



U.S Department of
Transportation
Office of the Secretary
of Transportation

ORDER

DOT 4200.5D

6-7-05

Subject: GOVERNMENTWIDE DEBARMENT, SUSPENSION, AND INELIGIBILITY

1. **PURPOSE.** This Order prescribes standards for implementing debarment, suspension, and ineligibility procedures and ensures that the Department of Transportation (DOT) has a vigorous departmentwide debarment and suspension program.
2. **POLICY.** The American public has entrusted DOT with many billions of dollars in grant and acquisition funds and rightly expects that the Department will act as an effective steward of these funds to ensure a safe, efficient, secure, accessible and convenient transportation system. As part of its stewardship obligations to the American public, the Department is responsible for ensuring that these Federal funds are used responsibly and consistent with legal requirements. As such, DOT officers and employees will utilize the debarment and suspension process to ensure that only responsible persons participate in DOT procurement and nonprocurement programs.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

3. **CANCELLATION.** DOT 4200.5C, Governmentwide Debarment, Suspension and Ineligibility and Appendix E, Debarment and Suspension, of DOT 4600.17A, Financial Assistance Management Requirements.
4. **REFERENCES.**
 - a. 49 C.F.R. Part 29, Governmentwide Debarment and Suspension (Nonprocurement), effective November 26, 2003, provides rules for a Department-wide system of debarment and suspension under nonprocurement transactions. The Governmentwide Debarment and Suspension (Nonprocurement) regulation can be accessed through the following website: <http://www.dot.gov/ost/m60/grant/49cfr29.htm>.

Distribution: All Secretarial Offices
All Operating Administrations

OPI: Office of the Senior Procurement
Executive

- b. Federal Acquisition Regulation (FAR), 48 C.F.R. Subpart 9.4, Debarment, Suspension, and Ineligibility, provides rules for a Federal-wide system of debarment and suspension for procurement actions; FAR, 48 C.F.R. Part 3, Improper Business Practices and Personal Conflicts of Interest; and 48 C.F.R. Subpart 9.1, Responsible Prospective Contractors, are also relevant and should be referenced. The FAR can be accessed through the following website: <http://www.arnet.gov/far/>.
 - c. Department of Transportation Acquisition Regulation (TAR), 48 C.F.R. Subpart 1209.4, Debarment, Suspension, and Ineligibility. The TAR establishes uniform acquisition policies and procedures, which implement and supplement the FAR. The TAR can be accessed through the following website: <http://www.dot.gov/ost/m60/tamtar/tar.htm>.
 - d. Department of Transportation Acquisition Manual (TAM), Subpart 1209.4, Debarment, Suspension, and Ineligibility, supplementing FAR, 48 C.F.R. Subpart 9.4. The TAM, issued by the Office of the Senior Procurement Executive (OSPE), establishes uniform internal operating acquisition procedures which implement or supplement the FAR and the TAR. The TAM can be accessed through the following website: <http://www.dot.gov/ost/m60/earl/tam.htm>.
 - e. Acquisition Management System (AMS), Procurement Guidance, T3.2.2.7, provides rules for procurement debarment and suspension actions for the Federal Aviation Administration (FAA). The AMS, Procurement Guidance, can be accessed through the following website: http://www.fast-faa.us/ams/do_action?do_action=ListTOC&contentUID=1#3.
5. **APPLICABILITY**. This Order applies to all DOT Operating Administrations (OAs) (including the FAA) and Secretarial Offices that make, execute or approve nonprocurement transactions under 49 C.F.R. Part 29. This Order also applies to all OAs (except the FAA) and Secretarial Offices that make, execute or approve procurement transactions under FAR Subpart 9.4. Though not subject to the FAR, the FAA applies similar procedures through the AMS for its procurement transactions.
6. **RESPONSIBILITIES**.
- a. OAs and Secretarial Offices shall:
 - (1) Be proactive in ensuring that only responsible persons and organizations participate in DOT procurement and nonprocurement transactions. Sources of information regarding potential debarment or suspension actions include:

