U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF ACQUISITION AND PROPERTY MANAGEMENT
PROCEDURES FOR CONDUCTING
SUSPENSION AND DEBARMENT
FACT FINDING HEARINGS

I. Introduction.

These are the procedures for determining genuinely disputed material facts in support of suspension and/or debarment actions taken by the U.S. Department of the Interior (DOI) under 48 C.F.R. Subpart 9.4, as supplemented by Part 1409.4; and 2 C.F.R. Parts 180 as supplemented by Part 1400. Such proceedings are referred to as "fact finding". For purposes of these procedures rule cites hereafter are to the primary regulatory sections at Subpart 9.4 and Part 180.

There are two distinct kinds of proceedings in the suspension or debarment process under 48 C.F.R. Subpart 9.4 and 2 C.F.R. Part 180. The first is the informal presentation by a person (the Respondent) of matters in opposition (PMIO) to the notice of proposed debarment or suspension. The second is fact-finding.

Debarment and suspension proceedings are to be conducted as informally as practicable consistent with principles of fundamental fairness. Where the Department action is based upon an indictment or conviction or civil judgment, there will be no fact-finding concerning the matters alleged in the indictment, or the facts underlying the charges upon which conviction or civil judgment is based. The PMIO is conducted in the format of a business meeting.

The fact finding hearing with its opportunity to confront and question witnesses, the burdens of proof and persuasion and the provision for transcription, is a more formal proceeding. Fact-finding occurs only in limited circumstances, under the debarment and suspension rules at 48 C.F.R. §§ 9.406-3 and 9-407-3, and 2 C.F.R. §§ 180.830 and 180.840; and §§ 180.735 (b) and 180.745. Fact-finding is triggered when the DOI Debarring and Suspending Official (SDO) determines that a Respondent's presentation of information and argument in opposition to proposed debarment, or suspension, raises a genuine dispute of fact material to the action, and (in the case of suspension only) fact-finding is not precluded under 48 C.F.R. §9.407-3 (b) (6) (ii) or 2 C.F.R. §180.735 (a) (4).

Fact-finding ordinarily occurs in cases with a fact based, as opposed to indictment or conviction based, cause of action. However, fact finding may occur in cases of imputed conduct or asserted affiliation between the Respondent and a person indicted, convicted, or subject of a civil judgment, where a genuine dispute of fact is established as to the causal connector question of imputation under 48 C.F.R. § 9.406-5 or 2 C.F.R. §180.630 (b); or affiliation under 48C.F.R. § 9.403, or 2 C.F.R. §§180.625 and 180.905. Fact-finding in all cases is limited to presentation of information and evidence concerning material facts, or factual issues, identified by the SDO as the subject of a genuine dispute. Fact finding proceedings in fact based actions can occur either before or after a PMIO.

To the extent practicable, fact finding proceedings are conducted as informally as possible to minimize the counter-productive effects of the heightened adversarial approach typical of a formal trial. Debarment and suspension proceedings are not subject to the Administrative Procedures Act. The Federal rules of evidence and procedure do not govern. Nevertheless, the objective remains to generate a decision record based on probative, reliable evidence. The proceeding is in the nature of an inquiry with the Office of Inspector General Acquisition Integrity Unit (AIU) case representative and Respondent appearing to present information and question witnesses for the administrative record.

II. The Fact-Finding Official.

Under DOI's debarment and suspension process, the DOI Debarment Program Manager, Office of Acquisition and Property Management (PAM), is the Fact-Finding Official (FFO) for debarment and suspension.

III. Procedures.

A. Referral for Fact-Finding.

Upon determining that material fact(s) are genuinely in dispute, the SDO will by memorandum, with copies to the AIU case representative and respondent's counsel, refer the matter for fact finding proceedings by the FFO. The proceedings are limited to a finding of the facts in dispute as referred by the SDO. Matters before the fact finding official are separate from the presentation of matters in opposition before the SDO. Procedural and legal issues arising in the course of the fact-finding proceeding are decided by the FFO. Decisions are specific to resolution of the referred case and do not establish national policy.

