

**PART 609—CONTRACTOR
QUALIFICATIONS**

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AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

**Subpart 609.2—Qualifications
Requirements**

609.202 Policy.

The authority prescribed in FAR 9.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

609.206 Acquisitions subject to qualification requirements.

609.206-1 General.

(b) The authority prescribed in FAR 9.206-1(b) is delegated, without power of redelegation, to the head of the contracting activity.

[64 FR 43622, Aug. 11, 1999]

**Subpart 609.4—Debarment,
Suspension, and Ineligibility**

609.403 Definitions.

Debarring official means the Procurement Executive.

Suspending official means the Procurement Executive.

609.403-70 DOSAR definitions.

Fact-finding official means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

Notice means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406-3 and FAR 9.407-3.

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

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66756, Dec. 28, 1994]

609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d) In accordance with a FAR class deviation granted by the Procurement Executive, the following actions apply to actions awarded by DOS contracting activities:

(1)(i) Contracting officers at overseas contracting activities may rely on the debarment certification submitted by

bidders/offerors (FAR 52.209-5) as proof of eligibility for award when access to the current "Lists of Parties Excluded from Procurement Programs" is not reasonably available. For contracts which require A/OPE review and approval, the contracting officer should request that A/OPE perform the required review if the list is not available.

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the simplified acquisition threshold, contracting officers need not consult the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", either in hard copy or electronic form, prior to awarding a procurement action exceeding the simplified acquisition threshold.

[59 FR 66756, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43622, Aug. 11, 1999]

609.405-1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405-70.

609.405-2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-2.

609.405-70 Termination action decision.

(a) Prior to making a decision to terminate, based on the consideration listed below, the contracting officer shall have the proposed action reviewed and approved by:

- (1) The Office of the Legal Adviser;
- (2) An individual one level above the contracting officer; and
- (3) For overseas posts, A/OPE.

(b) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(c) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

- (1) Seriousness of the cause for debarment or suspension;
- (2) Extent of contract performance;
- (3) Potential costs to the Government;
- (4) Urgency of the requirement and the impact of the delay; and/or
- (5) Availability of other safeguards to protect the Government's interests.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

609.406 Debarment.

609.406-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406-1(c).

609.406-3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office. The Office of the Inspector General shall provide to the Procurement Executive a copy of its investigation report. The contracting officer shall provide to the