

**PART 309—CONTRACTOR
QUALIFICATIONS**

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4231, Jan. 17, 2001, unless otherwise noted.

**Subpart 309.4—Debarment,
Suspension, and Ineligibility**

309.403 Definitions.

Acquiring agency's head or designee, as used in the FAR, shall mean, unless otherwise stated in this subpart, the head of the contracting activity. Acting in the capacity of the acquiring agency's head, the head of the contracting activity may make the required justifications or determinations, and take the necessary actions, specified in FAR 9.405, 9.406, and 9.407 for his or her respective activity, but only after obtaining the written approval of the debarring or suspending official, as the case may be.

Debarring official means the Assistant Secretary for Administration and Management, or his/her designee.

Initiating official means either the contracting officer, the head of the contracting activity, the Deputy Assistant Secretary for Acquisition Management and Policy, or the Inspector General.

Suspending official means the Assistant Secretary for Administration and Management, or his/her designee.

[71 FR 76497, Dec. 20, 2006]

309.404 List of parties excluded from Federal procurement and non-procurement programs.

(c) The Office of Acquisition Management and Policy (OAMP) shall perform the actions required by FAR 9.404(c).

(4) OAMP shall maintain all documentation submitted by the initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OAMP review.

[71 FR 76497, Dec. 20, 2006]

309.405 Effect of listing.

(a) The head of the contracting activity (HCA) (not delegable) may, with the written concurrence of the debarring or suspending official, make the determinations referenced in FAR 9.405(a), regarding contracts for their respective activities.

(1) If a Contracting Officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the Contracting Officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Compelling reasons for award of a contract or consent to a subcontract with a debarred or suspended contractor include:

(i) The property or services to be acquired are available only from the listed contractor; or

(ii) The urgency of the requirement dictates that the Department conduct business with the listed contractor.

(2) If the HCA decides to approve the requested action, he/she shall request the concurrence of the debarring or suspending official and, if given, shall inform the contracting officer in writing of the decision within the required time period.

[66 FR 4231, Jan. 17, 2001, as amended at 71 FR 76497, Dec. 20, 2006]

Health and Human Services

309.470-1

309.406 Debarment.

309.406-3 Procedures.

(a) *Investigation and referral.* When an apparent cause for debarment becomes known, the initiating official shall prepare a report containing the information required by 309.470-2, along with a written recommendation, and forward it through appropriate channels to the debarring official. Reports shall be forwarded in accordance with 309.470-1. The debarring official, the Deputy Assistant Secretary for Acquisition Management and Policy, shall initiate an investigation.

(b) *Decision making process.* The debarring official shall review the results of the investigation, if any, and make a written determination whether or not debarment procedures are to be commenced. A copy of the determination shall be promptly sent through appropriate channels to the initiating official and the Contracting Officer. If it is determined that debarment procedures shall commence, the debarring official shall consult with the Office of General Counsel and then notify the contractor in accordance with FAR 9.406-3(c). If the proposed action is not based on a conviction or judgment and the contractor's submission in response to the notice raises a genuine dispute over facts material to the proposed debarment, the debarring official shall arrange for fact-finding hearings and take the necessary action specified in FAR 9.406-3(b)(2). The debarring official shall also ensure that written findings of facts are prepared, and shall base the debarment decisions on the facts as found, after considering information and argument submitted by the contractor and any other information in the administrative record. The Office of the General Counsel shall represent the Department at any fact-finding hearing and may present witnesses for HHS and question any witnesses presented by the contractor.

[71 FR 76497, Dec. 20, 2006]

309.407 Suspension.

309.407-3 Procedures.

(a) *Investigation and referral.* When an apparent cause for suspension becomes known, the initiating official shall pre-

pare a report containing the information required by 309.470-2 along with a written recommendation and forward it through appropriate channels to the suspending official. Reports shall be forwarded in accordance with 309.470-1. The suspending official shall initiate an investigation.

