

or commence service, on all authorized channels within 12 months of initial grant date, or within 12 months of the date of the release of the terms of an agreement between the United States and Canadian governments on the sharing of 220–222 MHz spectrum between the two countries, whichever is later. The authorization of a licensee that does not construct its base station and place it in operation, or commence service, by this date, cancels automatically and must be returned to the Commission.

[FR Doc. 96–2324 Filed 2–1–96; 8:45 am]

BILLING CODE 6712–01–P

PANAMA CANAL COMMISSION

48 CFR Part 3509

RIN: 3207–AA30

Panama Canal Commission Acquisition Regulation; Debarment, Suspension and Ineligibility

AGENCY: Panama Canal Commission.

ACTION: Interim final rule with request for comments.

SUMMARY: The Panama Canal Commission is today amending its regulations in Subpart 3509.4 of Title 48, Code of Federal Regulations (CFR), concerning the debarment, suspension and ineligibility of contractors or potential contractors to conform with changes in the Federal Acquisition Regulation (FAR) and to improve the agency's notice and administrative procedures pertaining to debarment, suspension or ineligibility.

DATES: Effective February 2, 1996. Comments must be received by April 2, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to John A. Mills, Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050, Washington, DC 20006–5402 (Telephone: (202) 634–6441; Facsimile: (202) 634–6439), or Theodore G. Lucas, Deputy General Counsel, Office of General Counsel, Panama Canal Commission, Unit 2300, APO AA 34011–2300 (Telephone in Republic of Panama: 011 (507) 272–7511; Facsimile: 011 (507) 272–3748).

FOR FURTHER INFORMATION CONTACT: Theodore G. Lucas, Deputy General Counsel, Office of General Counsel, Panama Canal Commission, or Barbara Fuller, Assistant to the Secretary for Commission Affairs, Office of the Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050,

Washington, DC 20006–5402 (Telephone: (202) 634–6441; Facsimile: (202) 634–6439).

SUPPLEMENTARY INFORMATION: Subpart 3509.4 forms part of the Panama Canal Commission Acquisition Regulation (PAR) located at Part 3509 of CFR Title 48. The subpart is being revised at this time to conform with recent changes to this subpart in the FAR and to improve the agency's notice and administrative procedures that govern actions pertaining to debarment, suspension and ineligibility determinations.

The changes substitute "Procurement Executive" for "Chairman of the Debarment Committee" in section 3509.404(c), remove paragraph (a) from section 3509.406–1, the substance of which is now incorporated in new section 3509.403, add paragraph (c) under section 3509.406–1 to name the Procurement Executive as the agency head's designee with respect to the action authorized by FAR 9.406–1(c), and improve the procedures in section 3509.406–3 by providing a more comprehensive and efficient system including the use of an independent, non-Government fact-finding official where fact-finding is required and by improving the internal processes of investigation, review and recommendation.

Several new sections are added to the subpart. Section 3509.403 is added to identify the Administrator of the Panama Canal Commission as the agency's *Debarring Official* and *Suspending Official* unless there is a conflict of interest or a previously established recusal statement in which case it is the Deputy Administrator. The new section also introduces and defines the term *Fact-finding Official*. The appointment and duties of a *Fact-finding Official* are developed fully at section 3509.406–3. Sections 3509.405, 3509.405–1 and 3509.405–2 are added to name the Procurement Executive as the agency head's designee with respect to the requirements of FAR 9.405 (a) and (d) (2) and (3), 9.405–1 (a) and (c) and 9.405–2(a). Section 3509.406–2 is unchanged. Sections 3509.406–70, "Settlement," and 3509.406–71, "Voluntary Exclusion," are added to enable the debarring official to, at his discretion, resolve a potential debarment without engaging in the complete debarment process. New sections 3509.407–2, 3509.407–70 and 3509.407–71 are added and section 3509.407–3 is revised to establish that most of the subpart's provisions concerning debarment apply equally to suspension. New section 3509.470 is substantively identical to the existing

3509.406–3(b)(7) and new section 3509.471 is substantively identical to the existing 3509.406–3(b)(6).

