



PROGRAM MATERIALS

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Federal Acquisition Regulation: Latest Trends in Suspensions and Debarments

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**5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919**

Subpart 9.4 - Debarment, Suspension, and Ineligibility

Parent topic: [Part 9 - Contractor Qualifications](#)

9.400 Scope of subpart.

(a) This subpart-

(1) Prescribes policies and procedures governing the *debarment* and *suspension* of contractors by agencies for the causes given in [9.406-2](#) and [9.407-2](#);

(2) Provides for the listing of contractors debarred, suspended, proposed for *debarment*, and declared *ineligible* (see the definition of "*ineligible*" in [2.101](#)); and

(3) Sets forth the consequences of this listing.

(b) Although this subpart does cover the listing of *ineligible* contractors ([9.404](#)) and the effect of this listing ([9.405](#)), it does not prescribe policies and procedures governing declarations of ineligibility except for contractors that have been declared *ineligible* pursuant to [10 U.S.C. 983](#) (see [9.110](#), and [9.405-1\(b\)](#)).

(c) For Federal *Acquisition* Supply Chain Security Act (FASCSA) orders, see subpart [4.23](#).

9.401 Applicability.

In accordance with Public Law 103-355, Section 2455 ([31 U.S.C. 6101](#), note), and Executive Order 12689, any *debarment*, *suspension* or other Governmentwide exclusion initiated under the Nonprocurement Common Rule implementing Executive Order 12549 on or after August 25, 1995, *shall* be recognized by and effective for Executive Branch agencies as a *debarment* or *suspension* under this subpart. Similarly, any *debarment*, *suspension*, proposed *debarment* or other Governmentwide exclusion initiated on or after August 25, 1995, under this subpart *shall* also be recognized by and effective for those agencies and participants as an exclusion under the Nonprocurement Common Rule.

9.402 Policy.

(a) Agencies *shall* solicit *offers* from, award contracts to, and *consent to subcontracts* with responsible contractors only. *Debarment* and *suspension* are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of *debarment* and *suspension* requires that these remedies be imposed only in the public interest for the Government's protection and not for purposes of punishment. Agencies *shall* impose *debarment* or *suspension* to protect the Government's interest and only for the causes and in accordance with the procedures in this subpart.

(c) Agencies are encouraged to establish methods and procedures for coordinating their *debarment* or *suspension* actions.

(d) When more than one agency has an interest in the *debarment* or *suspension* of a contractor, the Interagency *Suspension* and *Debarment* Committee, established under Executive Order 12549, and authorized by section 873

of the *National Defense Authorization Act for Fiscal Year 2009* (Pub. L. 110-417) ([31 U.S.C.6101](#), note), shall resolve the lead agency issue and coordinate such resolution among all interested agencies prior to the initiation of any *suspension, debarment*, or related administrative action by any agency.

(e) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

9.403 Definitions.

As used in this subpart

Administrative agreement means an agreement between an *agency suspending and debarring official* and the *contractor* used to resolve a *suspension* or *debarment* proceeding, or a potential *suspension* or *debarment* proceeding.

Affiliates.

(1) Business concerns, organizations, or individuals are *affiliates* of each other if, directly or indirectly

(i) Either one controls or has the power to control the other; or

(ii) A third party controls or has the power to control both.

(2) Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the *debarment, suspension*, or proposed *debarment* of a *contractor* which has the same or similar management, ownership, or principal employees as the *contractor* that was debarred, suspended, or proposed for *debarment*.

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

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition that creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 ([31 U.S.C. 3801-3812](#)).

Conviction means

(1) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or

(2) Any other resolution that is the functional equivalent of a judgment establishing a criminal offense by a court of competent jurisdiction, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

Contractor means 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*.

Indictment means *indictment* for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an *indictment*.

Legal proceedings means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

Nonprocurement Common Rule means the procedures used by Federal *Executive Agencies* to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, *insurance*, payments for specified use, and donation agreements. See 2 CFR part 180 and *agency* enacting regulations in 2 CFR subtitle B.

Pre-notice letter means a written correspondence issued to a *contractor* in a *suspension* or *debarment* matter, which does not immediately result in an exclusion or ineligibility. The letter is issued at the discretion of the *suspending and debarring official*. The letter is not a mandatory step in the *suspension* or *debarment* process.

Unfair trade practices means the commission of any or the following acts by a *contractor*—

(1) A violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, et seq.) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the *head of the agency* to which such certificate was furnished.

Voluntary exclusion means a *contractor's* written agreement to be excluded for a period under the terms of a settlement between the *contractor* and the *suspending and debarring official* of one or more *agencies*. A *voluntary exclusion* must have Governmentwide effect.

9.404 Exclusions in the System for Award Management.

(a) The General Services Administration (GSA)

(1) Operates the web-based *System for Award Management (SAM)*, which contains exclusion records; and

(2) Provides technical assistance to *Federal agencies* in the use of SAM.

(b) An exclusion record in SAM contains the

(1) Names and addresses of the entities debarred, suspended, proposed for *debarment*, voluntarily excluded, declared *ineligible*, or excluded or disqualified under the nonprocurement common rule, with cross-references when more than one name is involved in a single action;

(2) Name of the agency or other authority taking the action;

(3) Cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) Effect of the action;

(5) Termination date for each listing;

(6) *Unique Entity Identifier*;

(7) Social Security Number (SSN), Employer Identification Number (EIN), or other *Taxpayer Identification Number (TIN)*, if available; and

(8) Name and telephone number of the agency point of contact for the action.

(c) Each agency *must*—

(1) Identify the individual(s) responsible for entering and updating exclusions data in SAM and assign the appropriate roles;

(2) Remove the exclusion roles in SAM when the individual leaves the organization or changes functions;

(3) For each exclusion, including each voluntary exclusion, accomplished by the agency—

(i) Enter the information required by paragraph (b) of this section within 3 working days after the action becomes effective;

(ii) Determine whether it is legally permitted to enter the SSN, EIN, or other TIN, under agency authority to suspend or debar; and

(iii) Update the exclusion record in SAM, generally within 5 working days after modifying or rescinding an action;

(4) In accordance with internal retention procedures, maintain records relating to each *debarment*, *suspension*, proposed *debarment*, or voluntary exclusion taken or entered into by the agency;

(5) Establish procedures to ensure that the agency does not solicit *offers* from, award contracts to, or *consent to subcontracts* with contractors who have an active exclusion record in SAM, except as otherwise provided in this subpart;

(6) Direct inquiries concerning listed contractors and other entities to the agency or other authority that took the action; and

(7) Contact GSA for technical assistance with SAM, via the support e-mail address or on the technical support phone line.

(d) SAM is available via <https://www.sam.gov>.

9.405 Effect of listing.

(a) Contractors debarred, suspended, proposed for *debarment*, or voluntarily excluded, are excluded from receiving contracts, and agencies *shall* not solicit *offers* from, award contracts to, or *consent to subcontracts* with these contractors, unless the *agency head* determines that there is a compelling reason for such action (see [9.405-1\(a\)\(2\)](#), [9.405-2](#), [9.406-1\(d\)](#), [9.407-1\(d\)](#), and [26.505\(e\)](#)). Contractors debarred, suspended, proposed for *debarment*, or voluntarily excluded, are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors and other entities that have an active exclusion record in SAM because they have been declared *ineligible* on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies *shall* not solicit *offers* from, award contracts to, or *consent to subcontracts* with these contractors under those conditions and for that period.

(c) Agencies *shall* not enter into, renew, or extend contracts with contractors that have been declared *ineligible* pursuant to 22 U.S.C. 2593e.

(d) Contractors debarred, suspended, proposed for *debarment*, or voluntarily excluded, are excluded from acting as individual *sureties* (see part 28).

(e)

(1) After the opening of bids or receipt of proposals or quotes, the *contracting officer shall* review the exclusion records in SAM.

(2) Bids received from any listed contractor in response to an invitation for bids *shall* be entered on the abstract of bids, and rejected unless the *agency head* determines *in writing* that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or *offers* received from any listed contractor *shall* not be evaluated for award or included in the competitive range, nor *shall* discussions be conducted with a listed *offeror* during a period of ineligibility, unless the *agency head* determines, *in writing*, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the *contracting officer may*, but is not required to, consider such proposals, quotations, or *offers*.

(4) Immediately prior to award, the *contracting officer shall* again review the exclusion records in SAM to ensure that no award is made to a listed contractor.

9.405-1 Continuation of current contracts.

(a) *Contractors debarred, suspended, proposed for debarment, or voluntarily excluded .*

(1) Notwithstanding the *debarment, suspension, proposed debarment, or voluntary exclusion*, of a contractor, agencies *may* continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, proposed for *debarment*, or voluntarily excluded, unless the *agency head* directs otherwise. A decision as to the type of termination action, if any, to be taken *should* be made only after review by agency *contracting* and technical personnel and by counsel to ensure the propriety of the proposed action.

(2) For contractors debarred, suspended, proposed for *debarment*, or voluntarily excluded, unless the *agency head* makes a written determination of the compelling reasons for doing so, ordering activities *shall* not

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;

(ii) Place orders under Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or

(iii) Add new work, exercise *options*, or otherwise extend the duration of current contracts or orders.

(b) *Ineligible* contractors. A covered agency, as defined in 9.110-1, *shall* terminate existing contracts and *shall* not place new orders or award new contracts with contractors that have been declared *ineligible* pursuant to 10 U.S.C. 983 (see 9.110), except for contracts at or below the *simplified acquisition threshold* or contracts for the *acquisition of commercial products and commercial services*.

9.405-2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, proposed for *debarment*, or voluntarily excluded, is proposed as a subcontractor for any subcontract subject to Government consent (see subpart 44.2), *contracting officers shall* not *consent to subcontracts* with such contractors unless the *agency head* states *in writing* the compelling reasons for this approval action. (See 9.405 concerning declarations of ineligibility affecting sub-contracting.)

(b) The Government suspends or debar contractors to protect the Government's interests. Contractors are prohibited from entering into any subcontract in excess of \$45,000, other than a subcontract for a commercially available off-the-shelf item, with a contractor that has been debarred, suspended, proposed for *debarment*, or voluntarily excluded, unless there is a compelling reason to do so. If a contractor intends to enter into a subcontract in excess of \$45,000, other than a subcontract for a commercially available off-the-shelf item, with a party that is debarred, suspended, proposed for *debarment*, or voluntarily excluded, as evidenced by the party's having an active exclusion record in SAM (see [9.404](#)), a corporate officer or designee of the contractor is required by operation of the clause at [52.209-6](#), Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, Proposed for *Debarment*, or Voluntarily Excluded, to notify the *contracting officer, in writing*, before entering into such subcontract. For contracts for the *acquisition of commercial products*, the notification requirement applies only for first-tier subcontracts. For all other contracts, the notification requirement applies to subcontracts at any tier. The notice *must* provide the following:

- (1) The name of the subcontractor;
- (2) The contractor's knowledge of the reasons for the subcontractor having an active exclusion record in SAM;
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its having an active exclusion record in SAM; and
- (4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's *debarment, suspension, proposed debarment, or voluntary exclusion*.