- (a) Office of Inspector General investigations (the Office of the Inspector General will report indictments and convictions to the relevant OA);
 - (b) Department of Justice/U.S. Attorney investigations;
 - (c) Civil or criminal court actions;
 - (d) Media reports (newspaper, magazine, newsletter, etc.);
 - (e) Records, reports, and reviews of DOT recipients and other Federal agencies.
- (2) Encourage recipients to utilize the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs located on the Excluded Parties Listing System (EPLS) website: <http://epls.arnet.gov/> before entering into an agreement.
- (3) Include in all nonprocurement agreements the requirement that the recipient inform the OA or Secretarial Office with which it entered into a nonprocurement agreement when the recipient suspends or debar a contractor.
- (4) Appoint a representative to attend quarterly suspension and debarment meetings to be chaired by the OSPE.
- (5) Submit all new and revised procedures, if any, which implement any of the requirements of FAR Subpart 9.4, 49 C.F.R. Part 29, and this Order to the OSPE for review. (FAA is not subject to this responsibility).
- (6) Prepare an annual submission to OSPE detailing all cases in which debarment or suspension actions were considered, initiated, or completed and the status or outcome of each case. The submission shall include cases in which information was received pursuant to paragraph 6.a.(1) (or any other source) even if ultimately no action was initiated. If no action was initiated, the OA or Secretarial Office must include an explanation regarding why no action was initiated. This report shall cover the preceding calendar year and shall be submitted to the OSPE on February 1 of each year. The OSPE is responsible for forwarding the report to the General Counsel and the Inspector General.
- (7) Coordinate and cooperate with other Federal agencies and DOT offices to the maximum extent possible. Prior to initiating a debarment or suspension action, OAs and Secretarial Offices shall:

- (a) Check the Federal List of Excluded Parties to ensure that the party is not already debarred or suspended.
 - (b) Determine whether another Federal agency has an interest in initiating a debarment or suspension action against the party. If another agency has an interest in initiating action against the party, the two agencies should discuss and agree upon a lead agency and/or joint responsibilities.
 - (c) Determine whether another OA or Secretarial Office has an interest in initiating a debarment or suspension action against a party. If another DOT office has an interest in taking action against the party, the two offices should discuss and agree upon a lead office and/or joint responsibilities.
 - (d) Notify the Office of the Assistant Inspector General for Investigations before any debarment or suspension action is initiated. To ensure continued timely processing of the debarment or suspension action, the Office of the Assistant Inspector General for Investigations will respond within five working days. The Office of the Assistant Inspector General will contact the appropriate U.S. Attorney's Office or the Department of Justice to ensure that there are no pending or contemplated actions that may be affected by the debarment or suspension action.
- b. The OSPE shall:
 - (1) Provide policy and technical advice.
 - (2) Chair quarterly suspension and debarment meetings.
 - (3) Review all procedures submitted in accordance with paragraph 6.a.(5).
7. **IMPLEMENTATION.** The policy and procedures contained in this Order are effective immediately. Pursuant to paragraph 6.a.(5), OAs and Secretarial Offices shall submit any additional implementing guidance to the OSPE within 60 days following the issuance of this Order.
8. **DEBARMENT PROCEDURES FOR DOT PROCUREMENT AND NONPROCUREMENT TRANSACTIONS.**
 - a. All debarment proceedings must comply with the requirements of the FAR, 48 C.F.R. Subpart 9.4, Debarment, Suspension, and Ineligibility, and with the TAR, 48 C.F.R. Subpart 1209.4, Debarment, Suspension, and Ineligibility, and the TAM, Subpart 1209.4, Debarment, Suspension, and Ineligibility, for procurement transactions, or with the AMS Procurement Guidance, T3.2.2.7

for FAA procurement actions, and with 49 C.F.R. Part 29 for nonprocurement transactions. Any inconsistency or ambiguity shall be resolved by giving precedence to the applicable provisions in the following order: the FAR or the AMS for procurement transactions or 49 C.F.R. Part 29 for nonprocurement transactions, the TAR, the TAM and this Order.

