

## DLAD PART 9

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## PART 9

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**SUBPART 9.1 - RESPONSIBLE PROSPECTIVE CONTRACTORS**

**9.104-1 General standards.**

(c) (90) Assuring that contracts are awarded to responsible prospective contractors necessitates the maintenance of contractor performance history and development of criteria for its use. Occasional quality deficiencies in contractor performance may be unavoidable, but if the defects are of a critical or repetitive nature and the contractor is not amenable to taking corrective action, such circumstances, may constitute support for finding a prospective contractor nonresponsible for award of contracts. Results, both positive and negative, from the System for the Analysis of Laboratory Testing (SALT) program, and other applicable quality history records, such as those from the Quality Evaluation Program (QEP) and from the Customer Depot Complaint System (CDCS), should be included in the contracting officer's determination and documentation of contractor responsibility. Contractor quality performance records will not be limited to product quality deficiencies, but also will include discrepancies due to inadequate packaging, improper or missing documentation, overages, shortages, misdirected or damaged shipments, and similar discrepancies. Individual and summary records of actions taken will be maintained for review by management. If there are overriding reasons for awarding a contract to a supplier who has an unsatisfactory quality history, the contract file will be documented accordingly, and a Quality Assurance Letter of Instruction (QALI) shall be submitted to the activity responsible for

Government acquisition quality assurance at source or destination.

(c) (91) Contracting offices will maintain appropriate documentation to facilitate assessment of contractor's recent delivery performance. Contracting personnel should utilize performance data on both currently active and recently closed awards (if available) in responsibility determinations and when considering contractors for placement on the DLA Contractor Alert List (CAL). Absent identifiable positive corrective action, poor past performance indicates poor future performance. Documentation of contractor-caused delinquencies should serve as sufficient evidence to substantiate a nonresponsibility determination. (For procedural consequences of that determination with regard to small businesses, see, generally, FAR 19.6 and DFARS 219.6.) A supplier's repeated refusal to perform purchase orders issued in accordance with small purchase procedures may also be used as a basis for not awarding future contracts. Since inaccuracies in delivery data may occur, performance histories should be reviewed and furnished to the contractor before serious actions are taken. Overall delivery performance data shall be based on ship dates not receipt dates, due to problems in obtaining timely receipt data.

**9.104-1(e)(90) Use clause 52.209-9014, *Vehicle Registration and Operations*, for base**

***support acquisitions involving installation access to the Defense Logistics Agency***

***facility located in Richmond, Virginia.***

(g) (90) Standards for drugs. The Food and Drug Administration (FDA) has cognizance of all quality aspects of certain medical items (predominantly drugs) in accordance with the DoD-FDA Interagency Agreement on Drugs, dated 17 December 1975. At the request of **DSCP**, FDA will review the capability of a supplier to produce drugs and biologics of an appropriate quality whenever acquisition by **DSCP** of such an item is pending. It is within the discretion of the contracting officer to rely upon FDA conclusions regarding the capability of such offerors to meet required quality standards. A determination by FDA of unsatisfactory quality based on regulatory action shall necessitate a mandatory rejection of the offer by the contracting officer.

(90) The "Defense Logistics Agency Contractor Alert List" (CAL) is a monthly listing of suppliers who may require special evaluation before a determination of responsibility can be made. The list is provided to contracting offices by the Defense Contract Management District East (DCMDE) based on input from all Defense Contract Management Districts (DCMDs) and other contracting offices. Suppliers are added to the list when they are recommended for a preaward survey (PAS) by a contract administration office (CAO) for a particular reason. Contracting officers shall consider the DLA CAL as they would other similar data related to contractor performance. Appearance on the list (or any other indication of questionable prior performance, as set forth in 9.106-1(a)(90)(1) through (9)) does not mean a supplier is nonresponsible, but it puts the contracting officer on notice to consider carefully and deliberately the need for additional steps in making a responsibility determination in individual cases. (Any questions pertaining specifically to the Alert data should be

directed to the PAS monitor at the CAO that has cognizance over the contractor involved, rather than to the contracting officer.)

## **9.105 Procedures.**

### **9.105-1 Obtaining information.**

(90) The Excluded Parties List System (EPLS) is the official, mandatory source for identifying contractors that are ineligible for award. DLA buying activities shall ensure that data in the EPLS and information on the Defense Contractor Review List (DCRL) are consistent. Whenever updates are made to the EPLS (i.e., when contractors that have been identified as debarred, suspended, proposed for debarment, or otherwise ineligible for award are added to (or removed from) the EPLS), notification shall be provided to the DCRL Monitor requiring identical updates to the DCRL.

(91) When making determinations of responsibility, Acquisition Specialists shall

(1) Comply with all requirements in FAR 9.105-1;

(2) Review the DCRL (see 9.105-1(92)) and comply with DCRL Special Attention Treatment Codes in BSM SAP; and

(3) Refer to on-site procedures to determine whether application of any of the following additional tools is mandatory:

(i) Contractor Performance History (CPH). (See 9.105-1(92)(3).)

(ii) Dun and Bradstreet (D&B) Financial Reports. Acquisition Specialists (preaward) may submit requests for D&B information to the Industrial Specialist.

(A) D&B Reference Plus provides the Acquisition Specialist (preaward) a firm's D&B rating (if D&B has rated the company). The Rating or Composite Credit Appraisal (CCA), with a brief explanation of that Rating Code, provides information relative to whether the contractor has adequate financial resources, or the ability to obtain them, to perform the contract.

(B) If a contractor is not listed, or is listed but not rated, and there are financial concerns about the contractor and/or the contract is a very high dollar value and complex long-term contract, a report may be ordered in accordance with on-site procedures.

(iii) Contractor General Files. Refer to on-site procedures for required content and DSC focal point responsible for maintaining file. Contractor General Files include delivery performance data on both active and recently closed awards.

(iv) Pricing Branch Files. Refer to on-site procedures.

(v) Quality History. When a detailed review of a contractor's past quality performance is desired and a preaward survey (PAS) is not being contemplated, the Acquisition Specialist (preaward) may request a quality history from the Product Specialist in accordance with on-site procedures. If a preaward survey is being contemplated, the Acquisition Specialist (preaward) shall follow on-site procedures for requesting the quality portion of the preaward survey.

(92) Defense Contractor Review List (DCRL).

(1) Maintenance and dissemination.

(i) The DCRL Monitor is responsible for maintaining the DCRL. The DCRL provides information to the acquisition workforce that has been collected related to a contractor's performance. A contractor listed on the DCRL has been referred to the DCRL Monitor—

(A) To be included on the DCRL as debarred, suspended, proposed for debarment, or otherwise ineligible for award, in accordance with the EPLS; or

(B) For investigation, and the DCRL Monitor has found sufficient evidence to warrant implementation of a control action in DPACS DCRL.

(ii) The DCRL is accessible through the DPACS "Vendor" icon; or by viewing the "DCRL" Field in DPACS and the "Choose Awardee" screen (Functions<Plan Award<Choose Awardee). The DCRL Field identifies contractors by CAGE Code that are on the DCRL. Personnel who do not have access to DPACS may request a hard copy of the information, which will mirror the information contained in DPACS DCRL field. Detailed information will be controlled and obtained from the DCRL Monitor.

(iii) The DCRL is "FOR OFFICIAL USE ONLY." Information contained in the DCRL shall be protected from improper disclosure.

(2) Effect of listing.

(i) Acquisition Specialists (preaward) shall comply with BSM SAP Special Attention Treatment Codes, both "Required" and "Recommended". Acquisition Specialists (preaward) shall not make award decisions inconsistent with DCRL Treatment Code requirements; unless the DCRL Monitor is consulted, higher-level approval is obtained, and the rationale is fully documented in the contract file.

(ii) The BSM DPACS DCRL includes contractors that are undergoing close scrutiny by all three Defense Supply Centers (DSCs). The BSM DCRL is enterprise-wide, with reason and treatment codes from all three DSCs. Generally, Acquisition Specialists shall apply the codes designated by the supply chain to which they are assigned, as experience has shown that vendor performance varies widely from one supply chain to another; however, Acquisition Specialists (preaward) shall consult the DCRL Monitor if clarification is needed.



(iii) The DCRL includes contractors that are identified in the EPLS as debarred, suspended, proposed for debarment, or otherwise ineligible for award. In the event of an inconsistency, the EPLS data takes precedence over DCRL data.

(A) For contractors identified as debarred, suspended, or proposed for debarment, consult the DSC focal point for debarred/suspended contractors (refer to on-site procedures.)

(B) See 9.405(92) for policies to preclude ineligible contractors from receiving contracts.

(iv) The DCRL shall not be used as a "BLACKLIST". Contractors on the DCRL shall still be considered for solicitation (except when the Special Attention Treatment Code is "08" (see 9.105(92) (6) (i) (B))).

(v) Information on the DCRL may or may not be sufficient to determine a contractor nonresponsible. It is possible for a contractor that is on the DCRL to be determined responsible.