The section and paragraph numbers of this PAR subpart continue to conform with the corresponding section and paragraph numbers of the FAR.

The Commission has been exempted from Executive Order 12866 and, accordingly, the provisions of that directive do not apply to this rule. Even if the Order were applicable, this rule would not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Only a very small percentage of contractors or prospective contractors doing business with the Commission are debarred or suspended.

The agency has additionally determined the Paperwork Reduction Act does not apply because these changes to the PAR do not impose recordkeeping or information collection requirements or collections of information from offerors, contractors or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Further, the agency has determined implementation of the rule will have no adverse effect on competition, employment, investment, productivity or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Administrator of the Panama Canal Commission certifies these regulatory changes meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 48 CFR Part 3509

Government procurement.

For the reasons set forth in the preamble, 48 CFR Part 3509 is amended as follows:

PART 3509—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 3509 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Part 3509 is amended by revising Subpart 3509.4 to read as follows:

Subpart 3509.4—Debarment, Suspension and Ineligibility

Sec. 3509.400 Scope of subpart.
3509.403 Definitions.

3509.404 List of Parties Excluded from
Federal Procurement and
Nonprocurement Programs.

3509.405 Effect of listing.

3509.405–1 Continuation of current
contracts.

3509.405-2 Restrictions on subcontracting.
 3509.406 Debarment.
 3509.406-1 General.
 3509.406-2 Causes for debarment.
 3509.406-3 Procedures.
 3509.406-70 Settlement.
 3509.406-71 Voluntary exclusion.
 3509.407 Suspension.
 3509.407-2 Causes for suspension.
 3509.407-3 Procedures.
 3509.407-70 Settlement.
 3509.407-71 Voluntary exclusion.
 3509.470 Special notice.
 3509.471 Equal application.

Subpart 3509.4—Debarment, Suspension and Ineligibility

3509.400 Scope of subpart.

This subpart supplements, and shall be applied in conformity with, FAR subpart 9.4.

3509.403 Definitions.

Debarring official means the Administrator of the Panama Canal Commission (hereinafter "Commission"). In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed debarment due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the debarring official.

Fact-finding official means a person not employed by the Commission or any agency of the U.S. Government retained at Commission expense to conduct fact-finding under this subpart. The individual must have no prior knowledge of the particular subject matter and no conflict of interest with respect to any of the parties involved in the debarment or suspension action. He shall have knowledge of the laws and regulations governing the federal procurement system, and shall have experience in receiving evidence and formulating findings of fact.

Suspending official means the Commission Administrator. In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed suspension due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the suspending official.

3509.404 List of parties excluded from Federal procurement and nonprocurement programs.

(c) The Commission Procurement Executive (hereinafter "PE") shall

perform the actions required by FAR 9.404(c).

3509.405 Effect of listing.

The PE is the designee of the agency head for the purposes of FAR 9.405(a) and (d)(2) and (3) and may, upon the written recommendation of the pertinent Head of the Contracting Activity (hereinafter "HCA"), make the determinations referenced therein.

3509.405-1 Continuation of current contracts.

The PE is the designee of the agency head for the purposes of FAR 9.405-1(a) and (c) and may, upon the written recommendation of the pertinent HCA, take the actions referenced therein.

3509.405-2 Restrictions on subcontracting.

(a) The PE is the designee of the agency head for the purposes of FAR 9.405-2(a) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

3509.406 Debarment.

3509.406-1 General.

(c) The PE is the designee of the agency head for the purposes of FAR 9.406-1(c) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

3509.406-2 Causes for debarment.

In addition to the causes listed in FAR 9.406-2, the use of a Panama Canal Commission employee or a member of the Commission's Board of Directors as an agent or advocate for a Commission contractor, or prospective contractor, shall be a cause for debarment.

3509.406-3 Procedures.

(a) Investigation and referral.

(1)(i) Any Commission official or employee who suspects or has knowledge of any conduct, statement, act, or omission of, or attributable to, a Commission contractor or a potential Commission contractor which could justify debarment under FAR subpart 9.4 or this subpart shall immediately report this information to the Commission General Counsel (hereinafter "GC") or to the appropriate contracting officer.

