



# **United States Department of Commerce**

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## **Contractor and Recipient Responsibility Program Handbook**

September 2023

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# Contractor and Recipient Responsibility Program Handbook

## I. Introduction

As stewards of taxpayers' resources and to protect the Government's interests, the Department of Commerce (Department) is required to award contracts and financial assistance only to responsible sources – those that are determined to be reliable, dependable, and capable of performing required work – also known as being a presentably responsible source. One way to achieve this vital goal is through administrative actions. Administrative actions include suspensions and debarments, which are actions taken to exclude organizations or individuals from receiving contracts or financial assistance based on various types of misconduct. In 2011, the Office of Management and Budget issued guidance to ensure agencies are properly positioned to give appropriate consideration to administrative actions, including suspension and debarment, as tools in the fight against waste, fraud, and abuse.

As an executive branch agency, the Department has the authority to take administrative actions, including suspension and debarment, with federal awardees. These administrative remedies are not intended as punishment, but rather as processes to ensure that federally funded business is conducted with responsible entities. The Federal Acquisition Regulation (FAR) and the Non-procurement Common Rule both recommend that agencies implement procedures for coordinating administrative remedies. Additionally, in 1994 Congress passed the Federal Acquisition Streamlining Act of 1994, mandating reciprocity of suspension and debarment determinations between procurement and non-procurement programs.

### A. Purpose

This Handbook establishes policy, assigns roles and responsibilities, and provides guidance for procurement and non-procurement administrative remedies, including suspensions and debarments.

### B. Scope

This Handbook applies to all operating units, offices, and organizations in the Department. The provisions of this directive shall not interfere with the authorities or independence of the Office of Inspector General (OIG).

This Handbook represents a comprehensive administrative remedies program and applies to both actions involving contracts under the FAR and Federal assistance (commonly known as financial assistance) or Other Transactions under the Non-procurement Common Rule.

### C. Authorities

The following is a list of governing authorities.

1. Executive Order 12689, August 16, 1989 (54 FR 34131).

2. Executive Order 12549 (Non-procurement Common Rule), Feb. 18, 1986 (51 FR 6370).
3. FAR Subpart 9.4—Debarment, Suspension, and Ineligibility (48 C.F.R. § 9.4, et seq.).
4. Department of Commerce Non-procurement Debarment and Suspension Rule, 2 C.F.R. § 1326.
5. Non-procurement Common Rule, 2 C.F.R. § 180.
6. Department of Commerce Class Deviation 2023-08, Flexibilities for Suspending and Debarring Official Correspondence with Contractors.

The information provided in Sections V, VI, and VII of this Handbook in large part summarize the material set forth in FAR Subpart 9.4—Debarment, Suspension, and Ineligibility (48 C.F.R. § 9.4, et seq.); Non-Procurement Common Rule, 2 C.F.R. § 180; and Department of Commerce’s Non-Procurement supplemental guidance at 2 C.F.R. § 1326. Any perceived or actual conflict or inconsistency between the regulations and the summaries should be reported to the Program Coordinators, who will seek guidance from the Office of the Assistant General Counsel for Transactions and Technology as appropriate. To the extent that there is any conflict or inconsistency between the regulations and the summaries in this Handbook, the regulations apply.

#### **D. Policy**

1. The Senior Procurement Executive (SPE) is the Suspending and Debarring Official (SDO) for procurement and non-procurement administrative remedies, including suspensions and debarments, within the Department and sets forth the roles and responsibilities of all relevant parties regarding administrative remedies within the Department.
2. Suspension and debarment sanctions shall be imposed only in the public interest for the Government’s protection and not for the purposes of punishment.
3. To protect the Government’s interest, the Department shall award contracts and financial assistance only to responsible sources – those who have been determined to be reliable, dependable, and capable of performing work.
4. Unless the SDO determines otherwise, all matters being considered for suspension or debarment that arise under or in relation to a procurement shall be processed in accordance with FAR Subpart 9.4—Debarment, Suspension, and Ineligibility (48 C.F.R. § 9.4, et seq.) and all matters being considered for suspension or debarment that arise under or in relation to a non-procurement action shall be processed in accordance with the Non-procurement Common Rule (2 C.F.R. § 180) as supplemented by Department of Commerce specific guidance at 2 C.F.R. § 1326.

## **II. Roles**

All Department employees are responsible for discovering and reporting misconduct that may give rise to a suspension and/or debarment action.

### **A. Suspending and Debarring Official**

The SDO is the individual designated by the Secretary of Commerce with authority to undertake actions pursuant to administrative remedies. At the Department, the SPE is the designated SDO. The SDO shall:

1. Issue policy and manage the Contractor and Recipient Responsibility program.
2. Make final determinations regarding whether a person/entity will be suspended and/or debarred.
3. Determine whether fact-finding proceedings shall be conducted pursuant to a request by a respondent.
4. Conduct or delegate responsibility to conduct fact-finding proceedings related to suspensions and proposed debarments.
5. Make the final determination regarding whether the suspension and/or debarment shall remain in effect or whether a period of debarment is extended or reduced.
6. In rare circumstances, make determinations based on compelling reasons to conduct business with debarred or suspended individuals/entities.
7. Execute administrative agreements.

### **B. Suspension and Debarment Coordinator & Contractor Responsibility Coordinator**

The Suspension and Debarment Coordinator and Contractor Responsibility Coordinator (Program Coordinators) are the program managers for the Suspension and Debarment Program and advise the SDO. The Program Coordinators shall:

1. Prepare an analysis of reports submitted by the Office of Inspector General (OIG) or any operating unit or office within the Department.
2. Coordinate all correspondence between the SDO and affected entities.
3. Coordinate all intra-agency communications.
4. In consultation with the Office of the General Counsel (OGC), review referrals for consideration, prepare notices, prepare recommendations for the SDO, and prepare proposed administrative agreements.
5. Conduct research to determine if any person affiliated with the proposed respondent should also be proposed for suspension and/or debarment.
6. Submit information regarding any administrative agreement into the System for Award Management (SAM) in its Responsibility/Qualification section.
7. Enter information regarding suspensions and debarments into SAM.
8. Perform other duties as may be assigned or delegated by the SDO as required to carry out the Program.

### **C. Office of the General Counsel**

The Office of the Assistant General Counsel for Transactions and Technology serves as legal counsel for the Suspension and Debarment Program. The Office of the Assistant General Counsel for Transactions and Technology shall:

1. Review and clear all administrative actions, including suspensions, debarments, and administrative agreements to ensure that they satisfy all legal and regulatory requirements.
2. Upon request, provide legal advice and counsel regarding administrative action matters to:
  - a. the SDO,
  - b. the Program Coordinators, and
  - c. Contracting Officers, Grants Officers, Program Managers and Contracting Officer Representatives and other individuals regarding the preparation of suspension and debarment consideration packages.
3. Attend fact-finding proceedings.