(3) Contractor Performance History (CPH). When the BSM SAP Special Attention Treatment Code SAP Description states "Review Contractor Performance History," refer to on-site procedures for the procedures for requesting a CPH. The completed CPH will include specific actions recommended for the current procurement.

(4) Examples of referrals to the DCRL Monitor.

(i) Notifications requiring that contractors be added to (or removed from) the DCRL, consistent with the most recent EPLS updates;

(ii) Notifications requiring that contractors be added to the DCRL when there is suspected fraud, unauthorized product substitution, counterfeit material, collusion, unauthorized foreign items, etc.; and an investigation has been initiated. The notification includes specific instructions for Acquisition Specialists (preaward and postaward) to follow in the event of award;

(iii) Referrals for investigation of a contractor (e.g., when the contractor has had several confirmed PQDRs; when a contractor has requested multiple cancellations, etc.).

(5) Reviewing/updating information on DCRL.

(i) The DCRL Monitor shall periodically review each contractor listed on the DCRL to ensure the information is accurate and up to date. When conducting a review, the DCRL Monitor contacts appropriate acquisition personnel to validate that previously reported conditions still exist. If the DCRL Monitor recommends a contractor be removed from the DCRL and acquisition personnel disagree, the acquisition personnel shall provide information to justify retention of the contractor on the DCRL.

(ii) Acquisition Specialists (preaward and postaward) shall contact the DCRL

Monitor if they become aware of circumstances that may warrant changes to DCRL information.

(iii) Contractors shall be removed from the DCRL when the DCRL Monitor determines—

(A) The conditions that warranted their inclusion on the DCRL no longer exist or have substantially improved; and/or

(B) e DCRL Monitor determines that information provided by acquisition personnel is not sufficient to justify retention of the contractor on the DCRL.

(6) Information in DPACS DCRL consists of reason/treatment codes, the date the contractor was placed on the DCRL, and a brief recommendation/instructions narrative.

(i) BSM Reason and Treatment Codes.

BSM Reason and Treatment Codes representing recommendations/instructions are cited for each vendor/CAGE Code listed. The purpose of these recommendations/instructions is to provide visibility of known/potential areas of concern and actions that shall be taken to address such issues. When a preaward survey results in a negative recommendation, a Certificate of Competency is required when a small business is involved. The only instances of "do not award" involve cases of debarment, suspension, and proposed debarment; except as otherwise directed by the DSC Fraud Monitor (refer to on-site procedures).

(A) Special Attention Reason Codes.

For DCRL Code A -- (NOTE: In the SAP Debarment Status Column, a "D" is entered for Debarment, a "P" is entered for Proposed Debarment/Suspension, and an "S" is entered for Suspended)

SAP Special Attention Reason Codes	SAP Description	DPACS Help Text
A	Suspended or Debarred	Debarred, Suspended or Otherwise Ineligible. This category includes firms or individuals that are ineligible for federal procurements due to a suspension, proposal for debarment or debarment pursuant to FAR 9.4.
B	Recommended for Debarment	Recommended For Debarment or Suspension. This category includes contractors that have been recommended for debarment or suspension. Although these contractors are not ineligible for award, special procedures are required.



<b>C</b>	<b>Responsibility Matters</b>	<b>Certification Regarding Responsibility Matters.</b> This category includes contractors that have certified in accordance with FAR 52.209-5 that they have had a criminal conviction or civil judgment for fraud in the past three years or are currently indicted or otherwise criminally or civilly charged with fraud.
<b>D</b>	<b>Termination for Default</b>	<b>Termination for Default.</b> Contractors in this category have been terminated for default within the previous twelve months.
<b>E</b>	<b>Financial Difficulties</b>	<b>Financial Difficulties (Including Chapter 11 Bankruptcy).</b> Contractors are included in this category when information is received from DCMA or other sources that indicates the contractor is having financial difficulties. Such difficulties include contractor indebtedness that may jeopardize timely completion of the contract or contractor application for reorganization under bankruptcy laws (Chapter 11). Information may include formal bankruptcy notifications, or information informally obtained from credible sources.
<b>F</b>	<b>Chapter 7 Bankruptcy</b>	<b>Business Closings (Including Chapter 7 Bankruptcy).</b> This category includes contractors and individuals who have ceased business operations, are in the process of liquidating under bankruptcy laws (Chapter 7), or are otherwise going out of business.
<b>G</b>	<b>Negative PreAward Survey</b>	<b>Negative Preaward Survey.</b> Contractors are included in this category when a preaward survey (PAS) that recommends no award has been received within the last twelve months
<b>H</b>	<b>DCMA Imposed Corrective Action</b>	<b>DCMA Has Imposed Corrective Action.</b> Contractors are included in this category when DCMA has found deficiencies in the contractors' quality system and has imposed a Corrective Action (CAR) Level III or IV Review
<b>I</b>	<b>In DCMA Alert System</b>	<b>DCMA "Alerts" System.</b> DCMA has relevant information concerning contractors in this category.
<b>J</b>	<b>Delinquent Performance</b>	<b>Delinquent Performance.</b> This category includes contractors that have exhibited a pattern of delinquencies.

K	<b>"Buy-Ins" or "Bid Shopping"</b>	<b>"Buy-ins" and "Bid Shopping."</b> This category includes contractors that have had excessive cancellations, price increases and requests for modification after award. These practices indicate a "buy-in", "bid shopping", or other unacceptable bidding practices. (1) "Bid shop after award" that result in frequent inability to furnish supplies in accordance with the quotation that led to the award. (2) Submit frequent requests for deviations or waivers, clarification, and substitution of part numbers, most of which lacks substance but prevents compliance with the original delivery date. (3) Frequently return purchase orders for price increase. (4) Frequently cancel purchase orders just prior to due date in an apparent effort to reduce its delinquency rate. (5) Take advantage of a purchase order that is not legally binding on the contractor until acceptance or start of performance.
L	<b>Pricing Discrepancies</b>	<b>Pricing Discrepancies (Excessive prices).</b> Contractors are in this category when information indicates prices may not be fair and reasonable.
M	<b>Fast Pay Discrepancies</b>	<b>Fast Pay Discrepancies/Abuse Contractors</b> are included in this category when there is evidence that a contractor is violating or has violated the Fast Pay procedure (e.g., contractor has invoiced the government without shipping the supplies).
N	<b>Potentially Defective Material</b>	<b>Potentially Defective Material.</b> The DoDIG has issued notifications regarding potentially defective material supplied by contracts in this category.
O	<b>Counterfeit Material and Unauthorized Substitution</b>	<b>Counterfeit Material and Unauthorized Product Substitution.</b> Contractors in this category are under surveillance by the Counterfeit Material/Unauthorized Product Substitution (CM/UPS) Team.
P	<b>Nonconforming Supplies</b>	<b>Nonconforming Supplies.</b> This category includes contractors for which evidence has been provided that a contractor has supplied nonconforming material, has supplied surplus material without quoting surplus material, has supplied foreign material without identifying country of origin, or has other questionable quality practices.

<b>Q</b>	<b>Failure to Provide Approved Part</b>	<b>Failure to Provide Approved Part. This category includes contractors that have a pattern of supplying unapproved parts or making an unauthorized substitution for CAGE code/part numbered items.</b>
<b>R</b>	<b>Miscellaneous</b>	<b>Miscellaneous (Other Information). This category serves as an informational category providing contracting personnel with current status of administrative changes, business closings, transfer of ownership, change of location, change of CAGE code, multiple contractors at the same location or any other information that may assist in the decision process. See the "Remarks" section of the DCRL for instructions.</b>
<b>S</b>	<b>Sensitive Information</b>	<b>Sensitive Information. Specific instructions apply to contractors listed in this category. These instructions are not necessarily related to responsibility and the reason for placement in this category may not be divulged due to sensitivity. The "Remarks" section of the DCRL may contain a point of contact for information regarding these contractors. Sensitive information regarding these contractors shall not be disclosed to unauthorized persons.</b>
<b>T</b>	<b>Delinquent on Delivery Reduction</b>	<b>Substantially Delinquent on Delivery Reduction Incentive/Delivery Evaluation Factor Awards.</b>
<b>U</b>	<b>Work Stoppage</b>	<b>Work Stoppage.</b>
<b>V</b>	<b>Suspected Fraud or Collusion</b>	<b>Suspected Fraud or Collusion/Deceptive Business Practices.</b>
<b>W</b>	<b>Combined CAGE Codes</b>	<b>Combined CAGE Codes. Performance history for two or more CAGE codes have been combined for ABVS purposes.</b>
<b>X</b>	<b>Contractor Report No Receipt of PO</b>	<b>Contractor Reported for Non-Receipt of Purchase Order.</b>
<b>Y</b>	<b>Reserved</b>	<b>Reserved</b>
<b>Z</b>	<b>Reserved</b>	<b>Reserved</b>