(c) The contractor's compliance with the requirements of [52.209-6](#) will be reviewed during Contractor Purchasing System Reviews (see [subpart 44.3](#)).

9.406 Debarment.

9.406-1 General.

(a) It is the *suspending and debarring official's* responsibility to determine whether *debarment* is in the Government's interest. The *suspending and debarring official may*, in the public interest, debar a contractor for any of the causes in [9.406-3](#). The existence of a cause for *debarment*, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures, mitigating factors, or aggravating factors *should* be considered in making any *debarment* decision. Before arriving at any *debarment* decision, the *suspending and debarring official should* consider factors such as the following (some of the factors below could apply to individuals such as contractors that are individuals, and are so marked):

- (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for *debarment* or had adopted such procedures prior to any Government investigation of the activity cited as a cause for *debarment*.
- (2) Whether the contractor (including an individual) brought the activity cited as a cause for *debarment* to the attention of the appropriate Government agency in a timely manner.
- (3) Whether the contractor has fully investigated the circumstances surrounding the cause for *debarment* (or the individual cooperated with the investigation) and, if so, made the result of the investigation available to the *suspending and debarring official*.
- (4) Whether the contractor (including an individual) cooperated fully with Government agencies during the investigation and any court or administrative action.

- (5) Whether the contractor (including an individual) has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
- (6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for *debarment*.
- (7) Whether the contractor (including an individual) has implemented or agreed to implement remedial measures, including any identified by the Government.
- (8)
- (i) Whether the contractor has instituted or agreed to institute new or revised review and control procedures, ethics training, or other relevant training programs.
- (ii) For an individual, whether the individual has attended relevant remediation training.
- (9) Whether the contractor (including an individual) has had adequate time to eliminate the circumstances that led to the cause for *debarment*.
- (10)
- (i) Whether the contractor's management recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for *debarment* and has implemented programs to prevent recurrence.
- (ii) For an individual, whether the individual recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for *debarment* and has adopted practices to prevent recurrence.
- (11) Whether the contractor (including an individual) has a pattern or prior history of wrongdoing, the frequency of incidents and/or duration of the wrongdoing, and the actual or potential harm or impact that results, or *may* result, from the wrongdoing.
- (12) Whether and to what extent the contractor (including an individual) planned, initiated, or carried out the wrongdoing, and the kind of positions within the contractor's organization held by the individual involved in the wrongdoing.
- (13) Whether the wrongdoing was pervasive within the contractor's organization.
- (14) Whether the individual or the contractor's principals tolerated the offense.
- (15) Whether the contractor (including an individual) is or has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for *debarment* specified in this subpart.
- (16) Whether the contractor (including an individual) has entered into an administrative agreement with a *Federal agency* or a similar agreement with a State or local government that is not Governmentwide but is based on conduct similar to one or more of the causes for *debarment* specified in this subpart.
- (17) Whether there are any other factors to consider for the contractor (including an individual) appropriate to the circumstances of a particular case.
- (b) The existence or nonexistence of any aggravating or mitigating factors or remedial measures such as set forth in paragraph (a) of this section is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for *debarment* exists, the contractor has the burden of demonstrating, to the satisfaction of the *suspending and debarring official*, its present responsibility and that *debarment* is not necessary.

(c) *Debarment* constitutes *debarment* of all divisions or other organizational elements of the contractor, unless the *debarment* decision is limited by its terms to specific divisions, organizational elements, or commodities. The *suspending and debarring official* may extend the *debarment* decision to include any *affiliates* of the contractor if they are—

(1) Specifically named; and

(2) Given written notice of the proposed *debarment* and an opportunity to respond (see 9.406-3(c)).

(d) A contractor's *debarment*, or proposed *debarment*, shall be effective throughout the executive branch of the Government, unless the *agency head* or a designee (except see 26.505(e)) states *in writing* the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)

(1) When the *suspending and debarring official* has authority to debar contractors from both contracts pursuant to the Federal *Acquisition* Regulation in this chapter and contracts for the purchase of Federal *personal property* pursuant to the Federal Management Regulation (FMR) in 41 CFR part 102-38, that official shall consider simultaneously debarring the contractor from the award of *acquisition* contracts and from the purchase of Federal *personal property*.

(2) When debarring a contractor from the award of *acquisition* contracts and from the purchase of Federal *personal property*, the *debarment* notice shall so indicate and the appropriate FAR and FMR citations shall be included.

9.406-2 Causes for debarment.

The *suspending and debarring official* may debar-

(a) A contractor for a *conviction* of or civil judgment for-

(1) Commission of fraud or a criminal offense in connection with-

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract.

(2) Violation of Federal or State antitrust statutes relating to the 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) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the *United States* or its *outlying areas*, when the product was not made in the *United States* or its *outlying areas* (see Section 202 of the Defense Production Act (Public Law 102-558)); or

(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b)

(1) A contractor, based upon a *preponderance of the evidence*, for any of the following-

(i) Violation of the terms of a Government contract or subcontract so serious as to justify *debarment*, such as-

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of 41 U.S.C. chapter 81, *Drug-Free Workplace*, as indicated by-

(A) Failure to comply with the requirements of the clause at 52.226-7, *Drug-Free Workplace*; or

(B) 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 26.504).

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the *United States* or its *outlying areas*, when the product was not made in the *United States* or its *outlying areas* (see Section 202 of the Defense Production Act (Public Law 102-558)).

(iv) Commission of an unfair trade practice as defined in 9.403 (see Section 201 of the Defense Production Act (Pub.L.102-558)).

(v) Delinquent Federal taxes in an amount that exceeds \$10,000.

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(1) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(2) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(B) Examples.

(1) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. *Should* the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(2) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. *Should* the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(3) *The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159.* The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(4) *The taxpayer has filed for bankruptcy protection.* The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(vi) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of-

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the *United States Code*;

(B) Violation of the civil False *Claims Act* (31 U.S.C. 3729-3733); or

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in 32.001.

(vii) Determination of a false certification under 52.209-13, Violation of Arms Control Treaties or Agreements-Certification.

(2) A contractor, based on a determination by the Secretary of Homeland Security or the Attorney General of the *United States*, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989, as amended by Executive Order 13286). Such determination is not reviewable in the *debarment* proceedings.

(c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

9.406-3 Procedures.

(a) *Investigation and referral.* Agencies *shall* establish procedures for the prompt reporting, investigation, and referral to the *suspending and debarring official* of matters appropriate for that official's consideration.

(b) *Decision-making process.*

(1) Agencies *shall* establish procedures governing the *debarment* decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures *shall* afford the contractor (and any specifically named *affiliates*) an opportunity to submit, in person, *in writing*, or through a representative, information and argument in opposition to the proposed *debarment*. If the *suspending and debarring official* extends the opportunity for the contractor to submit material in opposition, then the official *should* also give a deadline for submission of materials. The *suspending and debarring official may* use flexible procedures to allow a contractor to present matters in opposition in person or remotely through appropriate technology; if so, the *suspending and debarring official should* change the notice in paragraph (c)(3)(iv) of this section to include those flexible procedures.

(2) In actions not based upon a *conviction* or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed *debarment*, agencies *shall* also-

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* A notice of proposed *debarment shall* be issued by the *suspending and debarring official* to the contractor and any specifically named *affiliates*.

(1) The written notice *shall* be sent

(i) By U.S. mail or private delivery service to the last known street address, with delivery notification service;

(ii) By email to the point of contact email address in the contractor's SAM registration, if any, or to the last known email address as confirmed by the agency; or

(iii) By certified mail to the last known street address with return receipt requested.

(2) The notice *shall* be sent—

(i) To the contractor, the contractor's identified counsel for purposes of the administrative proceedings, or the contractor's agent for service of process; and

(ii) For each specifically named affiliate, to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agent for service of process.

(3) The notice *shall* state—

(i) That *debarment* is being considered;

(ii) The reasons for the proposed *debarment* in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(iii) The cause(s) relied upon under 9.406-2 for proposing *debarment*;

(iv) That, within 30 days after receipt of the notice, the contractor *may* submit, in person, *in writing*, or through a representative, information and argument in opposition to the proposed *debarment*, including any additional specific information that raises a genuine dispute over the material facts;

(v) The agency's procedures governing *debarment* decision making;

(vi) The effect of the issuance of the notice of proposed *debarment*;

(vii) The potential effect of an actual *debarment*;

(viii) That in addition to any information and argument in opposition to a proposed *debarment*, the contractor *must* identify—

(A) Specific facts that contradict the statements contained in the notice of proposed *debarment*. Include any information about any of the factors listed in 9.406-1(a). A general denial is insufficient to raise a genuine dispute over facts material to the proposed *debarment*;

(B) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(C) All criminal and civil proceedings not included in the notice of proposed *debarment* that grew out of facts relevant to the cause(s) stated in the notice; and

(D) All of the contractor's *affiliates*; and

(ix) That if the contractor fails to disclose the information in paragraph (c)(3)(viii) of this section, or provides false information, the agency taking the action *may* seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official's decision.*

(1) In actions based upon a *conviction* or civil judgment, or in which there is no genuine dispute over material facts, the *suspending and debarring official shall* make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no *suspension* is in effect, the

decision *shall* be made within 45 days from the date that the official administrative record is closed, unless the *suspending and debarring official* extends this period for good cause. The official record closes upon the expiration of the contractor's time to submit information and argument in opposition, including any extensions (see paragraph (b)(1) of this section).

(2)

(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact *shall* be prepared. The *suspending and debarring official shall* base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The *suspending and debarring official may* refer matters involving disputed material facts to another official for findings of fact. The *suspending and debarring official may* reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The *suspending and debarring official's* decision *shall* be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed *debarment* is not based upon a *conviction* or civil judgment, the cause for *debarment must* be established by a *preponderance of the evidence*.

(e) *Notice of suspending and debarring official's decision.*

(1) If the *suspending and debarring official* decides to impose *debarment*, the contractor and any *affiliates* involved *shall* be given prompt notice using the procedures in paragraphs (c)(1) and (2) of this section—

(i) Referring to the notice of proposed *debarment*;

(ii) Specifying the reasons for *debarment*;

(iii) Stating the period of *debarment*, including effective dates; and

(iv) Advising that the *debarment* is effective throughout the executive branch of the Government unless the head of an agency or a designee makes the statement called for by [9.406-1\(d\)](#).

