

Public Guide to U.S. Department of the Interior  
Suspension and Debarment Program

U.S. DEPARTMENT OF THE INTERIOR

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## I. Introduction

This information is provided to inform the public about the U.S. Department of the Interior (DOI) Suspension and Debarment Program, its structure, organizational participants, roles, and our general process from case initiation to completion. It is provided for general informational purposes and transparency only. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party.

## II. Authorities

DOI takes actions under the two separate but reciprocal and largely identical debarment rules for procurement programs and for nonprocurement programs, including discretionary assistance, loan, lease, concession, and benefit programs. The Government-wide suspension and debarment procurement rule, located in the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 9.4, is supplemented by the Department of the Interior Acquisition Regulation (DIAR) at Part 1409. The Office of Management and Budget Guidelines to agencies on Government-wide suspension and debarment for nonprocurement transactions are located at 2 C.F.R. Part 180 and are adopted and supplemented by the DOI implementing regulation at 2 C.F.R. Part 1400. Additional relevant authorities include: The Federal Acquisition Streamlining Act of 1994, Public Law 103-355, § 2455 (31 U.S.C. § 6101, note); and Executive Orders 11738, 12549, and 12689.

## III. Definitions

- a. **Action Referral Memorandum (ARM):** is a memorandum from the Office of Inspector General (OIG) to the Department's suspending and debarment official (SDO) that recommends suspension, debarment, or other administrative action to protect the business interests of the Federal Government. The ARM articulates the factual and regulatory basis for the recommendation and any supporting documentation.
- b. **Adequate Evidence:** is information sufficient to support the reasonable belief that a particular act or omission has occurred.
- c. **Compliance and Ethics Agreement:** is a negotiated administrative agreement entered between a respondent and an agency to resolve suspension or debarment matters in lieu of award ineligibility.
- d. **Contractor:** is any individual or other legal entity that (a) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract or subcontract under a Government contract; or (b) conducts business with the Government as an agent or representative of another contractor.

- e. **Covered Transaction:** is a nonprocurement or procurement transaction; it may be at the primary tier, which is between a Federal agency and a person, or a lower tier, between a participant in a covered transaction and another person. The term person applies to individuals, corporations, partnerships and other legal entities.
- f. **Debarment:** is an action by an SDO to exclude a contractor or participant from Federal Government contracting, Government-approved subcontracting, and non-procurement awards for a specific period of time, or an action to exclude a person from participating in covered transactions for a specific time.
- g. **Lack of Present Responsibility:** evidence that contractor or participant has engaged in criminal or other improper conduct or poor performance of such a compelling and serious nature that it would lead one to question the honesty, ethics, or competence of a contractor or participant.
- h. **Matters in Opposition:** is the response provided by the Respondent contesting the notice of administrative action. In accordance with FAR 9.406-3(c)(4) and 9.407-3(c)(5) for procurements or 2 C.F.R. §§ 180.720, 180.730, 180.815, and 180.825 for nonprocurement transactions, matters in opposition may be presented in person, in writing, or through a representative, by a party regarding the appropriateness of the administration action or the duration of the debarment. When presented in person or telephonically, the proceeding is referred to as a Presentation of Matters in Opposition (PMIO).
- i. **Nonprocurement Rule (NPR):** provides for a Government-wide system of nonprocurement suspension and debarment. A person who is debarred or suspended is excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Suspension and debarment of a participant in a program by one agency has Government-wide, reciprocal effect. It appears as Office of Management and Budget Guidelines at 2 C.F.R. Part 180, adopted as a rule by agencies through implementing regulations. DOI's implementing regulation is at 2 C.F.R. Part 1400.
- j. **Nonprocurement transaction:** is any transaction, regardless of type (except procurement contracts), including, but not limited to the following: (1) grants; (2) cooperative agreements; (3) scholarships; (4) fellowships; (5) contracts of assistance; (6) loans; (7) loan guarantees; (8) subsidies; (9) insurances; (10) payments for specified uses; (11) donation agreements; (12) leases, including mineral leases; and (13) concession agreements. A nonprocurement transaction at any tier does not require the transfer of Federal funds. For example, the transaction may be a lease of real property or a loan guarantee.
- k. **Participant:** is any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant. Participants for nonprocurement transactions may also be referred to as recipients.