**(B) Special Attention Treatment Codes.**

<b>SAP Special Attention Treatment Codes</b>	<b>SAP Description</b>	<b>DPACS Help Text</b>
<b>01</b>	<b>Reserved</b>	<b>Reserved</b>

02	<i>Evidence of AID MFR Part Number</i>	<i>For Part Numbered items, get evidence item was acquired from Manufacturer cited in the AID</i>
03	<i>Reserved</i>	<i>Reserved</i>
04	<i>Withhold Fast Pay Recommended</i>	<i>Withholding of Fast Pay recommended</i>
05	<i>Recom PAS &gt; SAT/ Verbal &lt; SAT</i>	<i>Recommend Preaward Surveys for large buys/ verbal preaward surveys for simplified buys</i>
06	<i>Fraud Monitor Coordination Required</i>	<i>Forward any proposed awards through Fraud Monitor</i>
07	<i>Source Inspection Recommended</i>	<i>Source Inspection recommended (use of source inspection evaluation factor authorized after formal notification to contractor)</i>
08	<i>Do not solicit or award</i>	<i>Do not solicit or award</i>
09	<i>Review Contractor Performance History</i>	<i>Review Contractor Performance History (CPH)</i>
10	<i>Report Suspect Material to Fraud Monitor</i>	<i>Report suspected material problems to Business Integrity (Fraud) Counsel</i>
11	<i>Coordinate with DCMA</i>	<i>Coordinate with DCMA</i>
12	<i>Corrective Action Report Level IV approval required</i>	<i>CAR Level IV, approval required for award</i>
13	<i>Bilateral Award Email to Fraud Monitor</i>	<i>Bilateral Award - email contractor's name and CAGE, contract/purchase order no., and NSN to Fraud Monitor</i>
14	<i>Coordinate Mods with Fraud Monitor</i>	<i>Post award - Coordinate all administrative actions (modifications) with Fraud Monitor or Fraud Counsel</i>
15	<i>Deter Resp/ Nonresp required</i>	<i>Prepare formal determination of responsibility/ nonresponsibility</i>
16	<i>CAGE Combined for ABVS Info</i>	<i>This CAGE Code has been combined with other CAGE codes for ABVS purposes (For Informational Purposes Only)</i>
17	<i>Coordinate Cost and Price Office</i>	<i>Coordinate with Cost and Price Office</i>
18	<i>Report to Fraud Counsel</i>	<i>Report to Business Integrity (Fraud) Counsel</i>
19	<i>Coordinate with Office of Counsel</i>	<i>Coordinate with Office of Counsel</i>
20	<i>Refer to DCRL Narrative Detail</i>	<i>Refer to DCRL Narrative for details</i>

21	Reserved	Reserved
22	Recommend no DRI/DEF awards	Recommend no delivery reduction Incentive/Delivery Evaluation Factor Awards
23	Coordinate Indust Prep Monitor	Coordinate with Industrial Preparedness Monitor
24	Reserved	Reserved
25	Reserved	Reserved
26	Recommend Price Reasonableness	Recommend documentation of price reasonableness
27	Suspend Automated Awards	Suspend from Automated Systems (case by case basis)
28	Reserved	Reserved
29	Reserved	Reserved
30	Reserved	

### 9.105-2 Determinations and documentation.

#### (a) Determinations.

(1) (90) If a contractor's quality deficiencies are of a critical/repetitive nature and the contractor has not taken corrective action, this information may be used as a basis for a nonresponsibility determination. Contractor quality performance deficiencies can include product quality deficiencies, discrepancies due to inadequate packaging, improper or missing documentation, overages, shortages, misdirected or damaged shipments, and/or other similar discrepancies.

(91) If it is determined that award will be made to a contractor that has a questionable quality history but cannot be determined non-responsible, the Acquisition Specialist (preaward) shall-

(A) Document the contract file;

(B) Revise Inspection and Acceptance (I&A) terms to specify that I&A shall take place at source; and

(C) Forward a referral to the Product Specialist in accordance with on-site procedures, requesting a Quality Assurance Letter of Instruction (QALI). The Product Specialist shall submit the QALI to the activity responsible for Government quality assurance.

(92) Adverse performance history shall always be well documented.

(93) Awards proposed to vendors who are designated DCMA Corrective Action Request Level IV, (DCRL Code 12), or offering the product of a Level IV firm, require higher level review and approval in accordance with on-site procedures.



(94) Use working knowledge of the contractor's performance, and coordinate with Acquisition Specialist (post award) and the Product Specialist, as necessary.

(b) Support documentation.

(90) Determinations of responsibility or nonresponsibility shall be documented and included in the Electronic Contract File (ECF). Refer to on-site procedures for documentation and content requirements. For simplified acquisitions, an annotation on Form 395, Significant Events, in DPACS, or comparable record, is generally sufficient to document the Acquisition Specialist's actions under 9.105(a)(1) and (2).

(91) Distinguishing responsibility determination from past performance evaluation factor. Acquisition Specialists (preaward) SHALL NOT make a determination of responsibility based on past performance information that applies to evaluation of the contractor's offer (e.g., an Automated Best Value System (ABVS) score).

(i) Past performance information (e.g., an ABVS score supported by substantiating backup documentation) can be used for evaluation purposes, if a past performance evaluation factor is included in the solicitation. The evaluation process involves a comparative assessment of offers to determine which offer represents the best value - based on price, past performance, and other evaluation factors stated in the solicitation. Acquisition Specialists (preaward) must, however, determine that a prospective contractor is responsible. If a contractor cannot be determined responsible, it is ineligible for award whether or not its offer appears to represent the best value.

(ii) To determine that a contractor is responsible, Acquisition Specialists (preaward) must determine that the contractor meets all the standards in FAR 9.104 (i.e., has adequate financial resources (or ability to obtain them); has ability to satisfy delivery requirements; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, internal controls, and technical skills; and is otherwise qualified/eligible for award). The DCRL is an essential resource for determining responsibility; because it not only includes past performance data - some or all of which may have gone into the calculation of the ABVS score - but it also captures data that is not included in ABVS (e.g., financial difficulties, suspected product substitution, etc.). Consequently, a contractor may have favorable ABVS scores but could be included on the DCRL for reasons that will preclude a determination of responsibility.

(93) If a preaward survey is not obtained on a proposed award exceeding \$100,000, the contracting officer shall include in the contract file a memorandum explaining the basis for the determination of responsibility, addressing each of the applicable standards in FAR 9.104. When the contracting officer makes a determination regarding the prospective contractor's responsibility that is contrary to that recommended in the preaward survey report, the reason for not following the preaward survey report recommendation shall be included in the contract file. In each instance where the preaward survey report recommendation is not followed, the case must be reviewed and



**concurred in by the chief of the contracting office and at DSCP by the Commodity Business Unit Chiefs. The contracting officer shall provide written notice to the surveying activity that performed the preaward survey of the reason for not following the preaward survey recommendation.**

### **9.106-1 Conditions for preaward surveys.**

(a) (90) Although a formal PAS is not normally requested for acquisitions valued at \$100,000 or less, there are circumstances which justify conducting a PAS (formal or informal), regardless of the dollar value of the acquisition under consideration. (An informal PAS is one in which the contracting officer's request for information is able to be fulfilled by a phone call to the CAO component, and may not necessitate contacting the firm or individual in question. A formal PAS, on the other hand, requires, at a minimum, the CAO PAS monitor to conduct a telephone survey, and may require one or more site visits to the prospective contractor's location. A formal PAS always incorporates an informal survey.) Because the survey is the primary means by which the responsibility of some contractors can be determined, its performance is strongly recommended on a prospective contractor (manufacturer or nonmanufacturer) that:

(1) Has been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past 3 years (or other locally determined time period);

(2) Is (to the extent determinable from local records) a first-time Government contractor, or has had a performance break from Government business of 3 or more years' duration (or other locally determined time period);

(3) Is undergoing or has undergone reorganization under bankruptcy laws within the past 3 years (or other locally-determined time period);

(4) Has been terminated within the past 3 years (or other locally determined time period) for default;

(5) Has negative quality records (PQDRs, RODs, etc.) in the Quality Evaluation Program (QEP), is on the Contractor Alert List (CAL), has a poor **Product Verification Record (PVR) as indicated by ICP PVR**, or is otherwise known to the contracting officer to have a poor or marginal performance history;

(6) Has, within the past year (or other locally-determined time period), received a negative PAS for any item within the same Federal Supply Class (FSC), or for the same type of service, as the item or service being purchased;

(7) Has failed to liquidate indebtedness to DLA (the extent of the indebtedness that would normally dictate a PAS shall be determined locally);

(8) Is a transferee in interest of a former Government contractor; or

(9) Is the subject of information that is not sufficient on which to base a

responsibility determination, or is a current contractor about whom the historical capability data, in terms of productive capacity, quality assurance, financial ability, etc., is unavailable to the contracting officer or is inconclusive.

