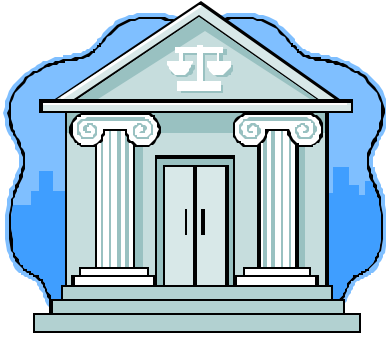


Debarment and Suspension



Guiding Principles

- ✓ Contracts are only awarded to offerors who demonstrate responsibility to perform.
- ✓ Responsibility is a matter not only of capacity to perform, but also the trustworthiness of the offeror to perform.

[Reference: FAR 9.4; DEAR 909.4]

➤ Overview

This section provides guidance and instruction to Contracting personnel regarding debarment and suspension. As part of their responsibilities, Contracting Officers must take certain actions before awarding a contract and when they become aware of a contractor's conduct that could require administrative action. This section provides guidance on what specific actions are required.

➤ Background

FAR Subpart 9.4, Debarment, Suspension, and Ineligibility, prescribes and implements the policy that contracts will only be awarded to offerors who demonstrate responsibility to perform Government contracts and subcontracts. Responsibility is a matter not only of capacity to perform, but also the trustworthiness of the offeror to perform. While capacity to perform is largely a case specific situation, trustworthiness issues tend to have a more comprehensive impact on a broad range of contracts. For this reason, the Government has adopted policies and processes to preclude untrustworthy contractors from receiving Government contracts and subcontracts.

Debarment and suspension actions taken by one agency are recognized and effective for all Executive Branch agencies. Furthermore, debarment or suspension under procurement programs are also recognized as exclusions under nonprocurement programs, and vice versa. These exclusionary actions are taken to effectuate the Government's policy of contracting only with responsible contractors.

While in many agencies, the debarment and suspension function resides within the Office of General Counsel, at the Department of Energy (DOE), the function is housed within the DOE Office of Procurement and Assistance Management as the decision to suspend or debar is considered a business decision, not a legal decision. The authority to debar or suspend a company

at DOE is delegated to the Director, Office of Procurement and Assistance Management (ME-60). Support to the Director, Office of Procurement and Assistance Management, on matters related to debarment and suspension is provided by the Office of Management Systems and Services (ME-65). Neither the Head of the Contracting Activity nor the Contracting Officer has the authority to debar or suspend a company.

Contracting Officers therefore must provide the debarring and suspending official information to facilitate making appropriate decisions regarding debarment and suspension.

➤ **Debarment/Suspension Responsibilities**

FAR Subpart 9.4, Debarment, Suspension, and Ineligibility, describes the causes and effects of debarment and suspension on a contractor, and some of the responsibilities of Contracting Officers once a contractor or subcontractor has been debarred or suspended. These responsibilities include reviewing the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs before extending an award to an offeror or exercising an option under a contract, or reviewing an offeror's response to FAR clauses identifying criminal actions. Other government personnel have responsibilities before an exclusionary action is taken. For example, the Office of the Inspector General (IG) conducts investigations into allegations of criminal or civil misconduct.

Similarly, Contracting Officers have the responsibility to notify the Debarring/Suspending Official of conduct that may require administrative action. This includes providing relevant information concerning criminal or civil fraud actions involving the contractor or its personal agents, but also information related to a contractor's violation of the terms of a contract or subcontract so serious as to justify debarment, such as willful failure to perform a Government contract or subcontract, or a history of failure to perform, and or of unsatisfactory performance of one or more contracts or subcontracts. The following information should be provided to the Debarring/Suspending Official:

- Name and address of the company;
- Contract Number;
- Parties Involved;
- Specific details of the matter; and,
- The name and telephone number of the Contracting Officer with cognizance over the contract.

Copies of relevant documents such as letters to the company should also be provided. Matters involving criminal misconduct should be referred to the IG.

Note that a referral for debarment/suspension to the debarring/suspending official does not necessarily result in the contractor's debarment or suspension. All matters are reviewed to determine if a cause for action exists and if there are any mitigating factors that may bear on the matter.