### **D. Office of Inspector General**

The OIG may, to the fullest extent appropriate to the case and permissible by law, coordinate with the SDO when the Inspector General deems suspension and/or debarment action to be appropriate for the SDO's consideration.

### **E. Operating Unit Heads**

Operating Unit Heads shall designate a suspension and debarment point of contact to assist in the processing and development of referral for consideration packages.

### **F. Suspension and Debarment Points of Contact Program**

The Department's Suspension and Debarment Points of Contact Program is comprised of individuals from each Operating Unit that have contracting or financial assistance activities. Suspension and Debarment Points of Contact, designated by the Operating Unit Head receive training, guidance, and support through regular meetings and convey this information to the Points of Contact's operating unit. The Suspension and Debarment Points of Contact also assist the suspension and debarment investigatory processes by locating documents, resources, and people related to potential responsibility related matters and OIG investigations.

## **G. Contracting Officers**

Contracting Officers shall:

1. Review SAM Exclusions after receipt of offers and quotations, prior to contract award, placing orders under indefinite delivery vehicles such as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts and blanket purchase agreements, adding new work or extending the duration of a contract, and exercising options in order to ensure the potential awardee is not excluded.
2. Oversee and monitor procurement transactions for indications of fraud or behavior that could indicate grounds for administrative action.
3. In consultation with the OGC, assemble available information of potential misconduct and refer it to the SDO for consideration of administrative action when, during the execution of a contract, there are indications of fraud or lack of responsibility.
4. Submit, through their respective leadership chains, any requests for consideration to the SDO for review of entities that have been terminated for default, cause, or have a history of underperformance.
5. Refer activity that may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to the OIG in accordance with Department Administrative Order 207-10.

## **H. Grants Officers**

Grants Officers shall:

1. Review SAM Exclusions prior to awarding, renewing, or extending a financial assistance transaction to ensure the potential awardee is not excluded.
2. Oversee and monitor financial assistance transactions for indications of fraud or behavior that could be grounds for administrative action.
3. In consultation with the OGC and Program Manager, assemble available information of potential misconduct and refer it to the SDO for consideration of administrative action when, during and/or after the execution of the financial assistance transaction, there are indications of fraud or lack of responsibility.
4. Submit requests for consideration, through their appropriate leadership chain, to the SDO for review for entities that have a history of underperformance.
5. Refer activity that may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to the OIG in accordance with Department Administrative Order 207-10.



## **I. Program Managers and Contracting Officer Representatives**

Program Managers and Contracting Officer Representatives shall:

1. Oversee and monitor administered procurement and financial assistance transactions for indications of fraud or behavior that could indicate grounds for administrative action.
2. In consultation with the OGC and award officials, assemble available information of potential misconduct and refer it to the SDO for consideration of administrative action when, during and/or after the execution of a contract or financial assistance transaction, there are indications of fraud or lack of responsibility.
3. Refer activity which may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to the OIG in accordance with Department Administrative Order 207-10.

## **III. Request for Information and Show Cause Letters**

Requests for Information provide the potential respondent notice of and an opportunity to respond to the SDO's concerns. SDOs frequently use Requests for Information when the public record (i.e., a press report) raises concerns about the potential respondent's responsibility but there is no reliable record to perform a responsibility review.

Show Cause Letters are used by SDOs to provide notice to respondents of serious concerns relating to the respondent's present responsibility and provide an opportunity to respond to the SDO's concerns. When a Show Cause Letter is used, there is no immediate exclusion for the respondent. Show Cause Letters are often used when there is sufficient information to establish a cause for exclusion, but the information may be too one-sided or there is concern about the credibility or staleness of the factual record.

Requests for Information and Show Cause Letters often clarify the situation and result in establishing a potential respondent's present responsibility without the need for an exclusion. However, a potential respondent's failure to respond to a Request for Information or a Show Cause Letter, or failure to adequately address the concerns raised, may result in an action for exclusion.

## **IV. Suspension**

A suspension is a temporary status of ineligibility for procurement and non-procurement transactions, pending completion of an investigation or legal proceeding. In order to impose a suspension, there must be adequate evidence that there may be a cause for debarment of the person or entity and a determination that immediate action is necessary to protect the Federal interest.

## **A. Causes for Suspension - Procurement**

The SDO may suspend a person or entity when the SDO determines that immediate action is necessary to protect the Government's interest (FAR 9.407-1) and upon indictment or adequate evidence of:

1. Commission of fraud or a criminal offense in connection with:
  - a. Obtaining,
  - b. Attempting to obtain, or
  - c. Performing a public contract or subcontract.
2. Violation of Federal or state antitrust statutes relating to submission of offers.
3. Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.
4. Violations of the Drug-Free Workplace Act, as indicated by:
  - a. Failure to comply with the requirements of FAR 52.223-6, Drug-Free Workplace, or
  - b. The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace so as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see FAR 23.504).
5. Intentionally affixing a label bearing "Made in America" to a product sold in or shipped to the United States of America when the product was not made in the United States of America.
6. Commission of an unfair trade practice as defined in FAR 9.403.
7. Delinquent Federal taxes in an amount that exceeds the current established threshold. Federal taxes are considered delinquent if both of the following apply:
  - a. The tax liability is finally determined (i.e., assessed), and
  - b. The taxpayer is delinquent in making payment.
8. Knowing failure by a principal, until three (3) years after final payment on any Government contract, to timely disclose credible evidence of:
  - a. Violation of Federal criminal law involving fraud, conflict of interests, bribery, or gratuity violations found in Title 18 of the United States Code,
  - b. Violation of the civil False Claims Act, or
  - c. Significant overpayment(s) on the contract.
9. Determination of a false certification under 52.209-13, Violation of Arms Control Treaties or Agreements-Certification.
10. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor.

11. Any other cause of so serious or compelling a nature that it affects the present responsibility of a respondent.

## **B. Causes for Suspension - Non-Procurement**

The SDO may suspend a person or entity, as defined by 2 C.F.R. § 180.985 when the SDO determines that immediate action is necessary to protect the public interest (2 C.F.R. § 180.700) and:

1. There exists an indictment for, or other adequate evidence to suspect a 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. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the respondent's present responsibility.
2. There exists adequate evidence to suspect:
  - a. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:
    - i. A willful failure to perform in accordance with the terms of one or more public agreements or transactions,
    - ii. A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions, or
    - iii. A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.
  - b. Any of the following causes:
    - i. A non-procurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 C.F.R. § 9, subpart 9.4, before August 25, 1995.
    - ii. Knowingly doing business with an ineligible person, except as permitted by the SDO.
    - iii. 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.

- iv. Violation of a material provision of a voluntary exclusion agreement and/or any settlement of a debarment or suspension action.
  - v. Violation of the provisions of the Drug-Free Workplace Act of 1988 (41U.S.C. § 701).
- c. Any other cause of so serious or compelling a nature that it affects the respondent's present responsibility.

### **C. Period of Suspension**

Suspension shall be for a temporary period, pending the completion of an investigation and any ensuing legal proceedings. A suspension may be terminated sooner by the SDO.

