

JUL 15 2016



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

MEMORANDUM FOR: Heads of Operating Units
~~Signed~~
FROM: Barry E. Berkowitz
Senior Procurement Executive
and Director for Acquisition Management
SUBJECT: U.S. Department of Commerce *Suspension and Debarment Handbook*

The attached guidance entitled U.S. Department of Commerce *Suspension and Debarment Handbook* dated August 2014 prescribes current requirements for the Department's suspension and debarment program. This Handbook applies to all operating units, offices and organizations within the Department of Commerce.

The Suspension and Debarment Handbook was jointly developed by the Office of the Assistant General Counsel for Finance and Litigation and the Office of Acquisition Management and establishes policy and assigns roles and responsibilities for procurement and non-procurement suspensions and debarments; and represents a comprehensive suspension and debarment program and applies to both actions involving contracts under the Federal Acquisition Regulation and financial assistance under the Non-procurement Common Rule.

Questions regarding the Suspension and Debarment Handbook should be directed to the Suspension and Debarment email address at SuspendDebar@doc.gov.



U.S. Department of Commerce

Suspension and Debarment Handbook

September 2014

Table of Contents

I. Introduction	1
A. Purpose.....	1
B. Scope.....	1
C. Authorities.....	2
D. Policy	2
II. Roles	2
A. Suspending and Debarring Official (SDO).....	3
B. Suspension and Debarment Coordinator	3
C. Office of General Counsel (OGC)	4
D. Office of Inspector General.....	4
E. Bureau Procurement Officials.....	4
F. Contracting Officers	4
G. Grants Officers	5
H. Program Managers and Contracting Officer Representatives	5
III. Suspension	6
A. Causes for Suspension - Procurement.....	6
B. Causes for Suspension - Non-Procurement.....	7
C. Period of Suspension	9
IV. Debarment	9
A. Causes for Debarment – Procurement.....	9
B. Causes for Debarment – Non-Procurement.....	11
C. Period of Debarment	12
V. Scope of Suspension and Debarment	12
A. Conduct Imputed from an Individual.....	13
B. Conduct Imputed from an Organization.....	13
C. Conduct Imputed from Joint Ventures or Similar Arrangements.....	13
D. Conduct to Include Affiliates	13
VI. Procedures for Suspension and Debarment	13
A. Request for Consideration	13
B. Analysis of Requests	16
C. Decision Making Process	16
D. Presentation of Matters in Opposition	18
E. Fact Finding Proceeding.....	18
F. Administrative Record.....	19

G. Final Decision	19
H. Request for Reconsideration	22
I. Judicial Review	22
VII. Administrative Agreements	23
VIII. Parallel Proceedings.....	23
IX. System for Award Management Exclusions (SAM)	24
A. Pre-Award Review	24
B. Post-Award Review	24
C. Entering Entities into SAM.....	25
Appendix A - Definitions.....	A-1
Appendix B - Suspension & Debarment Process.....	B-1
Appendix C - Consideration Memorandum – Template.....	C-1
Appendix D - Consideration Request Summary – Template.....	D-1
Appendix E - Lead Agency Template.....	E-1

Suspension and Debarment Handbook

I. Introduction

As stewards of scarce taxpayers' resources and to protect the Government's interests, the Department is required to award contracts and assistance only to responsible sources – those that are determined to be reliable, dependable, and capable of performing required work. One way to achieve this vital goal is through suspensions and debarments, which are actions taken to exclude organizations or individuals from receiving contracts or assistance based on various types of misconduct. In 2011, OMB issued guidance to ensure agencies are properly positioned to give appropriate consideration to suspension and debarment remedies as tools to fight fraud, waste and abuse.

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

A. Purpose

This Handbook establishes policy and assigns roles and responsibilities for procurement and non-procurement suspensions and debarments.

B. Scope

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

This Handbook represents a comprehensive suspension and debarment program and applies to both contracts under the Federal Acquisition Regulation and non-procurement actions under the Non-procurement Common Rule.

