



# INTERAGENCY SUSPENSION AND DEBARMENT COMMITTEE

## Suspension and Debarment Basic Concepts, Rules, and Process

# INTRODUCTION

## BASIC PRINCIPLE

**Government contracts and discretionary assistance, loan and benefit program transactions are awarded only to “presently responsible” parties.**





# NATURE OF SUSPENSION AND DEBARMENT

- Administrative remedy – decision about significant business risk of a person or organization as a potential contractor or participant -
- Inherent authority of the Government as a consumer of goods and services



# PURPOSE

- Protect the integrity of Federal procurement and non-procurement program activities
- The remedy is consistent with and supports a basic OIG objective of prevention of poor performance, fraud, waste, and abuse

# Definitions:

## Suspension:

- An action taken by the Suspending and Debarring Official which
- temporarily excludes a person from
- eligibility for new Federal procurement and discretionary assistance awards
- pending completion of investigation and any judicial or administrative proceedings that may ensue.

# Definitions:

## Debarment:

- An action taken by the Suspending and Debarring Official upon completion of proceedings to impose award ineligibility from new procurement and nonprocurement awards when in the best interests of the Government for a fixed specified time period, generally not to exceed three years, but for a longer period where circumstances warrant.



# NEVER USE THE REMEDY...

- May not be used as:
- Punishment;
- To coerce;
- to embarrass, harass or get even

# TWO RULES

- Two separate governmentwide debarment rules
- For procurement: 48 CFR 9.4
- For nonprocurement (Discretionary Assistance Loans and Benefit Programs): OMB Guidelines at 2 CFR Part 180 separately adopted by each Agency through implementing rule: example: DOI at 2 CFR Part 1400

# EFFECT OF ACTION

- Reciprocal effect of action under rules P.L. 103-355, Section 2455 and E.O. 12689
- Prospective effect – new awards only
- Awarding officials must separately decide proper action on existing awards



## EFFECT OF ACTION (CONT.)

- For contractors (individuals or companies) proposed for debarment, suspended, or debarred - excluded from receiving new contracts and federally approved subcontracts
- For participants (individuals or organizations) – no new awards

## EFFECT OF ACTION (CONT.)

- Ineligible persons cannot be agents, representatives, or principals, including key employees for award performance purposes
- Names entered into the web-based Exclusions Section of the GSA System for Award Management (SAM) (listings formerly placed in Excluded Parties List System (EPLS))
- Awarding officials must check following receipt of offer or proposal and again “immediately before making award”

# Who can be debarred or suspended?

- Individuals
- Business and organization entities, and affiliates controlled by bad actor
- Conduct may be imputed from individuals to entity from entity to individuals and between entities



# CAUSES FOR DEBARMENT

- Offense-based causes -conviction or civil judgment for fraud, false statements, falsification of records, theft, bribery, or other misconduct showing a lack of honesty or integrity

# CAUSES FOR DEBARMENT(CONT.)

- Fact-based (i.e., performance) causes:
  - ▶ Information showing a lack of business honesty, integrity, or poor performance including violation of terms of award such as willful failure to perform, or history of failure to perform on one or more awards, and certain tax delinquencies

# STANDARD OF REVIEW AND BURDEN

- For debarment: “preponderance of evidence”
- Conviction or civil judgment meets standard as a matter of regulation
- Non-offense fact-based cause: Government has burden of proof to establish existence of cause
- SDO must conduct fact-finding where facts material to action determined to be “genuinely in dispute”



# MITIGATING AND AGGRAVATING FACTORS

- Standards of conduct
- Voluntary disclosure
- Internal investigation
- Full cooperation
- Paid costs/ restitution

- Disciplined employee
- Agreed to implement remedial actions
- Ethics training
- Adequate time to eliminate causes
- Management recognition of problem

# BASIC DUE PROCESS PROVIDED

- Written Notice (Affiliates must get separate notice);
- Opportunity to submit written information in opposition;



# BASIC DUE PROCESS CONTINUED

- Only informal meeting with SDO, upon request, in offense based cases and those where material facts not genuinely in dispute
- Fact-finding hearing where genuine dispute of facts material to action; and
- Written decision based on administrative record
- SDO may alternatively resolve by negotiated administrative agreement (Compliance and Ethics Agreement) where appropriate.

# Suspensions

- Same basic notice and contest process as debarment process
- Except: SDO will deny fact finding in pre-indictment suspension action where DOJ letter states substantial interests in pending or contemplated legal proceedings based on same facts as suspension would be prejudiced by fact finding. 48 CFR 9.407-3(c)

# SOME TAKE AWAYS

- **DEBARMENT IS A POTENT REMEDY**
- **PROVIDES PROSPECTIVE PROTECTION FOR FEDERAL AWARD PROGRAMS INTEGRITY**
- **ESSENTIALLY A BUSINESS RISK ASSESSMENT**
- **ONE ACTION PROTECTS GOVT WIDE**
- **CAN REACH BOTH ORGANIZATIONS AND BAD ACTOR INDIVIDUALS**
- **CAN DRIVE ALTERED CORPORATE ATTITUDE/PRACTICES AND PROCEDURES**

# CONTACT

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