However, if legal proceedings are not initiated within twelve (12) months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General, United States Attorney, or other responsible prosecuting official requests its extension in writing, in which case it may be extended for an additional six (6) months. In no event may a suspension extend beyond eighteen (18) months unless legal proceedings have been initiated within that period. The SDO must notify the appropriate officials of a pending termination of the suspension at least thirty (30) days before the twelve (12) month period expires to allow those officials to request an extension.

## **V. Debarment**

A debarment is imposed for a specified period as a final determination that a person or entity is not presently responsible. In order to impose a debarment, the SDO must conclude, based on a preponderance of evidence, that the person or entity has engaged in conduct that warrants debarment. A debarment is imposed only after giving the respondent notice of the action and an opportunity to contest the proposed debarment.

### **A. Causes for Debarment - Procurement**

The SDO may debar a person or entity when the SDO determines that debarment is necessary to protect the Government's interest (FAR 9.406-1(a)) and for causes defined under FAR 9.406-2:

1. The SDO may debar a person or entity for conviction of or civil judgment for:
  - a. Commission of fraud or a criminal offense in connection with:
    - i. Obtaining,
    - ii. Attempting to obtain, or

- iii. Performing a public contract or subcontract.
  - b. Violation of Federal or state antitrust statutes relating to submission of offers.
  - c. Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.
  - d. Intentionally affixing a label bearing "Made in America" to a product sold in or shipped to the United States of America when the product was not made in the United States of America.
  - e. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the respondent's present responsibility.
- 2. The SDO may debar a person or entity, based upon a preponderance of the evidence for any of the following actions under FAR 9.406-2:
  - a. Violation of the terms of a Government contract, subcontract or public agreement so serious as to justify debarment, such as:
    - i. Willful failure to perform in accordance with the terms of a contract, or
    - ii. A history of failure to perform, or of unsatisfactory performance of a contract.
  - b. Violations of the Drug-Free Workplace Act, as indicated by:
    - i. Failure to comply with the requirements of FAR 52.223-6, Drug-Free Workplace, or
    - ii. Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see FAR 23.504).
  - c. Intentionally affixing a label bearing "Made in America" to a product sold in or shipped to the United States of America when the product was not made in the United States of America.
  - d. Commission of an unfair trade practice as defined in FAR 9.403.
  - e. Delinquent Federal taxes in an amount that exceeds the current established threshold. Federal taxes are considered delinquent if both of the following apply:
    - i. The Tax Liability is finally determined, and
    - ii. The taxpayer is delinquent in making payment.
  - f. Knowing failure by a principal, until three (3) years after final payment on any Government contract, to timely disclose credible evidence of:

- i. Violation of Federal criminal law involving fraud, Conflict of Interest, bribery, or gratuity violations found in Title 18 of the United States Code,
    - ii. Violation of the civil False Claims Act, or
    - iii. Significant overpayment(s) on the contract (see FAR 32.001).
  - g. Determination of a false certification under 52.209-13, Violation of Arms Control Treaties or Agreements-Certification.
3. The SDO may debar a person or entity based on a determination by the Secretary of Homeland Security or the Attorney General of the United States that the person or entity is not in compliance with Immigration and Nationality Act employment provisions. Such a determination is not reviewable in the debarment proceedings.
4. The SDO may debar a person or entity based on any other cause of so serious or compelling a nature that it affects the present responsibility of the person or entity under FAR 9.406-2(c).

#### **B. Causes for Debarment – Non-Procurement**

The SDO may debar a person or entity, as defined by 2 C.F.R. § 180.985, for the causes listed under 2 C.F.R. § 180.800:

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. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the respondent's present responsibility.
2. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, 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.

- c. A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.
3. Any of the following causes:
  - a. A non-procurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 C.F.R. § 9, subpart 9.4, before August 25, 1995.
  - b. Knowingly doing business with an ineligible person, except as permitted by the SDO.
  - c. 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.
  - d. Violation of a material provision of a voluntary exclusion agreement and/or any settlement of a debarment or suspension action.
  - e. Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).
4. Any other cause of so serious or compelling a nature that it affects the respondent's present responsibility.

### **C. Period of Debarment**

Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

## **VI. Scope of Suspension and Debarment**

This section of the Handbook discusses how a Respondent's conduct may be imputed to other individuals and organizations, and how the conduct of these individuals and organizations may be imputed to a Respondent. Additionally, this section discusses the extension of remedies through affiliation.

### **A. Conduct Imputed from an Individual**

The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an entity may be imputed to the entity when the conduct occurred in connection with the individual's performance of duties for or on behalf of the entity, or with the entity's knowledge, approval, or acquiescence.

## **B. Conduct Imputed from an Organization**

The fraudulent, criminal, or other seriously improper conduct of an entity may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the entity when the individual to whom the improper conduct is imputed participated in, knew of, or had reason to know of the entity's conduct.

## **C. Conduct Imputed from Joint Ventures or Similar Arrangements**

The fraudulent, criminal, or other seriously improper conduct of an entity participating in a joint venture or similar arrangement may be imputed to other participating entities if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these entities.

## **D. Conduct to Include Affiliates**

The SDO may extend the debarment decision to include any affiliates if they are specifically named in the written notices. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways to determine control include but are not limited to:

1. Interlocking management or ownership.
2. Identity of interests among family members.
3. Shared facilities and equipment.
4. Common use of employees.
5. A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

# **VII. Procedures for Suspension and Debarment**

## **A. Referral for Consideration of Suspending and Debarring Official**

Operating units, offices, program managers, contracting officers, contracting officer representatives, grants officers and staff shall promptly notify the Program Coordinators using the Referral for Consideration of Suspending and Debarring Official form (Referral) (Appendix C) whenever, during or subsequent to the execution or performance of a contract or federal financial assistance award, there are indications of fraud or grounds for suspecting that any of the bases or causes for administrative action exist. [Please note that certain matters are required to be referred to the OIG; see Department Administrative Order 207-10 for additional information regarding reporting activity which may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to the OIG.]



## **B. Notice to Suspending and Debarring Official**

In addition to the Referral form, a separate and distinct Notice to Suspending and Debarring Official form (Notice) (Appendix D) provides submitters with a format for notifying the SDO of issues that are not captured by or are outside the scope of a Referral.

## **C. Referring Entities Compilation of Facts and Information**

Within the time communicated by the Program Coordinators, the referring entity shall, in consultation with the OGC, assemble all available relevant information for consideration and forward it to the Program Coordinators. For matters that involve more than a single entity or individual, include sections that separately set forth the grounds and bases for proceeding against each individual or entity.

## **D. Analysis of Referrals**

All referrals shall be evaluated for potential administrative action. The Program Coordinators shall review referrals and prepare an analysis and recommendation for the SDO. The Program Coordinators may request assistance or input from the OGC, OIG or any other source at any time during the processing of a case.