C. Authorities

1. Executive Order 12689, August 16, 1989 (54 FR 34131);
2. Executive Order 12549 (Non-Procurement Rule), Feb. 18, 1986 (51 FR 6370);
3. Federal Acquisition Regulation Subpart 9.4—Debarment, Suspension, and Ineligibility (48 C.F.R. 9.4, et seq.);
4. Commerce Non-Procurement Debarment and Suspension Rule, 2 C.F.R. Part 1326;
5. Non-Procurement Common Rule, 2 C.F.R. Part 180.

The information provided in Sections III, IV, and V summarize the material set forth in the FAR Subpart 9.4—Debarment, Suspension, and Ineligibility (48 C.F.R. 9.4, et seq.), Non-Procurement Debarment and Suspension Rule, 2 C.F.R. Part 180; and Commerce's Non-Procurement supplemental guidance at 2 C.F.R. Part 1326. To the extent that there is any conflict or inconsistency between the regulations and the summaries, the regulations control and apply.

D. Policy

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

II. Roles

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

A. Suspending and Debarring Official (SDO)

The Suspending and Debarring Official is the individual designated by the Secretary of Commerce with authority to undertake a suspension and/or debarment action. At the Department of Commerce, the Senior Procurement Executive is the designated SDO. The SDO shall:

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

B. Suspension and Debarment Coordinator

The Suspension and Debarment Coordinator is the program manager for the Suspension and Debarment Program and advises the SDO. The Suspension and Debarment Coordinator shall:

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

C. Office of General Counsel (OGC)

The Office of the Assistant General Counsel for Finance and Litigation (OAGCFL) serves as legal counsel for the Suspension and Debarment Program. OAGCFL shall:

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

D. Office of Inspector General

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

E. Bureau Procurement Officials

Bureau Procurement Officials shall designate a suspension and debarment point of contact to assist in the processing and development of request for consideration packages.

F. Contracting Officers

Contracting Officers shall:

1. Review the System for Award Management Exclusions after receipt of proposals, prior to contract award, prior to placing orders under indefinite quantity contracts, prior to adding new work or extending the duration of a contract, and prior to exercising options in order to ensure the potential awardee is not excluded;
2. Oversee and monitor administered procurement transactions for indications of fraud or behavior that could indicate grounds for suspension and/or debarment;
3. In consultation with the OGC, assemble available information of potential misconduct and refer it to the SDO for consideration of suspension and/or debarment when, during the execution of the contract, there are indications of fraud or lack of responsibility;
4. Submit request for consideration packages, through their appropriate leadership chain, to the SDO for review of entities that have been terminated for default, cause, or have a history of underperformance; and

5. Refer activity which may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to the OIG in accordance with Department Administrative Order (DAO) 207-10.

G. Grants Officers

Grants Officers shall:

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

H. Program Managers and Contracting Officer Representatives

Program Managers and Contracting Officer Representatives shall:

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

The information provided in Sections III, IV, and V following in large part summarize the material set forth in Federal Acquisition Regulation Subpart 9.4—Debarment, Suspension, and Ineligibility (48 C.F.R. 9.4, et seq.); Non-Procurement Debarment and Suspension Rule, 2 C.F.R. Part 180; and Commerce's Non-Procurement supplemental guidance at 2 C.F.R. Part 1326. Any perceived any conflict or inconsistency between the regulations and the summaries should be reported to the SDC, who will seek guidance from OAGCFL as appropriate. To the extent that there is any conflict or inconsistency between the regulations and the summaries in this Handbook, the regulations control and apply.

III. Suspension

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

A. Causes for Suspension - Procurement

The Suspending and Debarring Official may suspend a contractor when it has been determined that immediate action is necessary to protect the Government's interest (FAR 9.407-1(b)(1)) and upon indictment or adequate evidence of:

1. Commission of fraud or a criminal offense in connection with:
 - a. Obtaining;
 - b. Attempting to obtain; or
 - c. Performing a public contract or subcontract;
2. Violation of Federal or state antitrust statutes relating to submission of offers;
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
4. Violations of the Drug-Free Workplace Act, as indicated by:
 - a. Failure to comply with the requirements of FAR 52.223-6, Drug-Free Workplace; or
 - b. Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor

has failed to make a good faith effort to provide a drug-free workplace (see FAR 23.504);

