U. S. Department of the Interior

Suspension and Debarment

Basic Concepts, Rules, and Process

INTRODUCTION

Government contracts and discretionary assistance are awarded only to "presently responsible" parties.

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:

- A n 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.

AUTHORITY TO SUSPEND AND DEBAR

- 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

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 ward such as willful failure to perform, or history of failure to perform <u>on one or more awards</u>, 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

MINIMUM DUE PROCESS

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

MINIMUM 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 an administrative record

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)

Congressional/Administration Interest in This Remedy

- "Suspension and debarment can be an effective tool for federal agencies to ensure contractor performance. Unfortunately...the suspension and debarment tools often go unused, quietly rusting away in the procurement tool box." Edolphus Towns, former chair, House Oversight and Government Reform Committee
- Increasing hearings: Examples – Feb. 28, 2011 Committee on War Time Contracting hearing; and Nov. 16, 2011 Senate Committee on Homeland Security and Governmental Affairs hearing
- OMB Memo of Nov. 15, 2011, directs all Exec Branch Agencies to implement effective debarment programs
- DoD Authorization Acts commencing 2009 impose annual S&D reporting requirements on ISDC
- FY 12 Appropriations Act contains debarment provisions re corporations with: 1. Felony convictions in past 24 months; 2. delinquent (i.e., fully adjudicated unpaid) tax debt.