



Special Inspector General for Afghanistan Reconstruction

Main: 703-602-3840

1550 Crystal Drive, 9th Floor

Arlington, VA 22202-4704

www.sigar.mil

John F. Sopko, Special Inspector General

23 July 2012

MEMORANDUM THRU
SIGAR ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS
SIGAR ASSISTANT INSPECTOR GENERAL FOR AUDITS

FOR SIGAR INVESTIGATORS, AUDITORS AND ANALYSTS

SUBJECT: Building the Administrative Record for Suspension and Debarment

1. Purpose. As part of the initiation of the Special Inspector General for Afghanistan's (SIGAR) Suspension and Debarment Program (SDP) this document has been initiated to provide basic guidance to investigators, auditors, analysts and other personnel regarding the materials that should be gathered to provide support for referral of individuals, organizations and contractors for suspension and debarment.

2. Suspension and Debarment Process.

a. Suspension and Debarment cases are initiated based on the receipt of a report of investigation from an investigator, a referral from an auditor or any other source, based on the discovery of contractor misconduct. Following coordination with the Department of Justice, other criminal investigative agencies (as necessary) and a determination of which agency is the lead for suspension and debarment, the SIGAR SDP will generate a referral for review by the appropriate Suspension and Debarment Official (SDO). That SDO will then make a determination if action is in the interest of the Government and what form that action will be. In support of that determination an administrative record will be created to document the decision-making process. It will include all information and documents considered by the SDO in determining his or her course of action for a particular case made available by the Government and the contractor. While suspension and debarment lacks the formal discovery rules found in the rules of criminal and civil procedure, the administrative record of the decision constitutes a "final agency action" under the Administrative Procedures Act. All materials considered by the SDO are made available to allow the contractor to prepare a response to the Government's recommendation to suspend or debar. In addition, all materials in the administrative record are subject to release under the Freedom of Information Act unless an exception for release exists.

b. When providing materials to the SIGAR SDP or to any other agency as part of a potential suspension and debarment action, communication with the counsel responsible for drafting the recommendation to the SDO is vital. While investigative and audit work product, such as case summaries, internal communications, administrative communications or similar documents are not appropriate for inclusion in the administrative record, most of the other documentation generated in the course of an investigation or audit may be considered. This specifically includes exculpatory information or materials showing that the contractor attempted to resolve the matter or mitigate its effect. Based on this need for a full disclosure to the counsel drafting the recommendation to the SDO, the preferred method is to provide all documentation in the investigative or audit file. Using this information, the attorney responsible for drafting the recommendation can properly evaluate the merits of the case, recommend the appropriate remedy, identify all affiliates and imputees and build a much more persuasive recommendation. If there is concern about the use of a document, it should be brought to the attention of the attorney drafting the recommendation as soon as possible, along with the reason why inclusion in the administrative record should be avoided. Due to the fact that all materials forwarded by the SIGAR SDP

will be reviewed prior to submission to an agency SDO for action to eliminate materials that raise these concerns, documents should not be withheld from the SIGAR SDP by investigators or auditors.

3. Supporting Documentation for Suspension and Debarment

a. Efforts should be made to collect the following materials to support suspension and debarment referrals. All items listed should either be in possession of the Government or located at the site of performance. They are therefore available for collection without requests for information, subpoenas or other formal communications with the contractor.

- 1) The contract between the Government and the prime contractor;
- 2) Any subcontract that is the subject of the investigation or audit;
- 3) Any task orders, purchase agreements, contract modifications, contract amendments correspondence or other documents regarding the statement of work or contract administration;
- 4) Contact information, to include e-mail addresses, phone and fax numbers, office locations, home addresses or other means of providing written or electronic correspondence for the contractors, subcontractors, individuals or any other parties that are the subject of the investigation or audit;
- 5) Interviews of the contracting officer, contracting officer's representative, quality assurance representatives and/or other persons with responsibility for oversight of the contractor's performance;
- 6) Invoices, payment requests, certifications of performance (i.e. DD 250s), electronic funds transfer records, and other records showing that the Government was billed and/or payment was sent to the contractor;
- 7) Any inspection reports or other similar reports contained in the contract file regarding contract performance;
- 8) Clear and legible pictures of what was delivered and the condition that it was received in, to include, at a minimum, all data labels, serial numbers, company logos, defective elements (i.e. missing parts, nuts, bolts, components, etc.), the appearance of aftermarket parts or modifications, construction defects or other items that indicate failure of performance to contract standards;
- 9) Samples of dirt, gravel, asphalt, insulation or other items present at the location of contract performance;

b. Pictures should be taken in quantity – multiple pictures are better than one – and be accompanied by a brief memorandum stating where and when the pictures were taken, who took them, what the pictures are of and why the site visit, audit or investigation team was present at the location where the pictures were taken. When necessary, pictures should also include a means of measuring the size or scale of the item photographed. Samples from the location of contract performance should be accompanied by similar information and have a chain of custody documenting where and how they were accounted for following collection.

4. Questions regarding the SIGAR SDP should be directed to Mr. Brian A. Persico, Senior Counsel for Investigations via e-mail at brian.a.persico.civ@mail.mil (NIPR), brian.persico@hqda-s.army.smil.mil (SIPR) or by phone at (703) 545-6118.