If the Administrative Record contains adequate evidence to warrant further consideration by the SDO, the Program Coordinators will contact the Interagency Suspension and Debarment Committee to coordinate lead agency status (see process discussed below in E. Lead Agency).

## **E. Lead Agency**

Lead Agency is a designation determined by reviewing a potential respondent's Federal agency dollar distribution on [USAspending.gov](https://USAspending.gov) and coordinating with the Interagency Suspension and Debarment Committee to identify which agency should properly evaluate a referral for administrative action. The [USAspending.gov](https://USAspending.gov) evaluation determines the agency with the highest contract and financial award dollar amount with a potential respondent. Whether or not the seeking agency has the highest dollars with the potential respondent, that agency must submit a Lead Agency Coordination Request through the Interagency Suspension and Debarment Committee. A template for an Interagency Suspension and Debarment Committee Lead Agency Coordination Request is provided in Appendix E. When more than one agency has an interest in the potential respondent, the Interagency Suspension and Debarment Committee resolves the lead agency issue and coordinates resolution among all interested agencies *prior* to the initiation of any related administrative action.

To submit a Lead Agency Coordination Request through the Interagency Suspension and Debarment Committee, use the template found in Appendix E, and e-mail the Lead Agency Coordination Request to [cigie-isdc@list.nih.gov](mailto:cigie-isdc@list.nih.gov). Senders must be on the Interagency Suspension and Debarment Committee LISTSERV to send and receive Lead Agency Coordination Requests. To join and access the LISTSERV the SDO must ensure the requesting individual

meets the “need to know” and other LISTSERV access requirements, approve the individual’s request, and request the individual’s access to the LISTSERV through the LISTSERV e-mail.

#### **F. Suspending and Debarring Official’s Decision-Making Process**

If sufficient evidence is presented, the Program Coordinators shall submit a recommendation to the SDO that includes: (1) identity of respondents; (2) narrative statement; (3) aggravating and mitigating factors; (4) time sensitive nature of case (if any); (5) recommended course of action; and (6) supporting documentation. The SDO shall review the recommendation and take one of the following actions:

##### **1. Declination of the Referral**

The SDO may determine that there are insufficient grounds to pursue administrative action or administrative action is not appropriate under the circumstances. This decision shall be documented in a Declination and added to the Administrative Record. If the SDO declines the referral, the referring entity or individual should continue to monitor the situation, when appropriate, and may submit a revised referral upon discovery of additional supporting evidence.

##### **2. Issue Request for Information**

The SDO may issue a Request for Information. Requests for Information are informal notices sent by the SDO to an individual or entity requesting additional information on a particular matter which may be the basis for administrative action. A Request for Information affords the individual or entity an opportunity to present information to the SDO explaining the situation and providing context to the SDO’s question or concern.

##### **3. Issue Show Cause Letter**

The SDO may issue a Show Cause Letter. The Show Cause Letter shall be sent to the respondent through United States Postal Service certified mail, return receipt requested or electronic mail. A Show Cause Letter must include the following information:

- a. Alleged misconduct.
- b. Notice that the misconduct may form the basis for a suspension and/or debarment action.
- c. Request for respondent to admit, deny, or explain the alleged misconduct,
- d. Time within which the respondent must respond (generally thirty (30) calendar days from the date of receipt).
- e. Consequences for failure to respond to the letter or adequately address the allegations of misconduct.

#### **4. Issue Notice of Suspension**

The SDO may issue a Notice of Suspension and accompanying Memorandum in Support. To the extent possible, a Notice of Suspension and Memorandum in Support should set forth the bases for suspension with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances. The Notice of Suspension shall inform the respondent of the following:

- a. That the person or entity has been suspended.
- b. The suspension is based on an indictment, a conviction or other adequate evidence that the respondent has committed misconduct warranting immediate action, or such action is imputed to the respondent.
- c. The suspension is for a temporary period pending the completion of an investigation or resulting legal/debarment proceedings.
- d. The cause(s) relied upon for imposing the suspension.
- e. The government-wide effect of the suspension.
- f. That the respondent has thirty (30) calendar days from the receipt of the notice to respond with its Presentation of Matters in Opposition in person, in writing, or through a representative with information and argument in opposition to the suspension.
- g. Aggravating and mitigating factors.
- h. That a fact-finding proceeding may be conducted.

The Notice of Suspension and Memorandum in Support shall be sent by United States Postal Service certified mail, return receipt requested, or electronic mail, to the last known address or e-mail address of the respondent.

#### **5. Issue Notice of Proposed Debarment**

The SDO may issue a Notice of Proposed Debarment and accompanying Memorandum in Support. To the extent possible, a Notice of Proposed Debarment and Memorandum in Support should set forth the bases for debarment with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances. The Notice of Proposed Debarment shall inform the respondent of the following:

- a. That the person or entity is being considered for debarment.
- b. The reasons and causes under the FAR or Non-procurement Common Rule for the proposed debarment.
- c. The effect of the proposed debarment.
- d. The potential government-wide effect of actual debarment.
- e. Department's debarment procedures.

- f. That the respondent has thirty (30) calendar days from the receipt of the notice to respond with its Presentation of Matters in Opposition in person, in writing, or through a representative with information and its argument in opposition.
- g. Aggravating and mitigating factors.
- h. That a fact-finding proceeding may be conducted.

The Notice of Proposed Debarment and Memorandum in Support shall be sent by United States Postal Service certified mail, return receipt requested, or electronic mail, to the last known address or e-mail address of the respondent.

### **G. Presentation of Matters in Opposition**

This section discusses a Respondent's opportunity to respond to and provide evidence to support their response to the SDO's administrative action. After receiving a Notice of Suspension and/or Notice of Proposed Debarment, the Respondent has thirty (30) calendar days, unless otherwise provided by the SDO, to submit and/or schedule its Presentation of Matters in Opposition (defined below) with the SDO.

The presentation may be accomplished through any combination of the following, as permitted by the SDO:

1. In-person meeting,
2. Conference call, and/or
3. Written response.

All matters that a respondent wants considered must be presented in writing, regardless of the presentation method selected. The respondent may be represented or assisted by counsel and should address all defenses, contested facts, admissions, remedial actions taken, and mitigating factors.

The SDO will review all materials presented and determine whether or not the respondent has raised a genuine dispute regarding material facts. A general denial is insufficient to raise a genuine dispute over facts.

### **H. Fact Finding Proceeding for Proposed Debarment**

If a proposed debarment is not based upon a conviction or civil judgment and the Respondent's presentation raises a genuine dispute regarding any material facts, including its duration or scope, mitigating circumstances or remedial measures, the SDO, or a factfinder delegated by the SDO, will conduct an informal fact-finding proceeding at which the Respondent may present evidence, and may call and question witnesses. The fact-finding proceeding shall be transcribed unless the respondent and the agency agree otherwise. The respondent may purchase a copy of the transcript upon request.