(ii) Any Commission official or employee who suspects or has knowledge that a debarred individual or company has reestablished itself under a new name shall immediately report this information to the GC or to the appropriate contracting officer.

(2) When the GC receives such information he shall refer the matter to the appropriate contracting officer for

investigation and shall notify the PE and the pertinent HCA. When the contracting officer receives such information he shall notify the PE and the pertinent HCA.

(3) The contracting officer shall, in coordination with the pertinent HCA, promptly investigate the matter, assemble all relevant information and prepare a written report containing all available evidentiary material, including copies of indictments and conviction notices when applicable, and the names of the owners and officers, as well as any affiliates, of the contractor in question. The written report shall include a recommendation whether a debarment action should be commenced and, if so, shall identify the causes for debarment, see FAR 9.406-2 and 3509.406-2 of this subpart, and identify each company and individual, including divisions of companies and affiliates, which the contracting officer recommends should be specifically named in the action.

(4) The contracting officer shall submit his report to the pertinent HCA and a copy thereof to the PE and the GC. The HCA shall study the report and promptly advise the PE, in writing, whether or not he concurs in the contracting officer's recommendation and shall explain the reasons for his concurrence or nonconcurrence.

(5) The PE shall study the contracting officer's report and the recommendation of the HCA. If the HCA and the PE agree that a debarment action should not be commenced, the PE shall so inform the debarring official and shall prepare a memorandum for record describing and closing the matter. If, however, either the HCA or the PE recommend that a debarment action should be commenced, the PE shall forward the contracting officer's report to the debarring official, together with the recommendation of the HCA as well as the PE's own written recommendation.

(b) Decisionmaking process.

(1) If the debarring official, after reviewing the contracting officer's report and the recommendations of the HCA and the PE, considering fully the provisions of FAR 9.402 and 9.406-1(a), and consulting with the GC, determines there is a reasonable basis to commence a debarment action, the debarring official shall instruct the PE to sign and send to each specifically named company, individual or affiliate to which the action is to apply, via certified mail, return receipt requested, either:

(i) An informal notice of the Commission's intention to propose debarment, see 3509.406-3(b)(2) of this subpart; or

(ii) A formal notice of the Commission's proposal to debar under FAR 9.406-3(c).

(2) An informal notice of the Commission's intention to propose debarment shall advise the addressee, in writing, of the following:

(i) The issuance under FAR 9.406-3(c) of a formal notice of proposal to debar the addressee is seriously being considered by the Commission;

(ii) The basic factual reasons for the contemplated debarment;

(iii) The causes relied upon under FAR 9.406-2 and 3509.406-2 of this subpart;

(iv) The Commission's procedures governing the debarment process;

(v) The addressee's right to reply to the PE in writing within 21 calendar days of receipt of the informal notice, and show cause why the Commission should not issue, to the addressee, a formal notice of proposal to debar under FAR 9.406-3(c) for the reasons and causes cited by the Commission;

(vi) That, if the PE does not receive a reply from the addressee to the informal notice within 21 calendar days of the addressee's receipt of the informal notice, the Commission will issue to the addressee a formal notice of proposal to debar;

(vii) The effect of the issuance of a formal notice of proposal to debar;

(viii) The potential effect of an actual debarment; and

(ix) That, while the Commission will carefully consider the content of a timely reply to the informal notice, the Commission reserves the right to issue a formal notice of proposal to debar without additional discussion or correspondence.

(3) The PE shall study the timely reply of an addressee to an informal notice and shall forward the reply to the GC and the debarring official with the PE's evaluation and recommendation.

(4) If, after reviewing a timely reply to an informal notice, as well as the views of the PE and the GC, the debarring official determines, considering fully the provisions of FAR 9.402 and 9.406-1(a), that a formal debarment action should commence, the debarring official shall instruct the PE to sign and send a formal notice of proposal to debar to the addressee.