(a) (91) When an offer received from a prospective contractor described in (a) (90) (1) through (9) above is proposed for award, and the contracting officer decides that actual performance of the PAS is in the best interests of the Government, the contracting officer shall request the survey, and provide the rationale for that request in the "Remarks" section of the SF 1403, Pre-award Survey of Prospective Contractor (General). When a PAS is requested with respect to an offeror described in (a) (90) (1) above, the contracting officer shall identify integrity as a factor about which information is needed and shall ask that the PAS team specifically identify the corrective actions undertaken by the prospective contractor to address the problems that resulted in the contractor's being listed on the GSA List of Parties Excluded from Federal Procurement Programs.

(a) (92) ***When a preaward survey (PAS) is contemplated, the Acquisition Specialist (preaward) shall first obtain as much information as feasible from DSC records and use this information to determine if a preaward survey is required. If the Acquisition Specialist (preaward) cannot make a determination of responsibility or nonresponsibility based on DSC records and requires more information, the Acquisition Specialist (preaward) shall consider a preaward survey. For simplified acquisitions, the Acquisition Specialist (preaward) shall use informal (verbal) PAS procedures. For acquisitions other than simplified, the Acquisition Specialist (preaward) shall use either informal or formal PAS procedures, depending on the situation.***

(93) ***To request a preaward survey:***

(i) ***Informal preaward survey (PAS): When limited information is desired, the Acquisition Specialist (preaward) shall use an informal PAS. This will preclude the administrative effort and time of a formal survey. The Acquisition Specialist (preaward) shall not use an informal PAS if there is sufficient data to indicate that a formal PAS is required. Request an informal PAS in accordance with on-site procedures. The result of the survey will include performance history information and a recommendation for award or no award. The contracting officer makes the final responsibility determination.***

(ii) ***Formal preaward survey (PAS): A formal PAS is used to get detailed information regarding key performance areas (e.g., technical, production, quality, etc.). (Defense Contract Audit Agency (DCAA) requires 30 days to respond to a request for financial data.) If a formal PAS is requested for a simplified acquisition, the request shall be justified in writing.***

(A) ***Before requesting a formal PAS, the Acquisition Specialist (preaward) shall submit an email, or process a DPACS referral, to the Product Specialist for a recommendation as to whether the quality portion of the preaward survey is required. The response from the Product Specialist can be used to determine whether to include or exclude the quality portion of the preaward survey.***

*Product Specialist responses may include:*

*(1) Quality history indicates quality portion of the preaward survey*

*is not required. (If highlights are provided by the Product Specialist, document in*

*accordance with on-site procedures.)*

*(2) No quality history exists. Recommend quality portion of preaward*

*survey be conducted.*

*(3) Unique characteristics or manufacturing process require*

*quality portion be done. (Document this response in accordance with on-site procedures.)*

*(4) Product Specialist desires to participate in the PAS. (Document*

*in accordance with on-site procedures.)*

*(B) Written requests for formal preaward surveys. (Refer to on-site procedures).*

#### **9.106-2 Requests for preaward surveys.**

(90) Generally, a preaward survey shall be requested only when award is contemplated to a firm from which a bid or proposal has been received. However, a preaward survey may be requested of the facilities or firms supplying perishable food items before receipt of a bid or proposal when the time between opening/closing and award would not be sufficient for a survey following receipt of an offer. Concurrent requests for preaward surveys may be made in emergency situations and/or when multiple awards are contemplated. The need to request concurrent preaward surveys will depend upon the circumstances of the individual acquisition. Contracting officers shall obtain the agreement of the appropriate CAO preaward survey monitor prior to the submission of such requests. Although FAR 9.106-2(d) specifies a norm of 7 working days for conducting preaward surveys, except for FDA determinations, contracting offices should provide for the maximum allowable time, particularly if a negative finding is anticipated or a secondary survey will be required. When the contracting office needs a response in less than 7 working days, the surveying activity should be provided with the reason for the expedited survey. Surveying activities should notify contracting officers of survey results by telephone or electronically transmitted message on the day the survey is mailed.

(a) Additional factors would include the need for special facilities (e.g., tools, machines, test facilities) required to produce the item. Failure to liquidate indebtedness indicates a lack of responsibility. Therefore, if it is proposed to contract with firms indebted to DLA, and the proposed contract would otherwise require a preaward survey, an annotation should be made in the

"Remarks" section of the SF 1403.

(a)(ii) Evaluation of a contractor as a planned producer will not affect the outcome of the PAS for other than industrial preparedness purposes. Any prospective contractor receiving a negative PAS for production or quality assurance capability with regard to an existing/potential Industrial Preparedness Planning List (IPPL) item should neither be solicited nor enrolled as a planned producer.

(e) Contracting officers shall restrict their requests for preaward survey information to that which is not already available to the contracting office. The contracting officer must determine the scope of the preaward survey to be performed. (Preaward survey requests on sole source suppliers will be limited to partial surveys.) The only factors to be investigated (e.g., production backlog, finances, and quality history) are those which actually affect or indicate the contractor's ability to perform under the contract and for which the contracting officer does not have sufficient knowledge to make a responsibility determination.

(i) When limited information is required, it can often be obtained through telephonic contact with the PAS monitor at the cognizant contract administration office (CAO), precluding the administrative effort associated with a formal PAS request.

(ii) For items assigned to the U.S. Department of Agriculture, the U.S. Department of Commerce, and/or the U.S. Army Veterinary Corps for source inspection, the quality assurance personnel representing the contracting officer, and other military agencies, as deemed necessary, will be requested to participate in the PAS, and their comments will be included in the quality assurance portion of the report.

### **9.106-3 Interagency preaward surveys.**

(b) The list shall be retained with the contract file.

### **9.106-4 Reports.**

*(a) Refer to on-site procedures for actions required when a negative preaward survey report is received.*

*(b) When a Contracting Officer's determination of contractor responsibility is inconsistent with the recommendation in the preaward survey report, the rationale shall be documented in the contract file. This decision shall be reviewed and approved in accordance with on-site procedures. The Preaward Survey Monitor shall advise the surveying facility of the Contracting Officer's decision.*

*(c) Acquisition Specialists (preaward) shall document the procurement file and ensure all documents are scanned into the electronic contract file (ECF).*

### **9.106-90 DLA preaward survey monitors.**

(a) Each DSC will designate an organizational element to serve as the focal point for preaward surveys and to be the principal point of contact with PAS monitors at surveying activities. The focal point will review PAS requests for completeness and accuracy before forwarding these requests to surveying activities. Upon receipt of completed preaward surveys, the focal point will review the reports and shall consult with available technicians in particular areas, such as Cost and Price Analysts, when there are doubts as to the validity of the information in the survey report. If the PAS contains information questioning a company's quality control, then the survey report shall be reviewed with the DSC Quality Assurance personnel. **The on-site PAS Monitor shall:**

**(1) Send one copy of the completed report to the Acquisition Specialist (preaward) for placement in the contract file.**

**(2) Send one copy of all formal preaward survey documentation regarding a company's quality control to the Product Specialist. (Refer to on-site procedures.)**

**(3) Maintain one copy of each survey for a period of one year.**

(b) A register of all PAS requests and responses, both formal and informal, shall be maintained in a current status by the PAS monitor at each DSC. As a minimum, this register shall include:

(1) PAS or FDA number (to provide an audit trail).

(2) Date of Preaward Survey request. Note: If the request is made by phone and a written report is requested, the SF 1403 must follow by mail on the same day as the telephone request.

(3) Date completed report to be returned (Block 10). (This is the date by which the surveying activity is to mail the completed report.)

(4) Extended date when extension is granted.

(5) Date telephonic or electronically transmitted report is received by DSC.

(6) Date Preaward Survey report is received by DSC.

(7) Prospective contractor's name and location.

(8) Surveying activity's location.

(9) Solicitation number (RFP/IFB/PR Number).

(10) Buyer or contracting officer name.

(11) Dollar amount of proposed award.

(12) Brief identification of item to be acquired.

(13) Recommended action, whether "A," "P," or "N" (Affirmative, Partial, or Negative).

(14) Remarks. Indicate whether recommendation was overturned, and add any other pertinent comments. (See 9.105-2(b).)

(15) Date of award, if any.

### **9.106-91 Capability surveys for workshops for the blind and other severely handicapped.**

(a) The contracting office, upon request from the Committee for Purchase from People who are Blind or Severely Disabled, shall request a capability survey to determine the capability of the workshop(s) to produce specific items being considered for addition to the Procurement List.

(b) The contracting office, when requesting a capability survey, shall make the request on Standard Form (SF) 1403, Preadward Survey of Prospective Contractor (General). The contracting office should emphasize factors concerned primarily with production capabilities. When a capability survey is being requested, the form shall clearly indicate the request is for a "Capability Survey" only.

(c) The contracting office shall forward requests for capability surveys to the appropriate office, in accordance with DFARS 209.106-2. The contracting office shall furnish a copy of the completed survey to the Executive Director, Committee for Purchase from People who are Blind or Severely Disabled.