The fact-finding proceeding is an informal evidentiary hearing. The Rules of Evidence and Civil Procedure do not apply. Documentary evidence is taken into the record in conjunction with direct witness testimony and cross-examination. The factfinder will prepare written findings of fact for the record. To ensure prompt and timely proceedings, established schedules are binding unless modified by the factfinder upon their own initiative or in response to a written request. Schedule modifications shall be documented in the Administrative Record.

### **I. Administrative Record**

During the course of the suspension and debarment process, the Program Coordinators shall maintain and document all information that will be considered by the SDO. This information will form the Administrative Record.

The official record closes upon the SDO's receipt of final submissions, information, and findings of fact, if any. Upon the conclusion of the fact-finding proceedings, the Program Coordinators in consultation with the legal counsel shall review the entire Administrative Record, discuss the case with the SDO, and forward to the SDO a Final Recommendation that considers the Administrative Record in its entirety. The recommendation shall explain why there is or is not a genuine dispute as to material facts, discuss the relevance or weight of any information obtained subsequent to the issuance of the Notice of Suspension or Proposed Debarment, and clarify or supplement the case.

### **J. Suspending and Debarring Official's Final Decision**

The SDO's Final Decision shall be based on all the information in the Administrative Record, including any submission made by the respondent. The decision shall be based on facts as found, together with any information and argument submitted by the respondent and any other information in the Administrative Record. The decision shall be made after the conclusion of the proceedings with respect to disputed facts. Prompt written notice of the SDO's decision shall be sent to the respondent and any affiliates involved, by certified mail, return receipt requested, or electronic mail.

In making a final decision, the SDO, at a minimum, should consider the following aggravating and mitigating factors (FAR 9.406-1 and Non-procurement Common Rule, 2 C.F.R. § 180.860):

- The actual or potential harm or impact that results or may result from the wrongdoing.
- The frequency of incidents and/or duration of the wrongdoing.
- Whether there is a pattern or prior history of wrongdoing.
- Whether wrongdoing was pervasive in the organization.
- The kinds of positions held by individuals involved in the wrongdoing.
- Whether principals tolerated the wrongdoing.

- Whether there were effective standards of conduct and internal control systems in place at the time of the misconduct.
- The misconduct was brought to the attention of the Department or another federal agency in a timely manner.
- The respondent investigated the circumstances surrounding misconduct and made the result of the investigation available to the SDO.
- Cooperation with the investigation.
- Paid or agreed to pay full restitution, as well as any investigative or administrative costs incurred.
- Took appropriate disciplinary action against the individuals responsible for the misconduct.
- Implemented or agreed to implement remedial measures.
- Instituted or agreed to institute new or revised review and control procedures and ethics training programs.
- Whether the respondent is or has been excluded or disqualified by an agency of the Federal Government.
- Whether the respondent has entered into an administrative agreement with a Federal agency or a State or local government.
- To what extent the respondent has planned, initiated, or carried out the wrongdoing.
- Has had adequate time to eliminate the circumstances within the respondent's organization that led to the misconduct.
- Recognized and understood the seriousness of the misconduct and has implemented programs to prevent recurrence.

The SDO shall issue a written Decision Memorandum based on the Administrative Record and issue the Decision within the timeline outlined below, depending on the authority under which the decision is governed. The Decision Memorandum shall include an assessment of the respondent's present responsibility, identities of affiliates, respondent's conduct, length of suspension/debarment, if applicable, and the effect of mitigating factors on the present case as well as the determination.

If the SDO's Decision is based on non-procurement actions, then the SDO must make a written decision on suspension or debarment for non-procurement actions within forty-five (45) days of closing the official record. The SDO may extend the period for good cause.

If the SDO's Decision is based on procurement actions and upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, if no suspension is in effect, the SDO shall make a written decision within thirty (30) working days after closing the official record. The SDO will make written decisions for suspensions and debarments that are not based on

conviction or civil judgment, within forty-five (45) days of closing the official record. The SDO may extend the period for good cause.

SDO's may take any of the following actions:

**1. Declination: Decision Not to Debar**

The SDO may decide not to debar the respondent. The decision not to debar shall have no prejudicial effect on another agency's imposition of an administrative action proceeding, such as to suspend or debar, against the respondent, or on a future action by the Department based on new or additional information. This decision shall include:

- a. Reference to the Notice of Proposed Debarment.
- b. Summary of proceedings.
- c. Reason for not debarring.
- d. That respondent may request a copy of the Administrative Record.
- e. Effective date of decision.

**2. Declination: Decision to Terminate Suspension**

The SDO may decide to terminate a suspension. The decision to terminate a suspension shall have no prejudicial effect on another agency's imposition of a suspension and/or debarment proceeding against the respondent, or on a future action by the Department based on new or additional information. This decision shall include:

- a. Reference to the Notice of Suspension.
- b. Summary of proceedings.
- c. Reason for terminating the suspension.
- d. That respondent may request a copy of the Administrative Record.
- e. Effective date of decision.

**3. Decision to Modify or Continue Suspension**

The SDO may decide to modify or leave the current suspension in place. This decision shall include:

- a. Reference to the Notice of Suspension.
- b. Summary of proceedings.
- c. Outcome of fact-finding proceedings.
- d. Reasons for modifying or continuing the suspension.
- e. Scope of Ineligibility.
- f. Consequences of continued suspension.
- g. Effective dates of continued suspension.

- h. Government-wide effects of the suspension.

#### **4. Decision to Debar**

The SDO may decide to debar the respondent. All debarment determinations shall be based on a preponderance of the evidence. This decision shall include:

- a. Reference to the Notice of Proposed Debarment.
- b. Summary of proceedings.
- c. Outcome of fact-finding proceeding.
- d. Reasons for debarment.
- e. Scope of Ineligibility.
- f. Consequences of debarment.
- g. That respondent may request a copy of the Administrative Record.
- h. Period of debarment.
- i. Effective dates of debarment.
- j. Government-wide effects of the debarment.

#### **K. Excluded Entity's Request for Reconsideration**

Upon receiving a final decision to debar from the SDO, a debarred person or entity may ask the SDO to reconsider the debarment decision or to reduce the time period or scope of the debarment. This request must be made in writing and supported with documentation.

#### **L. Judicial Review**

A suspended or debarred person/entity may seek judicial review after exhausting all administrative remedies. Suspension and debarment decisions are reviewed under the Administrative Procedures Act in Federal District Court and, in some instances, before the Court of Federal Claims. In preparing for litigation, the OGC will work with the SDO and any other concerned parties within the agency.

### **VIII. Administrative Agreements**

Administrative Agreements are used under appropriate circumstances when an SDO determines suspension and debarment is not necessary to protect the public's interest, provided the respondent is willing to enter into an Administrative Agreement. Administrative Agreements are signed by the SDO and the respondent and generally have a three (3)-year term. Administrative Agreements incorporate remedial measures that the respondent agrees to implement and require the respondent to prepare and submit reports to the SDO to verify compliance. Provided that the respondent complies with the terms of the Administrative Agreement, the respondent establishes its present responsibility. The respondent acknowledges in the Administrative Agreement that any violation of the Administrative Agreement is evidence of a lack of present responsibility and may form a new (and immediate)



basis for debarment. The terms of the Administrative Agreement should serve at least one of two general objectives: (1) helping the respondent to implement appropriate controls, practices, and programs to establish responsibility, and/or (2) providing necessary information to the government to facilitate appropriate oversight of the respondent's efforts.