- b. Post Conviction or Civil Judgment. OAs and Secretarial Offices shall consider initiating a debarment proceeding against any contractor, subcontractor, or supplier or any principal thereof, that has been convicted of a criminal offense, or has been the subject of a civil judgment, in an action related to a project or activity receiving public funds and that indicates a lack of business integrity or business honesty.
- (1) A debarment action shall be initiated within 45 days of notification of the conviction or civil judgment.
 - (2) If the debarment officer determines that a debarment action will not be initiated, then he or she shall include in the annual submission required in paragraph 6.a.(6) of this Order, the reasons for his or her decision. This explanation shall include an analysis of the factors considered in paragraph 8.f.
- c. Post Indictment. See Suspension Procedures for Procurement and Nonprocurement Transactions, Post Indictment, paragraph 9.b. of this Order.
- d. Investigation and Referral. Where there is no conviction, civil judgment or indictment and an OA or any Secretarial Office receives information from any source that a party's actions or activities, or failure to act, may be a cause for debarment, it must promptly evaluate the information, and if warranted, refer the case to the Office of Assistant Inspector General for Investigations. If the Office of the Assistant Inspector General for Investigations determines that no investigation is warranted by the Office of the Assistant Inspector General or other relevant law enforcement agency, no action shall be initiated against the party unless the General Counsel or the Chief Counsel determine that a debarment or suspension action should be initiated.
- e. Causes for Debarment. Causes for debarment in procurement actions are located in the FAR at 48 C.F.R. Subsection 9.406-2; for FAA procurement actions in AMS Procurement Guidance at T3.2.2.7(A)(2)(b)(1); and for nonprocurement actions at 49 C.F.R. Section 29.800. Causes for a debarment may include, but are not limited to:
- (1) Conviction of or civil judgment for--
 - (a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

- (b) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
 - (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - (d) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act Amendments of 1992 (Public Law 102-558));
 - (e) Violations of the Buy American Act, 41 U.S.C. 10a-10c, which restricts the purchase of foreign-made supplies and use of foreign-made construction materials;
 - (i) Pursuant to Section 509 of P.L. 108-447, Division H, title V, and during Fiscal Year 2005, if a contracting officer determines that a contractor does not comply with the Buy American Act, the contractor is automatically debarred and is not eligible to receive appropriated funds of any kind;
 - (ii) Section 509 is not permanent and therefore must be enacted each fiscal year. If Section 509 or a similar provision is not enacted in future fiscal years, but a contracting officer determines that a contractor does not comply with the Buy American Act, then the OA or Secretarial Office shall initiate debarment proceedings according to the procedures set forth in this Order and applicable regulations; or
 - (f) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person or entity.
- (2) Violation of the terms of a public agreement or transaction so serious as to justify debarment, such as--
- (a) A willful failure to perform in accordance with the terms of one or more public agreements, or transactions;

- (b) A history of failure to perform or of unsatisfactory performance of one or more public agreements, or transactions; or
 - (c) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;
- (3) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person or entity, in any connection with a DOT nonprocurement transaction, except as permitted in 49 C.F.R. Section 29.120;
 - (4) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;
 - (5) Violation of a material provision of a voluntary exclusion agreement entered into under 49 C.F.R. Section 29.640 or of any settlement of a debarment or suspension action;
 - (6) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or
 - (7) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person or entity.
- f. Remedial Measures and Mitigating Factors. In determining whether to impose a debarment, the debarring official must evaluate the party's present responsibility. The party that is proposed for debarment has the burden of demonstrating to the satisfaction of the debarring official that it is presently responsible. In evaluating a party's present responsibility, the debarring official may consider, but is not limited to, the following factors:
- (1) Whether the party had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment;
 - (2) Whether the party brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner;

- (3) Whether the party has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official;
- (4) Whether the party cooperated fully with Government agencies during the investigation and any court or administrative action;
- (5) Whether the party has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution;
- (6) Whether the party has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;
- (7) Whether the party has implemented or agreed to implement remedial measures, including any identified by the Government;
- (8) Whether the party has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
- (9) Whether the party has had adequate time to eliminate the circumstances within the party's organization that led to the cause for debarment;
- (10) Whether the party's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

g. Fact Finding. In actions not based upon a conviction or civil judgment, and when the debarment official finds that there is a genuine dispute over facts material to the proposed debarment, he or she may:

- (1) Request that the DOT Board of Contract Appeals conduct fact finding and provide a report to the debarment official;
- (2) Request that a DOT Administrative Law Judge conduct fact finding and provide a report to the debarment official;
- (3) Request that the head of a DOT operating administration or Secretarial Office, other than the one in which the debarment action is being initiated, designate a fact finder to conduct fact finding and provide a report to the debarment official; or
- (4) Designate an independent fact finder to conduct fact finding and provide a report to the debarment official. The designated fact finder

must be independent and, therefore, may not be supervised by the debarment official. The designated fact finder in any case may not, in that or any other factually related case, participate or advise in the decision.

