



Suspension/Debarment

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Suspension and Debarment

- ◆ Organization
- ◆ Purpose
- ◆ Definition
- ◆ Effects
- ◆ Mitigating Factors
- ◆ Causes
- ◆ Types of Actions
- ◆ Process
- ◆ Information
- ◆ Documentation



Suspension and Debarment Organization

- ◆ Office of Procurement and Assistance Policy
 - Within Office of Procurement and Assistance Management
- ◆ Suspension/Debarring Official
 - Edward Simpson, Director, Office of Procurement and Assistance Management
- ◆ Support from Office of General Counsel



Suspension and Debarment Purpose

- ◆ In public interest for Government's protection
 - NOT for punishment
- ◆ Discretionary action
 - Existence of cause for debarment does not required the contractor to be debarred
 - Remedial measures or mitigating factors should be considered



Suspension and Debarment Definition

◆ Suspension

- Action taken by suspending official to disqualify a contractor or awardee temporarily
 - FAR 9.407 for procurement
 - 2 CFR 1036.400 for nonprocurement

◆ Debarment

- Action taken by debarring official to exclude contractor or awardee for specified period
 - FAR 9.406 for procurement
 - 2 CFR 1035.300 for nonprocurement



Suspension and Debarment Effects

- ◆ Contractors/awardees debarred, suspended or proposed for debarment are excluded from
 - receiving contracts
 - conducting business with Government as agents or representatives of other contractors
 - Acting as individual sureties
- ◆ Agencies shall not solicit offers from, award contracts to, or consent to subcontract with contractors
- ◆ Flow down provision to subcontracts in excess of \$25,000



Suspension and Debarment Mitigation

- ◆ Effective standards of conduct and internal control systems
- ◆ Matter brought to attention of Government by contractor
- ◆ Full investigation by contractor
- ◆ Full cooperation with Government
- ◆ Payment of liability
- ◆ Appropriate disciplinary action taken



Suspension and Debarment Mitigation - continued

- ◆ Agreement to implement remedial measures
- ◆ Agreed to institute new/revised review and control procedures and ethics training
- ◆ Adequate time to eliminate circumstances leading to debarment
- ◆ Recognition and understanding of seriousness of misconduct



Suspension and Debarment Causes

- ◆ Conviction or civil judgment for:
 - Fraud or criminal offense in connection with public contract/transaction or subcontract/lower tier transaction
 - Violation of Federal or State antitrust statutes
 - Embezzlement, theft, forgery, bribery, falsification or destruction of records; false statements; tax evasion; receiving stolen property



Suspension and Debarment Causes - continued

- Affixing a “Made in America” inscription when it was not
- Any other offense indicating lack of business integrity or business honesty
- ◆ Based on preponderance of evidence of
 - Violations of terms of Government contract/transaction or subcontract/lower tier transaction, such as
 - Willful failure to perform
 - History of failure to perform



Suspension and Debarment Causes - continued

- Violations of Drug-Free Workplace Act
- Affixing “Made in America” inscription when it was not
- Unfair trade practices
- ◆ Based on a determination by the AG that the contractor is not in compliance with Immigration and Nationality Act Employment Provisions
- ◆ Any other cause of so serious or compelling a nature



Suspension and Debarment Causes - continued

- ◆ Affiliation with debarred contractor/awardee
 - Debarment decision may be extended to include affiliates
 - Business, individuals are affiliates if, directly or indirectly,
 - Either one controls or has the power to control the other, or
 - 3rd party controls or has power to control both



Suspension and Debarment Causes - continued


◆ Imputation

- Conduct of any officer, director, shareholder, partner, employee or other individual may be imputed to contractor/awardee
- Conduct of contractor/awardee may be imputed to any officer, director, shareholder, partner, employee or other individual
- Also applies to joint ventures




Suspension and Debarment Types

- ◆ 2 types
 - Conviction
 - Fact-based
- ◆ Process fundamentally identical
 - Fact-based requires higher degree of documentation



Suspension and Debarment Types - continued

- ◆ Conviction-based
 - Based on judgment or conviction of criminal offense, either verdict or plea, includes nolo contendere
 - Includes “information” in civil case



Suspension and Debarment Types - continued

◆ Fact-based

- No criminal or civil conviction/plea or cases where conduct indicates lack of present responsibility
- Includes cases where respondent enters into settlement agreement or pre-trial diversion



Suspension and Debarment Process

- ◆ IRM/other referral
- ◆ Fact finding/review
- ◆ Document preparation
 - GC review
- ◆ Signature and dispatch
- ◆ Notice sent Certified Mail – Return Receipt



Suspension and Debarment Process

- ◆ 30 days for submission of information and argument
 - If no information and argument, final notice prepared
- ◆ Submission of information and argument may lead to:
 - Meeting
 - Fact-finding
 - Termination of suspension
- ◆ Final notice of decision sent Certified Mail – Return Receipt



Suspension and Debarment Information Requirements

- ◆ Name and address of contractor/awardee
- ◆ Allegation and results of investigation
- ◆ Statute or Regulatory Violation
 - Or details of fact-pattern in fact-based actions
- ◆ Outcome of proceedings



Suspension and Debarment Documentation Requirements

- ◆ Indictment/Information
- ◆ Conviction/Plea
- ◆ Sentencing Order
- ◆ For Fact-Based Actions:
 - Report of Investigation
 - Record of Interviews
 - Other relevant documents

Suspension and Debarment



◆ Statistics

– FY2006

- 6 referrals involving 19 entities

– FY2007

- 15 referrals involving 25 entities
 - 1 case (2 entities) rejected
 - 1 case (2 entities) referred to NNSA
 - Remaining cases suspended, then debarred