- l. **Preponderance of the Evidence:** is proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- m. **Pre-notice investigative letter:** is a letter sent by the OIG informing a person that they are being reviewed for a potential suspension or debarment referral and requests that the person tell the OIG why it believes that administrative action should not be taken. For example, a pre-notice letter may be sent to a company to determine whether it participated in an employee's misconduct or whether its compliance program had weaknesses that led to the failure to detect or prevent the misconduct.
- n. **Procurement transaction:** is a transaction to acquire by contract with appropriated funds supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.
- o. **Respondent:** is a person against whom a suspension or debarment action has been initiated.
- p. **Suspending and Debarring Official (SDO):** is an agency head or a designee authorized by the agency head to impose suspension or debarment. The DOI SDO is the Director of the Office of Acquisition and Property Management (PAM). The director is also the DOI Senior Procurement Executive.
- q. **Suspension:** is an action taken by an SDO to exclude a contractor temporarily from Federal Government contracting and Government-approved subcontracting, or an action to exclude a person from participating in covered transactions for a temporary period.
- r. **System for Award Management (SAM),** located at [www.sam.gov](http://www.sam.gov), is the system maintained by the General Services Administration (GSA) containing the names, addresses, and identities of persons suspended, debarred, or voluntarily excluded from Federal procurement and nonprocurement programs, and persons proposed for debarment from Federal procurement or nonprocurement awards pursuant to FAR. The SAM exclusions section replaced the GSA Excluded Parties List System (EPLS). Suspensions, proposed debarments, and debarments pursuant to the FAR and suspensions and debarments pursuant to 2 C.F.R. Part 180 are entered into the exclusions section of the SAM, ordinarily within three (3) working days of the date of the action.

#### IV. Program Roles and Responsibilities

The DOI Suspension and Debarment Program is designed to ensure a proactive mechanism to assess whether a person poses a potential business risk as a Federal contactor or participant and to manage high risk over the long term.

##### A. The Suspending and Debarring Official

DOI's SDO reviews action referral memoranda and supporting information, decides whether suspension or debarment action is warranted, issues notices of action to respondents, and decides the final outcome of all cases and the period of any exclusion to be imposed in accordance with applicable laws and regulations. The SDO, or designee, enters the names of suspended or debarred respondents into the SAM. The SDO also approves, on behalf of DOI, any negotiated resolution of suspension and debarment matters by compliance and ethics agreements.

##### B. DOI Debarment Program Director

The Debarment Program Director (DPD) is the national program manager of the DOI suspension and debarment program. The DPD reports to and advises the SDO. The DPD is responsible for the overall management of DOI's debarment program and the processing of suspension and debarment actions. The DPD, in consultation with the SDO and the DOI OIG, establishes DOI Debarment Program policies and resolves procedural questions related to matters before the SDO.

##### C. Office of the Inspector General

###### 1. Assistant Inspector General for Investigations

The Assistant Inspector General for Investigations (AIGI) is responsible for oversight of the OIG Administrative Remedies Division.

###### 2. Director, Administrative Remedies Division

The OIG Director of the Administrative Remedies Division (DARD) administers and coordinates the OIG's efforts relating to administrative remedies, including the suspension and debarment recommendation process. The DARD recommends actions to the SDO and, in consultation with the OIG debarment program manager (OIG DPM), establishes and maintains the OIG suspension and debarment recommendation process policy. The DARD routinely reviews OIG investigative actions and coordinates with the relevant OIG investigative field offices and other DOI bureau law enforcement offices, regarding potential administrative actions. The DARD is also responsible for coordinating with leadership of the Office of Audits, Inspections and Evaluations for the potential referral of

audits as the basis for suspension and debarment actions. The DARD will coordinate with the SDO and DOI's DPD to ensure that the SDO has the information necessary to take suspension or debarment action.

