



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 18, 2022

MEMORANDUM FOR: Acquisition Management Division and Buyers in the Regions

FROM: Eleni Jernell *Eleni Jernell* Signed by Jernell, Eleni
Senior Procurement Executive on 10/18/22

SUBJECT: CLASS DEVIATION FROM THE U.S. NUCLEAR REGULATORY
COMMISSION ACQUISITION REGULATION
SECTION 2009.407-3(b)

Purpose: To provide a class deviation from the U.S. Nuclear Regulatory Commission (NRC) Acquisition Regulation (NRCAR) to streamline NRC's suspension and debarment procedures to align with the procedures more closely in the Federal Acquisition Regulation (FAR).

Effective Date: Upon issuance.

Expiration Date: Until superseded, incorporated into the NRCAR or otherwise rescinded.

Guidance: NRCAR 2009.407-3 prescribes the procedures to be followed when considering suspension of a contractor. 2009.407-3(b) states that if, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407-3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406-3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.407-3(c)(5), the suspending official may notify the contractor in accordance with FAR 9.407-3(d) that the contractor is suspended.

Deviation: This deviation removes the NRCAR requirement to provide the contractor with an opportunity to appear at an informal hearing similar in nature to the hearing for debarments as discussed in FAR 9.406-3(b)(2). The effect of this deviation is to align NRC suspension actions with the suspension procedures of FAR 9.407-3 rather than with debarment procedures of FAR 9.406-3. Consistent with FAR 9.407, suspension and debarment officials will be able to immediately suspend a contractor upon adequate evidence, including indictment, of any of the causes for suspension listed in FAR 9.407-2(a), and following imposition of suspension the contractor will be afforded an opportunity to submit information and argument in opposition to the suspension. In suspension actions not based upon an indictment, if the contractor's submission in opposition raises a genuine dispute over facts material to the suspension (and if it would not prejudice pending or contemplated legal proceedings), the contractor will also be afforded an opportunity to appear with counsel, submit documentary evidence, present

witnesses, confront any person the agency presents, and to have a transcribed record of the proceedings.

Action Required by Suspension and Debarment Officials: Suspension and debarment officials need not afford a contractor an opportunity to appear at an informal hearing as discussed in the debarment procedures of FAR 9.406-3(b)(2) prior to imposition of suspension. Suspension and debarment officials shall follow the suspension procedures of FAR 9.407-3 in suspension actions.

Authority: This class deviation is issued under the authority of NRCAR 2001.404.

Clause Changes: None.

CLASS DEVIATION FROM THE NUCLEAR REGULATORY COMMISSION ACQUISITION
REGULATION SECTION 2009.407-3(b) DATED OCTOBER 18, 2022

DISTRIBUTION:

PUBLIC

AMD r/f

NStevenson, ADM

ADAMS Accession No.: ML22287A127

***e-concurrence**

OFFICE	ADM/AMD/APPSB/BC*	ADM/AMD/D*	
NAME	JDaly	EJernell	
DATE	10/14/2022	10/18/2022	

OFFICIAL RECORD COPY