The SDO may, at any time during administrative proceedings, negotiate an Administrative Agreement with the respondent in order to resolve a matter, if it is in the Government's interest. An Administrative Agreement may recognize or impose conditions upon a respondent in lieu of exclusion that has government-wide effect. Under the Administrative Agreement, the respondent may remain eligible to enter into contracts and other covered transactions with the Government but must adhere to the terms and conditions of the Administrative Agreement. Additionally, as noted above, an Administrative Agreement may impose conditions by which an excluded respondent may regain present responsibility and be eligible for new award/work. The SDO should consider the following when contemplating an Administrative Agreement:

- The person/entity's otherwise satisfactory performance.
- Response to the wrongdoing.
- Willingness to cooperate, make restitution, and implement or strengthen an existing ethics program.

If an Administrative Agreement is deemed appropriate, the Program Coordinators shall draft an Administrative Agreement in consultation with the OGC and the cognizant operating unit or office. Upon agreement with the respondent, a final Administrative Agreement will be distributed for signature. After the Administrative Agreement has been fully executed, the Program Coordinators will enter the Administrative Agreement in SAM within three (3) business days.

## **IX. Parallel Proceedings**

Persons and entities that are proposed for debarment also may be subject to or may be considered for concurrent criminal or civil remedies (parallel proceedings) by law enforcement activities. It is Department policy that to the fullest extent appropriate and permissible by law, the Department's Contractor and Recipient Responsibility Program will timely communicate, coordinate, and cooperate with Department of Justice prosecutors and civil attorneys in a manner that ensures the government's administrative remedies are adequately addressed simultaneously with its criminal and civil remedies.

The potential for parallel proceedings arises in many of the Department's suspension and debarment cases. When effectively coordinated, parallel proceedings allow the government to expend resources efficiently and to take appropriate advantage of all available remedies. However, regardless of the extent to which they are coordinated with civil and criminal enforcement actions, suspension or debarment proceedings are to remain sufficiently separate and discrete to ensure that their procedural and substantive requirements are satisfied, and their determinations are independent and properly based.

Communication and coordination with the Department of Justice regarding the potential settlement of a criminal or civil matter will be appreciated, but the Department will not entertain advocacy on behalf of a defendant by a law enforcement entity. The SDO will only consider a request for a release from suspension or debarment vulnerability that is made directly to the SDO by the individual or entity, or their counsel, for whom the release is sought.

## **X. System for Award Management Exclusions (SAM)**

Entities that are debarred or suspended are generally excluded from receiving Federal Government contracts or financial assistance awards. SAM is a web-based system operated by the General Services Administration to record information on all entities debarred, suspended, proposed for debarment, declared ineligible or excluded, or disqualified under the non-procurement common rule.

### **A. Pre-Award Review**

Prior to the solicitation and award of a Department contract or financial assistance transaction, the Awarding Official shall consult SAM for possible exclusions. An awarding official may not make an award to an entity that is currently excluded without approval from the SPE/SDO.

### **B. Post-Award Review**

The Contracting Officer shall consult SAM prior to:

1. Placing orders exceeding the guaranteed minimum under indefinite quantity contracts.
2. Placing orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements.
3. Adding new work, exercising options, or otherwise extending the duration of current contracts or orders.

For contractors debarred, suspended, or proposed for debarment, unless the SPE makes a written determination of the compelling reasons for doing so, contracting officers shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors.

### **C. Entering Entities into System for Award Management**

Upon a final decision of suspension or debarment by the SDO, the Program Coordinators shall update SAM within three (3) business days, to include:

1. Names and addresses of all entities debarred, suspended, proposed for debarment, declared ineligible, or excluded under the non-procurement common rule, with cross-references when more than one name is involved in a single action.

2. The type of action.
3. Name of the agency or other authority taking the action.
4. Cause for the action or other statutory or regulatory authority.
5. Effect of the action.
6. Termination date for each listing.
7. Unique Entity Identifier Number.
8. Social Security Number, Employer Identification Number, or other Taxpayer Identification Number, if available.
9. Name and telephone number of the agency point of contact for the action.

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## Appendix A - Definitions

**Administrative Agreement.** An agreement between the Department of Commerce (Department) and a respondent entered into at any time during an administrative action. Administrative Agreements are typically executed in lieu of imposing a suspension and/or debarment. Such agreements may include acceptance of responsibility by the respondent, voluntary exclusion, mitigating plans, training requirements, and other required actions of, limitations on, or representations made by the respondent.

**Administrative Record.** The Administrative Record is all the information considered by the Suspending and Debarment Official (SDO) including, but not limited to: reports, notes, emails, newspaper articles, summaries of oral briefings, and respondent submissions. The Administrative Record is the evidentiary basis of the SDO's Final Decision and consists of all the documentary evidence considered by the SDO. The Administrative Record generally starts with a set of documents developed by the government recommending the Suspension and Debarment action and expands as the respondent and government provide additional information over the course of the proceeding. The FAR does not expressly require the government to provide respondents with a copy of the record. However, SDOs may provide respondents with a copy of the Administrative Record including updated copies through the course of the proceeding at the Respondent's request. Respondents are not entitled to conduct discovery.

**Affiliates.** Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third-party controls or has the power to control both. Indications of control include, but are not limited to (1) interlocking management or ownership; (2) identity of interests among family members; (3) shared facilities and equipment; (4) common use of employees, or (5) a business entity organized following the debarment, suspension, or proposed debarment of an entity which has the same or similar management, ownership, or principal employees as the entity that was debarred, suspended, or proposed for debarment

**Agency.** Any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

**Aggravating Factor.** Any fact or circumstance that increases the severity or culpability of a respondent such as the amount of harm or lack of remorse.

**Contractor.** Any individual or other legal entity that:

(1) Directly or indirectly (*e.g.*, through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract, or

(2) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

**Contractor Performance Assessment Reporting System.** Contractor Performance Assessment Reporting System houses performance evaluations which contain both government and contractor comments to provide a balanced view of performance, allowing source selection officials to look beyond contractor references. Government officials can use the Contractor Performance Assessment Reporting System to objectively evaluate performance and review relevant performance and integrity information before making an award decision. Contractor Performance Assessment Reporting System integrity records contain federal contractor criminal, civil, and administrative proceedings in connection with federal awards; suspensions and debarments; administrative agreements issued in lieu of suspension or debarment; non-responsibility determinations; terminations for cause or default; defective pricing determinations; termination for material failure to comply; subcontractor payment issues; information on trafficking in persons; and recipient not qualified determinations.