5. Intentionally affixing a label bearing "Made in America" to a product sold in or shipped to the U.S., when the product was not made in the U.S.;
6. Commission of an unfair trade practice as defined in FAR 9.403;
7. Delinquent Federal taxes in an amount that exceeds \$3,000. Federal taxes are considered delinquent if both of the following apply:
 - a. The tax liability is finally determined (i.e., assessed); and
 - b. The taxpayer is delinquent in making payment;
8. Knowing failure by a principal, within 3 years after final payment on any Government contract, to timely disclose credible evidence of:
 - a. Violation of Federal criminal law involving fraud, conflict of interests, bribery, or gratuity violations found in Title 18 of the United States Code;
 - b. Violation of the civil False Claims Act; or
 - c. Significant overpayment(s) on the contract; or
9. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor.
10. Any other cause of so serious or compelling a nature that it affects the present responsibility of a respondent.

B. Causes for Suspension - Non-Procurement

The Suspending and Debarring Official may suspend a person, as defined by 2 C.F.R. § 180.985 when it has been determined that immediate action is necessary to protect the public interest (2 C.F.R. §180.700) and:

1. There exists an indictment for, or other adequate evidence to suspect a conviction of or civil judgment for:
 - a. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

- b. Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
 - c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
 - d. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the respondent's present responsibility;
2. There exists adequate evidence to suspect:
- a. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—
 - i. A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
 - ii. A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
 - iii. A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;
 - b. Any of the following causes:
 - i. A non-procurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;
 - ii. Knowingly doing business with an ineligible person, except as permitted by the SDO;
 - iii. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

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

C. Period of Suspension

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

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

IV. Debarment

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

A. Causes for Debarment – Procurement

1. The SDO may debar an entity/person for conviction of or civil judgment for:
 - a. Commission of fraud or a criminal offense in connection with:
 - i. Obtaining;
 - ii. Attempting to obtain; or
 - iii. Performing a public contract or subcontract;

- b. Violation of Federal or state antitrust statutes, including those relating to submission of offers;
 - c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 - d. Intentionally affixing a label bearing "Made in America" to a product sold in or shipped to the U.S., when the product was not made in the U.S.; or
 - e. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the respondent's present responsibility.
2. The SDO may debar an entity/person, based upon a preponderance of the evidence for any of the following actions:
- a. Violation of the terms of a Government contract, subcontract or public agreement so serious as to justify debarment, such as:
 - i. Willful failure to perform in accordance with the terms of a contract; or
 - ii. A history of failure to perform, or of unsatisfactory performance of a contract;
 - b. Violations of the Drug-Free Workplace Act, as indicated by:
 - i. Failure to comply with the requirements of FAR 52.223-6, Drug-Free Workplace; or
 - ii. Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see FAR 23.504);
 - c. Intentionally affixing a label bearing "Made in America" to a product sold in or shipped to the U.S., when the product was not made in the U.S.;
 - d. Commission of an unfair trade practice as defined in FAR 9.403;
 - e. Delinquent Federal taxes in an amount that exceeds \$3,000. Federal taxes are considered delinquent if both of the following apply
 - i. The Tax Liability is finally determined; and
 - ii. The taxpayer is delinquent in making payment;

- f. Knowing failure by a principal, within 3 years after final payment on any Government contract, to timely disclose credible evidence of:
 - i. Violation of Federal criminal law involving fraud, Organizational Conflict of Interest, bribery, or gratuity violations found in Title 18 of the United States Code;
 - ii. Violation of the civil False Claims Act; or
 - iii. Significant overpayment(s) on the contract (see FAR 32.001).
3. The SDO may debar an entity/person based on a determination by the Secretary of Homeland Security or the Attorney General of the United States that the entity/person is not in compliance with Immigration and Nationality Act employment provisions. Such determination is not reviewable in the debarment proceedings.
4. The SDO may debar an entity/person based on any other cause of so serious or compelling a nature that it affects the present responsibility of the entity/person.

B. Causes for Debarment – Non-Procurement

The SDO may debar a person, as defined by 2 C.F.R. § 180.985 for:

1. Conviction of or civil judgment for:
 - a. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - b. Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
 - c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
 - d. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the respondent's present responsibility;
2. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

- i. A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
 - ii. A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
 - iii. A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;
 3. Any of the following causes:
 - a. A non-procurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;
 - b. Knowingly doing business with an ineligible person, except as permitted by the SDO;
 - c. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;
 - d. Violation of a material provision of a voluntary exclusion agreement and/or any settlement of a debarment or suspension action; or
 - e. Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or
 4. Any other cause of so serious or compelling a nature that it affects the respondent's present responsibility.