- h. Affiliates. In imposing any debarment, the debarment official shall consider debarment any affiliates as appropriate.
- i. Length of Debarment. Generally, debarment periods are limited to three years; however, if circumstances warrant, a longer debarment period may be imposed. The proposed debarment period may be reduced by the debarment official commensurate with the seriousness of the cause and any mitigating evidence presented. If preceded by a suspension, the debarment period may begin retroactively from the effective date of the suspension.

9. **SUSPENSION PROCEDURES FOR PROCUREMENT AND NONPROCUREMENT TRANSACTIONS.**

- a. All suspension proceedings must comply with the requirements of the FAR, 48 C.F.R. Subpart 9.4, Debarment, Suspension, and Ineligibility for procurement transactions, or with the AMS Procurement Guidance, T3.2.2.7 for FAA procurement actions, and with 48 C.F.R. Part 29 for nonprocurement transactions, and with the TAR, 48 C.F.R. Subpart 1209.4, Debarment, Suspension, and Ineligibility and the TAM, Subpart 1209.4, Debarment, Suspension, and Ineligibility. Any inconsistency or ambiguity shall be resolved by giving precedence to the applicable provisions in the following order: the FAR or the AMS for procurement transactions or 49 C.F.R. Part 29 for nonprocurement transactions, the TAR, the TAM and this Order.
- b. Post Indictment or Civil Complaint. OAs and Secretarial Offices shall consider initiating a suspension proceeding against any contractor, subcontractor, or supplier or any principal thereof, that has been indicted for a criminal offense, or is the subject of a civil complaint, related to projects receiving public funds and that indicates a lack of business integrity or business honesty.
 - (1) An indictment shall constitute adequate evidence for purposes of suspension actions.
 - (2) The decision to impose a suspension shall be made only after determining that an immediate action is necessary to protect the public interest.
 - (3) A suspension action shall be initiated within 45 days of notification of the indictment or notification that the company is the subject of a complaint filed by or on behalf of the United States, related to projects

receiving Federal funds and that indicates a lack of business integrity or business honesty.

- (4) If the suspension officer determines that a suspension action will not be initiated, then he or she shall include in the annual submission required in paragraph 6.a.(6) of this Order, the reasons for his or her decision. This explanation shall include the mitigating factors considered in paragraph 8.f. of this Order.
- c. Investigation and Referral. Where there is no indictment and an OA or any Secretarial Office receives information from any source that a party's actions or activities, or failure to act, may be a cause for suspension, it must promptly evaluate the information, and if warranted, refer the case to the Office of Assistant Inspector General for Investigations. If the Office of the Assistant Inspector General for Investigations determines that no investigation or action is warranted by the Office of the Assistant Inspector General or other relevant law enforcement agency, no action shall be initiated against the party unless the General Counsel or the Chief Counsel determine that a debarment or suspension action should be initiated.
 - d. Causes for Suspension. Causes for suspension in procurement actions are located in the FAR at 48 C.F.R. Subsection 9.407-2; for FAA procurement actions in the AMS Procurement Guidance at T3.2.2.7(A)(2)(c)(2); and for nonprocurement actions at 49 C.F.R. Section 29.700.
 - (1) Causes for suspension action include adequate evidence:
 - (a) That a cause for debarment under paragraph 8.e. of this Order may exist; or
 - (b) To suspect the commission of an offense listed in paragraph 8.e.(1) of this Order.
 - (2) The suspending official may, upon adequate evidence, also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.
 - e. Immediate Need. In deciding whether to impose a suspension, the suspending official must determine whether immediate action is necessary to protect the public interest. The determination of immediate need does not require a separate finding. Immediate need is a conclusion that a suspending official may draw from inferences made from the facts and circumstances. Also, immediate need does not connote that future misconduct, loss, or injury is probable. The need for immediate action is based on what a reasonably prudent business person would be expected to do given the risk potential under the circumstances. Additionally, even where the suspending official

may initially find that immediate action is necessary, a suspended party, in its response, may address the immediate need. If the party can demonstrate to the satisfaction of the suspending official that it has taken protective action to eliminate, or reduce to an acceptable level, the Government's risk pending the completion of the investigation or legal proceedings, then the suspending official may terminate or modify a suspension even though there is adequate evidence to support a suspension.