**Cooperative Agreement.** A cooperative agreement is a form of federal financial assistance award reflecting a relationship in which the Federal Government provides funding (or a thing of value in lieu of money) to a nonfederal recipient to carry out a public purpose of support or stimulation as authorized by Federal statute, and it is anticipated that the government will have substantial involvement during the performance of the contemplated activity.

**Debarment.** An action taken by the SDO to exclude an individual or an entity from federal Government contracting, certain subcontracts or federal financial assistance for a reasonable, specified period.

**Excluded.** An excluded entity is prohibited from participating in covered transactions, whether the entity has been suspended, debarred, or proposed for debarment.

**Federal Awardee Performance and Integrity Information System (FAPIS).** FAPIS is no longer active and has been incorporated into the System for Award Management (SAM) as “Responsibility/Qualification” and is part of the entity information. FAPIS was a centrally maintained database for information relevant principally to determinations of contractor responsibility. FAPIS collected information from other databases like SAM and the Past Performance Information Retrieval System and also served as a collection point for other information related to contractor past performance, such as determinations of non-responsibility or final terminations for default or cause. All information previously provided by FAPIS is now captured by Responsibility/Qualification on SAM and still entered in the Contractor Performance Assessment Reporting System.

**Grant.** An award of financial assistance that establishes a legal relationship under which money, property, services, or a thing of value in lieu of money, is transferred from the government to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States.

**Grantee.** The legal entity to which a grant or cooperative agreement is awarded, and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document.

**Interagency Suspension and Debarment Committee.** An organization established under Executive Order 12549 and composed of suspension and debarment representatives from participating executive branch agencies. The Interagency Suspension and Debarment Committee is charged with coordinating suspension and debarment actions among agencies.

**Lead Agency.** The federal agency determined through Interagency Suspension and Debarment Committee procedures to be responsible for processing, in coordination with other interested agencies, a potential administrative action.

**Material Facts.** Information that is critical to the determination of whether a suspension and/or debarment action is appropriate. The lack of such facts can prevent an agency from imposing a suspension and/or debarment.

**Mitigating Factors.** Considerations that reflect favorably on a respondent's present responsibility. Mitigating factors must be considered by the SDO in a suspension and/or debarment decision and should be documented in the Administrative Record.

**Non-procurement Common Rule.** The procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in non-procurement transactions under Executive Order 12549. The non-procurement common rule can be found at 2 C.F.R. § 180.

**Non-procurement Transaction.** Any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- 1) Grants
- 2) Cooperative Agreements
- 3) Scholarships
- 4) Fellowships
- 5) Contracts of Assistance
- 6) Loans
- 7) Loan Guarantees
- 8) Subsidies
- 9) Insurances
- 10) Payments for Specified Uses\*
- 11) Donation Agreements
- 12) Joint project Agreements under 15 U.S.C. § 1525

- 13) Cooperative research and development agreements
- 14) Joint statistical agreements
- 15) Patent licenses under 35 U.S.C. § 207
- 16) National Technical Information Service joint ventures, 15 U.S.C. § 3704b
  - \* This includes Other Transaction Agreements

**Person.** Any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

**Present Responsibility.** FAR 9.1 prohibits the award of a purchase order or contract unless the contracting officer makes an affirmative determination of responsibility of the offeror. 2 C.F.R. § 200.206 provides similar requirements for financial assistance awards. Present responsibility includes an adequate performance record, a record of integrity and business ethics and qualification and eligibility under applicable laws and regulations.

**Presentation of Matters in Opposition.** Phase of a suspension and/or debarment proceeding where the respondent presents information and argues it (1) did not commit the alleged misconduct, or (2) committed the misconduct and describes the remedial measures taken to fix the problem. The respondent may also present mitigating factors.

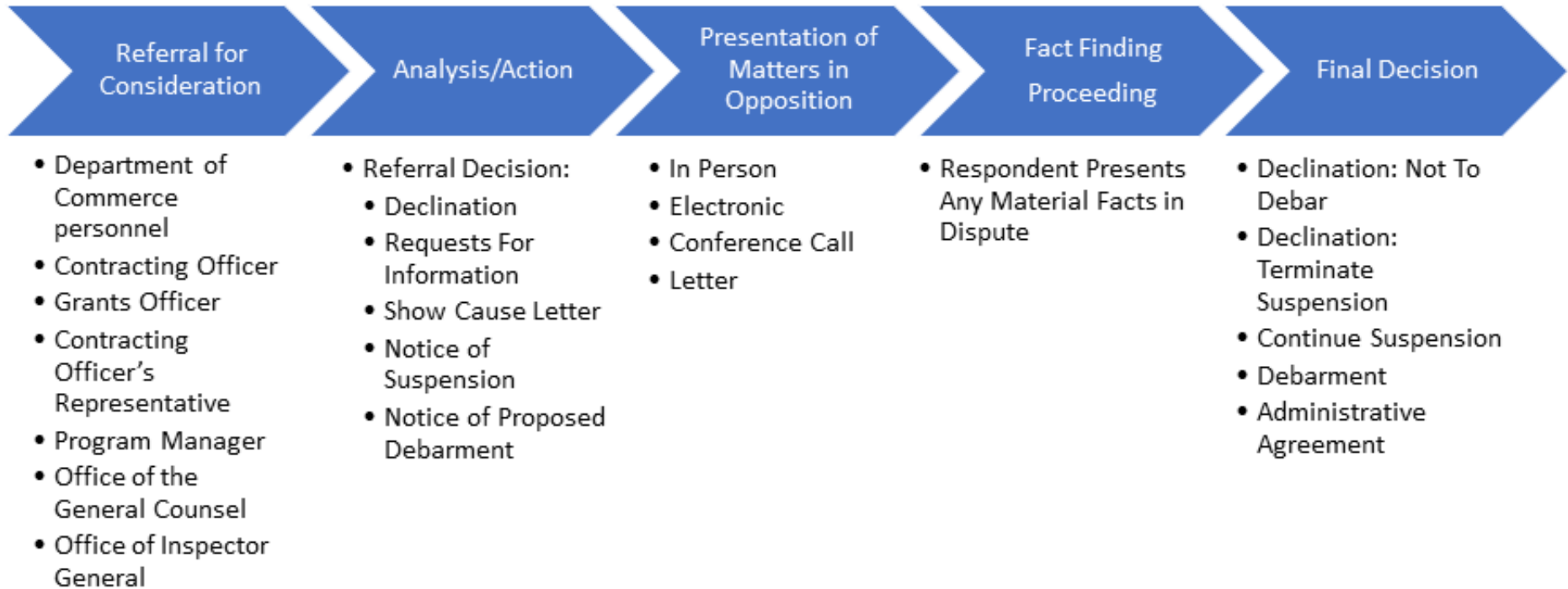
**Respondent.** Entity against whom an administrative action has been formally initiated.

**Suspension.** An immediate but temporary measure imposed by the SDO, rendering an entity or individual ineligible to receive new Government contracts, subcontracts, or grants pending the outcome of a legal proceeding or investigation that could give rise to a debarment.