(c) *Notice of proposal to debar.* In addition to the matters listed at FAR 9.406-3(c), a formal notice of proposal to debar shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the proposed debarment.

(d) *Debarring official's decision.*

(1) A submission in opposition to the Commission's formal notice of proposal to debar presented by a contractor, or any named individual or affiliate, shall include information and argument in opposition to the proposed debarment, including any additional specific information or documents that raise a genuine dispute over material facts. The submission shall be addressed to the PE.

(2) If a timely submission in opposition to a formal notice of proposal to debar is not presented by a named contractor, individual or affiliate to whom a formal notice was sent, the PE shall, with respect only to each such contractor, individual or affiliate that failed to present a timely submission, study all the information in the administrative record and shall forward the entire record to the debarring official with an evaluation and recommendation whether to debar the nonresponding contractor, individual or affiliate and, if so, for what period of time.

(3) If a timely submission in opposition to a formal notice of proposal to debar is submitted in actions based upon a conviction or civil judgment, the PE shall evaluate all the information in the administrative record, including the submission in opposition, and shall forward these materials to the debarring official with a recommendation whether to debar and, if so, for what period of time.

(4)(i) If a timely submission in opposition to a formal notice of proposal to debar is presented in actions not based upon a conviction or civil judgment, the PE shall evaluate the formal notice of proposal to debar and the submission in opposition and shall determine, with the advice of the GC, if the submission raises a genuine dispute over any facts material to the proposed debarment. If it does not, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(ii) If, however, the PE determines, in consultation with the GC, that a timely submission in opposition to a formal notice of proposal to debar in actions not based upon a conviction or civil judgment raises a genuine dispute over any fact material to the proposed debarment, the PE shall so advise the contractor, named individual or affiliate, and shall inquire whether a fact-finding hearing is desired. If a fact-finding hearing is not requested by the contractor, named individual or affiliate, the PE shall forward the entire administrative record, including the submission in opposition, to the

debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(iii) If a fact-finding hearing is requested, the PE shall appoint a fact-finding official to whom all matters involving disputed material facts shall be referred. The PE will provide the fact-finding official with a copy of the entire administrative record including the submission in opposition. The fact-finding official shall study the Commission's notice(s) of proposal to debar and the submission(s) in opposition, and shall identify specifically the material facts in genuine dispute and so advise the pertinent contractor, named individual or affiliate, as well as the Commission's designated advocate in the Office of General Counsel. A fact-finding hearing shall be scheduled and conducted by the fact-finding official, and shall take place in a Commission facility in Panama unless the fact-finding official determines that fundamental fairness compels the use of another location. The rules governing the fact-finding hearing shall be established by the fact-finding official but shall conform fully with FAR 9.406-3(b)(2) and (d)(2) and (3).

(5) The fact-finding official shall present written findings of fact and the transcribed record of the hearing, if made, to the debarring official within 21 calendar days from his receipt of the transcript or from the final day of the hearing if no transcript is ordered. The findings shall resolve each material fact previously determined to be in genuine dispute based on a preponderance of the evidence presented.

(6) Upon receiving the complete administrative record and the evaluation and recommendation of the PE or, if there was a fact-finding hearing, upon receiving the hearing record and the findings of fact of the fact-finding official and the evaluation and recommendation of the PE, the debarring official shall, considering fully the provisions of FAR 9.402 and 9.406-1(a), make a final decision whether to impose debarment. If debarment is chosen, the debarring official shall also determine the period of debarment.

(e) *Notice of debarring official's decision.* The debarring official shall promptly notify the contractor and any named individual or affiliate of the final decision in writing by certified mail, return receipt requested.

3509.406-70 Settlement.

(a) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S.

Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to perform, accomplish or implement such remedial measures or mitigating factors as are listed at FAR 9.406-1(a). The contractor, individual or affiliate shall also agree that its failure to observe any term or condition of the agreement shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a settlement agreement if the proposed debarment is based on a conviction of or civil judgment for any of the causes in FAR 9.406-2(a).

3509.406-71 Voluntary exclusion.