### 3. OIG Debarment Program Manager

The OIG DPM is located in the OIG ARD. The OIG DPM manages OIG's suspension and debarment recommendation process. The OIG DPM collects and presents information to the DARD relating to potential suspension and debarment matters. The OIG DPM also negotiates and monitors compliance and ethics agreements, including reviewing alleged breaches of such agreements. The OIG DPM interfaces with the DOI DPM and various Federal and state investigative, program, prosecutorial and other officials, and generally coordinates the development of matters for review by the DARD and for consideration by the SDO. The OIG DPM will coordinate with the SDO and the DOI DPD to ensure that the SDO has the information necessary to take the recommended suspension or debarment action.

### 4. OIG Counsel

The OIG General Counsel is the attorney for the OIG. ARD consults with the OIG General Counsel regarding disclosures of records involving privacy issues and to request a legal opinion, when appropriate.

## D. The Bureaus

DOI bureau procurement officials and nonprocurement award officials are required to forward to the SDO information of which they become aware that indicates a lack of business honesty, integrity, or serious poor performance on the part of a contractor or participant. Under the DOI debarment rules a bureau may, if it desires, prepare and forward a referral directly to the SDO. However, bureaus are instructed to refer matters to the DOI OIG for evaluation and, preparation of an action referral memorandum to the SDO.

## E. Office of the Solicitor

The Office of the Solicitor (SOL) is the DOI legal counsel and, as such, provides legal advice to the SDO. The SOL requests U.S. Department of Justice (DOJ) representation for the DOI in the event that a decision of the SDO is challenged in Federal court. The SOL General Law Division is designated to advise PAM.

## V. Suspension and Debarment Process

### A. The Case Referral Development Process

Ordinarily, potential suspension and debarment actions originate with the OIG ARD. Information indicating that a suspension or debarment action may be warranted can come from a wide range of sources, including agency award personnel, Department or bureau law enforcement personnel, other agencies, and members of the public. The OIG DPM coordinates the collection and assembly of relevant information about a contractor/participant and analyzes the information in accordance with applicable Federal regulations. The OIG DPM consults with other Federal agencies with a known or suspected interest in the matter in order to decide which Federal agency should act as lead agency.

The OIG DPM follows the Interagency Suspension and Debarment Committee (ISDC) lead agency coordination process to consult with other Federal agencies with a known or suspected interest in the matter in order to decide which Federal agency should act as lead agency. Where DOI is the lead agency for a suspension or debarment action, the OIG DPM coordinates with appropriate officials. If lead is assigned to DOI, the OIG DPM develops a plan for sharing important information and developments in the case with internal and external interested offices, and obtains from them any important information that may bear on the matter.

At any time during the initial case review, the OIG DPM may consult with the DPD regarding interpretations of applicable regulations or policies or to advise the SDO of important events or interests that may be impacted by a suspension or debarment action. The OIG DPM, through the DPD, will also keep the SDO informed of the progress of any ongoing settlement discussions or negotiations with a contractor/participant prior to or after the SDO's issuance of a notice of action.

If the OIG DARD, in consultation with the OIG DPM, determines that additional information is needed during the referral development process, the OIG DARD may use OIG investigative resources to obtain additional information or may issue a pre-notice letter to the Respondent to obtain the information. Where a respondent does not answer a pre-notice investigatory letter and an ARM is subsequently prepared and referred to the SDO, the ARM will note the fact that the respondent did not reply. The SDO may draw any reasonable inferences appropriate under the circumstances. The ARM, which functions akin to an administrative complaint, reports information and activities about a person that raises serious questions about that person's suitability to serve as a potential contractor, subcontractor, recipient, participant, agent, representative or principal in federally-financed transactions. The ARM with its attachments usually constitutes the primary source of

information for the SDO to take action to protect Government procurement and nonprocurement transactions from fraud, waste, abuse, poor performance, noncompliance, and unsatisfied debts.

## B. SDO Review and Proceedings

The DPD reviews the ARM in accordance with applicable regulations. When the DPD has reviewed the ARM and decided that action is appropriate, the DPD prepares and forwards to the SDO an action notice. If the SDO determines that administrative action is appropriate, the SDO will issue a Notice of Suspension, a Notice of Proposed Debarment, or Notice of Suspension and Proposed Debarment to the Respondent, pursuant to applicable provisions under FAR Subpart 9.4 or 2 C.F.R. Part 180. Consistent with the rule under which the action is initiated, and type of action, PAM ordinarily makes the exclusion entry in SAM within three (3) working days of the notice issuance date.