(2) If *debarment* is not imposed, the *suspending and debarring official shall* promptly notify the contractor and any *affiliates* involved, using the procedures in paragraphs (c)(1) and (2) of this section.

(f) *Administrative agreements.*

(1) If the contractor enters into an administrative agreement with the Government in order to resolve a *debarment* or potential *debarment* proceeding, the *suspending and debarring official shall* access the website (available at <https://www.cpars.gov>, then select FAPIIS), enter the requested information, and upload documentation reflecting the administrative agreement.

(2) The *suspending and debarring official* is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission *should* be made within 3 working days.

(3) With regard to information that *may* be covered by a disclosure exemption under the Freedom of Information Act, the *suspending and debarring official shall* follow the procedures at [9.105-2\(b\)\(2\)\(iv\)](#).

(g) *Voluntary exclusions.*

(1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a *debarment* or potential *debarment* matter, the *suspending and debarring official shall* access the website (available at

<https://www.sam.gov>) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The *suspending and debarring official* is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission *should* be made within 3 working days.

(3) Regarding information that *may* be covered by a disclosure exemption under the Freedom of Information Act, the *suspending and debarring official shall* follow the procedures at 9.105-2(b)(2)(iv).

(h) *Pre-notice letters*. Prior to initiating a proposed *debarment*, a pre-notice letter *may* be issued at the discretion of the agency *suspending and debarring official*. A pre-notice letter is not required to initiate *debarment* under this subpart. (See 9.403.)

9.406-4 Period of debarment.

(a)

(1) *Debarment shall* be for a period commensurate with the seriousness of the cause(s). Generally, *debarment should* not exceed 3 years, except that-

(i) *Debarment* for violation of the provisions of 41 U.S.C. chapter 81, Drug-Free Workplace (see 26.505) *may* be for a period not to exceed 5 years;

(ii) *Debarments* under 9.406-2(b)(2) *shall* be for 1 year unless extended pursuant to paragraph (b) of this section; and

(iii) *Debarments* under 9.406-2(b)(1)(vii) *shall* be for a period of not less than 2 years, inclusive of any *suspension* period, if *suspension* precedes a *debarment* (see paragraph (a)(2) of this section).

(2) If *suspension* precedes a *debarment*, the *suspension* period *shall* be considered in determining the *debarment* period.

(b) The *suspending and debarring official may* extend the *debarment* for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a *debarment may* not be extended solely on the basis of the facts and circumstances upon which the initial *debarment* action was based. *Debarments* under 9.406-2(b)(2) *may* be extended for additional periods of one year if the Secretary of Homeland Security or the Attorney General determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If *debarment* for an additional period is determined to be necessary, the procedures of 9.406-3 *shall* be followed to extend the *debarment*.

(c) The *suspending and debarring official may* reduce the period or extent of *debarment*, upon the contractor's request, supported by documentation, for reasons such as-

(1) Newly discovered material evidence;

(2) Reversal of the *conviction* or civil judgment upon which the *debarment* was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the *debarment* was imposed; or

(5) Other reasons the the *suspending and debarring official* deems appropriate.

9.406-5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor *may* be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct *shall* be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor *may* be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement *may* be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct *shall* be evidence of such knowledge, approval, or acquiescence.

9.407 Suspension.

9.407-1 General.

(a) The *suspending and debarring official may*, in the public interest, suspend a contractor for any of the causes in [9.407-2](#), using the procedures in [9.407-3](#).

(b)

(1) *Suspension* is a serious action to be imposed on the basis of *adequate evidence*, pending the completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In deciding whether immediate action is necessary to protect the Government's interest, the *suspending and debarring official* has wide discretion. The *suspending and debarring official may* infer the necessity for immediate action to protect the Government's interest either from the nature of the circumstances giving rise to a cause for *suspension* or from potential business relationships or involvement with a program of the Federal Government. In assessing the adequacy of the evidence, agencies *should* consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment *should* include an examination of basic documents such as contracts, *inspection* reports, and correspondence. An indictment or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes *adequate evidence* for purposes of *suspension* actions.

(2) The existence of a cause for *suspension* does not necessarily require that the contractor be suspended. The *suspending and debarring official should* consider the seriousness of the contractor's acts or omissions and *may*, but is not required to, consider remedial measures, mitigating factors, or aggravating factors, such as those in [9.406-1\(a\)](#). A contractor has the burden of promptly presenting to the *suspending and debarring official* evidence of remedial measures or mitigating factors when it has reason to know that a cause for *suspension* exists. The existence or nonexistence of any remedial measures or aggravating or mitigating factors is not necessarily determinative of a contractor's present responsibility.

(c) *Suspension* constitutes *suspension* of all divisions or other organizational elements of the contractor, unless the *suspension* decision is limited by its terms to specific divisions, organizational elements, or commodities. The *suspending and debarring official may* extend the *suspension* decision to include any *affiliates* of the contractor if they are-

(1) Specifically named; and

(2) Given written notice of the *suspension* and an opportunity to respond (see [9.407-3\(c\)](#)).

(d) A contractor's *suspension shall* be effective throughout the executive branch of the Government, unless the *agency head* or a designee (except see [26.505\(e\)](#)) states *in writing* the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)

(1) When the *suspending and debarring official* has authority to suspend contractors from both contracts pursuant to the Federal *Acquisition Regulation* in this chapter and contracts for the purchase of Federal *personal property* pursuant to Federal Management Regulation (FMR) in 41 CFR part 102-38, that official *shall* consider simultaneously suspending the contractor from the award of *acquisition* contracts and from the purchase of Federal *personal property*.

(2) When suspending a contractor from the award of *acquisition* contracts and from the purchase of Federal *personal property*, the *suspension* notice *shall* so indicate and the appropriate FAR and FMR citations *shall* be included.

9.407-2 Causes for suspension.

(a) The *suspending and debarring official may* suspend a contractor suspected, upon *adequate evidence*, of-

(1) Commission of fraud or a criminal offense in connection with-

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract.

(2) Violation of Federal or State antitrust statutes relating to the 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 [41 U.S.C. chapter 81](#), *Drug-Free Workplace*, as indicated by-

(i) Failure to comply with the requirements of the clause at [52.226-7](#), *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 [26.504](#));

(5) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the *United States* or its *outlying areas*, when the product was not made in the *United States* or its *outlying areas* (see Section 202 of the Defense Production Act (Public Law 102-558));

(6) Commission of an unfair trade practice as defined in [9.403](#) (see section 201 of the Defense Production Act (Pub.L.102-558));

(7) Delinquent Federal taxes in an amount that exceeds \$10,000. See the criteria at [9.406-2\(b\)\(1\)\(v\)](#) for determination of when taxes are delinquent;

(8) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, 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* (31 U.S.C. 3729-3733); or

(iii) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in 32.001; or

(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 Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) of this section constitutes *adequate evidence* for *suspension*.

(c) The *suspending and debarring official* may upon *adequate evidence* also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.407-3 Procedures.

(a) *Investigation and referral.* Agencies *shall* establish procedures for the prompt reporting, investigation, and referral to the *suspending and debarring official* of matters appropriate for that official's consideration.

(b) *Decision-making process.*

(1) Agencies *shall* establish procedures governing the *suspension* decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures *shall* afford the contractor (and any specifically named *affiliates*) an opportunity, following the imposition of *suspension*, to submit, in person, *in writing*, or through a representative, information and argument in opposition to the *suspension*. If the *suspending and debarring official* extends the opportunity for the contractor to submit material in opposition, then the official *should* also give a deadline for submission of materials. The *suspending and debarring official* may use the flexible procedures in 9.406-3(b)(1); if so, the *suspending and debarring official* *should* change the notice in paragraph (c)(5) of this section to include those flexible procedures.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the *suspension* and if no determination has been made, on the basis of advice from the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the *suspension* would be prejudiced, agencies *shall* also-

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named *affiliates* are suspended, they *shall* be immediately advised using the procedures in 9.406-3(c)(1) and (2)

(1) That they have been suspended and that the *suspension* is based on an indictment or other *adequate evidence* that the contractor has committed irregularities

(i) Of a serious nature in business dealings with the Government; or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities *shall* be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the *suspension* is for a temporary period pending the completion of an investigation and such legal proceedings as *may* ensue;

(3) Of the cause(s) relied upon under 9.407-2 for imposing *suspension*;

(4) Of the effect of the *suspension*;

(5) That, within 30 days after receipt of the notice, the contractor *may* submit, in person, *in writing*, or through a representative, information and argument in opposition to the *suspension*, including any additional specific information that raises a genuine dispute over the material facts;

(6) That additional proceedings to determine disputed material facts will be conducted unless—

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of advice by the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the *suspension* would be prejudiced;

(7) That, in addition to any information and argument in opposition to a *suspension*, the contractor *must* identify—

(i) Specific facts that contradict the statements contained in the notice of *suspension*. Include any information about any of the factors listed in 9.406-1(a). A general denial is insufficient to raise a genuine dispute over facts material to the *suspension*;

(ii) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(iii) All criminal and civil proceedings not included in the notice of *suspension* that grew out of facts relevant to the cause(s) stated in the notice; and

(iv) All of the contractor's *affiliates*; and

(8) That if the contractor fails to disclose the information in paragraph (c)(7) of this section or provides false information, the agency taking the action *may* seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official's decision.*

(1) The *suspending and debarring official's* decision *shall* be based on all the information in the administrative record, including any submission made by the contractor, for actions—

(i) Based on an indictment;

(ii) In which the contractor's submission does not raise a genuine dispute over material facts; or

(iii) In which additional proceedings to determine disputed material facts have been denied on the basis of advice from the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office.

(2)

(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact *shall* be prepared. The *suspending and debarring official shall* base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The *suspending and debarring official may* refer matters involving disputed material facts to another official for findings of fact. The *suspending and debarring official may* reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The *suspending and debarring official's decision shall* be made after the conclusion of the proceedings with respect to disputed facts.

(3) The *suspending and debarring official may* modify or terminate the *suspension* or leave it in force (for example, see 9.406-4(c) for the reasons for reducing the period or extent of *debarment*). However, a decision to modify or terminate the *suspension shall* be without prejudice to the subsequent imposition of—

(i) *Suspension* by any other agency; or

(ii) *Debarment* by any agency.

(4) Prompt written notice of the *suspending and debarring official's decision shall* be sent to the contractor and any *affiliates* involved, using the procedures in 9.406-3(c)(1) and (2).