(a)(1) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to voluntarily refrain, for a specified period of time, from attempting to obtain, and from entering into, any contract, purchase agreement or other form of contractual relationship, regardless of dollar amount, with, as the debarring official may determine, either: (i) the Commission; or (ii) the Commission and one or more, or all, other agencies, departments or entities of the U.S. Government.

(2) A voluntary exclusion will not be reported to the GSA nor appear in the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," and if the contractor, individual or affiliate is currently listed due to a Commission notice of proposal to debar the PE will advise the GSA of the voluntary exclusion and request the immediate cessation of the listing. The contractor, individual or affiliate shall agree that its failure to observe any term or condition of the voluntary exclusion shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a voluntary exclusion agreement if the proposed debarment is based on a conviction of or civil judgment for any of the causes in FAR 9.406-2(a).

3509.407 Suspension.

3509.407-2 Causes for suspension.

In addition to the causes listed in FAR 9.407-2, the cause for debarment identified in 48 CFR (PAR) 3509.406-2 also applies to suspension actions.

3509.407-3 Procedures.

(a) The procedures set forth in 48 CFR (PAR) 3509.406-3 for debarment also apply, insofar as they are compatible with the procedures set forth in FAR 9.407-3, to suspension actions except those procedures identified in paragraph (b) of this subsection.

(b) The following procedures in 48 CFR (PAR) 3509.406-3 do *not* apply to suspension actions: 3509.406-3(b)(1)(i), 3509.406-3(b)(2) through (4) and 3509.406-3(c).

(c) *Notice of suspension.* In addition to the matters listed at FAR 9.407-3(c), in actions not based on an indictment, a notice of suspension shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the suspension.

3509.407-70 Settlement.

Where a suspension is being considered, the suspending official may enter into a settlement agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406-70.

3509.407-71 Voluntary exclusion.

Where a suspension is being considered, the suspending official may enter into a voluntary exclusion agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406-71.

3509.470 Special notice.

The Commander in Chief, United States Southern Command, shall be notified by the Procurement Executive of the issuance of any Commission notice of proposal to debar and of any debarment or suspension decision made by the debarring or suspending official.

3509.471 Equal application.

These procedures for debarment and suspension apply equally to all firms, individuals and affiliates doing business with the Panama Canal Commission regardless of their nationality, residence or location.

Dated: January 24, 1996.
Gilberto Guardia F.,
Administrator, Panama Canal Commission.
[FR Doc. 96-2044 Filed 2-1-96; 8:45 am]

BILLING CODE 3640-04-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018-AD33

Conferring Designated Port Status on Atlanta, GA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service confers designated port status on Atlanta, Georgia, pursuant to section 9(f) of the Endangered Species Act of 1973. Designated port status will allow the direct importation and exportation of fish and wildlife, including parts and products, through Atlanta, Georgia, a growing international port. Under this final rule, 50 CFR 14.12 will be amended to add Atlanta, Georgia, to the list of Customs ports of entry designated for the importation and exportation of wildlife. A public hearing has been held on this proposal.

EFFECTIVE DATE: This rule is effective March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Special Agent Thomas Striegler, [(703) 358-1949], or Special Agent Cecil M. Halcomb, Assistant Regional Director, U.S. Fish and Wildlife Service, P.O. Box 49226, Atlanta, Georgia 30359, [(404) 679-7057].

SUPPLEMENTARY INFORMATION:

Background

Designated ports are the cornerstones of the process by which the Fish and Wildlife Service (Service) regulates the importation and exportation of wildlife in the United States. With limited exceptions, all fish or wildlife must be imported and exported through such ports as required by section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f). The Secretary of the Interior is responsible for designating these ports by regulation, with the approval of the Secretary of the Treasury after notice and the opportunity for public hearing.

Under Service regulations, wildlife must be imported and exported through one of the designated ports unless the importer/exporter meets one of the exceptions in the regulations. The most common exception is through a permit issued by the Service authorizing an importer or exporter to ship through a nondesignated port. The Service maintains a staff of Wildlife Inspectors at each designated port to inspect and clear wildlife shipments.