B. Scheduling of Proceedings.

Following issuance of the SDO's memorandum identifying material facts genuinely in dispute, the FFO, will contact the AIU case representative and Respondent (counsel, where represented) jointly, as soon as practicable, by letter or by telephone and arrange the schedule of proceedings. Scheduling routinely is done by joint conference call. In this call the FFO will establish a schedule, including any written submissions, identification of witnesses and documents to be submitted for the hearing, and the location, date(s) and times for the fact-finding hearing. The FFO will memorialize the agreed upon schedule in a schedule letter to the case representative and respondent's counsel. Ordinarily, the hearing will be held within thirty (30) working days of the schedule call.

C. Schedule Modifications.

To ensure prompt proceedings, agreed upon schedules are binding. However, schedule modifications may be appropriate from time to time. The FFO will consider and ordinarily approve schedule changes jointly agreed upon and presented by the parties that do not result in unnecessary delay. The FFO will consider unilateral schedule modification requests only for good cause. Such modification requests must be made in writing to the

FFO, and copied to the other participant(s) in the matter. Absent unusual circumstances, the written request must be received by the FFO, no later than five working days prior to the scheduled event. Schedule changes are not effective until approved by the FFO.

D. The Hearing.

An official record is made of the fact-finding proceeding. Fact-finding proceedings are transcribed, as required by 48 C.F.R. §§ 9.406-3 (b) (2) (ii) and 9.407-3 (b) (2) (ii) and 40 C.F.R. §§ 180.840 (b) and 180.745 (b). A transcript shall be made available at cost to the Respondent, upon request, unless the Department and the Respondent, by mutual agreement, waive the requirement for a transcript. In that event, the proceeding will be tape-recorded.

1. The AIU case representative and the Respondent will have an opportunity to present evidence relevant to the facts at issue, and to question witnesses. The Respondent may appear in person, or through a representative, at the fact-finding proceeding.

2. Debarment and suspension proceedings are not subject to the hearing requirements of the Administrative Procedures Act. Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern these fact-finding proceedings, although, the FFO may look to the Rules for general guidance as appropriate. Hearsay evidence may be presented and will be given appropriate weight by the FFO.

3. Hearing Location.

Hearings are generally convened with all persons at the same location. Location is set by the FFO. Fact findings may be held in the field or at Headquarters. Location of the hearing is determined in consultation with the AIU case representative and respondent's counsel. The FFO takes into consideration location of Department officials and witnesses, Respondent's counsel, Respondent, and witnesses, convenience to the Department, and location of Federal facilities available for holding the hearing. Upon request of a party, the FFO may conduct all, or portions, of the hearing telephonically.

4. Hearing Duration.

The time necessary for fact-finding is dependent upon the extent and complexity of the facts in dispute. Typically, such hearings take between one to three days. Presentation of testimony should be limited to that which is relevant and material, and not duplicative, or otherwise redundant.

5. Format.

The proceeding format is as informal as practical. A conference table configuration is routinely used. The FFO will open the proceeding with a brief statement identifying the case, purpose of the proceedings, the factual matters at issue, and identification of participants. In proposed debarment proceedings, the AIU case representative

ordinarily proceeds first, as the Department bears the burden of proof. In suspension proceedings, since the SDO has found adequate evidence present in the record at the point of issuing the suspension, the Respondent, as the party seeking to lift the suspension which has been imposed, will ordinarily proceed first. Brief opening statements and closing statements, ordinarily not to exceed 10 minute each, are permitted.

E. Witnesses and Documents.

1. Witnesses.

a. DOI has no authority under the suspension and debarment rules to compel witness testimony or production of documents in these informal proceedings. However, the FFO may draw reasonable adverse inferences from a participant's failure to cooperate and provide information.

b. Witnesses may testify in person. Live witness testimony is preferred and witnesses routinely appear in person for debarment and suspension fact finding hearings. However, testimony may be taken telephonically.

c. Witnesses, other than Respondent, may be present only when testifying, unless the parties agree otherwise. If agreement cannot be reached, other persons may be present at the discretion of the FFO.

d. Witnesses are not formally sworn, but are advised on the record of obligation to provide truthful, accurate, non-misleading testimony in matters before a Federal Department, and of the penalties provided for failure to do so, under 18 U.S.C. § 1001. Witnesses are subject to cross examination.

e. Parties and witnesses may be questioned by the FFO both during, and after, their testimony.

f. After each party has completed presentation of a witness, the other party may question the witness on any material, relevant matter. The scope of cross-examination is not limited by the scope of direct examination.