(e) *Administrative agreement*.

(1) If the contractor enters into an administrative agreement with the Government in order to resolve a *suspension* or potential *suspension* proceeding, the *suspending and debarring official shall* access the website (available at <https://www.cpars.gov>, then select FAPIIS), enter the requested information, and upload documentation reflecting the administrative agreement.

(2) The *suspending and debarring official* is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission *should* be made within 3 working days.

(3) With regard to information that *may* be covered by a disclosure exemption under the Freedom of Information Act, the *suspending and debarring official shall* follow the procedures at 9.105-2(b)(2)(iv).

(f) *Voluntary exclusion*.

(1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a *suspension* or potential *suspension* proceeding, the *suspending and debarring official shall* access the website (available at <https://www.sam.gov>) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The *suspending and debarring official* is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission *should* be made within 3 working days.

(3) Regarding information that *may* be covered by a disclosure exemption under the Freedom of Information Act, the *suspending and debarring official shall* follow the procedures at 9.105-2(b)(2)(iv).

(g) *Pre-notice letter*. Prior to initiating a *suspension*, a pre-notice letter *may* be issued at the discretion of the agency *suspending and debarring official*. A pre-notice letter is not required to initiate *suspension* under this subpart. (See 9.403.)

9.407-4 Period of suspension.

(a) *Suspension shall* be for a temporary period pending the completion of an investigation and any ensuing legal proceedings, unless sooner terminated by the *suspending and debarring official* or as provided in this section.

(b) If legal proceedings are not initiated within 12 months after the date of the *suspension* notice, the *suspension shall* be terminated unless an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests its extension, in which case it *may* be extended for an additional 6 months. In no event *may* a *suspension* extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The *suspending and debarring official shall* notify the Department of Justice or other responsible prosecuting official of the proposed termination of the *suspension*, at least 30 days before the 12-month period expires, to give that official an opportunity to request an extension on the Government's behalf.

9.407-5 Scope of suspension.

The scope of *suspension shall* be the same as that for *debarment* (see [9.406-5](#)), except that the procedures of [9.407-3](#) *shall* be used in imposing *suspension*.

9.408 [Reserved]

9.409 Contract clause.

The *contracting officer shall* insert the clause at [52.209-6](#), Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, Proposed for *Debarment*, or Voluntarily Excluded, in *solicitations* and contracts where the contract value exceeds \$45,000.



Fiscal Year (FY) 2023 Interagency Suspension and Debarment Committee (ISDC) Section 873 Report to Congress

In This Report:

- ◆ Who We Are
- ◆ FY 2023 Summary Highlights
- ◆ Federal Suspension, Debarment, and Related Administrative Activities: An Overview
- ◆ Actions Consider Agency Missions, Business Lines, and the Coordinated Governmentwide Needs
- ◆ FY 2023 Governmentwide Activities and Accomplishments: Year in Review
- ◆ Common Misconceptions / FAQs (Part 3)

Who We Are

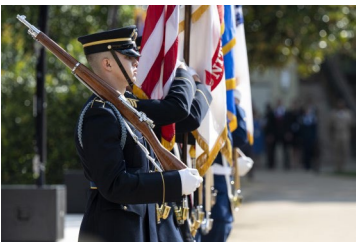
- Interagency body established by Executive Order 12549 consisting of Federal agencies that pool resources, such as experience and promising practices to provide support for Federal suspension and debarment programs
- **Mission:** To **protect** the Government's business interests from potential harm posed by individuals or entities whose conduct indicates or constitutes cause for exclusion, such as a history of poor performance or a serious or compelling lack of business honesty or integrity
- Committee work is implemented by volunteer agency representatives who share their time and talents to support ISDC efforts in addition to their regular duties.
- For more information, see www.acquisition.gov/isdc-home.

FY 2023 Summary Highlights

- Agency Suspending and Debarment Officials (SDOs) primarily rely on referrals to initiate suspension and debarment proceedings. Referrals to SDOs decreased approximately 3.6% from FY 2022 with agencies noting continuing delays in court proceedings and other challenges. Total *declinations* of referrals remained low at 2.8% when compared to the number of actions executed.
- Total suspensions, proposed debarments, and debarments increased modestly from FY 2022 by 3%, with suspensions and proposed debarments exceeding the Governmentwide average for FYs 2020-23 (the Pandemic years) as the effects of the COVID-19 Pandemic continued to subside. This trend occurred despite significant personnel changes and some agency reports of newly emerging types of actions and increasingly complex actions received that required more time and resources to evaluate.
- COVID-19 fraud matters were among the newly emerging types of cases reported in FY 2023. COVID-related suspensions, proposed debarments, and debarments increased from 13 in FYs 2021 and 2022 combined to over 230 in FY 2023.
- Based on agencies' voluntary responses, parties contested and disclosed fewer matters to suspension and debarment offices Governmentwide: the total number of proactive engagements by potential respondents decreased significantly by approximately 42%; agencies also reported an overall decrease in post-notice engagements by approximately 24% despite some agencies' reported increases.
- Agencies reported a growing number of requests by Respondents for extended or stayed administrative proceedings pending the resolution of parallel criminal proceedings and other concerns, such as movement within correctional facilities. Where such requests for extension or stays of proceedings are granted, the Government is properly protected because the exclusions remain in effect.
- While voluntary exclusions increased slightly, certain alternatives to exclusion, such as administrative agreements and pre-notice letters, decreased by approximately 40% and 37% respectively, attributable in part to diminished outreach by respondents.
- Notable FY 2023 accomplishments by the ISDC include: (1) working with the FAR Council to publish a proposed rule that better aligns the procurement regulatory coverage with the nonprocurement coverage in Title 2 of the Code of Federal Regulations; (2) partnering with the Council of Inspectors General on Integrity and Efficiency, and Pandemic Response Accountability Council to lead the bi-annual workshop on interagency collaboration with a COVID-19 fraud focus; (3) supporting the U.S. delegations to the 2023 negotiations in the Indo-Pacific Economic Framework for Prosperity; (4) working with the Department of Justice (DOJ) to increase coordination, resulting in increased notification by DOJ of convictions to help SDOs identify and assess matters impacting programmatic integrity and efficiency.

***SDOs are strategically situated to consider and coordinate agencies' and Governmentwide needs, missions, and business lines, such as:**

- ◇ Providing for national security and defense, including responding to national emergencies and natural disasters; and
- ◇ Promoting the progress of science and useful arts and regulating commerce with foreign nations and among the states and with Tribes, including via resource management/stewardship.



The color guard presents the colors during a September 11 Pentagon Staff Memorial Observance in the courtyard of the Pentagon in 2023.

Photo Credit: Navy Petty Officer 1st Class Alexander Kubitzka.



An Army CH-47 Chinook drops seawater over a perimeter surrounding the wildfires in Lahaina, Maui, on August 16, 2023. Members of the Hawaii Army and Air National Guard and of the Army (active duty and reserves) helped authorities establish immediate security and safety.

Photo credit: U.S. Army National Guard Spc. Tonia Ciancanelli.

Federal Suspension, Debarment, and Related Administrative Activities: An Overview

The Federal suspension and debarment (S&D) system is governed by the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 9.4 and the Nonprocurement Common Rule (NCR) at 2 C.F.R. Part 180, to help ensure the Government only conducts business with presently responsible parties. These tools are designed to protect the Government's business interests from potential harm posed by individuals or entities whose conduct indicate or constitute cause for exclusion, such as a history of poor performance or a serious or compelling lack of business honesty or integrity.

The Government uses suspension and debarment procedures to exercise business judgment in accordance with principles of fairness and due process, through the actions of agencies' Suspending and Debarring Officials (SDOs) and their offices. These procedures both afford parties due process and equip Federal officials with the ability to exclude parties from participating in certain transactions as needed to protect Government operations and financial resources. In contrast with certain foreign governments' S&D systems, the United States' S&D system is not punitive; rather it is principled upon protection of the Government and taxpayer funds against prospective business risk, including the mitigation of fraud, waste, and abuse. Under the United States' S&D system, if sufficient corrective or remediating actions are taken, such as through an administrative agreement, present responsibility may be demonstrated and subsequently, an excluded party's eligibility to participate as a business partner or participant may be reinstated.

Actions Consider Specific Agency Missions, Business Lines, and the Coordinated Governmentwide Needs

SDOs and corresponding S&D programs are strategically situated in-house with expertise on the agency's various mission, programs, and business lines. This facilitates Federal suspension and debarment programs' consideration of the business risks posed by an entity or individual² and promotes coordination with impacted programs, such as agency procurement or nonprocurement programs and activities. Agencies also assess and coordinate the need for and impact of suspension and debarment actions Governmentwide through participation in the ISDC and through its internal Lead Agency Coordination Request (LACR) process.

¹ For the definitions and counting conventions of suspensions, debarments, and related remedies, see Appendix 1.

² Agency SDOs consider S&D related actions against entities and individuals. When business entities are considered for SDO action, individuals are routinely and appropriately subject to related SDO actions because of their participation or other involvement in the misconduct: entities ultimately act through individuals. A significant portion of persons subject to a debarment action were first convicted and afforded due process through the criminal justice system by the time of administrative S&D action.

Agency missions and business lines (continued):



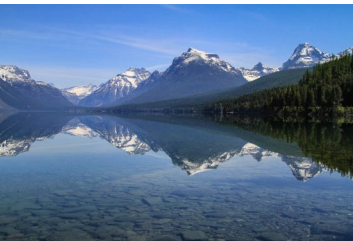
Artist's rendition of Geostationary Operational Environmental Satellites (GOES-R) orbiting Earth.

Photo credits: NOAA/NESDIS.



A luminescent jellyfish - Order Limnomedusae.

Photo credits: National Oceanic and Atmospheric Administration (NOAA) Okeanos Explorer Program.



Lake McDonald at Glacier National Park.

Photo credits: David Restivo/ National Park Service (NPS).