The DOI notice will ordinarily transmit a copy of the ARM and the ARM attachments. However, where the notice initiates a fact based action and the attachments are voluminous, the SDO may choose to send out the ARM without the attachments and notify the respondent in the notice that a copy of the ARM attachments will be provided upon request. In some limited instances, ordinarily in the case of pre-indictment suspensions, where there is a request by a prosecutor to deny fact finding, the suspension notice will contain a statement advising the respondent of that fact and will be issued without the ARM or attachments. Additionally, although not required, the notice will routinely include a courtesy copy of the regulations governing the action.

## VI. The Notice Reply Period

To contest an action, a respondent must submit a written response within the 30-day reply period. Telephonic communication does not suffice to satisfy the 30-day reply requirement. The SDO, exercising sole discretion, may consider an untimely written contest letter. In the event of a written response many months after the notice, that response will be treated as a petition for reinstatement upon the written record rather than as a contest of the initial notice, if the administrative action rendered them ineligible.

### A. Uncontested Notices

In the event a respondent fails to reply to the notice within the 30-day window, a default determination will be issued for the record in order to promptly protect the Government program award interests. Default determinations are issued for both uncontested suspensions and for uncontested debarment notices

## B. Contesting Administrative Actions

### 1. Written Submission in Opposition

If a respondent seeks to contest an action taken or proposed by the SDO, the Respondent or its representative must do so in writing within 30 days of the Respondent's receipt of the notice. Failure to do so will result in the SDO issuing a default decision. The submission in opposition must set forth the information the Respondent wishes the SDO to consider. The DPD, on behalf of the SDO, may authorize an extension of the respondent's 30-day response period. The DPD will do so only for good cause. Any information provided by the respondent or its representative verbally should also be reduced to writing or otherwise recorded so that all important information can be preserved for the record and considered by the SDO when making a decision. If the Respondent desires to approach the OIG DPM during the 30-day period to attempt to resolve the matter under mutually acceptable terms, the Respondent may do so. However, holding discussions with the OIG DPM will not be the sole basis for extending the 30-day period required for the respondent to submit information in opposition to the SDO's action notice. Any request for a time extension must be made in writing to the DOI DPD. The respondent should send a copy of its submission in opposition to the OIG ARD at the same time it is sent to the SDO. The notice will contain a statement to that effect.

Upon receipt of a submission in opposition, the DPD will issue a letter acknowledging receipt to begin the process. The acknowledgement letter will be sent by email whenever feasible to expedite communication. The letter will be copied to the OIG ARD. The letter will advise the respondent of the case schedule, including the dates by which written submissions are to be made, and where requested, the date of a PMIO.

### 2. Oral Presentation of Matters in Opposition

There are two types of oral suspension and debarment proceedings: the PMIO and the more formal fact-finding hearing.

#### a. PMIO

If the Respondent wants to meet with the SDO to present matters in opposition, a meeting with the SDO, or designee, will be arranged. As provided by the regulations, the Respondent may appear in person, or by or with a representative. The SDO may permit agency representatives who have information or an interest in the matter to attend the PMIO. The SDO will allow the respondent to present any information at the meeting that the Respondent believes is important for the record that will form the basis of a final decision.

PMIOs ordinarily take place in the context of actions where an indictment or conviction serves as the basis for the action, or in the absence of an indictment or conviction, where facts are not in dispute. Accordingly, the information presented at the PMIO usually comes principally from the Respondent and focuses on mitigating factors and/or remedial measure that the Respondent believes should make suspension and/or debarment unnecessary. Once the Government has established that cause for suspension or debarment exists, the Respondent bears the burden of demonstrating to the SDO that suspension and/or debarment are not necessary.

The PMIO is conducted in the manner of an informal business meeting at a conference table. The PMIO is, however, recorded for inclusion in the administrative record. A copy of the PMIO recording is provided at cost to the respondent where requested. The recording is routinely reviewed as a part of the administrative record in the course of preparation of contested case determinations.

