

“Building an Effective Record”

Moderated by: Michael D. Russell, DHS SDO



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Panel Members

- Michael Meisel, Esq.
SDO, Army
- Isaac Natter, Esq.
Associate Counsel, Navy
- Randolph Sawyer
SDO, DHS/ICE
- Stanley Stocker, Esq.
Debarment Program Manager, DOI



Agenda

- Adequate evidence using 48 C.F.R. pt. 9 or 2 C.F.R. pt.180. Immediate need? Criminal or fact-based.
- Supporting evidence and information to build the “intake record”. Redactions within the IG record. Resolve “protected data” issues.
- Creating/formatting the intake (who and briefly-why). Evidence not conclusions.
- Intake Document Checklist



Agenda (con't)

- Distinct and separate phased concept?
 - Initial investigation/prosecution
 - S&D process including research/writing, legal review
 - SDO decision based on Administrative Record which includes intake supporting evidence and S&D ARM, Notice Letter(s), communication with Respondent, etc.

- SDO reviews the recommendation and supporting data. Initial decisions can include- Show Cause, Suspension, P4D, No Action, return for more information.



Agenda (con't)

- Due Process using APA – 30 days to submit matters in opposition (extensions common)
- Involve the suspension and debarment office early. Perceived immediate threat?
- Feedback and communication: a two-way street
- Investigation, Analysis, SDO decision – a siloed or integrated approach?
- Key Takeaways



Adequate evidence
using the FAR or NCR.

Immediate need?

Criminal or fact-based.



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Supporting evidence and information to build the “intake record”.

Redactions within the IG record.

Resolve protected data issues.



Creating/formatting the Intake (who and briefly why).

Evidence not conclusions.



INTAKE DOCUMENT CHECKLIST

When completing suspension/debarment packages please make sure all the applicable information is provided in the body or as an attachment to the Criminal or Administrative Memorandum. Include the following documents as applicable.

- Signed Intake (commonly called a referral) for Suspension/Debarment
- Copies of investigative reports
- Summary of pertinent evidence and status of legal proceedings
- Witness statements or affidavits
- Indictment/Waiver of Indictment/Information
- Plea Agreement
- Judgment and Conviction Order
- Settlement Agreement or Non-prosecution Agreement
- Court/Sentencing Transcripts (if available)
- Business/Corporate Structure (i.e., Owner, President, Vice-President, Managers, Supervisors, etc.)



INTAKE DOCUMENT CHECKLIST (con't)

- Status of Company, if known (i.e., out of business, sold to another person, etc.)
- Status of named party, if known (i.e., in custody, released, currently employed with same company, working for another company)
- Last known physical address of named party (to include location of correction facility; inmate number, if applicable) and social security number for individuals
- Did the contractor cooperate with the Government during the investigation and administrative and court actions? Was this behavior repetitive, if so, for how long? Did the company or individual self-disclose? Has the contractor paid, or agreed to pay, all criminal, civil and administrative liability for the improper activity?
- Federal contracts or assistance involved (include contract number and pertinent data)
- Estimated damages to the Government
- Impact to the Agency
- Any other appropriate exhibits or documents



Distinct and separate phased concept?

- Initial investigation, prosecution
- S&D process including research, writing, legal review
- SDO decision based on Administrative Record which included intake supporting evidence and S&D ARM, Notice Letter(s), communication with Respondent, etc.



SDO reviews the recommendation and supporting data.

Initial decisions can include –
Show Cause, Suspension, P4D,
No Action, return for more
information.



Due Process using APA.

30 days to submit matters in opposition (extensions common).



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Involve the suspension and debarment office early.

Perceived immediate threat?



Feedback and communication

– a two-way street.



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Investigation, Analysis, the SDO's decision

– a siloed or integrated
approach?



Key Takeaways...

It is imperative to build a credible and actionable record.

Involve the SDO as soon as practicable.

Trust the process.



Questions?



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