C. Period of Debarment

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

V. Scope of Suspension and Debarment

Actions taken under suspension and debarment procedures, conduct may be imputed to other individuals and organizations as outlined below.

A. Conduct Imputed from an Individual

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

B. Conduct Imputed from an Organization

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

C. Conduct Imputed from Joint Ventures or Similar Arrangements

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

D. Conduct to Include Affiliates

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

- a. Interlocking management or ownership;
- b. Identity of interests among family members;
- c. Shared facilities and equipment;
- d. Common use of employees; or
- e. A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

VI. Procedures for Suspension and Debarment**A. Request for Consideration**

Operating units, offices, program managers, contracting officers, contracting officer representatives, grants officers and staff shall promptly notify the Suspension and

Debarment Coordinator utilizing a Consideration Memorandum whenever, during or subsequent to the execution or performance of a contract or federal financial assistance award there are indications of fraud or grounds for suspecting that any of the bases or causes for suspension and/or debarment exist. [Please note that certain matters are required to be referred to the OIG; see DAO 207-10 for additional information regarding reporting activity which may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to the OIG.]

Within the time period communicated by the Suspension and Debarment Coordinator, the requesting entity shall, in consultation with the OGC, assemble all available relevant information as a request for consideration and forward it to the Suspension and Debarment Coordinator for consideration. Requests shall be in writing, routed through their appropriate leadership chain, in the form of a Consideration Memorandum which should include, as appropriate (See Appendix C):

1. PURPOSE
 - a. Recommendation and rationale for the request.

2. RESPONDENT
 - a. List of parties, including the contractor, principals, and affiliates (including known identifying information such as addresses, zip codes, and DUNS Number or other identifying number for an individual).
 - b. The Department's engagement history with the parties, including recent experiences under contracts and/or financial assistance agreements and copies of pertinent documents (i.e., CPARS/PPIRS reports, FAPIIS entries, etc.).
 - c. List of any known investigations, proceedings, or claims.

3. NARRATIVE STATEMENT
 - a. Statement of facts.

4. AGGRAVATING AND MITIGATING FACTORS
 - a. List any considerations that reflect favorably or demonstrate a respondent's present responsibility. A partial list of aggravating and mitigating factors may be found in Section VI, G of this handbook.

5. NEXUS STATEMENT
 - a. Briefly explain the government's interest or risk associated in the present case.

6. LEAD AGENCY

- a. Utilizing tools and resources such as USASpending, identify if any other agencies have worked with or are currently working with the identified respondents.

7. REGULATORY BASIS

- a. Please highlight the regulatory basis for requesting suspension and/or debarment consideration in the referenced case. Please work with the OGC when preparing this section.

8. TIME CRITICAL EVENTS

- a. Please highlight any potential awards and or other time critical events that the Suspending and Debarring Official should be aware of when making a decision.

9. RECOMMENDATION

- a. Comments and recommendations of the requesting official and any higher level review authority regarding whether to suspend and/or debar, the period of any recommended action, and whether to continue any current engagements.

10. ATTACHMENTS

- a. Copies of all documentary evidence (i.e., court documents, contract or grant documents, invoices, emails, etc.).
- b. Any other appropriate exhibits or documents.

Memoranda that include more than a single entity or individual shall include sections that separately set forth the grounds and bases for proceeding against each individual or entity. The memorandum shall include all information supporting an imputation and/or affiliation determination. All recommendations and conclusions should properly reference supporting documentation. The Consideration Memorandum template found in Appendix C may be used as a guide. In addition, the Consideration Request Template (Attachment D) should be completed and transmitted with Request for Consideration.

The OIG may submit actions for suspension and/or debarment consideration, where appropriate.

B. Analysis of Requests

All requests shall be evaluated for potential suspension and/or debarment action. The Suspension and Debarment Coordinator shall review requests and prepare an analysis and recommendation for the SDO. The coordinator may request assistance or input from the OGC, OIG or any other source at any time during the processing of a case.