**Suspending and Debarring Official.** Individual designated responsibility to impose procurement and non-procurement suspensions and debarments pursuant to 48 C.F.R. § 9 and 2 C.F.R. § 1326. The SDO is responsible for management of the Suspension and Debarment program.

**System for Award Management Exclusions.** An electronic database maintained and posted by the General Services Administration, that contains all parties suspended, proposed for debarment, debarred, declared ineligible, excluded or disqualified. The list contains the names and other information concerning entities who are ineligible to receive Government contracts or non-procurement covered transactions.

### Appendix B - Suspension & Debarment Process Flowchart





## **Appendix C - Referral for Consideration of Suspending and Debarring Official**

Pursuant to Section VII (Procedures for Suspension and Debarment), paragraph A (Referral for Consideration of Suspending and Debarring Official), of this Handbook, operating units, offices, program managers, contracting officers, contracting officer representatives, grants officers and staff shall promptly notify the Program Coordinators using this fillable **Referral for Consideration of Suspending and Debarring Official** PDF form whenever, during or subsequent to the execution or performance of a contract or federal financial assistance award, there are indications of fraud or grounds for suspecting that any of the bases or causes for administrative action exist.

This form is available on the OAM/S&D [webpage](#) for download.



## REFERRAL FOR CONSIDERATION OF SUSPENDING AND DEBARRING OFFICIAL

This referral is provided to the Department of Commerce ("DOC") Suspending and Debarring Official ("SDO") for consideration of any administrative action deemed appropriate.

**SUPPLEMENTAL** (check this box if this referral is a supplement to a previously submitted referral and only include updated information)

**REFERRING BUREAU/OFFICE:**

**BUREAU/OFFICE FILE NUMBER:**

**BUREAU/OFFICE POINT OF CONTACT:**

**CONTACT INFORMATION:**

**RESPONDENT(S)** (individual or company name (& POC), address, DOB, phone, email, DUNS/UEI number, if applicable):

**KNOWN AFFILIATES/SUBSIDIARIES/PARENT FIRMS** (if known, provide names, identifying info, and relationship to Respondent for affiliates involved in conduct directly or through imputation--e.g., companies owned by individual):

N/A

**ASSOCIATION TO DEPARTMENT OF COMMERCE** (describe Respondent's past/present nexus to the DOC, including programs impacted, loss amount, and contract/financial assistance agreement file numbers, if applicable):

**OTHER GOVERNMENT AGENCIES** (identify, if known, if Respondent has funding/contracts with other government agencies):

N/A

**INVESTIGATIVE AGENCIES** (if referral is investigation based, identify, if known, lead investigative agency and any other supporting agencies):

N/A

**BASIS OF REFERRAL:**

**REASONS FOR REFERRAL** (check all that apply):

- Commission of fraud or a criminal offense in connection with a government contract/subcontract or a public or private agreement or transaction
- Violation of Federal or State antitrust statutes
- Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property
- Misusing "Made in America" inscription
- Commission of any other offense indicating lack of business integrity or business honesty and directly affects their present responsibility
- Willful failure to perform in accordance with the terms of one or more contracts
- A history of failure to perform or unsatisfactory performance, on one or more contracts
- Failure to make a good faith effort to provide a Drug-Free Workplace
- Commission of an unfair trade practice as defined in FAR 9.403
- Delinquent Federal taxes in an amount that exceed \$10,000
- Knowing failure by a principal to timely disclose, in connection with a government contract, credible evidence of violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity; violations of the civil False Claims Act; or significant overpayment(s) on the contract
- Other: \_\_\_\_\_

**SUMMARY** (provide a brief statement of relevant facts that precipitated this referral; include attachments for details; if judicial-based, do not repeat information in court documents):

**MITIGATING FACTORS** (list any known mitigating factors the SDO should consider, such as restitution, voluntary disclosures, cooperation w/law enforcement/government, implementation of remedial policies/procedures, personnel accountability measures, etc.)

N/A

**CURRENT LEGAL PROCEEDINGS AGAINST RESPONDENT:**

N/A

Court:	Docket Number:	Status:
Court:	Docket Number:	Status:

**TIME CRITICAL EVENTS** (highlight any known with which the SDO should be aware):

N/A

**LIST OF ATTACHMENTS** (select all that apply. Include documents related to the underlying action(s) precipitating this referral, a document showing some relation to the DOC, and any documents demonstrating mitigating factors. Materials will be redacted, and only the relevant portions will be provided to the Respondent in the Administrative Record):

Indictment/Charging Document	Statement of Facts	Report of Investigation	Financial Records
Judgment	DOJ Press Release	Interview Notes/Statements	Contract Documents
Settlement/Plea Agreement	Search/Arrest Warrant	Audit Report/Official Findings	Grant/Underlying Agreements
Other Supporting Material:			

**SIGNATURE OF REFERRING OFFICIAL:**

**DATE:**

Referrals should be emailed to the DOC S&D Office at [suspenddebar@doc.gov](mailto:suspenddebar@doc.gov).

## **Appendix D - Notice to Suspending and Debarring Official**

Pursuant to Section VII (Procedures for Suspension and Debarment), paragraph B (Notice to Suspending and Debarring Official) of this Handbook, use this fillable **Notice to Suspending and Debarring Official** PDF form for notifying the Suspending and Debarring Official of issues that are not captured by or are outside the scope of a Referral for Consideration.

This form is available on the OAM/S&D [webpage](#) for download.



## **NOTICE TO SUSPENDING AND DEBARRING OFFICIAL**

This Notice is provided to the Department of Commerce ("DOC") Suspending and Debarring Official ("SDO") as provided below. Notice forms should be e-mailed to the DOC SDO at [suspenddebar@doc.gov](mailto:suspenddebar@doc.gov).

**NOTIFYING BUREAU/OFFICE:**

**BUREAU/OFFICE POINT OF CONTACT:**

**NOTICE (provide the Notice, reason for Notice, list any attachments, and any other relevant information below):**

**SIGNATURE OF REFERRING INDIVIDUAL:**

**DATE:**

## Appendix E - Lead Agency Coordination Request Template

From:

To: Interagency Suspension and Debarment Committee Community

CC:

Subject: Lead Agency Coordination

The Department of Commerce has opened a case for proposed administrative action based on the criminal convictions/indictments/facts of the individual and company listed below for violations of [Insert FAR and or Non-procurement Common Rule]. [Insert Company/Individual name] was found to have contracts/grants with [Agency] or company does not have any listed federal contracts.] Basic Information below:

Name (Individual):

Address:

Statute(s) Alleged/Convicted of Violating:

Narrative:

Agency Point of Contact Details:

Name (Company):

Address:

CAGE:

Unique Entity Identifier:

If there is an objection to the Department of Commerce as lead agency, please respond directly to [Insert name and email] by close of business on [Date].

Thank You,  
[Insert Name]