(d) Capability surveys will be executed by the cognizant contract administration office in accordance with DLAM 8300.1, Defense Contract Management Agency Industrial Support Manual, Section 1-102(i).

## **SUBPART 9.2 - QUALIFICATIONS REQUIREMENTS**

### **9.202 Policy.**

(a)(1) The chief of the contracting office shall provide to HQ DLA, ATTN: J-72 and J-7, a brief summary of the proposed plan to establish a **Qualified Products List (QPL), Qualified Manufacturers List (QML), or Qualified Bidders List (QBL)** requirement. Approval by HQ DLA is not required, unless HQ DLA requests a review of the plan. The chief of the contracting office shall approve the establishment of a qualification requirement, subject to the requirements of FAR Subpart 9.2 and after considering any comments of the activity Competition Advocate and the activity Commercial Advocate. When a qualification requirement is proposed for application to an item described by a document that is subject to the Defense Standardization Program, the procedures in DoD 4120.3-M, Appendix B, apply, including the requirement for OASD approval.



## 9.203 QPLs, QMLs, and QBLs

### 9.203 (a)(90)

Use [52.209-9000](#), *QPL Connector Assemblies and QPL Electrical Contacts*, in solicitations and awards when purchasing QPL connectors with contacts listed on other QPL(s). The purpose of this clause is to increase competition and reduce the unit price of the assembled item. This can be achieved when assemblers are able to pass along cost savings they have realized by purchasing the connector from one QPL manufacturer and the contacts from another.

### 9.203 (a)(91)

Use [52.209-9012](#), *Qualified List for Manufacturers/Qualified Suppliers List for Distributors*, in solicitations and contracts which have a *Qualified Suppliers List for Manufacturers (QSLM)* and/or a *Qualified Suppliers List for Distributors (QSLD)* requirement for the item. There must be an established QSLM/QSLD in place before inclusion of this clause.

### 9.203 (a)(92)

Use [52.209-9013](#), *Component QPL/QML Items*, with FAR [52.209-1](#) (I09A01), *Qualification Requirements*, in all solicitations and contracts that contain component QPL(s)/QML(s).

## 9.207 Changes in status regarding qualification requirements.

(b) See [11.302-90](#) for policy regarding notification and assistance to sources removed from an acquisition identification description (AID).

## 9.290 SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR AIRCRAFT LAUNCH AND RECOVERY EQUIPMENT (ALRE)

9.290(a) Ensure the ALRE provision 52.209-9001 is included in the solicitation for all ALRE requirements with an SPC code of "01" and the AMSC is B, C, K, M, N, S, V, or Y.

## SUBPART 9.3 - FIRST ARTICLE TESTING AND APPROVAL

### 9.306 Solicitation requirements.

(c) (1) Insert 52.209-9019, *Requests for Waiver of First Article Testing Requirements*, in all solicitations and contracts for items that require first article testing, including when acquiring items using FAR Part 12; unless-

(2) Information provided by the Product Specialist in the Material Master, Product Assurance tab, indicates the specification requires submission of drawings for Government approval prior to production of first article test units, in which case insert the following clauses:

(i) 52.209-9019 with its Alternate I; and

(ii) 52.209-9021, Drawing approval prior to production.

(90) (i) When acquiring items that require first article testing (either in accordance with FAR 52.209-3 or 52.209-4) and the dollar value of the procurement is not expected to exceed the simplified acquisition threshold, the clause at 52.209-9015, Waiver - First Article Test - Simplified Acquisitions, may be used if-

(A) One or more sources are identified as having been previously approved for waiver of the first article testing requirements, and the Contracting Officer has confirmed with the Product Specialist that the sources are still eligible for a waiver;

(B) The file is thoroughly documented with the rationale for considering only items produced by sources eligible for waiver of the first article testing requirements; and

(C) The price can be determined fair and reasonable.

(ii) When the clause at 52.209-9015 is used, the contracting officer shall-

(A) Delete from the solicitation any clauses other than 52.209-9015 that reference first article testing; and

(B) Use "Data Maintenance" to-

(1) Delete any reference to first article testing requirements in the Purchase Order Text (POT); and

(2) Free-type the following statement in the POT:

**THIS PROCUREMENT IS LIMITED TO CONSIDERATION OF QUOTES FOR ITEMS PRODUCED  
BY SOURCES**

**THAT ARE ELIGIBLE FOR WAIVER OF FIRST ARTICLE TESTING REQUIREMENTS (SEE  
52.209-9015).**

(f) (2) Insert 52.211-9019, Reduced Delivery Schedule Applies When First Article Testing Requirements Are Waived, in all solicitations and contracts for items that require first article testing, including when acquiring items using FAR Part 12.

i) (90) When FAR 52.209-4 applies and the **Government's testing cost** will be used as a factor in evaluating offers, insert the provision at 52.209-9016, Evaluation of Offers - First Article Testing, in solicitations, including when acquiring items using FAR Part 12.

(91) When FAR 52.209-3 applies and the Government's cost to review the contractor's First Article Test Report will be used as a factor in evaluating offers, insert the provision at 52.209-9016, Evaluation of Offers - First Article Testing, with its Alternate I, in solicitations, including when acquiring items using FAR Part 12.

### **9.306-90 Solicitation requirements for production lot test.**

(a) Policy. The product specialist determines whether Production Lot Test (PLT) will be required.

(1) The acquisition specialist shall establish PLT as a separate, no-charge CLIN in the solicitation. This will preclude paying for the items twice, when they are delivered with the production quantity.

(2) The acquisition specialist shall refer any requests for waivers or deviations from PLT requirements to the product specialist, who will evaluate the request and furnish recommendations to the acquisition specialist.

(3) Upon receipt from the testing facility of the testing results and the recommendation of approval or disapproval, the acquisition specialist shall provide a copy of the results/recommendation to the product specialist, in addition to providing written notification to the contractor.

(b) Clause.

Insert the clause at [52.209-9026](#), Production Lot Test (PLT), in solicitations and awards, including when the acquisition is conducted using FAR Part 12, when the procurement item description (PID) includes the statement: "Production Lot Test Required."

(1) Complete the fill-ins in 52.209-9026 with information in the Material Master, Product Assurance tab, under Classification.

(2) Whenever PLT is required, the product specialist is responsible for adequately defining the required quality requirements. These requirements shall, at a minimum, include the following:

(i) Specific production lot tests and evaluations to be conducted; including sequence of processes, testing procedures, and evaluation;

(ii) Reporting requirements (e.g., due date, number, distribution of Production Lot Test reports); and

(iii) Criteria for determining conformance to Production Lot Test requirements.

### **9.307 Reserved**

### **9.308 Contractor Clauses**

**9.308-1 Testing performed by the contractor.**

(a) When it has been determined that first article approval is required and the testing will be performed by the contractor, the contracting officer shall follow the policies in 9.308-1(a) (90)-(93):

(90) Pre-solicitation.

(i) Ensure that-

(A) First article inspection and testing requirements are clearly stated;

(B) Sources currently waived for first article testing are identified, or a statement is present indicating there are no waived sources, when the clause at 52.209-9015 will be used (see 9.306(c) (90) (i));

(C) The number of calendar days allotted for the contractor to produce and test the samples is commensurate with the amount of time it will take the contractor to obtain materials, produce the samples, perform all the required tests, and prepare and submit the test report; and

(ii) Use two-party, negotiated acquisition procedures when acquiring items that require first article testing. Micro-purchase procedures and simplified acquisition procedures that solicit and/or award automatically shall not be used.

(91) Solicitation.

(i) (A) Insert the clause at FAR 52.209-3, First Article Approval, with its Alternate I. Complete the fill-ins with information in the Material Master, Product Assurance tab;

(B) Ensure the delivery schedule specified in the solicitation includes the number of calendar days allotted to the contractor for first article testing and submission of the test report; and the number of calendar days allotted to the Government to evaluate the First Article Test Report and provide disposition to the contractor; and

(C) (1) Select the Additive CLIN number for "Contractor First Article Test (FAT) (including test report)." Insert the Inspection and Acceptance points under the Additive CLIN and in SAP.

(2) Identify the "Contractor First Article Test (FAT) (including test report)" quantity as "1 TE (TEST);" and

(ii) Insert the clauses in solicitations and contracts as prescribed at 9.308-1 (a) (91) (ii) (A)-(C) below, including when acquisitions are conducted using FAR Part 12:

(A) 52.209-9017, First Article - Contractor Test - Additional Requirements;

with its alternates as prescribed below, when applicable:

(1) Use Alternate I when the product specialist has communicated to the contracting officer that first article approval authority shall be delegated to the Defense Contract Management Agency (DCMA) Administrative Contracting Officer (ACO) whenever awardee will be required to perform contractor first article testing;

(2) Use Alternate II for clothing and textile (C&T) items;

(3) Use Alternate III when the Material Master, Product Assurance tab specifies terms for disposition of approved first article units that differ from the terms in FAR 52.209-3. The contracting officer shall complete the appropriate fill-in;

(4) Use Alternate IV when progress payments are authorized for the first article. Circumstances that justify the need for progress payments (such as when exceptionally high start-up costs are anticipated) and the basis for determining the maximum dollar value and/or percentage of total contract price shall be thoroughly documented in the contract file.