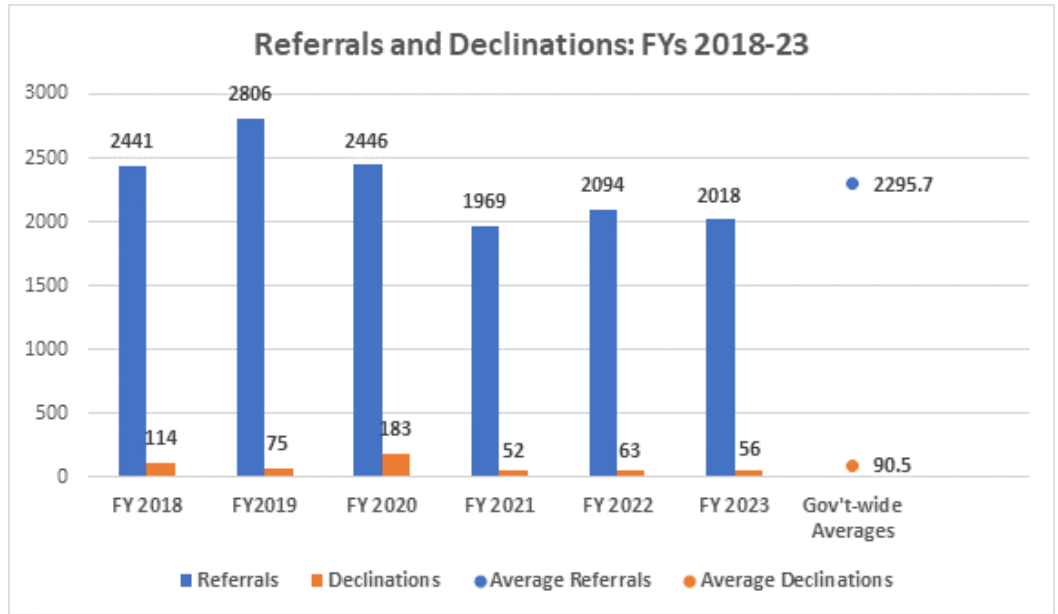
FY 2023 in context:

- ◆ Total referrals decreased approximately 3.6% from FY 2022, with agencies noting varied ebbs and flows of referrals and declinations.
- ◆ Agencies noted new and complex types of cases as well as sources of referrals.
- ◆ Despite significant turnover in S&D programs and decreases in many agencies' total referrals received, overall, agencies declined fewer matters in FY 2023 than in FY 2022.

FY 2023 Governmentwide Activities and Accomplishments: Year in Review

In FY 2023, agencies continued to receive and assess referrals of S&D matters impacting programmatic integrity. Agency SDOs primarily rely upon referrals received to initiate suspension and debarment related actions. Overall, agencies reported the receipt of 3.6% fewer total referrals than in the prior year. Total declinations of referred matters remained relatively low in FY 2023 at 2.8%.³ Some S&D programs reported outreach efforts to facilitate referrals, such as training personnel on indicators of fraud to promote awareness and effectiveness. Agencies also reported the receipt of referrals from new sources and of complex matters. However, Governmentwide, total referrals and declinations fell below their corresponding averages for FYs 2018-23 as well as for FYs 2020-23 (*the Pandemic years*).

Figure 1



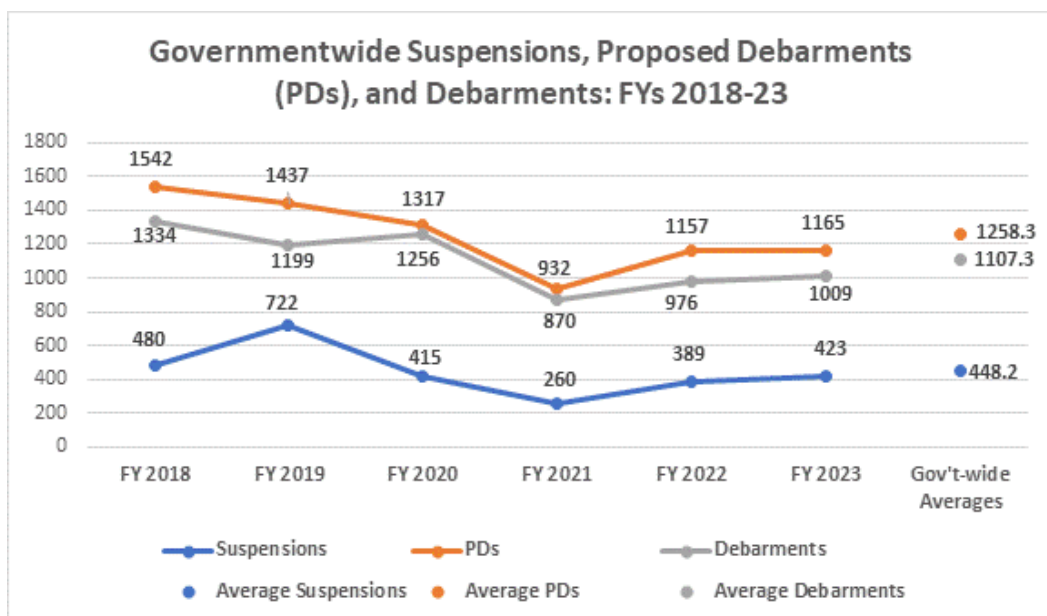
³ Because the receipt of referrals and issuance of declination of matters can cross fiscal years, the total referrals received and declined matters in a given fiscal year will not be an exact comparison.

FY 2023 in context (continued):

- ◆ Total debarments, suspensions, and proposed debarments slightly increased by 3% from FY 2022 in support of protecting agencies’ missions, supply chains, and business lines.
- ◆ Potential or actual respondents’ outreach to agencies decreased in FY 2023: Total proactive engagements by potential respondents decreased by approximately 42%. Post-notice engagements by respondents decreased by approximately 24%. In FY 2023, a smaller number of agencies reported the receipt of pre-notice engagements than in FY 2022; however, a minimally larger number of agencies reported post-notice engagements.
- ◆ The total number of administrative agreements decreased by 48% from FY 2022 in part due to the decrease in the number of proactive engagements by contractors and government participants.

Agencies also reported their continued use of flexibilities adopted in response to the COVID-19 Pandemic and noted continuing delays in court proceedings and other challenges. As the effects of the Pandemic continued to subside, Governmentwide total actions in Figure 2 stabilized with a slight increase in FY 2023 of 3%, despite significant personnel changes. The FY 2023 total suspensions and proposed debarments exceeded averages for FYs 2020-23, the years spanning the Pandemic, thus, signaling the process of returning to pre-COVID levels. The extent of agencies’ activities varied from FY 2022, with at least one agency noting decreases in total suspensions, proposed debarments, and debarments; four agencies reporting increases in all three types of actions; and several agencies reporting varied shifts in types of actions taken ranging from double to ten-fold, including one agency that increased its FY 2023 proposed debarment and debarment totals each by more than 150 actions. Such variation, when considered with an agency’s alternatives to exclusion, reflect the agency’s case-by-case evaluation and application of S&D remedies.

Figure 2



Some agencies reported significant increases in requests by respondents for extensions or stays of their administrative proceedings pending the conclusion of parallel criminal proceedings, movement within correctional facilities, or other concerns. Where such requests for extension or stays of proceedings are granted, the Government is properly protected because the exclusions remain in effect. However, flexibilities granted for respondents’ submissions contributed to delayed final determinations and actions. As court proceedings started to return to pre-pandemic levels, agencies reported a corresponding Governmentwide increase in actions based on indictments, convictions, and civil judgments.

FY 2023 in context
(continued):

- ◆ Although the number of negotiated voluntary exclusion agreements increased minimally, total pre-notice letters decreased by 40% from FY 2022.
- ◆ Agencies noted increased requests by respondents for additional due process, such as stayed S&D proceedings, pending the resolution of other parallel matters, the grant of which likely contributed to the decreased use of alternatives to exclusion.
- ◆ Agencies also reported that a greater number of S&D actions were based on judicial filings, such as convictions and civil judgments, than in FY 2022, indicating that S&D respondents are receiving due process through both the judiciary and administrative proceedings on the facts constituting cause.
- ◆ On a voluntary basis, 8 agencies reported issuing over 230 COVID-19 fraud related S&D actions, signifying an approximately 17-fold increase as compared to the Governmentwide totals identified for FYs 2021-22.

In contrast to the increased exclusions in FY 2023, agencies reported significant Governmentwide decreases in the communications by respondents, both before and after agencies' issuance of notices as compared with FY 2022. Proactive engagements occur when a potential respondent is the first to initiate contact with S&D program officials before an SDO issues any notice. The ISDC remains committed to encouraging individuals and entities to proactively reach out to SDOs. The ISDC maintains and updates the SDOs points of contact through the ISDC's website. In FY 2023, some members of the ISDC even engaged in outreach through private bar panel discussions, such as on individual agency suspension and debarment programs' coordination of remedies and proactive engagement with SDOs.

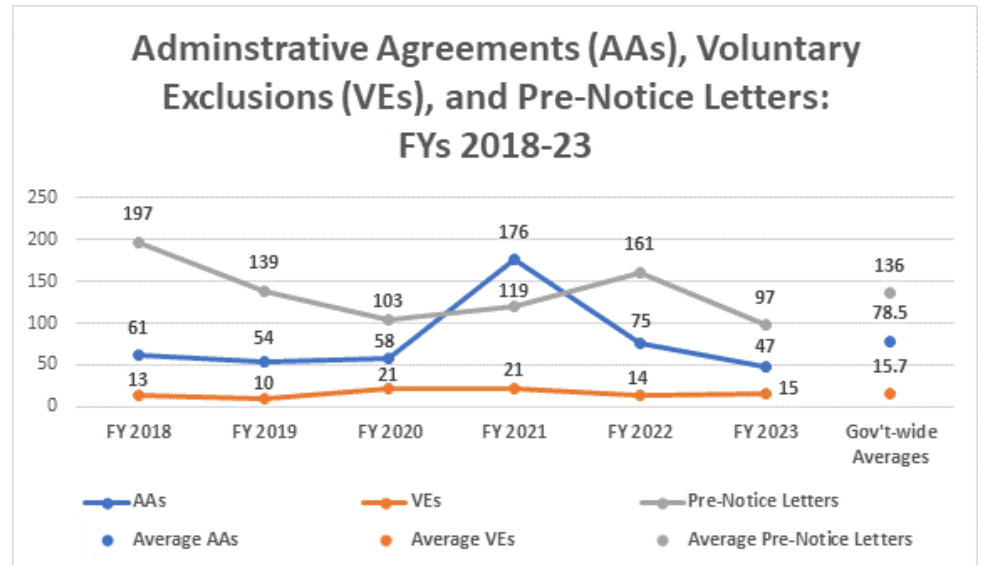
Based on voluntary responses for FY 2023, 9 agencies reported 37 potential respondents proactively engaged with S&D offices, which is a decrease of approximately 42% from the reported FY 2022 total. The FY 2023 total also is significantly less than the FY 2021 total and approximates the FY 2020 reported sum. Only 7 agencies reported such engagements for each of FYs 2021, 2022, and 2023. For FY 2023, 19 agencies, on a voluntary basis, reported post-notice engagements or communications contesting suspension or debarment actions, by 318 respondents. The FY 2023 total represents an approximately 24% decrease from FY 2022 and a 25% decrease from FY 2021, despite some agencies reporting increased interactions. The total number of agencies reporting such interactions in FY 2023 increased by one.