#### b. Fact-Finding Hearing

A PMIO can also occur in fact-based actions as a preliminary step to ascertain whether fact-finding is necessary. In fact-based actions, i.e., where there is no indictment or conviction, the Government has the burden to establish the existence of cause based on certain evidentiary standards. For suspensions the Government must meet the adequate evidence standard. For debarments, the Government must meet the preponderance of the evidence standard.. A fact-finding hearing may occur before or after a PMIO, depending upon circumstances of the action.

Based upon preliminary written submissions and information presented, the SDO will consider whether all pending factual issues related to cause have been adequately addressed. Once the SDO is satisfied that the issues, allegations and responses to them are clear and that the parties have had an opportunity to present information for the record, the SDO will determine whether there are facts material to cause that are genuinely in dispute, and whether resolution of the particular disputed facts are necessary in order to render a decision. If so, the SDO will submit those disputed facts to a designated official, who shall conduct additional proceedings (i.e., a fact-finding hearing), to determine those disputed facts before the SDO will decide the matter. The SDO may, exercising sole discretion, decide to submit disputed material facts for a hearing before meeting with a Respondent.

However, where it is apparent that facts material to establish the cause stated in the notice are genuinely in dispute, fact finding will be undertaken.

If the SDO submits material facts that are genuinely in dispute for a hearing, a proceeding will be conducted to receive information and evidence bearing on those facts from the Respondent and the OIG ARD. The proceeding is an informal evidentiary hearing. Because these actions are not subject to the Administrative Procedures Act, the Federal Rules of Evidence and Civil Procedure do not apply in suspension and debarment actions. The objective of the hearing is to elicit reliable, probative evidence to establish the existence of facts to support the presence of cause(s) for debarment (or suspension where fact finding is authorized). To that end, documentary evidence is taken into the record and direct witness testimony, and cross examination of witnesses presented by the Government and by the Respondent occurs. Unlike the PMIO, fact-finding proceedings are transcribed. This is routinely done through the use of a court reporter. The Government bears the burden of proof to establish the existence of cause for suspension or debarment. It should be noted that under the suspension and debarment rules, the SDO does not have the authority to compel the appearance of witnesses or the production of documents.

The hearing official, ordinarily the DPD, will notify the participants of the time, place, procedures, and other logistics necessary to conduct the hearing, and will determine the appropriate manner to receive and weigh the information in reaching findings of fact. The proceedings will be conducted in accordance with the DOI procedures for fact finding. The DOI debarment program fact-finding procedures are provided to the Respondent. The procedures are also posted on the Debarment page of the PAM website. Fact-finding determinations are in writing and document the basis for the facts found, and are used by the SDO in reaching a final decision.

### C. The Contested Case Determination

When the SDO is satisfied that the administrative record is complete, including any findings with respect to material facts in dispute, the SDO issues a written decision letter in accordance with the applicable regulation and transmits a copy to the Respondent. The SAM will be promptly updated to add, modify, or remove an exclusion entry, as appropriate. DOI posts its contested case determinations on the debarment program page of the PAM website for transparency purposes.

## VII. Petition for Reconsideration or Reinstatement

### A. Reconsideration

The SDO's written decision is the final agency action, following which recourse to Federal District Court may be taken. However, under the debarment regulations, a Respondent may request that the SDO reconsider a decision upon a showing of clear error of fact or law, or that the decision is arbitrary, capricious or an abuse of discretion. The SDO, exercising sole discretion, may stay the effect of the initial determination pending a decision on reconsideration.

### B. Reinstatement

Debarment is a protective remedy and not punishment. Since it is about present responsibility, rather than liability, the rules provide that a respondent may at any time following the initial determination and prior to expiration of the debarment, petition for reduction or termination of the debarment period for reasons such as: newly discovered evidence, reversal of the conviction or civil judgment upon which the action was based, bona fide change in ownership or management, elimination of other causes for which the debarment was imposed, or "other reasons the debarring official deems appropriate." See 48 C.F.R. § 9.406-4 (c) and 2 C.F.R. § 180.880.