(5) Use Alternate V when the product specialist has communicated to the contracting officer that the item requires in-process verification of the first article manufacture by the cognizant Quality Assurance Representative (QAR).

(92) Evaluation of offers. Review the price offered for the "Contractor First Article Test (FAT) (including test report)" Additive CLIN. The price offered for the Contractor First Article Test (FAT) (including test report) must be determined fair and reasonable, in addition to the price offered for the production units. Evaluation shall be based in part on the terms for disposition of the first article units.

(93) Award of contract.

(i) When award is made for an item that requires "Contractor First Article Test (FAT)," the following requirements apply:

(A) Ensure the appropriate Additive CLIN numbers are established for "Contractor First Article Test (FAT) (including test report)" in the award document; and in SAP, upon funding of the award. Additive CLINs must be established for all FAT requirements (e.g., CLIN 9906, FAT Samples; CLIN 9907, FAT Report; etc.). Whether separately priced or not, a FAT Additive CLIN is a deliverable and must be accounted for. An Additive CLIN that was not separately priced in the quote/offer is still a deliverable, but it is not payable.)

(B) Provide notification by e-mail, including award number, NSN, and Additive CLIN number; and provide copy of award, if not available in Electronic Document Access (EDA), to the contracting officer and to:

(1) For awards issued by Defense Supply Center Columbus (DSCC):

*DSCC FAT Monitor*

*Defense Supply Center Columbus*

*DSCC-BPI*

*P. O. Box 3990*

*Columbus, OH 43218-3990;*

*(2) For awards issued by Defense Supply Center Philadelphia (DSCP):*

*(i) Defense Supply Center Philadelphia*

*ATTN: First Article/Testing Monitor*

*Bldg. 3 NASA*

*700 Robbins Avenue*

*Philadelphia, PA 19111; or*

*(ii) For acquisitions of Clothing and Textile (C&T) items; Medical and Subsistence items; and Meal, Ready-To-Eat (MRE) and Tray Pack Items, the contracting officer, who acts as FAT/Testing Monitor;*

*(3) For awards issued by Defense Supply Center Richmond (DSCR):*

*Defense Supply Center Richmond*

*Test Coordinator Office*

*[DSCR.Test&EvaluationOffice@dla.mil](mailto:DSCR.Test&EvaluationOffice@dla.mil)*;

*(4) For awards issued by Naval Surface Warfare Center, Carderock*

*Division:*

*Commanding Officer*

*Naval Surface Warfare Center*

*Code 954, BLDG 77L*

*Philadelphia Business Center*

*Carderock Division*



Philadelphia, PA 19112-5083

ATTN: Long Nguyen

Tel: (215) 897-1146

(5) For awards issued by Naval Sea Systems Command, Washington Navy

Yard:

Commander

Naval Sea Systems Command

Sea 05M3

1333 ISAAC Hull Avenue

SE Stop 5160

Washington Navy Yard, DC 20376-5160

ATTN: John Kallinikos

Tel: (202) 781-3729

(C) Ensure all appropriate documents are placed in the Electronic Contract File (ECF).

(ii) Outline agreements. When awarding outline agreements that include items with first article testing requirements, lock the Service Material line item on the delivery order, to prevent payment of the line prior to receipt of the testing/approval certification; and lock the "FAT" row in SAP.

(iii) When the clause at 52.209-3 was included in the solicitation, and it has been determined that the first article test and approval requirements will be waived for the awardee, the Contracting Officer shall reflect this in the award by taking the following actions:

(A) Insert the clause at 52.209-9020, First Article Testing Requirements Are Waived, in the award; and

(B) Use "Data Maintenance" to-

(1) Delete any reference to First Article Testing in the Purchase Order Test (POT); and

(2) Free-type the following statement in the POT:

FIRST ARTICLE TESTING REQUIREMENTS ARE WAIVED FOR THIS PROCUREMENT.

### **9.308-2 Testing performed by the Government.**

(a) When it has been determined that first article approval is required and the testing will be performed by the Government, the contracting officer shall follow the policies in 9.308-2(a)(90)-(93):

(90) Pre-solicitation.

(i) Ensure that-

(A) First article inspection and testing requirements are clearly stated;

(B) Sources currently waived for Government First Article Testing (FAT) are identified, or a statement is present indicating there are no waived sources, when the clause at 52.209-9015 will be used (see 9.306(c)(90)(i)); and

(C) The number of calendar days allotted for the contractor to produce and deliver the first article units to the Government testing facility is commensurate with the amount of time it will take the contractor to obtain materials, produce the first article units, perform all the required tests, and deliver the first article units to the testing facility.

(ii) Use two-party, negotiated acquisition procedures when acquiring items that require Government First Article Testing. Micro-purchase procedures and simplified acquisition procedures that solicit and/or award automatically shall not be used.

(91) Solicitation. Insert the clauses as prescribed at 9.308-2(a)(91)(i)-(ii) below; with alternates, as applicable:

(i) (A) Insert the clause at FAR 52.209-4, First Article Approval - Government Testing, with its Alternate I;

(B) Complete the fill-ins in FAR 52.209-4 with information in the Material Master, Product Assurance tab; and

(C) Ensure the delivery schedule specified in the solicitation includes the number of calendar days allotted to the contractor to produce and deliver the first article units; and the number of calendar days allotted to the Government to test the first article units and provide disposition to the contractor; and

(D) (1) Insert the Additive CLIN number for "Government First Article Test (FAT)." Insert the Inspection and Acceptance points under the Additive CLIN and in SAP.

(2) Identify the "Government First Article Test (FAT)" quantity as "1 TE (TEST);" and

(ii) Insert the clauses in solicitations and contracts as prescribed below; including when acquisitions are conducted using FAR Part 12:

(A) 52.209-9018, First Article - Government Test - Additional Requirements; with its alternate(s) as prescribed below, if applicable-

(B) Use Alternate I when the product specialist has communicated to the contracting officer that the item requires in-process verification of the first article manufacture by the cognizant Quality Assurance Representative (QAR).

(C) Use Alternate II for Clothing and Textile (C&T) items;

(D) Use Alternate III for Medical and Subsistence items. The contracting officer shall complete the appropriate fill-in in paragraph (a) (2) (ii) with information in the Material Master, Product Assurance tab; or, if no alternative direction appears, mark "Other," and insert "in accordance with contract terms."

(E) Use Alternate IV for Meal, Ready-To-Eat (MRE) and Tray Pack Items;

(F) Use Alternate V when the purchase order text (POT) cites that MIL-STD-1525B applies;

(G) Use Alternate VI when the Material Master, Product Assurance tab specifies terms for disposition of the first article units that differ from the terms in FAR 52.209-4. The contracting officer shall complete the appropriate fill-in;

(H) Use Alternate VII when progress payments for the first article units are authorized in the contract. Circumstances justifying the need for progress payments (e.g., when exceptionally high start-up costs are anticipated, etc.) and the basis for determining the maximum dollar value and/or percentage of total contract price shall be thoroughly documented in the contract file.

(I) Use Alternate VIII in requests for quotes when Government first article test requirements apply, and the contracting officer determines its use is appropriate (e.g., if prior quoters for the item are known to have submitted unbalanced quotes in the past, etc.).

(92) Evaluation of offers.

(i) Review the price offered for the "Government First Article Test (FAT)" Additive CLIN. The price offered for "Government First Article Test (FAT)" must be determined fair and reasonable, in addition to the price offered for the production units. Evaluation shall be based in part on the terms for disposition of the first article units.

(ii) If the provision at 52.209-9016, Evaluation of Offers - First Article Testing, was included in the solicitation, the Government's estimated testing costs shall be used as a factor in evaluating offers.

(93) Award.

(i) When award is made for an item that requires "Government First Article Test (FAT)," the following requirements apply:

(A) Ensure the Additive CLIN numbers are established for "Government First Article Test (FAT)" in the award document; and in SAP, upon funding of the award (e.g., CLIN 9906, FAT Samples; CLIN 9907, FAT Report; etc.). Additive CLINs must be established for all FAT requirements. FAT CLIN is a deliverable and must be accounted for. An Additive CLIN that was not separately priced in the quote/offer is still a deliverable, but it is not a payable.

