



## **Suspension and Debarment: Frequently Asked Questions**

### **Points of Contact.**

For questions or concerns directed to the Suspending and Debarring Official's office, please contact David M. Sims, Debarment Program Director, by email at [david\\_sims@ios.doi.gov](mailto:david_sims@ios.doi.gov) and by telephone at 202-513-0689. To contact the Office of Inspector General (OIG) Administrative Remedies Division (ARD), please email ARD staff at [oig\\_debarment@doioig.gov](mailto:oig_debarment@doioig.gov) to ensure a prompt response.

### **Q. Who is the Department of the Interior (DOI) Suspending and Debarring Official (SDO)?**

A. The DOI SDO is Debra Sonderman. Ms. Sonderman is the Director of the Office of Acquisition and Property Management (PAM) which is located within the Immediate Office of the Secretary.

### **Q. How is the DOI Debarment Program organized?**

A. The DOI Office of Inspector General (OIG) Administrative Remedies Division (ARD) develops cases and refers recommendations either for administrative action or for no administrative action to the DOI SDO. After the DOI SDO initiates proceedings, ARD staff serves as a case representative.

The DOI PAM Debarment Program Director (DPD) manages the suspension and debarment program on behalf of the DOI SDO, reviews ARD referrals, prepares notices, manages contested notice proceedings, and prepares determinations for SDO approval. If the SDO finds that there is a genuine dispute of material fact, the SDO may hold a fact-finding hearing for which the DPD acts as the hearing official.

### **Q. What is suspension and debarment?**

A. Suspensions and debarments are administrative remedies used to prevent the Government from working with parties who are not "presently responsible" – i.e., those that have engaged in criminal or other improper conduct of such a compelling and serious nature that it would lead one to question their honesty, ethics, or competence. Federal agencies, exercising their inherent authority as consumers of goods and services, lessors, or awarding officials, use these remedies

NOTE: This document does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party.

to prevent non-responsible parties from obtaining new Federal contracts and certain subcontracts (procurement) or discretionary assistance, lease, loan, or benefit program (nonprocurement) awards.

**Q. What is the purpose of these remedies?**

A. The Government uses suspensions and debarments to protect the integrity of Federal procurement and nonprocurement programs; to prevent fraud, waste, and abuse; and to address poor performance.

**Q. What is a suspension?**

A. A suspension is a preliminary action taken by an SDO to temporarily exclude a party from eligibility for new Federal procurement and nonprocurement awards. A suspension excludes parties from Federal contracting, certain subcontracting, and nonprocurement awards. Suspensions are usually taken pending completion of an investigation, audit or review, judicial proceeding, or administrative proceeding that may ensue. If legal or debarment proceedings have begun, the suspension may continue until the conclusion of those proceedings. However, if legal or debarment proceedings have not begun, a suspension may not exceed twelve (12) months. The SDO may grant a one-time extension of the 12-month limit for an additional six (6) months if requested by the proper authorities.

**Q. What is a debarment?**

A. Debarment is a final action taken by an SDO to exclude a party from eligibility for new Federal procurement and nonprocurement awards. Like a suspension, a debarment excludes parties from Federal contracting, certain subcontracting, and nonprocurement awards. Debarment is for a fixed, specified time period, generally not to exceed three years. The SDO has the discretion to either reduce or extend that time depending on the need to protect the Government's interests.

**Q. Can suspensions or debarments be used as punishment?**

A. No. Suspensions and debarments cannot be used as punishment, and they may not be used as enforcement or prosecutorial tools.

**Q. What regulations apply to suspension and debarment at DOI?**

A. There are two sets of regulations that create the suspension and debarment framework at DOI: (1) for procurement: the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 9.4, and the Department of Interior Acquisition Regulation at 48 C.F.R. Part 1409; and (2) for nonprocurement: the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension at 2 C.F.R. Part 180, implemented and adopted by DOI at 2 C.F.R. Part 1400.

NOTE: This document does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party.

**Q. What is the effect of a suspension or debarment?**

A. Suspension and debarment render parties ineligible to receive new Federal contracts awards and certain subcontract awards, and new Federal nonprocurement awards. Suspension or debarment triggers exclusion from new Federal procurement and nonprocurement awards. These remedies have Governmentwide, reciprocal effect. In other words, if DOI suspends or debars a party from procurement awards under the FAR, that party is also suspended or debarred from DOI nonprocurement awards (reciprocal effect), as well as from procurement and nonprocurement awards across the other approximately 125 Executive Branch agencies or departments (Governmentwide effect). In addition, suspended and debarred parties cannot be agents, representatives, principals, or key employees for performance purposes under Federal awards for otherwise eligible parties or participants. Under very limited award specific circumstances, agencies may determine, with the issuance of a written compelling reasons determination, that award is necessary notwithstanding the fact a party is suspended or debarred parties. The SDO is the only Department official authorized to issue such a determination.

**Q. Does suspension or debarment automatically cause termination of an existing award?**

A. No. Awarding officials separately decide what the proper action is and whether it is in the best interests of the Government to continue the existing award.

**Q. Who can be suspended or debarred?**

A. In general, any non-responsible party that may reasonably be expected to participate in Federal procurement or nonprocurement programs may be suspended or debarred. Parties include, but are not limited to, individuals, corporations, partnerships, and nonprofit organizations. “Affiliates” – or those controlled by the primary bad actor or primary poor performer – may also be subject to suspension and debarment. Conduct may also be “imputed” from individuals to an entity, from an entity to individuals, and between entities. For example, the misconduct of a contractor may be imputed to an individual associated with the contractor who participated in, knew of, or had reason to know of the contractor’s conduct.