In tandem with the decreased proactive and post-notice engagements, agencies reported fewer negotiated administrative agreements⁴, which address SDO concerns in lieu of suspension or debarment. In FY 2023, 10 agencies entered into 47 administrative agreements, which is a 37% decrease from the prior year's reported total and a more than 70 percent drop from FY 2021. Comparing FYs 2022 and 2023, five agencies issued administrative agreements in only one but not both fiscal years as a result of interactions with respondents. Of the agencies with administrative agreements in FY 2023, five entered such agreements for each of FYs 2021, 2022, and 2023.

Voluntary exclusions are where respondents voluntarily agree to refrain from Federal opportunities in lieu of suspension and debarment. Seven agencies reported voluntary exclusions with 15 respondents in FY 2023. Comparing FYs 2022 and 2023, six agencies that reported voluntary exclusions did not negotiate such agreements in both years; however, four agencies reported voluntary exclusions for each of FYs 2021 through 2023. For FY 2023, 13 agencies issued 97 pre-notice letters or a decrease of approximately 40% from FY 2022. Of the agencies reporting pre-notice letters, eight reported actions in FYs 2021 through 2023.

⁴ Administrative agreements typically include tailored provisions to improve the ethical culture and corporate governance processes of a respondent, such as the use of independent third-party monitors or the removal of individuals associated with a violation from positions of responsibility within a company.

Figure 3



In FY 2023, agencies also reported increasingly complex and/or newly emerging types of actions referred. For example, based on voluntary responses, 8 agencies (some different from the previous year) reported receipt of referrals related to COVID-19 fraud and the issuance of over 230 administrative actions. Those agencies voluntarily reporting did not decline any referral associated with pandemic fraud. These actions represent a substantial increase from the previous total of 13 COVID-19 fraud actions voluntarily reported for FYs 2021-22 as well as a changing mix of agencies receiving referrals and implementing actions across FYs 2021-23. Such activities reflect the ongoing coordination of the ISDC and Federal law enforcement communities in this and other emerging areas to steward taxpayer resources as well as mitigate against fraud and further business risks.

FY 2023 Governmentwide Activities and Accomplishments

During FY 2023, the ISDC⁶ continued to focus on four strategic objectives:

- (1) promoting the fundamental fairness of the suspension and debarment process;
- (2) increasing transparency and consistency through training, engagement, and outreach;

⁶ Committee work is implemented by volunteer agency representatives who share their time and talents to support ISDC efforts in addition to their regular duties.

- (3) enhancing Federal suspension and debarment practices, including alternatives to exclusion, by identifying and developing resources available to the ISDC community; and
- (4) encouraging the development of more effective compliance and ethics programs by Government contractors and nonprocurement participants to address and balance business risks with opportunity costs and needs.

Notable examples of the ISDC leadership and members' past and ongoing efforts include:

- providing technical advice and support to the United States delegations to the 2023 negotiations relating to the Indo-Pacific Economic Framework for Prosperity;
- increasing coordination with DOJ, resulting in increased notification (on a quarterly basis) by DOJ of convictions to help SDOs identify and assess matters impacting programmatic integrity and efficiency;
- engaging in outreach through private bar panel discussions, such as on individual agency suspension and debarment programs' coordination of remedies and proactive engagement with SDOs;
- continued support of member agencies by:
 - ◊ providing instructors to train Federal practitioners;
 - ◊ providing timely updates regarding S&D related legislative, regulatory, and case law updates and developments as well as notable Governmentwide trends or initiatives, such as revisions to the GSA System for Award Management;
 - ◊ co-hosting with the Council of Inspectors General on Integrity and Efficiency (CIGIE) and the Pandemic Response Accountability Council (PRAC) a bi-annual workshop on interagency collaboration, with a COVID-19 fraud focus, for over 500 Government registrants;
 - ◊ facilitating lead agency coordination and the implementation of potential actions with the PRAC and DOJ; and
- continuing technical support of efforts to harmonize procurement and nonprocurement suspension and debarment regulations; and
- continued support of guidance related to emerging trends, such as COVID-19 fraud and foreign affiliation fraud matters, as well as coordination reference requirements for research integrity and disclosures.

Additional data regarding the FY 2023 activities are available in the enclosed appendices. The ISDC looks forward to its continued work with agencies to better protect taxpayer programs and operations from fraud, waste, and abuse through effective Governmentwide suspension and debarment programs.

Appendix 1

Glossary and Counting Conventions

For consistency and clarity, the ISDC used the following in preparing the Appendices to this report.

Glossary

“Administrative Agreement” - also known as an administrative compliance agreement, refers to a document that resolves an exclusion or potential exclusion matter. The election to enter into an administrative agreement is solely within the discretion of the SDO and is used only if the administrative agreement appropriately furthers the Government’s interest. Agreements may be entered into with any respondent, whether an individual person or organization when it is appropriate to do so. While administrative agreements vary according to the SDO’s concerns regarding each respondent, these agreements typically mandate the implementation of several provisions to improve the ethical culture and corporate governance processes of a respondent in a suspension or debarment-related proceeding. Agreements may also call for the use of independent third-party monitors or the removal of individuals associated with a violation from positions of responsibility within a company. Administrative agreements are made publicly available online in the General Services Administration’s System for Award Management (SAM) under the Responsibility/Qualification section.

“Agency Pre-Notice Letters” - includes show cause letters, requests for information, and similar types of letters used to inform the recipient that the agency debarment program is reviewing matters for potential SDO action, identify the alleged misconduct, and give the recipient an opportunity to respond prior to formal SDO action. This is a discretionary tool employed when appropriate to the circumstances of the matter under consideration and does not include show cause letters issued by contracting officers.

“Debarment” - an exclusion or ineligibility of an individual or entity from participating in new procurements and nonprocurement transactions upon an SDO’s finding of a preponderance of the evidence of cause in accordance with the agency’s regulations implementing and/or supplementing 2 C.F.R. § 180.800, *et seq.*, or 48 C.F.R. § 9.406, *et seq.*

“Declination” - an SDO’s determination after receiving a referral that issuing a suspension or debarment notice is not necessary to protect the Government’s interests. Placing a referral on hold in anticipation of additional evidence for future action is not a declination.

“Proactive Engagements” - written communications or documented in-person or oral discussions and/or meetings that occur when a potential respondent is the first to initiate contact with S&D program officials. Proactive engagements are reported herein by the number of respondents and occur before an SDO issues a notice.

“Post-Notice Engagements” - the contested suspension or debarment actions, counted and reported herein by the number of respondents. A contest includes any written and/or oral submission by a respondent challenging a notice of suspension, a notice of proposed debarment, or a debarment decision.

“Referral” - a written request prepared in accordance with agency procedures and guidelines, supported by documentary evidence, presented to the SDO for issuance of a notice of suspension or notice of proposed debarment as appropriate under FAR Subpart 9.4 and 2 C.F.R. Part 180.

Note: This definition of Referral is designed to eliminate potential variations due to differences in agency tracking practices and organizational structures. For example, agency debarment programs organized as coordination of fraud remedies divisions (responsible for the coordination of the full spectrum of fraud remedies: criminal, civil, contractual, and administrative) may not have a common starting point for tracking case referrals as agency programs exclusively performing suspension and debarment functions.

Appendix 1

Glossary and Counting Conventions (continued)

Glossary (continued)

“Suspension” - an exclusion or ineligibility of an individual or entity from participating in new procurements and nonprocurement transactions upon an SDO’s finding of adequate evidence of cause and the immediate need for action in accordance with the agency’s regulations implementing and/or supplementing 2 C.F.R. § 180.700 *et seq.* or 48 C.F.R. § 9.407 *et seq.*

“Voluntary Exclusion” - a term used under 2 C.F.R. Part 180 referring to the authority of an agency to enter into a voluntary exclusion with a respondent in lieu of suspension or debarment. A voluntary exclusion, like a debarment, carries the same Governmentwide reciprocal effect and, generally, bars the respondent from participating in procurement and nonprocurement transactions with the Government. Agencies must enter all voluntary exclusions in the General Services Administration’s System for Award Management (SAM).

Counting Conventions

Consistent with previous years’ Section 873 reports, the number of suspensions, proposed debarments, and debarment actions are broken out as separate exclusion actions even if they relate to the same respondents. With each of these exclusion actions, both FAR Subpart 9.4 and 2 C.F.R. Part 180 require an analysis performed by program personnel involving separate procedural and evidentiary considerations. Furthermore, a suspension may resolve without proceeding to a notice of proposed debarment, a notice of proposed debarment may resolve without a prior suspension action, and a proposed debarment may resolve without an agency SDO imposing a debarment. Moreover, separate “referrals” are typically generated for suspensions and proposed debarments. Finally, suspension and debarment actions trigger separate notice and other due process requirements by the agency.

Agencies were instructed to count referrals or actions regarding individuals as one action per individual regardless of the number of associated pseudonyms and AKAs (“also known as”) associated with the individual. Businesses operating under different names or that have multiple DBAs (“doing business as”) are counted separately as separate business entities or units for counting suspensions and debarments.

If one administrative agreement resolved potential suspension or debarment actions for multiple individuals and/or entities, agencies are instructed to count administrative agreements for each individual and/or entity to accurately reflect the legal obligations of each party.

The data in the appendices focus on the suspension and debarment activities of the 24 agencies and departments subject to the CFO Act. These are the agencies and departments with the highest activity levels in procurement and nonprocurement awards.

The report addresses the discretionary suspension and debarment actions taken under the Governmentwide regulations at FAR Subpart 9.4 and 2 C.F.R. Part 180. The Report does not track statutory or other nondiscretionary debarments outside of the scope of these regulations.