(B) Provide notification by e-mail, including award number, NSN, and Additive CLIN number; and provide copy of award, if not available in Electronic Document Access (EDA), to the contracting officer and to:

(1) For awards issued by Defense Supply Center Columbus (DSCC):

DSCC FAT Monitor

Defense Supply Center Columbus

DSCC-BPI

P. O. Box 3990

Columbus, OH 43218-3990;

(2) For awards issued by Defense Supply Center Philadelphia (DSCP):

(i) Defense Supply Center Philadelphia

ATTN: First Article/Testing Monitor

Bldg. 3 NASA

700 Robbins Avenue

Philadelphia, PA 19111; or

(ii) For acquisitions of Clothing and Textile (C&T) items; Medical and Subsistence items; and Meal, Ready-To-Eat (MRE) and Tray Pack Items, the contracting officer, who acts as FAT/Testing Monitor;

(3) For awards issued by Defense Supply Center Richmond (DSCR):

Defense Supply Center Richmond

*Test Coordinator Office*

[DSCR.Test&EvaluationOffice@dla.mil](mailto:DSCR.Test&EvaluationOffice@dla.mil);

*(4) For awards issued by Naval Surface Warfare Center, Carderock*

*Division:*

*Commanding Officer*

*Naval Surface Warfare Center*

*Code 954, BLDG 77L*

*Philadelphia Business Center*

*Carderock Division*

*Philadelphia, PA 19112-5083*

*ATTN: Long Nguyen*

*Tel: (215) 897-1146*

*(5) For awards issued by Naval Sea Systems Command, Washington Navy*

*Yard:*

*Commander*

*Naval Sea Systems Command*

*Sea 05M3*

*1333 ISAAC Hull Avenue*

*SE Stop 5160*

*Washington Navy Yard, DC 20376-5160*

*ATTN: John Kallinikos*

*Tel: (202) 781-3729*

*(C) Ensure all appropriate documents are placed in the Electronic Contract File (ECF) .*

*(D) The FAT/Testing Monitor (or the contracting officer, when serving as the*

FAT/Testing Monitor) is responsible for providing notice to the testing facility upon receipt of the notice required from the contractor prior to the date when the contractor will present the first articles to the QAR for inspection.

(E) Outline agreements. When awarding outline agreements that include items that require "Government First Article Test (FAT)," lock the Service Material line item on the delivery order, to prevent payment of the line prior to receipt of test/approval certificate; and lock the FAT row in SAP.

(ii) Waiver of Government First Article Test (FAT). When the clause at 52.209-4 was included in the solicitation, and it has been determined that the first article test and approval requirements will be waived for the awardee, the contracting officer shall reflect this in the award by taking the following actions:

(A) Insert the clause at 52.209-9020, *First Article Testing Requirements Are Waived*, in the award;

(B) Select the appropriate Additive CLIN number in DPACS to indicate that first article testing requirements are "Waived;"

(C) Reduce the delivery schedule specified in the solicitation by the number of calendar days allotted to the contractor to produce and deliver the first article units; and the number of calendar days allotted to the Government to test the first article units and provide disposition to the contractor; and

(D) Use "Data Maintenance" to—

(1) Delete any reference to First Article Testing in the Purchase Order Test (POT); and

(2) Free-type the following statement in the POT:

**FIRST ARTICLE TESTING REQUIREMENTS ARE WAIVED FOR THIS PROCUREMENT.**

### **9.308-2 (90)**

Use 52.209-9003, *Pre-Award Sample(s)*, in solicitations for medical materiel. If the contracting officer determines that routine preaward survey techniques are inadequate or have failed to result in a conclusive determination of the prospective contractor's responsibility, the clause allows the contracting officer to request a sample to verify responsibility.

1. Preaward samples may be required only when the contracting officer has included in the file written documentation detailing the reasons that a conclusive determination of the prospective contractor's responsibility is not possible unless preaward samples are submitted for evaluation.

2. The clause shall not be used when any of the following conditions exist:



- a. *Sole source items*
- b. *Rapid entry items*
- c. *Military unique items*
- d. *Repair parts*
- e. *DVD purchases*
- f. *Bid samples are required*
- g. *First Article Testing is required*

3. *Insert in paragraph (a) the item number(s) and number of units required; insert in paragraph (c) (2) the number of days, not to exceed 20 days, needed to evaluate the samples.*

#### **9.390 Compatibility testing.**

#### **9.391 Government fit verification testing.**

#### **9.390 Compatibility testing.**

*When the Material Master indicates compatibility testing is required, insert the clauses at 52.209-9022, Compatibility Testing Requirements, and 52.209-9023, Compatibility Testing Approval - Government Testing, in solicitations and awards, including when acquisitions are conducted using FAR Part 12. Complete the fill-ins in 52.209-9023, Compatibility Testing Approval - Government Testing, with information shown in the Material Master, Product Assurance tab.*

#### **9.391 Government fit verification testing.**

*When acquiring Aviation Supply Chain items and the Material Master indicates Government fit verification testing is required, insert the clauses at 52.209-9024, Government Fit Verification Testing, and 52.209-9025, Government Fit Verification Testing Approval, in solicitations and awards, including when acquisitions are conducted using FAR Part 12. Complete the fill-ins in 52.209-9025, Government Fit Verification Testing Approval, with information shown in the Material Master, Product Assurance tab.*

### **SUBPART 9.4 - DEBARMENT, SUSPENSION, AND INELIGIBILITY**

#### **9.404 Parties Excluded from Procurement Programs.**

(c) (1) The Special Assistant for Contracting Integrity (SACI), General Counsel, HQ DLA, shall furnish to the General Services Administration all additions, deletions, or modifications to the list of Parties Excluded from Federal Procurement and Nonprocurement Programs resulting from DLA action.

(c) (4) Departmental records. The records required by FAR 9.404(c) (4) are maintained for DLA by the SACI.

(c) (90) Each DLA activity shall obtain and have available the most recent edition of the list of Parties Excluded from Federal Procurement and Nonprocurement Programs. Consult the list before completing any contracting action identified in FAR 9.405, 9.405-1(b), or 9.405-2.

#### **9.404-90**

*Use 52.209-9004, Sources for Clothing/Textile Components - NIB and NISH, in all orders in the Clothing & Textile and Medical supply chains with NIB/NISH for clothing and equipment items which are to be fabricated in whole or in part from a cloth or textiles subcontractor.*

#### **9.404-91**

*Use 52.209-9005, Identification of Sources for All Components for Clothing/Textile Items, in solicitations in the Clothing & Textile and Medical supply chains for clothing and equipment items which are to be fabricated in whole or in part from cloth or textiles.*

#### **9.405 Effect of listing.**

(a) In order to take one of the contracting actions identified in FAR 9.405, 9.405-1(b), or 9.405-2, the activity **Commander/Director** shall forward a written request, including supporting information and rationale **that has been reviewed and approved by the Supply Chain HCA**, to the SACI via the local counsel for a determination that there is a compelling reason to make an exception. The proposed contracting action may not be taken until an exception is granted in writing by the SACI.

(90) From the time a report recommending debarment or suspension is forwarded to the General Counsel, until determination is made whether to initiate debarment or suspension action, the recommending activity and any other affected DLA activity that is aware of the recommendation will coordinate with the General Counsel, before taking any of the following actions with respect to the subject contractor:

- (1) Awarding a contract, issuing a purchase order, or entering the contractor's name in an automated purchase system.
- (2) Renewing or otherwise extending an existing contract or subcontract.
- (3) Consenting to or approving a subcontract to be awarded by or to the contractor.
- (4) Authorizing novation of a contract or agreeing to change of name for the contractor.

(b) Upon submission to the General Counsel of a report recommending debarment or suspension, contracting officers, in coordination with local counsel, will consider removing the subject contractor's name from **all automated purchase systems**. If the removal is accomplished, one contracting officer at each affected activity shall notify the contractor that the contractor has been removed from **the systems** and a report recommending the contractor's suspension or debarment has been submitted to HQ DLA. The notice shall include a brief summary of the reasons for the recommendation. Through Counsel at the activity, each affected activity shall notify the General Counsel, by telephone when the contractor is removed from **automated purchase systems**. For **simplified acquisition** purchase procedures, for other than **automated purchase systems** see subparagraph (c) (3) below.

(c) Prior to a determination whether to suspend or debar a contractor recommended for debarment or suspension, if the subject contractor submits an offer that is otherwise in line for an award, the cognizant contracting officer will review the fact sheet furnished pursuant to 9.406-3(a)(ii)(90)(A) below and any other supporting data that the contracting officer deems relevant.

(1) After review of the fact sheet and supporting data, if the contracting officer proposes to award the contract to the subject contractor, the contracting officer, through local counsel, shall coordinate with the General Counsel, prior to making the award.

(2) After review of the fact sheet and supporting data, if the contracting officer determines that the contractor is not responsible, the contracting officer shall notify the contractor of the determination in writing, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to HQ DLA, and provide to the contractor a brief summary of the reasons for the recommendation and for the determination of nonresponsibility. In addition:

(i) If the contractor is a large business, the contracting officer shall proceed with award to the next low responsible offeror that has submitted a responsive bid or technically acceptable proposal.

(ii) If the contractor is a small business concern, the contracting officer shall include with the FAR 19.602-1(a)(2) referral to the Small Business Administration a copy of all elements of the report required by DFARS 209.406-3(a)(ii) and 9.406-3(a)(ii)(90) of this directive that would be releasable directly to the contractor.

