

**COUNCIL OF THE INSPECTORS GENERAL
FOR
INTEGRITY AND EFFICIENCY
AND
INTERAGENCY SUSPENSION AND DEBARMENT COMMITTEE**

JOINT SPONSORED DEBARMENT WORKSHOP

MARCH 28, 2014



**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 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)

Increasing Focus

- “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 oversight hearings 2011-2013.
- OMB Memo of Nov. 15, 2011 - all Exec Branch Agencies to implement effective debarment programs.
- DoD Authorization Acts commencing 2009 impose annual S&D reporting requirements on ISDC.
- FY 12 Approp Act mandates no award to corporations with: 1. Felony convictions in past 24 months; 2. delinquent (i.e., fully adjudicated unpaid) tax debt absent debarment consideration.
- January 2013 AG memo directing coordination of civil, judicial, and administrative remedies including debarment.
- 2013 Proposed SUSPEND ACT – to create debarment board.
- 2014 GAO survey of selected agencies debarment program efforts.

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**

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