Suspension & Debarment Overview

International Workshop on Accountability in Science and Research Funding

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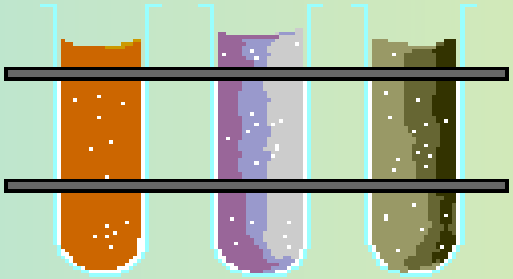
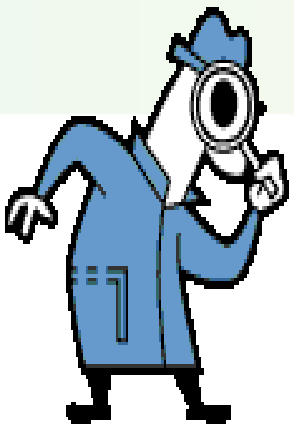


Key Points

- S&D exists to "protect the fisc," protect taxpayer dollars against fraud, waste, abuse, non-compliance and poor performance
- To get federal $$, a person or entity has to be "presently responsible:" honest, ethical and competent
- Procedure: Simple due process (notice & opportunity to be heard, ability to examine witnesses in a fact-finding hearing (rare), and a written decision)
- Suspension: "adequate evidence"
- Debarment: "preponderance of evidence"
- These actions go straight to debarring official
- An action taken for one agency applies to all federal agencies

Definitions by the Book



Debarment

An action taken by a debarring official . . .

To exclude a person

from participating in covered transactions and transactions covered under the Federal Acquisition Regulation

A person so excluded is “debarred”.

Causes for debarment

- Criminal conviction or civil judgment for an offense related to business integrity
- Violations of the terms or a contract/grant
- Statutory or Executive Order exclusions
- Other indications of a lack of business integrity (history of failure to perform, failure to pay debts, etc)

Definitions by the Book

Suspension

An action taken by a suspending official that

immediately prohibits

a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue.

A person so excluded is "suspended".

To do a suspension, need adequate evidence and immediate need to protect the government. If the immediate need ends, then so should the suspension.

Adequate vs. Inadequate

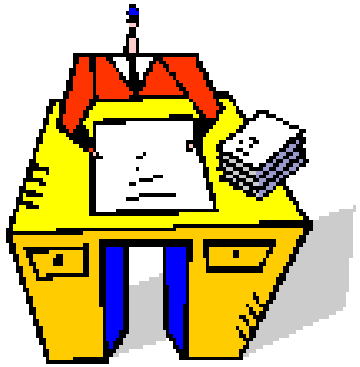
- Examples of adequate evidence
  - Indictment
  - Other criminal charge (an information)
  - Federal civil complaint
  - Search warrant affidavit
  - Reports of Interview
  - Audit report findings
  - Settlement agreement
- Examples of inadequate evidence
  - Newspaper reports
  - Opinions
  - Civil settlement with no admission of liability

In other words …

- We can move to debar people or entities when we don't want them to receive government contracts or grants for a period of time (usually 1-3 years, but in rare cases have been permanent)

- We can move to suspend people or entities when we think we need to stop them from receiving contracts or grants right away, until we figure out whether to debar them

Where are the Rules?



- For contracts:
  Federal Acquisition Regulation,
  Part 9, Subpart 9.4

- For things that aren't contracts:
  Code of Federal Regulations,
  Title 2, Part 180
  - Grants, cooperative agreements, scholarships, fellowships, loans, guarantees, subsidies, insurance, etc.