Appendix 2
Suspension and Debarment Actions in FY 2023

| Agency/Department | Suspensions | Proposed Debarments | Debarments |
|---|-------------|---------------------|-------------|
| Agency for International Development | 10 | 12 | 15 |
| Department of Agriculture | 6 | 23 | 24 |
| Department of Commerce | 2 | 3 | 2 |
| Department of Defense | | | |
| Department of the Air Force | 22 | 40 | 45 |
| Department of the Army | 11 | 123 | 80 |
| Fourth Estate* | 50 | 81 | 54 |
| Department of the Navy | 13 | 39 | 32 |
| Department of Education | 9 | 11 | 6 |
| Department of Energy | 7 | 6 | 6 |
| Department of Health and Human Services | 4 | 38 | 37 |
| Department of Homeland Security | 2 | 364 | 315 |
| Department of Housing and Urban Development | 24 | 16 | 22 |
| Department of the Interior | 1 | 6 | 13 |
| Department of Justice | 1 | 7 | 9 |
| Department of Labor | 12 | 61 | 88 |
| Department of State | 6 | 10 | 9 |
| Department of Transportation | 22 | 24 | 9 |
| Department of the Treasury | 38 | 38 | 53 |
| Department of Veterans Affairs | 8 | 6 | 12 |
| AmeriCorps | 8 | 5 | 5 |
| Environmental Protection Agency | 83 | 117 | 73 |
| Export-Import Bank | 18 | 18 | 0 |
| General Services Administration | 0 | 30 | 16 |
| National Aeronautics and Space Administration | 4 | 10 | 8 |
| National Nuclear Security Administration | 0 | 6 | 54 |
| National Science Foundation | 2 | 1 | 3 |
| Nuclear Regulatory Commission | 1 | 1 | 1 |
| Office of Personnel Management | 0 | 0 | 0 |
| Small Business Administration | 59 | 69 | 18 |
| Social Security Administration | 0 | 0 | 0 |
| Total Actions | 423 | 1165 | 1009 |

**The Department of Defense Fourth Estate includes other Defense subcomponents, such as the Defense Logistics Agency, Defense Health Agency, and National Geospatial-Intelligence Agency.*

Appendix 3
Other Actions Related to Suspension and Debarment in FY 2023

| Agency/Department | Show Cause/ Pre-Notice Letters | Referrals | Declinations | Administrative Agreements | Voluntary Exclusions |
|---|--------------------------------------|-------------|--------------|------------------------------|-------------------------|
| Agency for International Development | 0 | 27 | 0 | 0 | 0 |
| Department of Agriculture | 0 | 205 | 25 | 0 | 0 |
| Department of Commerce | 4 | 7 | 3 | 2 | 1 |
| Department of Defense | | | | | |
| Department of the Air Force | 4 | 62 | 0 | 3 | 1 |
| Department of the Army | 23 | 218 | 4 | 3 | 0 |
| Fourth Estate* | 2 | 139 | 0 | 7 | 0 |
| Department of the Navy | 26 | 271 | 0 | 11 | 0 |
| Department of Education | 0 | 19 | 0 | 0 | 0 |
| Department of Energy | 1 | 27 | 1 | 1 | 0 |
| Department of Health and Human Services | 1 | 19 | 1 | 0 | 4 |
| Department of Homeland Security | 4 | 435 | 0 | 2 | 0 |
| Department of Housing and Urban Development | 0 | 85 | 0 | 3 | 1 |
| Department of the Interior | 0 | 9 | 2 | 0 | 0 |
| Department of Justice | 0 | 8 | 0 | 0 | 0 |
| Department of Labor | 7 | 78 | 0 | 0 | 0 |
| Department of State | 3 | 16 | 0 | 0 | 0 |
| Department of Transportation | 1 | 62 | 0 | 5 | 2 |
| Department of the Treasury | 0 | 12 | 0 | 0 | 0 |
| Department of Veterans Affairs | 0 | 26 | 0 | 0 | 0 |
| AmeriCorps | - | 15 | 0 | 0 | 0 |
| Environmental Protection Agency | 8 | 209 | 18 | 5 | 0 |
| Export-Import Bank | 3 | 22 | 2 | 1 | 0 |
| General Services Administration | 8 | 10 | 0 | 0 | 0 |
| National Aeronautics and Space Administration | 1 | 12 | 0 | 1 | 4 |
| National Nuclear Security Administration | 0 | 3 | 0 | 0 | 0 |
| National Science Foundation | 0 | 5 | 0 | 0 | 0 |
| Nuclear Regulatory Commission | 1 | 1 | 0 | 0 | 0 |
| Office of Personnel Management | 0 | 0 | 0 | 0 | 0 |
| Small Business Administration | 0 | 16 | 0 | 3 | 2 |
| Social Security Administration | 0 | 0 | 0 | 0 | 0 |
| Total Actions | 97 | 2018 | 56 | 47 | 15 |

*The Department of Defense Fourth Estate includes other Defense subcomponents, such as the Defense Logistics Agency, Defense Health Agency, and National Geospatial-Intelligence Agency.

Common Misconceptions about Suspension and Debarment Frequently Asked Questions (Part 3) (Page 1 of 2)



For Common Misconceptions Part 1, refer to: https://www.acquisition.gov/sites/default/files/page_file_uploads/ISDC_FY_2020_Common_Misconceptions_about_Suspension_and_Debarment.pdf
For Common Misconceptions Part 2, refer to: https://www.acquisition.gov/sites/default/files/page_file_uploads/Common_Misconceptions_Part_2_%28ISDC_Section_873_Joint_FY_2021-22_Report%29.pdf

How does the Government determine which agency Suspending and Debarment Officials (SDOs) issue administrative suspension and debarment (S&D) related actions?

Upon the receipt of referrals from awarding officials, law enforcement officials, and others, including disclosures by potential respondents and/or substantiated referrals from the general public, agencies considering S&D action will coordinate within the Interagency Suspension and Debarment Committee (ISDC) to identify the SDO best situated to implement administrative remedies to protect the Government against identified business risks and misconduct of individuals and entities. This process is called lead agency coordination. On occasion, SDOs may act jointly given the substantial interests of the agencies.

Can an Agency take suspension or debarment action against an individual?

Yes. An Agency may take a suspension against an individual when there is cause, adequate evidence, and immediate need to protect the Government; and debarment when there is a preponderance of evidence of cause.

What should be provided to an SDO when requesting reconsideration of an exclusion?

Reconsideration requests must be based on more than mere assertions of present responsibility. A debarment official may reduce or terminate an exclusion based on newly discovered material evidence, a reversal of a conviction or civil judgment upon which a debarment was based, a bona fide change in ownership or management, an elimination of other cause(s) for which an exclusion was imposed, or other reason(s) for which the debarment official finds appropriate.

Why do agencies separately count SDO actions in the Report to Congress such as suspensions, proposed debarments, debarments, agreements, etc., when two or more actions address a common respondent?

Each action taken against a Respondent (irrespective of whether the Respondent is an individual or an entity) represents a separate decision by an SDO, subject to different notice requirements and/or other due process or evidentiary standards, which may have differing results. Unlike the report to Congress, which is bound by fiscal year, SDO actions are fluid and may transpire across fiscal years. For example, a suspension of a particular party may occur in one year, followed by a proposed debarment during the next year.

Do agencies separately count and report the exclusion of an individual's alternate name or alias in SAM.gov as multiple actions in the suspension and debarment reports to Congress?

No; agencies do not separately count and report the exclusion entries of an individual's alternate names or alias as multiple actions in its suspension and debarment reports to Congress. For example, where John Doe, also known as Jeremy Doe, has been suspended and listed under both names in SAM.gov, the reporting agency only counts one exclusion for the individual.

Aliases are identified in SAM.gov to inform awarding officials of an excluded party's identity by listing all known alternate name(s), to mitigate against the risks of an excluded party's attempted circumvention of an exclusion. Where some individuals incorporate or list themselves as legal entities, an SDO's action and corresponding SAM.gov entries may also identify the incorporated persona of the individual for the purpose of protecting against business risks by the excluded individual. Exclusions of businesses are separately counted from exclusions of any individuals acting through those entities.

Do the Governmentwide numbers reported in the suspension and debarment reports to Congress include actions designated in SAM as prohibitions/restrictions?

No; this report is limited to addressing discretionary suspensions and debarments as well as other related administrative remedies, such as voluntary exclusions and administrative agreements issued pursuant to 2 C.F.R. Part 180, as implemented by agencies, and 48 C.F.R. Subpart 9.4, as supplemented by agencies. This report to Congress does not include actions designated in SAM as prohibitions/ restrictions. For example, some agencies are statutorily required to impose restrictions or prohibitions, which result in parties being ineligible for fixed periods under limited circumstances and limited in scope as required under laws, Executive Orders, or regulations. Those non-discretionary actions are not covered by this report.



December 31, 2024

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Interagency Suspension and Debarment Committee (ISDC) provides reports to Congress on the activities and progress of the Federal suspension and debarment system, pursuant to Section 873 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Public Law 110-417).¹ This report describes the status of the Federal suspension and debarment and the related activities of each member agency during FY 2023.²

Suspension and debarment-related actions are administrative remedies designed to protect the public interest from potential harm posed by individuals or entities whose conduct indicates or constitutes cause for exclusion, such as serious poor performance, evidence of fraud, or other indicia of a serious or compelling lack of business honesty or integrity. Agency Suspending and Debarring Officials (SDOs) consider action against business entities and individuals alike, as appropriate, to ensure that Federal contractors and participants of nonprocurement transactions are presently responsible. In coordination with the implementation of other remedies, SDOs promote the Government's interests and present responsibility by excluding parties that engage in serious misconduct and fail to demonstrate an appropriately remediated approach and commitment to business honesty, integrity, and performance. As the purpose of suspension and

¹ Established by Executive Order (E.O.) 12549, the ISDC is an unfunded interagency body, consisting chiefly of representatives from executive branch organizations working together to improve and provide support for suspension and debarment programs throughout the Government. The 24 agencies covered by the Chief Financial Officers Act (CFO Act), as amended, are standing members of the ISDC. ISDC membership also includes independent Federal agencies and corporations. ISDC member agencies are collectively responsible for helping to ensure the integrity of nearly all Federal procurement and discretionary assistance, loan, and benefit (nonprocurement) transactions. In conducting their work, ISDC is an interagency body that collaborates with the federal law enforcement community legislative agencies, and other stakeholders.

² In accordance with E.O. 12549, the ISDC is responsible for the discretionary suspension and debarment system, which is governed by the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 9.4 and the Nonprocurement Common Rule (NCR) at 2 C.F.R. Part 180. The information collected for this report reflects activities related only to use of the discretionary suspension and debarment remedy. However, the Federal database for listing exclusions, System for Award Management (SAM), includes additional types of exclusions distinct in scope or application from discretionary actions reported here. This report does not address prohibitions and restrictions mandated by, or imposed as an automatic consequence of, violations of various statutes and/or regulatory compliance regimes, such as agency-specific prohibitions and restrictions.

debarment is the protection of Government interests rather than punishment, SDOs are also vested with an array of tools, such as alternate resolutions through which business entities and individuals may demonstrate that, prior problematic conduct notwithstanding, a present risk does not exist and corrective measures have been adopted to prevent any recurrence. SDOs are thus equipped to exercise business judgment, make appropriate assessments, and encourage Federal participants to implement solutions reducing risks to public programs, missions, and fisc.