(b) *Decision making process.* The suspending official shall review the results of the investigation, if any, and make a written determination whether or not suspension should be imposed. A copy of this determination shall be promptly sent through appropriate channels to the initiating official and the Contracting Officer. If it is determined that suspension shall be imposed, the suspending official shall consult with the Office of General Counsel and then notify the contractor in accordance with FAR 9.407-3(c). If the action is not based on an indictment, and, subject to the provisions of FAR 9.407-3(b)(2), the contractor's submission in response to the notice raises a genuine dispute over facts material to the suspension, the suspending official shall, after suspension has been imposed, arrange for fact-finding hearings and take the necessary actions specified in FAR 9.407-3(b)(2).

[71 FR 76497, Dec. 20, 2006]

309.470 Reporting of suspected causes for debarment or suspension, or the taking of evasive actions.

309.470-1 Situations where reports are required.

A report incorporating the information required by 309.470-2 shall be forwarded, in duplicate, by the Contracting Officer through acquisition channels to OAMP when:

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 or FAR 9.407-2; or

(b) A contractor is suspected of attempting to evade the prohibitions of debarment or suspension imposed under this subject, or any other comparable regulation, by changes of address, multiple addresses, formation of new companies, or by other devices.

[66 FR 4231, Jan. 17, 2001, as amended at 71 FR 76498, Dec. 20, 2006]

309.470-2

309.470-2 Contents of reports.

Each report prepared under 309.470-1 shall be coordinated with the Office of the General Counsel and shall include the following information, where available:

- (a) Name and address of contractor.
- (b) Name of the principal officers, partners, owners, or managers.
- (c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.
- (d) Description of the contract or contracts concerned, including the contract number, and office identifying numbers or symbols, the amount of each contract, the amount paid the contractor and the amount still due, and the percentage of work completed and to be completed.
- (e) The status of vouchers.
- (f) Whether contract funds have been assigned pursuant to the Assignment of Claims Act, as amended, (31 U.S.C. 3727, 41 U.S.C. 15), and, if so assigned, the name and address of the assignee and a copy of the assignment.
- (g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, the amount of the contracts, whether these funds have been assigned pursuant to the Assignment of Claims Act, as amended, (31 U.S.C. 3727, 41 U.S.C. 15), and the amounts paid or due on the contracts.
- (h) A complete summary of all available pertinent evidence.
- (i) A recommendation as to the continuation of current contracts.
- (j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate.
- (k) The comments and recommendations of the contracting officer and statements regarding whether the contractor should be suspended or debarred, whether any limitations should be applied to the action, and the period of any proposed debarment.
- (l) As an enclosure, a copy of the contract(s) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation or a written summary of any information for which documentation is not available.

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PART 311—DESCRIBING AGENCY NEEDS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

311.003 Defining Electronic Information Technology (EIT) requirements.

HHS officials who are defining agency needs for EIT products and services and performing market research to meet those needs can use the Buy Accessible Wizard (<http://www.buyaccessible.gov>) managed by the General Services Administration to document EIT requirements, identify the applicable Section 508 standards, and document the market research.

[71 FR 76498, Dec. 20, 2007]

PART 312—ACQUISITION OF COMMERCIAL ITEMS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 312.1—Acquisition of Commercial Items—General

312.101 Policy.

(a) It is HHS policy to maximize its buying power, reduce acquisition administrative costs, and develop long-term, mutually beneficial, open partnerships with best-in-class providers of products and services. Accordingly, HHS has implemented a Strategic Sourcing Program under which Indefinite-Delivery/Indefinite-Quantity contracts (IDIQs) and Blanket Purchase Agreements (BPAs), known as HHS-wide Acquisition Contracts (HWACs), are awarded to allow for savings for commercial items and services across HHS and make the acquisition process more efficient.

(b) If consideration is being given to soliciting or acquiring a product or service from a source, other than HHS Contract Closeout IDIQs or Strategic Sourcing BPAs, when the category of the current requirement (e.g. Lab Supplies, Events Management) is encompassed in the portfolio of existing IDIQ or BPA categories a waiver request must be prepared and approved in advance of a purchase or processing of a requirement.