Debarment: NOT A Slap on the Wrist

S&D is not a punitive measure –

But losing access to federal contracts or grants can shut a company down or ruin a career

- With that kind of impact, debarment may be as consequential, or more so, than criminal conviction or civil false claims liability

- Thus, a recommendation for suspension or debarment can be a REALLY effective motivator

Suspension Case Study

- October 1, 2010: Contractor suspended amidst allegations that the company improperly received contracts intended for small businesses
- October 19, 2010: Suspension lifted. The company is allowed to continue doing business with the government during the pendency of the investigation. In return, the company:
  - Agreed to stop working with small businesses serving as prime contractors and to stop participating in one of the agency's programs
  - Removed the CEO and General Counsel and suspended 3 other executives for the duration of the investigation
  - Agreed to provide a wide array of internal business documents
  - Agreed to hire an independent monitor with broad authority to ensure compliance with the agreement
- In the wake of the suspension, by May 2011 the company had lost over 100 employees (down from 534 in October 2010 to below 400). It also experienced a decline of 30.9 percent in first quarter 2011 revenue as compared with the first quarter of 2010 ($70.3 million vs. $101.8 million).

Why Debarment Has "Teeth"

- EPLS – Excluded Parties List System
  - Public database that lists the names of individuals and businesses who are suspended or debarred
  - Contains names and identifying information about all ineligible individuals and institutions, the period of and reason for the suspension or debarment, and agency points of contact

- <u>Every contracting officer and grant officer is required to check the EPLS before awarding a contract or grant</u>
  - If a person or entity is on the list, then the award will not be made (unless there is a written determination of compelling reasons to make a particular award)

Excluded Parties List System

Excluded Parties List System - Windows Internet Explorer

https://www.epls.gov/

EPLS

Excluded Parties List System

Search - Current Exclusions

- Advanced Search
- Multiple Names
- Exact Name and SSN/TIN
- MyEPLS
- Recent Updates

View Cause and Treatment Code Descriptions

- Reciprocal Codes
- Procurement Codes
- Nonprocurement Codes

Agency & Acronym Information

- Agency Contacts
- Agency Descriptions
- State/Country Code Descriptions

Important Notice -- EPLS Help Desk Changes

On Monday September 21, 2009, the email addresses and phone number to contact the EPLS help desk will change. Beginning on this date, all EPLS help requests will be directed to the GSA Federal Service Desk. The current phone number and email addresses will be discontinued, and any requests made using the current contact information will not receive a response starting on September 21.

Introduction

This World Wide Web site is provided as a public service by General Services Administration (GSA) for the purpose of efficiently and conveniently disseminating information on parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and each agency's codification of the Common Rule for Nonprocurement suspension and debarment.

Security Notice

Resources

- Search Help
- Public User's Manual
- FAQ
- Acronyms
- Privacy Act Provisions
- News

Reports

- Advanced Reports
- Recent Updates
- Dashboard

Archive Search - Past Exclusions

- Advanced Archive Search
- Multiple Names
- Recent Updates

NSF Debarments and Suspensions

- 33 active debarments for:
  - Data fabrication
  - Criminal convictions for fraud
  - SBIR fraud (individual and company)
  - Impersonation of NSF officials
  - Grant-related purchase card fraud

- 1 government-wide suspension
  - Our office's first action of this type, with another one currently pending
  - Allowing us to protect funds while doing our investigation

Settlements – Cutting a Deal

- Where respondent succeeds in showing present responsibility
- "Administrative agreements"
- Considerations/terms:
  - Removal or suspension of bad actors
  - Institution of ethics and compliance programs
  - More internal controls and remedies
  - Required reports and independent monitoring
- Compliance Plans
  - Ethics policy for institution
  - Code of conduct for employees
  - Internal reporting mechanisms
  - Awareness training
  - Emphasis by leadership ("culture")

Parallel Proceedings

- Sometimes AUSAs discourage suspension and debarment proceedings, because they don't want to lose control over discovery
- Conversely, debarment officials don't want AUSAs discussing S & D in agreements settling criminal or civil issues
- The Interagency Suspension & Debarment Committee (ISDC) has reference material on the issue that may help work out issues
- Bottom line, *coordinate efforts.*