Health and Human Services

threshold may be in the form of a para-

graph or paragraphs contained in the

requisition or other acquisition request

document. Justifications for orders in

excess of the simplified acquisition

threshold shall be in the form of a sep-

arate, self-contained document, pre-

pared in accordance with FAR 8.405-6(g)

and 308.405-6(g), and titled “Limited

Source Justification” (LSJ). HHS re-

quires use of a standard format for an

LSJ. The template for the justification

is available on the ASPR/OGAPA/DA

Internet Web site. Additional informa-

tion may be included in the LSJ tem-

plate in accordance with OPDIV proce-

dures.

(ii) Regardless of dollar amount of

the acquisition, justifications shall—

(A) Fully describe what is to be ac-

quired;

(B) Cite specific reasons that explain

why it is necessary to restrict consid-

eration of sources;

(C) Be supported by verifiable facts

rather than untested or unsubstan-

tiated opinions or conclusions; and

(D) Be written in a manner to permit

an individual without technical knowl-

dge of the requirement to understand

the supporting rationale.

(iii) Preliminary arrangements with,

or verbal or written commitments to, a

proposed contractor shall be avoided

given the requirement to obtain com-

petition for FSS orders using the pro-

cedures in FAR Subpart 8.4—see also

FAR 6.102(d)(3).

(iv) Justifications for non-FSS orders

to be awarded without full and open

competition shall comply with FAR

6.303 and 306.303.

(h) Justification approvals.

Certification, concurrence, and ap-

proval requirements. The Project Officer,

the Project Officer’s immediate super-

visor, the head of the sponsoring pro-

gram office, and the Contracting Offi-

cer shall certify that the justification

is accurate and complete by signing the

LSJ. For acquisitions in the dollar

amount cited in FAR 8.405-6(h)(2)

through (h)(4), the CCO, if applicable,

and the HCA shall indicate their review

of, and concurrence with, the justifica-

tion by signing the LSJ. The approving

officials for LSJs are as follows:

(1) The Contracting Officer shall ex-

ercise this approval authority unless a

higher approval level is required by

OPDIV procedures.

(2) The CAs are listed in 306.501. This

approval authority is not delegable.

(3) The CA shall exercise this ap-

proval authority, except where the in-

dividual designated as the competition

advocate does not meet the require-

ments of FAR 8.405-6(h)(3)(ii). This

approval authority is not delegable.

(4) The HHS SPE is the Associate

DAS for Acquisition.

PART 309—CONTRACTOR

QUALIFICATIONS

Subpart 309.4—Debarment, Suspension,

and Ineligibility

Sec.

309.403 Definitions.

309.404 List of parties excluded from Federal

procurement and non-procurement pro-

grams.

309.405 Effect of listing.

309.406 Debarment.

309.406–3 Procedures.

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309.407–3 Procedures.

309.470 Reporting of suspected causes for de-

barment or suspension or the taking of

evasive actions.

309.470–1 Situations where reports are re-

quired.

309.470–2 Contents of reports.


SOURCE: 74 FR 62398, Nov. 27, 2009, unless

otherwise noted.

Subpart 309.4—Debarment, Suspension,

and Ineligibility

309.403 Definitions.

Acquiring agency’s head or designee, as

used in the FAR, means, unless other-

wise stated in this subpart, the HCA.

The HCA may make the required jus-

tifications or determinations and take

the necessary actions specified in FAR

9.405, 9.406 and 9.407, only after obtain-

ing the written approval of the debarring

or suspending official, as appro-

priate.

Debarring official means the Deputy

Assistant Secretary for Grants and Ac-

quisition Policy and Accountability

(DAS/GAPA).
Initiating official means the Contracting Officer, the HCA, the Associate DAS for Acquisition, or the Inspector General (IG).

Suspending official means the DAS/GAPA.

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

(c) The ASFR/OGAPA/DA shall perform the actions required by FAR 9.404(c).

(4) The ASFR/OGAPA/DA shall maintain all documentation the initiating official submits to recommend the debarment or suspension action and all correspondence and other pertinent documentation generated during the review.

309.405 Effect of listing.

(a) The HCA (non-delegable) may, with the written concurrence of the debarring or suspending official, make the determinations referenced in FAR 9.405(a) regarding contracts.

(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 appropriate acquisition channels to the HCA. The documentation shall 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 the following:

(i) Only the cited contractor can provide the property or services.

(ii) The urgency of the requirement dictates that HHS conduct business with the cited contractor.

(2) If the HCA decides to approve the requested action, the HCA 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.

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 acquisition channels, including the HCA, to the Associate DAS for Acquisition in accordance with 309.470–1. The debarring official 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 shall commence. The ASFR/OGAPA/DA shall promptly send a copy of the determination through appropriate acquisition channels to the initiating official and the Contracting Officer. If the debarring official determines that debarment procedures shall commence, the debarring official shall consult with OGC–GLD 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 OGC–GLD shall represent HHS at any fact-finding hearing and may present witnesses for HHS and question any witnesses presented by the contractor.

309.407 Suspension.

309.407–3 Procedures.

(a) Investigation and referral. When an apparent cause for suspension becomes known, the initiating official shall prepare a report containing the information required by 309.470–2 along with a written recommendation and forward