2. Documents.

a. All submissions to the FFO will also be submitted to the other party.

b. Marking evidence for the record.

All documents to be relied upon at the fact-finding hearing shall be submitted to the FFO, and exchanged between AIU case representative and respondent's representative, generally, no later than 5 working days prior to the hearing. Department hearing exhibits should be labeled GH-1, etc. Respondent hearing exhibits should be labeled RH-1, etc.

F. The FFO, as the presiding official, generally:

1. Determines the admissibility of evidence offered for the record.
2. Determines the credibility of witnesses and the weight to be assigned evidence.
3. Asks questions of witnesses to clarify, or supplement testimony, as warranted.
4. May request a party provide participation of additional witnesses where the need for such becomes apparent in the course of the proceedings.
5. May limit lines of questioning or testimony as immaterial, irrelevant, unduly repetitious, or customarily privileged.
6. Regulates the course of the fact-finding proceedings, exclude persons engaging in disruptive, or otherwise counter-productive conduct.
7. May, as appropriate, draw adverse inferences, if a witness refuses to answer any question deemed proper.
8. May grant or deny the requests of third parties to be present at the fact-finding hearing.
9. May entertain pre-hearing stipulations on, or simplification of, one or more specific issues of fact .
10. May approve the stipulated withdrawal of one or more specific issues of fact.
11. May continue the fact-finding hearing from day to day or adjourn to a later date and/or

location.

12. Takes any actions necessary to complete the record.

G. Subsequent to the Fact-Finding Hearing.

1. The FFO, at his discretion, may authorize post-fact-finding hearing submissions on limited issues, where such submission will further the clarity or completeness of the record. The record will close either upon receipt of the transcript, or the post- fact-finding submissions where scheduled.

2. The FFO prepares written findings of fact on the facts at issue, as mandated by 48 C.F.R. §§ 9.406-3 (d) (2) (i) and 9.407-3 (d) (2) (i), and 2 C..F.R. §§ 180.840 (a) (2) and 180.745 (a) (2). The FFO will consider only evidence properly included in the administrative record. The FFO will make written findings on each fact or factual matter at issue. The FFO will make no legal conclusions or recommendations beyond those necessary to resolve the factual dispute and any additional issues referred by the SDO. The findings of fact will not include recommendations concerning the SDO's ultimate decision whether to debar or continue a suspension.

3. The FFO will send the written findings of fact to the SDO, for inclusion in the official case file as soon as practicable, generally no later than forty-five (45) working days after the close of the record. Copies of the decision are also sent, simultaneously, to AIU case representative and the Respondent.

4. The SDO may request that the FFO clarify or supplement fact(s) found. The

SDO will do so in writing with a copy to Respondent and AIU case representative. The FFO will then submit written supplemental findings to the SDO, AIU case representative, and the Respondent.

5. Under 48 C.F.R. §§ 9.406-3(d) (2) (ii) and 9.407-3 (d) (2) (ii), and 2 C.F.R. §§ 180.455 (c) and 180.750 (b), either AIU or the Respondent may request that the SDO reject the FFO's findings of fact. The SDO may reject the FFO's findings of fact, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

IV. Evidentiary Standards for Fact-Finding.

A. Debarment.

In debarment proceedings, the FFO determines disputed fact(s) by the "preponderance of the evidence" standard defined at 48 C.F.R. § 9.403, and 2 C.F.R. § 180.990.

B. Suspension.

In suspension proceedings, the FFO determines disputed facts by the "adequate evidence" standard defined at 48 C.F.R. § 9.403 and 2 C.F.R. § 180.900.