If the record contains adequate evidence to warrant further consideration by the SDO, the coordinator will contact the Interagency Suspension and Debarment Committee (ISDC) to request or coordinate lead agency status. A template for lead agency coordination is provided in Appendix E.

C. Decision Making Process

If sufficient evidence is presented, the Suspension and Debarment Coordinator shall forward a Referral Memorandum to the SDO that recommends such action as the Coordinator considers appropriate. If insufficient evidence is available, the Coordinator may request additional documentation prior to reconsideration. The SDO shall review the Referral Memorandum and take one of the following actions:

1. Reject the Referral Memorandum

The Suspending and Debarring Official may determine that there are insufficient grounds to pursue a suspension and/or debarment action or that a suspension and/or debarment is not appropriate. This decision shall be documented in the Administrative Record. If the SDO rejects the referral, the requesting official should continue to monitor the situation, when appropriate, and may submit a revised request upon discovery of additional supporting evidence.

2. Issue Show Cause Letter

The Suspending and Debarring Official may issue a Show Cause Letter. The Show Cause Letter shall be sent to the respondent through USPS certified mail, return receipt requested. A Show Cause Letter must include the following information:

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

- e. Consequences for failure to respond to the Letter or adequately address the allegations of misconduct.

3. Issue Notice of Suspension

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

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

The Notice of Suspension and supporting Memorandum shall be sent by USPS certified mail, return receipt requested to the last known address of the respondent.

4. Issue Notice of Proposed Debarment

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

- a. That the entity/person is being considered for debarment;
- b. The reasons and causes under the FAR or NCR for the proposed debarment;

- c. The effect of the proposed debarment;
- d. The potential government-wide effect of actual debarment;
- e. Commerce's debarment procedures;
- f. That the respondent has 30 calendar days from the receipt of the notice to respond with its Presentation of Matters in Opposition in person, in writing, or through a representative with information and its argument in opposition;
- g. Aggravating and mitigating factors; and
- h. That a fact-finding proceeding may be conducted.

D. Presentation of Matters in Opposition

After receiving a Notice of Suspension and/or Notice of Proposed Debarment, the respondent has 30 calendar days, unless otherwise provided by the SDO, to submit and or schedule its Presentation of Matters in Opposition with the SDO.

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

- a. In-person meeting; and/or
- b. Conference call; and/or
- c. Written response.

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

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

E. Fact Finding Proceeding

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

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

F. Administrative Record

During the course of the suspension and debarment process, the Suspension and Debarment Coordinator shall maintain and document all information that will be considered by the SDO. This information will form the Administrative Record. The respondent may request a copy of the Administrative Record following the SDO's issuance of a final decision.

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

G. Final Decision

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

In making a final decision, the SDO, at a minimum, should consider the following aggravating and mitigating factors (FAR 9.406-1 and NCR §180.860):

- The actual or potential harm or impact that results or may result from the wrongdoing;
- The frequency of incidents and/or duration of the wrongdoing;
- Whether there is a pattern or prior history of wrongdoing;
- Whether wrongdoing was pervasive in the organization;

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

The SDO shall issue a written Decision Memorandum based on the Administrative Record. The Decision Memorandum shall include an assessment of the respondent's present responsibility, identities of affiliates, respondent's conduct, length of suspension/debarment, if applicable, and the effect of mitigating factors on the present case.

- **Decision - Non-procurement Actions.** The Suspending and Debarring Official must make a written decision on suspension or debarment for non-procurement actions within 45 days of closing the official record. The SDO may extend the period for good cause.
- **Decision – Procurement Actions.** For procurement actions, debarments based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, if no suspension is in effect, the Suspending

and Debarring Official shall make a written decision within 30 working days after closing the official record. The SDO will make written decisions for suspensions and debarments that are not based on conviction or civil judgment, within 45 days of closing the official record. The SDO may extend the period for good cause.

1. Decision Not to Debar

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

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

2. Decision to Terminate Suspension

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

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

3. Decision to Modify or Continue Suspension

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

- a. Referral to the Notice of Suspension;
- b. Summary of proceedings;

- c. Outcome of fact-finding proceeding;
- d. Reasons for modifying or continuing the suspension;
- e. Scope of Ineligibility;
- f. Consequences of continued suspension;
- g. Effective dates of continued suspension; and
- h. Government-wide effects of the suspension.