This report addresses the ISDC's strategic objectives and activities, outreach, and member agencies' reported discretionary implementation of suspension and debarment-related remedies. During FY 2023, ISDC members collectively reported increases in total exclusions from the prior year including a substantial increase in the number of actions related to COVID-19 fraud referrals and other increasingly complex cases. Agencies reported fewer administrative agreements, proactive engagements with respondents and responses following SDOs' issuance of notices, despite greater outreach efforts by ISDC members to explore alternatives to suspension and debarment. Progress to improve the Federal suspension and debarment system included advancements to launch a new lead agency coordination request portal and ongoing efforts to better harmonize and align the FAR and NCR. Additional data regarding the FY 2023 activities are enclosed in the attached appendices, summary highlights, and common misconceptions document. For more information on the ISDC, please see its homepage at <https://www.acquisition.gov/isdc-home>.

The ISDC looks forward to its continued work with agencies to better protect taxpayer programs and operations from business risks through effective suspension and debarment programs.

Sincerely,

Jennifer L. Ward, Chair
ISDC

Monica Aquino-Thieman, Vice-Chair
ISDC

James S. Latoff, Vice-Chair
ISDC

Enclosures

Identical Letter Sent to: The Honorable Rand Paul, The Honorable James Comer, and The Honorable Jamie Raskin

Verification of Debarment or Suspension

All businesses and other entities doing business with the federal government are required to register for a Unique Entity Identifier also known as a UEI. A UEI is issued by the System for Award Management (SAM); the UEI replaced the DUNS number as the authorized identifier for the federal government.

For those contracts utilizing Federal Funds, verification of Federal debarment and suspension is required. This is discussed within the Federal Terms & Conditions which must be included within all contracts utilizing Federal funds. Please see the verbiage below.

Debarment and Suspension.

Contractor is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Contractor agrees to comply with the DOD implementation of 2 CFR part 180 (at 2 CFR 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify (sub)contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the Contractors contract files and shall be subject to audit by Federal and State audit agencies.

When viewing an entities registration within SAM.gov, there is an option available that allows a user to download a PDF report which will verify the following useful information:

1. Federal debarment or suspension also known as exclusions;
2. UEI Number; and
3. Verifies the entity's registration is still active and states the last updated date.

This resource provides the steps required to download an entity report.

Website Address: SAM.gov


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Cancel

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[Sign in](#)

[Create an account](#)

Sign in for existing users

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Workspace



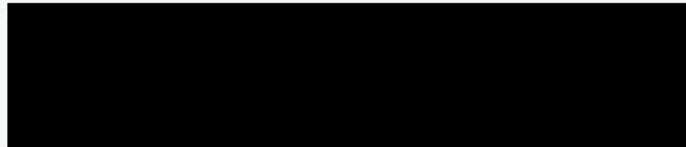
[Account Details](#)
[Roles](#)
[Email Settings](#)
[Saved Searches](#)
[Followed Records](#)

Pending Requests



No available requests

Notifications



[See All Notifications](#)

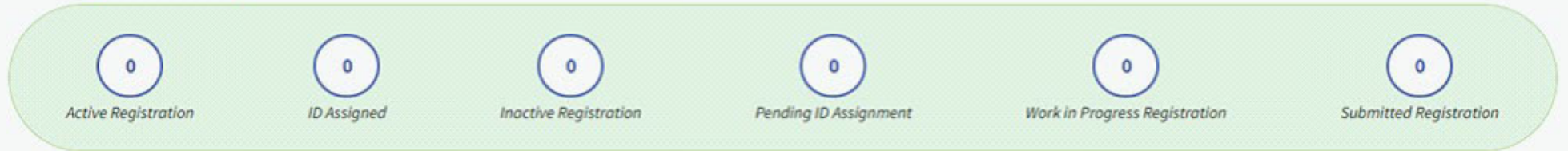
[Entity Information](#)

[Reference Services](#)

[Request A Role](#)

Entity Information

Entities [See All](#)



No Active Registrations

Search

All Words

Search Results

Saved Searches

Actions

Select Domain
All Domains

Filter By

Keyword Search

For more information on how to use our keyword search, visit our [help guide](#)

Simple Search

Search Editor

- Any Words
- All Words
- Exact Phrase

Federal Organizations

Status



Select Criteria

Choose your filters and run your report to begin.



Search

[Search Results](#) [Saved Searches](#) [Actions](#)

Select Domain Entity Information

- All Domains
- Contract Opportunities
- Assistance Listings
- Entity Information**
- Federal Hierarchy
- Wage Determinations

Select Criteria
Choose your filters and run your report to begin.



Search

[Search Results](#) [Saved Searches](#)



- Select Domain
Entity Information
- All Entity Information
 - Entities
 - Disaster Response Registry
 - Responsibility / Qualification
 - Exclusions

Select Criteria
Choose your filters and run your report to begin.

Search

All Words

e.g. 1606N020Q02



Search Results

Saved Searches

Actions

Select Domain
Entity Information



All Entity Information

Entities

Disaster Response Registry

Responsibility / Qualification

Exclusions

Filter By



Keyword Search

For more information on how to use our keyword search, visit our [help guide](#)

Simple Search

Search Editor

Any Words

All Words

Sort by

Relevance

Showing 1 - 25 of 86 results

LEGISLATIVE OFFICE OF STATE OF MONTANA ● ID Assigned

Unique Entity ID
RQ4AD2FZ3F29

Physical Address
1301 E 6TH AVENUE, STATE CAPITOL
RM 110, HELENA, MT 59620 USA

Entity
Assigned Date
Jan 27, 2022

JUDICIARY COURTS OF STATE OF MONTANA ● Active Registration

Unique Entity ID
FSMKBLPRN986

CAGE Code
4PK65

Physical Address
215 N SANDERS ST, HELENA,
MT 59601 USA

Entity
Expiration Date
Aug 6, 2024
Purpose of Registration
Federal Assistance Awards

DEPARTMENT OF COMMERCE MONTANA ● Active Registration

Unique Entity ID
QP1EAYPHGCD6

CAGE Code
399H7

Physical Address
301 S PARK AVE, HELENA, MT
59601 USA

Entity
Expiration Date
Oct 11, 2024
Purpose of Registration
Federal Assistance Awards

MONTANA DEPARTMENT OF ADMINISTRATION ● Active Registration

Unique Entity ID
KW2LA3N6EY79

CAGE Code
36RP4

Physical Address
125 N ROBERTS ST, HELENA,
MT 59601 USA

Entity
Expiration Date
Sep 6, 2024
Purpose of Registration
Federal Assistance Awards

Exclusions

Actions

- Entity Registration
- Exclusions**
- Active Exclusions
- Responsibility / Qualification

MONTANA DEPARTMENT OF ADMINISTRATION

Active Registration

Entity Information

Unique Entity ID: KW2LA3N6EY79
CAGE/NCAGE: 36RP4

Expiration Date: Sep 6, 2024

Physical Address
125 N Roberts ST
Helena, Montana
59601-4558, United States

Mailing Address
Room 155 Mitchell Bldg
125 N Roberts
Helena, Montana
59620-0101, United States

Purpose of Registration
Federal Assistance Awards Only

Version
Current Record

EXCLUSIONS



There may be instances when an individual or firm has the same or similar name as your search criteria, but is actually a different party. Therefore, it is important that you verify a potential match with the excluding agency identified in the exclusion's details. To confirm or obtain additional information, contact the federal agency that took the action against the listed party. Agency points of contact, including name and telephone number, may be found by navigating to the Agency Exclusion POCs page within Help.

Active Exclusions

There are no active exclusion records associated to this entity by its Unique Entity ID.

< Exclusions

Actions



- Download
- Follow

Entity Registration

Exclusions

Active Exclusions

Responsibility / Qualification

MONTANA DEPARTMENT OF ADMINISTRATION

● Active Registration

Unique Entity ID CAGE/NCAGE
KW2LA3N6EY79 36RP4

Expiration Date

Sep 6, 2024

Physical Address
**125 N Roberts ST
Helena, Montana
59601-4558, United States**

Mailing Address
**Room 155 Mitchell Bldg
125 N Roberts
Helena, Montana
59620-0101, United States**

Purpose of Registration
Federal Assistance Awards Only

Version

Current Record

Download Options

Select File Type

PDF

Name

EntityInformation_20240110-081722

Cancel Download

- Entity Registration
- Exclusions
- Active Exclusions
- Responsibility / Qualification

Entity Information

Active Registration

Expiration Date

Sep 6, 2024



MONTANA DEPARTMENT OF ADMINISTRATION

| | | |
|--|---|--|
| Unique Entity ID KW2LA3N6EY79 | CAGE / NCAGE 36RP4 | Purpose of Registration Federal Assistance Awards Only |
| Registration Status Active Registration | Expiration Date Sep 6, 2024 | |
| Physical Address 125 N Roberts ST Helena, Montana 59601-4558 United States | Mailing Address Room 155 Mitchell Bldg 125 N Roberts Helena, Montana 59620-0101 United States | |

Business Information

| | | |
|---|--|------------------------------|
| Doing Business as (blank) | Division Name State Of Montana | Division Number 01 |
| Congressional District Montana 02 | State / Country of Incorporation (blank) / (blank) | URL mt.gov |

Registration Dates

| | | |
|---------------------------------------|---------------------------------------|--|
| Activation Date Sep 8, 2023 | Submission Date Sep 7, 2023 | Initial Registration Date Feb 24, 2005 |
|---------------------------------------|---------------------------------------|--|

Entity Dates

| | |
|---|---|
| Entity Start Date Nov 8, 1889 | Fiscal Year End Close Date Jun 30 |
|---|---|

Immediate Owner

| | |
|------------------------|---------------------------------------|
| CAGE (blank) | Legal Business Name (blank) |
|------------------------|---------------------------------------|

Highest Level Owner

| | |
|------------------------|---------------------------------------|
| CAGE (blank) | Legal Business Name (blank) |
|------------------------|---------------------------------------|

Executive Compensation

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

Proceedings Questions

Registrants in the System for Award Management (SAM.gov) respond to proceedings questions in accordance with FAR 52.209-7, FAR 52.209-9, or 2. C.F.R. 200 Appendix XII. Their responses are displayed in the responsibility/qualification section of SAM.gov. Maintaining an active registration in SAM.gov demonstrates the registrant responded to the proceedings questions.

Exclusion Summary

Active Exclusions Records?

No

SAM Search Authorization

I authorize my entity's non-sensitive information to be displayed in SAM public search results:

Yes

Entity Types

Business Types

| | | |
|---|---|--|
| Entity Structure U.S. Government Entity | Entity Type US State Government | Organization Factors (blank) |
| Profit Structure (blank) | | |