



FEDERAL GOVERNMENT SUSPENSION & DEBARMENT

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The Society of Corporate Compliance & Ethics
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Today’s Agenda

- Suspension and Debarment – Definition & Authority
- Interagency Suspension and Debarment Committee
- DOI - OIG & SDO Working Together
- Criminal, Civil and Administrative Actions
- Corporate Responsibility – Corporate Compliance & Ethics Programs
- Administrative Agreements & Monitors
- Preventing and/or Surviving Suspension and Debarment
- Q&A Time



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Suspension

Action taken by an agency head or a designee to exclude a contractor temporarily from Federal Government contracting and Government-approved subcontracting, or an action to exclude a person from participating in covered transactions for a temporary period.



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Debarment

Action by an agency head or a designee to exclude a contractor from Federal Government contracting and Government-approved subcontracting for a specific period of time, or an action to exclude a person from participating in covered transactions for a specific time.



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Authority

- Administrative remedy – decision about significant business risk by a person or organization as a potential contactor or participant
- Inherent authority of the Government as a consumer of goods and services



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Purpose

- Protect the integrity of Federal procurement and non-procurement programs by conducting business only with responsible persons
- The remedy may not be used to punish, coerce, embarrass, harass or “get even”



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Interagency Suspension and Debarment Committee

- Established by Section 4 of Executive Order 12549
- Monitors implementation of the Order, which mandates Executive departments and agencies to:
 - Implement suspension and debarment system for Federal discretionary assistance, loans, and benefit (non-procurement) programs
 - Participate in Government-wide system for suspension and debarment
 - Issue regulations with Government-wide criteria and minimum due process procedures, when suspending or debarring entities
 - Enter suspended and debarred entities' identifying information into appropriate Government systems (i.e. SAM)



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Interagency Suspension and Debarment Committee

- Facilitates lead agency coordination
- Serves as a forum to discuss current suspension & debarment issues
- Assists in developing unified Federal policy
- Committee Members/Participants:
<http://www.epa.gov/isdc/member.htm>



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OIG & SDO Working Together

- Embedded Roles
- High degree of collaboration and coordination
- Common purpose and goals
- Joint participation & coordination throughout process
- Understanding of Corporate Compliance & Ethics Programs



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OIG & SDO Working Together

Office of Inspector General:

- Gathers information on possible S&D candidates from investigations, audits, award officials, state authorities, and others
- Evaluates candidates and coordinates with Special Agents, auditors, award officials and others, as necessary
- Coordinates lead agency through ISDC
- Prepares Action Referral Memo and refers to SDO
- Tracks action and provides further support, as necessary



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OIG & SDO Working Together

Suspension & Debarment Officer:

- Reviews referrals
- Issues notices of suspension or proposed debarment
- Conducts Presentation of Matters in Opposition/Fact-finding
- Issues determination or enters administrative agreement



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Administrative Remedies

- Exclusion from future awards through suspension and debarment
- Compliance agreements in lieu of S&D
- Contract termination for default or convenience
- Withdrawal of solicitation
- Suspension of payments upon a finding of fraud



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Coordination of Remedies

Attorney General's Memorandum encourages parallel proceedings coordination (1/30/2012)

- Damages (civil can be double or treble)
- Penalties
- Costs of civil action
- Criminal Prosecution, Jail, or Probation
- Fines and Restitution



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Corporate Responsibility

- “Present Responsibility” for debarment decisions based on Government’s interests
 - FAR 9.406-1
 - 2 C.F.R. Part 180.125
 - Contractor ethics and integrity
 - Ability to perform
- “Responsible Government Contractor”
 - FAR 9.104-1
 - Satisfactory record of integrity and business ethics
 - Necessary financial resources, ability given other current commitments, satisfactory past performance, organization, experience, accounting and operational controls and technical skills, qualified and eligible to receive award



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“Present Responsibility”

- Effective standards of conduct and internal controls
- Timely and appropriate self-disclosure
- Providing results of a full investigation
- Full cooperation
- Agreement to pay all criminal/civil/administrative liability, including costs and restitution
- Appropriate disciplinary actions against responsible persons



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“Present Responsibility”

- Implementation of remedial measures
- Institution of new/revised review and control procedures and ethics training programs
- Adequate time to eliminate underlying circumstances giving rise to action
- Management recognition and understanding of seriousness of misconduct and implementation of programs to prevent reoccurrence



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“Responsible Government Contractor”

- FAR 9.104.1
- Satisfactory record of integrity and business ethics
- Necessary financial resources
- Ability given other commitments
- Satisfactory past performance
- Organization, experience, accounting and operational controls and technical skills
- Qualified and eligible to receive award



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Administrative Agreements

- Between organization and Agency (SDO)
- Lifts suspension or in lieu of S&D
- Heavy focus on Corporate Compliance & Ethics Program
- Multi-year term
- May require an Independent Monitor
- Specific corrective actions with deadlines and reports
- Training
- Breach provision



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Independent Monitor

- Engaged by organization, but delivers reports to DOI
- Does not investigate the underlying conduct
- Verifies the organization's timely and effective compliance with the terms of the Administrative Agreement
- Scope is primarily determined by the Administrative Agreement
- Not a punitive measure, rather an asset to the organization and safeguard for the Government



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Avoiding Suspensions/Debarments

- Report issues early and thoroughly and demonstrate a willingness to cooperate to Awarding Official and SDO
- Executive/Board level acceptance of responsibility, appreciation of the gravity of any wrong-doing, and commitment to, and involvement in, improvement
- Use of credible third-parties (assessments, investigations, monitoring/testing, training, etc.)
- Effective Corporate Compliance & Ethics Program and internal controls that help prevent, detect and respond to issues in a timely and thorough manner
- If Monitor required, work together and be highly transparent



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Questions