4. Decision to Debar

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

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

H. Request for Reconsideration

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

I. Judicial Review

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

VII. Administrative Agreements

At any time during a suspension and/or debarment proceeding, the SDO may negotiate an administrative agreement with the respondent in order to resolve a suspension and/or debarment matter, if it is in the Government's interest. An administrative agreement recognizes or imposes conditions upon a respondent in lieu of exclusion and has government-wide effect. Under the administrative agreement, the respondent remains eligible to enter into contracts and other covered transactions with the Government, but must adhere to the terms and conditions of the administrative agreement. The SDO should consider the following when contemplating an administrative agreement:

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

If an administrative agreement is deemed appropriate, the Suspension and Debarment Coordinator shall draft an agreement in consultation with the OGC and the operating unit or office administering the procurement or financial assistance transaction. Upon agreement with the respondent, a final administrative agreement will be distributed for signature. After the agreement has been fully executed, the coordinator will enter the agreement in the Federal Awardee Performance and Integrity Information System (FAPIS) and the System for Award Management (SAM) within 3 business days.

VIII. Parallel Proceedings

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

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

substantive requirements are satisfied and their determinations are independent and properly based.

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

IX. System for Award Management Exclusions (SAM)

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

A. Pre-Award Review

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

B. Post-Award Review

The Contracting Officer shall consult the System for Award Management Exclusions prior to:

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

For contractors debarred, suspended, or proposed for debarment, unless the Senior Procurement Executive makes a written determination of the compelling reasons for doing so, contracting officers shall not take action to continue contract performance.

C. Entering Entities into SAM

Upon a final decision of suspension or debarment by the SDO, the Suspension and Debarment Coordinator shall update the System for Award Management within 3 business days, to include:

1. Names and addresses of all entities debarred, suspended, proposed for debarment, declared ineligible, or excluded under the non-procurement common rule, with cross-references when more than one name is involved in a single action;
2. The type of action;
3. Name of the agency or other authority taking the action;
4. Cause for the action or other statutory or regulatory authority;
5. Effect of the action;
6. Termination date for each listing;
7. Data Universal Numbering System (DUNS) Number
8. Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available; and
9. Name and telephone number of the agency point of contact for the action.

Appendix A - Definitions

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

Administrative Record. All information considered by the Suspending and Debarring Official (SDO) including: Reports, notes, emails, newspaper articles, summaries of oral briefings, and respondent submissions. The Administrative Record is the basis of the SDO decision.

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

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

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

Contractor. Any individual or other legal entity that -

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

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

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

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

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

Federal Awardee Performance and Integrity System (FAPIS). A centrally maintained database for information relevant principally to determinations of contractor responsibility. FAPIS collects information from other databases like SAM and the Past Performance Information Retrieval System (PPIRS) and also serves as a collection point for other information related to contractor past performance, such as determinations of non-responsibility or final terminations for default or cause. The Suspension and Debarment Coordinator must submit information regarding administrative compliance agreements directly to FAPIS within three (3) working days after the agreement is executed.

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

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

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

Lead Agency. The federal agency determined through ISDC procedures to be responsible for processing – in coordination with other interested agencies - a Government-wide suspension and/or debarment action.

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

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

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

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

- 1) Grants
- 2) Cooperative Agreements
- 3) Scholarships
- 4) Fellowships
- 5) Contracts of Assistance
- 6) Loans
- 7) Loan Guarantees
- 8) Subsidies
- 9) Insurances
- 10) Payments for Specified Uses
- 11) Donation Agreements
- 12) Joint project Agreements under 15 U.S.C. 1525
- 13) Cooperative research and development agreements
- 14) Joint statistical agreements
- 15) Patent licenses under 35 U.S.C. 207
- 16) NTIS joint ventures, 15 U.S.C. 3704b

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

Present Responsibility. FAR Subpart 9.1 prohibits the award of a purchase order or contract unless the contracting officer makes an affirmative determination of responsibility of the offeror. Present responsibility includes an adequate performance record, a record of integrity and business ethics and qualification and eligibility under applicable laws and regulations

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

Request For Consideration Memorandum. A memorandum, with attachments, that recommends suspension and/or debarment action by the Suspending and Debarring Official (SDO). Minimally the memorandum shall include: (1) Identity of Respondents; (2) Narrative Statement; (3) Aggravating and Mitigating Factors; (4) Time Sensitive Nature of Case (if any); (5) Recommended Course of Action; (6) and Supporting Documentation.

