

Health and Human Services

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threshold may be in the form of a paragraph 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 separate, self-contained document, prepared in accordance with *FAR 8.405-6(g)* and *308.405-6(g)*, and titled “Limited Source Justification” (LSJ). HHS requires use of a standard format for an LSJ. The template for the justification is available on the ASFR/OGAPA/DA Internet Web site. Additional information may be included in the LSJ template in accordance with OPDIV procedures.

(ii) Regardless of dollar amount of the acquisition, justifications shall—

(A) Fully describe what is to be acquired;

(B) Cite specific reasons that explain why it is necessary to restrict consideration of sources;

(C) Be supported by verifiable facts rather than untested or unsubstantiated opinions or conclusions; and

(D) Be written in a manner to permit an individual without technical knowledge 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 competition for FSS orders using the procedures 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 approval requirements. The Project Officer, the Project Officer’s immediate supervisor, the head of the sponsoring program office, and the Contracting Officer 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 justification by signing the LSJ. The approving officials for LSJs are as follows:

(1) The Contracting Officer shall exercise 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 approval authority, except where the individual designated as the competition advocate does not meet the requirements 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

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

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 otherwise stated in this subpart, the HCA. The HCA may make the required justifications or determinations and take the necessary actions specified in *FAR 9.405*, *9.406* and *9.407*, only after obtaining the written approval of the debarring or suspending official, as appropriate.

Debarring official means the Deputy Assistant Secretary for Grants and Acquisition Policy and Accountability (DAS/GAPA).

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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.

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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).