## VIII. Voluntary Exclusion Agreements

Under the nonprocurement debarment rules, the SDO is authorized to resolve actions through the use of a voluntary exclusion. Under a voluntary exclusion, a person agrees to be excluded under the terms of a settlement agreement with DOI. Voluntary exclusions are essentially a debarment without the onus of being involuntary. Voluntary exclusions are entered into the SAM with a specific cause and treatment code and like ordinary debarments have Government-wide effect. Note that FAR Subpart 9.4 does not expressly include the voluntary exclusion provision. Accordingly, the use of a voluntary exclusion, other than in unusual circumstances ordinarily is used in actions taken under the nonprocurement debarment rules.

## IX. Compliance and Ethics Agreement

The DOI debarment program uses compliance and ethics agreements as one tool for the resolution of suspension and debarment concerns. Such agreements may be considered where warranted by the circumstances of the matter. Through the compliance and ethics agreement process, a contractor or participant, with enhanced ethical procedures, can remain eligible for awards. The contractor or participant implements strengthened internal governance practices and risk diagnostic tools. The competitive pool does not shrink. American jobs are preserved.

Discussions that may lead to an agreement ordinarily can occur in the following way. A Respondent may request an opportunity to meet with the DARD or OIG DPM to present information regarding present responsibility and the appropriateness of a compliance and ethics agreement in lieu of suspension or debarment. ARD will inform the Respondent that it should be prepared to address the extent to which the Respondent's compliance and ethics program reflect the elements found in § 8B2 of the Federal Sentencing Guidelines, regarding an effective compliance and ethics program, and any corrective actions implemented to strengthen the compliance and ethics program, particularly with regard to the conduct that gave rise to the matter. The case investigator(s) may attend the meeting as observers. By virtue of their knowledge of the facts that gave rise to the recommendation to the SDO, investigators can often play a valuable role in the discussions and assessments that follow these meetings.

After the Respondent's presentation of information, the OIG DPM presents facts and recommends action to the DARD for OIG consideration. The OIG DARD may recommend to the SDO that DOI enter into a compliance and ethics agreement with the Respondent in lieu of suspension or debarment. If so, ARD staff negotiates with the Respondent or its counsel regarding the proposed terms of a compliance and ethics agreement. The agreement may include any appropriate term or condition including, but not limited to: acceptance of responsibility for the conduct that gave rise to the agreement; a requirement for a code of ethics; a training program for employees; an audit and internal control program; a compliance program; a mechanism for reporting misconduct; and the hiring of a third party monitor to ensure compliance with the terms of the agreement; and compliance with the Respondent's internal control procedures. Violation of the terms of an agreement provides an independent cause for debarment.

An OIG recommendation to the SDO to enter a compliance and ethics agreement is accompanied by the proposed, negotiated agreement. The SDO determines whether a compliance and ethics agreement in lieu of suspension or debarment is appropriate to address potential business risks to the Government. The SDO may accept or reject the OIG recommendation or may request revisions to the proposed agreement. The SDO is the only DOI official authorized to determine the appropriate administrative action and to resolve suspension and debarment matters through these agreements. The SDO may directly negotiate these agreements.

Section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417) requires that all compliance and ethics agreements be entered into the Federal Awardee Performance and Integrity Information System (FAPIIS at [www.fapiis.gov](http://www.fapiis.gov)) within three (3) working days. PAM staff is responsible for reporting to FAPIIS any signed compliance and ethics agreement and recording that the respondent is no longer suspended or debarred on the SAM. The agreements are also posted on the debarment page of the PAM website.

## X. . Conclusion.

We hope this guide will serve as an introduction to the suspension and debarment program at DOI. We provide this guide in order to promote transparency and a general understanding of the roles and responsibilities within the program. For more information, please contact David M. Sims, Debarment Program Director, Office of Acquisition and Property Management. Mr. Sims may be reached by email at [david\\_sims@ios.doi.gov](mailto:david_sims@ios.doi.gov) and by telephone at 202-513-0689. To contact OIG's Administrative Remedies Division, please email ARD staff at [oig\\_debarment@doioig.gov](mailto:oig_debarment@doioig.gov).