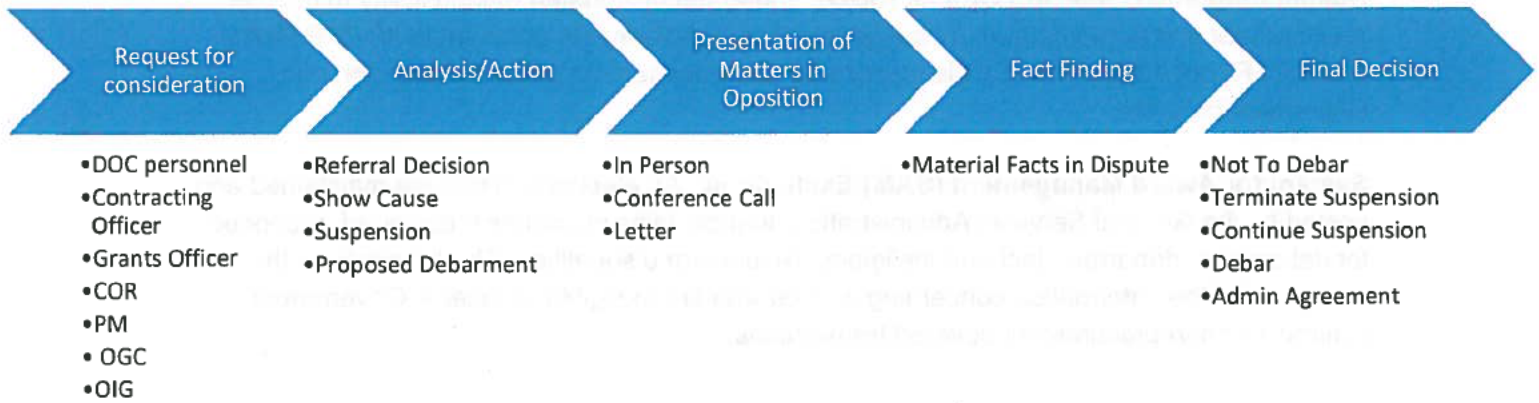
Respondent. Entity against whom a suspension and/or debarment action has been formally initiated.

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

Suspending and Debarring Official (SDO). Individual designated responsibility to impose procurement and non-procurement suspensions and debarments pursuant to 48 CFR Part 9 and 2 CFR Part 1326. The SDO is responsible for management of the Suspension and Debarment program.

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

Appendix B - Suspension & Debarment Process



Appendix C - Consideration Memorandum – Template

Memorandum For:

From:

Subject: Consideration Memorandum for the Issuance of Notice of Proposed Debarment

Respondent:

Name

Address

Reason for Request

DUNS: #####

CAGE: #####

I. PURPOSE:

[Please summarize the reason(s) for requesting suspension and or debarment consideration.]

The [referring unit] recommends that the Department of Commerce Suspending and Debarring Official propose the debarment of the respondent cited above under [cite appropriate FAR or NCR authority, for example: 2 C.F.R § 180]. This recommendation is based on the Respondent's [insert grounds for action].

II. RESPONDENT:

[List the parties, principals, and affiliates (including known identifying information such as addresses, zip codes, and DUNS Number or other identifying number for an individual) involved in this particular case. In addition, please list the Department's engagement history with the parties, including recent experiences under contracts and/or financial assistance agreements and copies of pertinent documents (i.e., CPARS/PPIRS reports, FAPIIS entries, etc.)]

Respondent Name

Address

Address

[Respondent] was the [Title] for [Company Name]. [Company] [describe type of company and location]. [Respondent] [Was/Was Not] found to have any current Federal Government contracts in his/her name [but/nor/and] [was/was not] found to have received any Federal assistance.

III. **NARRATIVE STATEMENT:**

[Write a brief narrative about what happened.]

