

309.404

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.

48 CFR Ch. 3 (10–1–10 Edition)

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

it through appropriate acquisition channels, including the HCA, to the suspending official 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 shall occur. ASFR/OGAPA/DA shall send a copy of the determination through appropriate acquisition channels to the initiating official and the Contracting Officer. If the suspending official determines that suspension is necessary, the suspending official shall consult with OGC-GLD 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 imposing the suspension, arrange for fact-finding hearings and take the necessary actions specified in FAR 9.407-3(b)(2).

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

309.470-1 Situations where reports are required.

The Contracting Officer shall forward a report, incorporating the information required by 309.470-2, through appropriate acquisition channels, including the HCA, to the Associate DAS for Acquisition whenever a contractor—

(a) 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) 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.

309.470-2 Contents of reports.

The Contracting Officer shall coordinate each report prepared under 309.470-1 with OGC-GLD and include the following information, when available:

(a) Contractor name and address.

(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 to 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 contractor's action, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the Contracting Officer and statements indicating whether the contractor should be suspended or debarred, whether any limitations are necessary, 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.

PART 310—MARKET RESEARCH

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