(3) If a contractor inquires as to the status of a quote it submitted under simplified acquisition procedures other than **by automated purchase systems**, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to HQ DLA whenever the facts supporting the recommendation are the basis for rejecting the contractor's quotation. Provide the contractor a brief summary of the reasons for the recommendation.

(4) The contracting officer, through local Counsel, shall coordinate by telephone with the General Counsel, actions to be taken under subparagraphs (2)

and (3) above.

(91) Review of files for potential claims and additional remedies.

(a) When a DLA contracting office learns that a contractor has been suspended, debarred or proposed for debarment, or a report has been submitted pursuant to DFARS 209.406-3(a) recommending debarment or suspension, the activity's records shall be reviewed to determine whether the activity has current or has had past contractual relationships with the contractor or its affiliates and, if so, whether the Government may have any basis pursuant to those relationships for recovery of damages from, or other claims against, the contractor.

(b) If a DLA activity determines that there may be such a basis, information stating the factual basis in as much detail as practical shall be forwarded promptly to the General Counsel.

**(92) Procedures and responsibilities. To preclude contractors that are debarred, suspended, or proposed for debarment from receiving contracts:**

**(1) Buying activities shall ensure that procedures are in place—**

**(i) To notify the DCRL Monitor when contractors that are identified as debarred, suspended, or proposed for debarment have been added to the Excluded Parties List System (EPLS);**

**(ii) To preclude awards of automated delivery orders under outline agreements (OAs)/long-term contracts (LTCs) to contractors that are debarred, suspended, or proposed for debarment;**

**(iii) To block the automated processing of all purchase requests (PRs) in SAP when a contractor that is suspended, debarred, or proposed for debarment is identified as a sole source, and refer the PR for manual review by the Acquisition Specialist (preaward).**

**(2) Acquisition Specialists (preaward) shall:**

**(i) Not accept requests for solicitations from contractors that are debarred, suspended, or proposed for debarment during the period of time prescribed in the DCRL;**

**(ii) Ensure the prospective contractor is not debarred, suspended, or proposed for debarment when preparing the award; and document the award file accordingly.**

**(iii) Review FAR 9.405-2 for restrictions on subcontracting with contractors that are debarred, suspended, or proposed for debarment.**

**(3) Contracting Officers shall, prior to signing award documents, verify that the Acquisition Specialist (preaward) complied with all requirements in 9.405 (92) (2).**

### **9.405-1 Continuation of current contracts.**

(90) Authorization for novation of a contract or change of name agreement held by a contractor debarred or suspended by any Federal executive agency or proposed for debarment by any DoD component shall be coordinated with the DLA SACI through local counsel, prior to such authorization.

### **9.406 Debarment.**

#### **9.406-3 Procedures.**

(a) (i) (90) Reports based on indictments or convictions.

(A) Submit reports recommending suspension based upon an indictment or criminal information to the General Counsel, within 2 weeks of the date of indictment or information and include a copy of the indictment (signed, with docket number and date).

(B) For purposes of recommending debarment based on a conviction, submit the report within 2 weeks of the date of sentencing. Include a copy of the judgment/conviction order.

(a) (ii) (A) The activity contact point shall be an attorney in the Counsel's office of the DLA activity submitting the report.

(a) (ii) (90) In addition to the information required by DFARS 209.406-3(a) (ii), include the following:

(A) A brief fact sheet setting forth the essential reasons for the recommendation to suspend or debar.

(B) The name of the investigative agency, or agencies, if any, that investigated either the facts reflected in the report or other aspects of the contractor's business dealings with the Government.

(C) Available Dun & Bradstreet reports on the subject contractor, including the Dun & Bradstreet Government Activity Report, and the DUNS (Dun & Bradstreet) number of the subject contractor, if available.

(91) When the basis for debarment or suspension is nonperformance, untimely performance, unsatisfactory quality or production performance, noncompliance with contract terms, or any other cause under FAR 9.406-2(b), include an explanation of previous contract steps taken to protect the Government's interest (e.g., termination for default, determinations of nonresponsibility) or an explanation of why such steps were not taken.

(92) When preparing a report pursuant to DFARS 209.406-3(a), contact the cognizant DCMD(s) to obtain the information required by DFARS 209.406-3(a) (ii) (F). If DCMD records reflect contracts with other DLA contracting offices, notify those other DLA contracting offices of the proposed recommendation and

furnish them and the DCMD(s) the information upon which the report will be based. State in the report that this intra-agency coordination has been accomplished, list the DLA activities contacted, and summarize the information exchanged.

(a)(iii) The report required by DFARS 209.406-3(a) shall be signed by the contracting officer, **reviewed and approved by the Supply Chain HCA**, and submitted by the Commander/**Director** of the PLFA recommending activity to the General Counsel, HQ DLA. Designate the report "For Official Use Only," unless the contents of the report warrant a security classification.

(a)(iii)(90) When a report recommending debarment or suspension is forwarded to the General Counsel, distribute copies of the fact sheet described in 9.406-3(a)(ii)(90)(A) to contracting personnel at the recommending activity assigned to commodities for which solicitations are likely to result in offers from the contractor identified in the report and to other DLA activities identified pursuant to (ii)(92), above.

(c)(6) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the debarred source for the period of time specified in 9.106-1(a)(1) after the debarment is no longer in effect (see 15.605-90).

#### **9.406-90 Procedures for debarments based on poor performance.**

(a) Policy. Debarment reflects a business judgment about a contractor's trustworthiness, commitment, and capability to successfully perform Government contracts. The debarment regulations recognize two general bases for debarment -- fraudulent or other seriously improper conduct suggesting that a contractor cannot be trusted to fulfill its contractual obligations and poor performance suggesting an inability to fulfill contractual obligations. Responsibility for managing the DLA Fraud Program has been assigned to the General Counsel. Thus, in those instances where suspected criminal misconduct provides the basis for debarment action, the responsibility for initiating action to ensure that a debarment report is forwarded to HQ DLA for further action lies primarily with local counsel. Conversely, where poor performance is to be relied upon as a basis for debarment in accordance with FAR 9.406-2(b), the responsibility for ensuring that action is taken to initiate debarment proceedings lies primarily with the cognizant contracting officer.

(b) Referral. The contracting officer, together with the other members of the contracting team, must initiate timely, effective action to ensure that the Government's business interests are protected when a contractor's action or inaction threatens successful contract performance. The contracting officer is responsible for ensuring that contracts are awarded only to responsible contractors with a high likelihood of being able to successfully perform in accordance with contract terms and conditions. Contracting officers are also responsible for making effective use of available contract remedies, including action to terminate contracts for default and recover for damages suffered, and pursuing extra-contractual remedies, such as debarment of poor performers, where the Government's business interests are at risk. In accordance with the



procedures contained in subparagraph (c) below, the cognizant contracting officer will refer to local counsel those instances of contractor nonperformance that are so serious as to justify consideration of possible debarment action.

(c) Decision-making process.

(1) Before referring a particular contractor to local counsel for possible preparation of a debarment report, the cognizant contracting officer must be able to document the poor performance which will form the basis for a debarment recommendation. The contracting officer must also be able to demonstrate why debarment is the only reasonable alternative available left to the Government. Efforts by the Government to protect its interests by less severe measures (e. g., changing the point of acceptance, suspension of progress payments or placing the contractor on the local contract award checklist) must be clearly identified. While debarment decisions are based on a determination of a contractor's present responsibility, detailed knowledge of that contractor's performance history and record including actions taken by the Government is critical to the debarring official's determination. Referrals to local counsel should include all current information necessary to support the business decision that is to be recommended to the DLA SACI. The contracting officer should be prepared to update the information provided once the debarment process is underway and to participate with local counsel in presenting the case to the DLA SACI.

(2) When referring a contractor to local counsel for consideration of a possible debarment recommendation on the basis of poor performance, the cognizant contracting officer shall provide:

(i) A clear identification of the contractor, including divisions, subsidiaries, and affiliates, and contractor employees, officers, and directors, specifically identifying the contractor personnel who have participated in the Government contracting process.

(ii) A detailed account of the contractor's current active contracts, recent, relevant performance history, and history of performance problems prompting the referral. While this detailed accounting of contracting performance will necessarily focus on contracts awarded by DLA, performance on other Government contracts must also be addressed. In this connection, the assigned contract administration office should be asked to provide information, as well as comments, on the action being considered.

(iii) The reasons identified for the contractor's poor performance and the action taken by the Government to protect its business interests.

(iv) A discussion of whether a debarment action directed toward a specific division, organizational element, or commodity would adequately protect the Government's interests.

(v) A discussion of the period of debarment to be recommended to the DLA SACI, supported by rationale that addresses the likelihood that the contractor will

be able to take corrective actions necessary to successfully perform in the future.

## **9.407 Suspension.**

### **9.407-3 Procedures.**

(c) (4) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the suspended source for the period of time specified in 9.106-1(a) (90) (1) after the suspension is no longer in effect (see **15.304 (c) (95)**).



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