[For Example:

On August 13, 2008, suit was filed in the District of Columbia charging the respondent with violations of 18 U.S.C 2 §§ 666(a)(1)(A) and (2), Misapplication of Federal Funds and Aiding and Abetting. The respondent knowingly and in direct violation caused Federal grants to be misappropriated for personal use. The information charged that the respondent spent in excess of \$10,000, namely, \$900,000 in cash under a Federal program used to hold extravagant parties in Reno, NV. The information also charged that the respondent intentionally misled Government representatives as to the nature of the respondent's credentials.]

On November 18, 2009, respondent pled guilty to counts one and two, which were violations of 18 U.S.C 2 §§ 666(a)(1)(A) and (2), Misapplication of Federal Funds and Aiding and Abetting.

On January 4, 2010, respondent was convicted and sentenced to a two-year probation and fined \$100,000 to which payment was deferred.

Through a search of SAM, respondent was not found to have any current or prior instances of being suspended or debarred.

IV. **AGGRAVATING AND MITIGATING FACTORS:**

In accordance with [cite appropriate FAR or NCR authority, for example: 2 C.F.R. §180.860], aggravating and mitigating factors were considered in making this recommendation.

[List any considerations that reflect favorably or demonstrate a respondent's present responsibility. A partial list of aggravating and mitigating factors may be found in Section VI, G of this handbook.]

[For Example:

The package contains numerous aggravating factors in this matter. The respondent's criminal misconduct was ongoing and pervasive as it occurred over a period of at least three (3) years. The respondent in full awareness of his/her responsibilities under the public agreement caused funds to be misappropriated for personal gain thus causing the respondent's business ethics to be suspect. Furthermore, the respondent did not bring these illegal activities to the attention of the agency.]

V. **NEXUS STATEMENT**

[Briefly explain the government's interest or risk associated in the present case. This action is recommended based on the respondent's criminal conviction.]

[For Example:

The criminal statutes that the respondent was convicted of have a direct relationship to the Department of Commerce's responsibilities. The incident underlying the conviction calls into question the respondent's present responsibility and therefore poses a risk to the Government. This criminal conviction provides a basis on which to propose debarment.]

VI. **LEAD AGENCY:**

[Utilizing tools and resources such as USASpending, identify if any other agencies have worked with or are currently working with the identified respondents.]

According to USASpending, no other agency has contracted or granted financial assistance to the aforementioned entities.

VII. **REGULATORY BASIS:**

[Please highlight the regulatory basis for requesting consideration in the referenced case. Please work with the OGC when preparing this section.]

[For Example:

The basis for the respondent's criminal conviction is cause for action under [cite appropriate FAR or NCR authority, for example: 2 C.F.R. §180.800(a) (4)].]

VIII. TIME CRITICAL EVENTS:

[Please highlight any potential awards and or other time critical events that the Suspending and Debaring Official should be aware of when making a decision.]

We found no current contracts or assistance awards and found no upcoming awards.

IX. RECOMMENDATION:

[Please provide comments and or recommendations that you would like the Suspending and Debaring Official to consider.]

Based on the information and authorities contained herein, the [referring unit] recommends the proposed debarment of the respondent. Based on the information, a [insert timeframe, typically not to exceed three (3) years] debarment is appropriate.

X. ATTACHMENTS:

[Copies of all documentary evidence (i.e., court documents, contract or grant documents, invoices, emails, etc.)]

Appendix D - Consideration Request Summary – Template

Please complete the following form and attach any relevant documentation you have. Documents that should be attached to this form include contract documents, invoices and other cost/pricing data, and emails and other communications between the entity and Commerce.

Name of the Person Referring Matter	
Bureau/Office	
Date(s) of Action(s) at Issue	
Describe the Actions/Conduct/Behavior/Misconduct at Issue	
Name and Addresses of all Possible Respondents, Businesses, etc	
Awards (Contracts, Grants, Cooperative Agreements, Other) Currently Held by Respondents. Nature of Award? Amounts? Dates?	
Time Sensitive Considerations	

Signature: _____

Date: _____

Title: _____

Appendix E - Lead Agency Template

From:
To: ISDC Community
CC:
Subject: Lead Agency Coordination

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

Address
Name

Name of Company
Address
CAGE: #####
DUNS: #####

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

Thank You,
[Insert Name]