with non-responsible contractors during times of emergency or crisis such as those presented by the COVID-19 virus pandemic (COVID-19).

Suspension and debarment are remedies designed to protect the Government's business interests from potential harm posed by individuals or entities whose conduct indicates a lack of business honesty or integrity or serious, poor performance. Agencies take suspension, proposed debarment, and debarment actions against both business entities and individuals who engage in misconduct, in order to reduce business risk to taxpayer funds or interests.

It is necessary to note that the suspension and debarment process is based on Executive Order and regulation, rather than statute. Although suspension and debarment are governed by the Administrative Procedure Act in general, there is no statutory requirement that the notice must be accomplished via certified mail, return receipt requested.

Action: Electronic delivery methods of notices of suspension, proposed debarment, and debarment in addition to certified mail, return receipt are now acceptable means of notification as required under FAR 9.406-3 and FAR 9.407-3.

Effective Date: This deviation is effective immediately and remains in effect until rescinded.

Point of Contact: Questions regarding this deviation may be directed to Procurement.Policy@usda.gov.