- f. Fact Finding. In actions not based upon an indictment, and when the suspension official finds that there is a genuine dispute over facts material to the proposed suspension, he or she may:
- (1) Request that the DOT Board of Contract Appeals conduct fact finding and provide a report to the suspension official;
 - (2) Request that a DOT Administrative Law Judge conduct fact finding and provide a report to the suspension official;
 - (3) Request that the head of a DOT operating administration or Secretarial Office, other than the one in which the suspension action is being initiated, designate a fact finder to conduct fact finding and provide a report to the suspension official; or
 - (4) Designate an independent fact finder to conduct fact finding and provide a report to the suspension official. The designated fact finder must be independent and, therefore, may not be supervised by the suspension official. The designated fact finder in any case may not, in that or any other factually related case, participate or advise in the decision.
- g. Length of Suspension. A suspension is for a temporary period, pending the completion of the debarment process. Generally, suspensions will not exceed 12 months where no related civil, criminal, or administrative proceeding has been initiated. If a related civil, criminal, or administrative proceeding is not initiated within 12 months of the effective date of the suspension, then the suspension will be terminated, unless an Assistant Attorney General in the Department of Justice or a United States Attorney requests an extension in writing, in which case it may be extended for an additional 6 months. In no event will a suspension be extended beyond 18 months, unless a related civil, criminal, or administrative proceeding is initiated.
10. GSA NOTIFICATION. OAs and Secretarial Offices shall promptly notify the OSPE after making a determination of ineligibility, debarment, or suspension; modifying or rescinding such action; or entering into an agreement for a voluntary exclusion. The OSPE shall notify the General Services Administration, Office of Acquisition Policy and Regulations, Eighteenth and F Streets, N.W., Washington, DC 20405, within five working days of the determination. The notification must include

the information required in the FAR, 48 C.F.R. Section 9.404(c) for procurement actions or 49 C.F.R. Section 29.520 for nonprocurement actions.

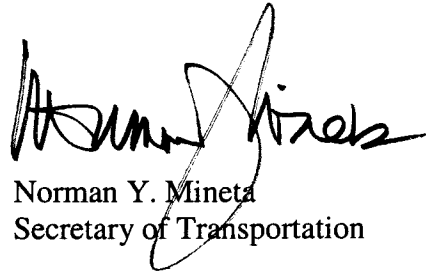
11. **EFFECT OF DEBARMENT OR SUSPENSION - PROCUREMENT**

- a. **New Contracts.** OAs and Secretarial Offices may not solicit offers, award contracts to, or consent to subcontracts with contractors on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, unless the Secretary or his or her designee determines that there is a compelling reason for such action.
- b. **Continuation of Current Procurement Transactions.** OAs and Secretarial Offices may continue transactions in existence at the time the party was debarred, suspended, or proposed for debarment, unless the Secretary or his or her designee directs otherwise. However, unless the Secretary or his or her designee makes a written determination of the compelling reasons for doing so, ordering activities (contracting offices) may not:
 - (1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;
 - (2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or
 - (3) Add new work, exercise options, or otherwise extend the duration of current contract orders.
- c. A debarred or suspended contractor is considered debarred or suspended for purposes of nonprocurement transactions.

12. **EFFECT OF DEBARMENT OR SUSPENSION - NONPROCUREMENT**

- a. **New Nonprocurement Transactions.** OAs and Secretarial Offices shall not enter into any nonprocurement transaction (i.e., grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance payments for specified use, donation agreements or other transaction agreements) with persons or entities who have been debarred, suspended, or proposed for debarment, unless the Secretary or his designee directs otherwise.
- b. **Continuation of Current Nonprocurement Transactions.** OAs and Secretarial Offices may continue with nonprocurement transactions that were already in existence at the time the party was debarred, suspended, or proposed for debarment. However, continuation of a transaction is not required and termination may be considered. The decision to terminate and the type of termination action, if any, shall be taken only after a thorough review to ensure that the action is proper and appropriate.

- c. An individual or organization debarred or suspended pursuant to 49 C.F.R. Part 29 is considered debarred or suspended for purposes of procurement transactions.

A handwritten signature in black ink, which appears to read "Norman Y. Mineta". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Norman Y. Mineta
Secretary of Transportation