SUSPENSION & DEBARMENT AS AN ANTI-CORRUPTION MEASURE

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Acquisition Integrity Functions

- Suspension and Debarment (anti-corruption)
- Agency Protests (anti-corruption)
- Competition Advocate (anti-corruption)
- Procurement Management Reviews (anti-corruption)
- IDIQ Ombudsman
- Metricalution Ombudsman
- Outreach Activities
Suspension & Debarment in GSA

• Acquisition function
• Office of General Counsel provides legal advice
• Proactive
• Open door
Suspension & Debarment
FAR 9.4

 Agencies shall solicit offers from and award contracts to responsible contractors only. Suspensions and Debarments are discretionary, imposed only to protect the Federal government’s interest, and not as punishment.
“Suspension” means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”
Debarment Defined - FAR 2.101

Debarment” means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.”
Suspension vs. Debarment

• Legal Standard
  – Suspension – Adequate Evidence ex: criminal indictment
  – Debarment – Preponderance of the Evidence ex: criminal conviction

• Term
  – Suspension – Immediate & temporary (12 months)
  – Debarment – longer (3 years)
Causes for Suspension & Debarment

• Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain; or performing a public contract or subcontract.

• Violation of Federal or State antitrust statutes relating to the submission of offers.

• 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.
Causes for S&D Cont’d

• Delinquent Federal taxes in an amount that exceeds $3,000.

• 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.

• Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.
Sources of Information

- Inspector General Referrals
- Contracting officers
- Self disclosures
- Media
Process

• Notice: RFI, Show Cause, Proposal for Debarment or Suspension
• Opportunity to submit information or argument:
  1. In person
  2. In writing
  3. Through a representative
• Possible fact-finding
• Decision
Burden

(If cause for suspension/debarment exists)

• Contractor has burden to demonstrate its present responsibility

• Contractor has burden to demonstrate that suspension/debarment is not necessary to protest the Government’s interest
Effects of Suspension or Debarment


- Offers not solicited from, contracts not be awarded to, existing contracts not renewed, and subcontracts not approved for Company/Individual

- Company/Individual may not conduct business with the Federal government as an agent or representative of other contractors

- No Government contractor may award to Company/Individual in excess of $30,000 but for compelling reason

- No agency in the Executive Branch shall enter into, renew, or extend primary or lower-tier covered transaction in which Company/Individual is either a participant or principal

- Company/Individual affiliation with, or relationship to, any organization doing business with the Government carefully examined
Mitigating Factors – FAR 9.406-1

- Voluntary Disclosure
- Internal Investigation
- Full Cooperation
- Paid Costs/Restitution
- Implementation of remedial action
- Management Recognition of problem
- Ethics training – Compliance w/ new ethics rules
- Time to eliminate causes
- Effective standards of conduct and internal controls
- Implement remedial measures
- Ethics Training Programs
- Programs to prevent further problems
Compliance as a Suspension & Debarment Prevention Tool

- Formal written ethics and compliance program
- Code of Conduct
- Employee obligation to comply with all laws, regulations, and ethics rules
- Defining and avoiding conflicts of interest (individual and corporate)
- Protection of confidential information
- Specific rules on prohibition of gifts and bribery
Compliance as a Suspension & Debarment Prevention Tool

- Establishment of complaint/whistleblower procedures
- Standard process for addressing complaints
- Comprehensive training program – new employees and continuing
- Independent compliance/ethics officer
- Regular review process by independent group
QUESTIONS?
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