**Q. How do I know if an individual or organization is suspended or debarred?**

A. Generally, debarment program personnel enter the names of suspended or debarred parties into the web-based Exclusions Section of the GSA System for Award Management (SAM) (formerly the Excluded Parties List System (EPLS)), located at [www.sam.gov](http://www.sam.gov). PAM debarment program staff enter names for DOI actions. DOI procurement and nonprocurement awarding officials check SAM for possible party ineligibility following receipt of an offer or proposal and again immediately before making the award.

NOTE: This document does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party.

**Q. What conduct can lead to suspension or debarment?**

A. For debarments, there are two broad categories of cause: 1) offense-based causes – a conviction or civil judgment for fraud, false statements, falsification of records, theft, bribery, or other misconduct showing a lack of honesty or integrity; and 2) fact-based (*e.g.*, performance) causes – any information showing a lack of business honesty, integrity, or poor performance. Information for a fact-based cause include violation of the terms of an award, evidenced by willful failure to perform, a history of failure to perform on one or more awards, or certain tax delinquencies. For suspensions, 1) an indictment or information (a formal criminal charge made by a prosecutor, without the necessity of obtaining a grand jury indictment) or 2) fact-based causes may be the basis for an action.

**Q. Is there an evidentiary standard which must be met for a suspension?**

A. Yes. The SDO may suspend a party only when the SDO determines that there is 1) adequate evidence and 2) an immediate necessity for action to protect the Government’s interest. The “adequate evidence” standard is akin to the “probable cause” standard. The Government has the burden to prove that there is cause for suspension. The existence of an indictment, information, or the equivalent, meets the standard and establishes cause for suspension under the regulations. In the absence of an indictment, information, or the equivalent, the Government must prove through the use of documentary and other evidence that cause for suspension exists.

**Q. Is there an evidentiary standard which must be met for debarment?**

A. Yes. The standard of proof for debarment is “preponderance of the evidence.” The preponderance standard means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issues is more probably true than not. The Government has the burden to prove that there is cause for debarment. A conviction, whether by trial or a guilty plea, or a civil judgment meet the standard under the regulations. An indictment alone is seldom sufficient, but an indictment along with other corroborating evidence, such as an admission by the party, may meet the preponderance of the evidence standard. For non-offense, fact-based actions, the Government must prove through the use of documentary and other evidence that cause for debarment exists.

**Q. Once the Government establishes cause, does the SDO always suspend or debar??**

A. Not necessarily. Suspensions and debarments are imposed only when it is in the best interest of the Government. Essentially, there are two questions involved in the SDO’s analysis: 1. does cause exist; and 2. does there remain a need to protect the integrity of the Government’s procurement and nonprocurement award programs. The analysis is about present business risk. Therefore, the SDO will consider mitigating or aggravating factors and/or remedial measures. The SDO will use these factors to determine whether debarment is necessary to protect the Government’s interests. While the Government bears the burden to establish that there is cause for action, the party bears the burden to demonstrate to the SDO’s satisfaction that suspension or debarment are not necessary to protect Federal programs.

NOTE: This document does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party.

**Q. What factors does the SDO consider in making the decision?**

A. There are several factors that may influence the SDO's decision. These factors are set out at 48 C.F.R. § 9.406-1, for actions under the FAR, and at 2 C.F.R. § 180.860 for actions under the nonprocurement regulations. For actions taken under the FAR, factors include, but are not limited to: whether effective standards of conduct and internal control systems were in place at the time of the activity; whether the party has taken appropriate disciplinary actions; whether the party voluntarily disclosed the activity; whether the party conducted a complete internal investigation; whether the party fully cooperated with Government agencies during the investigation; whether the party fulfilled all civil, criminal, and administrative liabilities for the improper activity; whether the party implemented remedial measures; whether the party implemented new or revised review and internal control procedures and ethics training programs; and whether the party recognizes and understands the seriousness of the misconduct.

For actions taken under 2 C.F.R. § 180.860, factors include, but are not limited to: the actual or potential harm or impact of the wrongdoing; the frequency or the duration of the wrongdoing; any pattern or history of wrongdoing; any past exclusion or disqualifications by a Federal agency based on conduct similar to a cause for debarment; whether the party accepts responsibility and recognizes the seriousness of the wrongdoing; whether the party fully cooperated with the Government agencies during the investigation; whether the party fulfilled all criminal, civil, and administrative liabilities for the improper activity; the pervasiveness of wrongdoing; whether the party implemented appropriate corrective action or remedial measures; whether the principals tolerated the offense; whether the party conducted a full internal investigation; whether the party has effective standards of conduct and internal control systems; whether the party took appropriate disciplinary action against wrongdoers; and other factors that are appropriate to the circumstances of the particular case.

**Q. What is the decision-making process?**

A. The suspension and debarment regulations require basic due process. First, the agency must issue the party a written notice, identifying the cause of action, and how to contest the notice. (Affiliates must receive separate notice.) Second, the party receives the opportunity to submit written information in opposition to the notice. The party may also have an informal meeting with the SDO, upon request, in offense-based cases and in cases where material facts are not genuinely in dispute. Third, the SDO may order a fact-finding hearing where a genuine dispute of facts material to the action exists. However, the SDO will deny a fact-finding hearing in a pre-indictment suspension action, if the U.S. Department of Justice states that the Government has a substantial interest in pending or contemplated legal proceedings based upon the same facts as the suspension, and that the proceedings would be prejudiced by a fact-finding hearing. Fourth, the SDO issues the party a written decision based on the administrative record. The written decision will set forth the SDO's analysis of the factors that the SDO considered in making the decision.

NOTE: This document does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party.

In addition, the SDO may resolve a matter by an administrative agreement, where the SDO determines that it is in the best interests of the Government to do so. In such instances, ARD usually makes a recommendation to the SDO on whether an administrative agreement addresses potential business risks.

NOTE: This document does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party.