

Getting to Know Your SDO: A Kinder, Gentler SDO

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Presented by James Latoff and Greg Coss

Introduction

- Olivia Bradley, Deputy for Procurement Management and the Deputy Senior Procurement Executive in the Office of Acquisition Management (OAM) in the Department of Commerce, responsible for the Department's procurement and financial assistance policy, compliance, savings, and systems initiatives.
- Greg Coss, Suspension & Debarment Coordinator with the Suspension & Debarment Office, and Grants & Cooperative Agreements Specialist with the Financial Assistance Policy and Oversight Division
- James Latoff, Contractor Responsibility Coordinator with the Suspension & Debarment Office, and Attorney with the Contract Law Division, Office of the General Counsel

Roadmap

- Where?? (This is should be an easy one).
- Who?
- Why?
- How?
- What?
- POCs!
- Questions?
- Goodbye!

Where? DOC

- The goal of the U.S. Department of Commerce is to foster and develop the exchange of goods and services between businesses or entities, both domestically and internationally
- In order to sustain success in this mission, the DOC must ensure it does business with responsible contractors and financial assistance recipients and help keep them in business
- By ensuring the DOC works with responsible entities and individuals we will help keep people employed and the DOC receiving quality products, services, and efforts to successfully complete our missions

Who is Responsible?

- The Suspension and Debarment Official (“SDO”), Mr. Barry Berkowitz, is designated by the Secretary of Commerce with authority to undertake suspension and debarment “actions”
- Therefore, Barry makes the final determination on what action will be taken with an entity or individual (known as the “respondent”)
- What’s important to remember is that the SDO’s mission (and this is the “kinder” part) is not to punish respondents with a suspension or debarment – it is to ensure that the grant or contract succeeds, the DOC does business with responsible parties, *non-responsible entities are assisted to become responsible (if possible)*, and that the government’s fiscal interests (i.e., your tax dollars) are protected
- Barry wants to keep contractors and financial aid recipients working, to keep people employed, and to grow commerce! Our job at Commerce is to grow commerce!

Why?

- To fight waste, fraud, and abuse by....
- Ensuring responsible contractors and financial recipients receive our tax dollars
- Ensuring the awardees and recipients can successfully complete the Bureau's mission
- Ensuring the Department can successfully complete our mission and support our country
- Keeping people employed and the economy moving
- We are custodians of our tax dollars, our mission today, and our country's tomorrow

How Is Success Achieved?

- Barry wants our projects to succeed, and for awardees to have the option of additional work
- For this to occur, awardees must be notified when the government suspects there is a problem during an awardee's lifecycle
- If this notification is through the S&D Office, the awardee (now a respondent) has the ability to put corrective actions in place to remedy the issues they are facing, which improves performance both now and in the future
- To Barry, success is achieved when non-responsible respondents make changes and become responsible, thereby keeping people working, projects moving, and DOC missions driving
- What tools are available to the SDO to drive this process?

What are Barry's Tools?

- Show Cause Letter
- Request for Information
- Administrative Agreement
- Voluntary Exclusion
- Suspension
- Debarment

Show Cause Letter

- *Show Cause Letters* (“SCLs”) are used by SDOs to provide notice to respondents of serious concerns relating to the respondent’s present responsibility and provide an opportunity to respond to the SDO’s concerns
- When an SCL is utilized, there is no immediate exclusion for the respondent
- SCLs are often utilized when there is sufficient information to establish a cause for exclusion, but the information may be too one-sided or there is concern about the credibility or staleness of the factual record.

Requests for Information (“RFIs”)

- *Requests for Information* (“RFIs”), like SCLs, provide the potential respondent notice of the SDO’s concerns and an opportunity to respond
- SDOs frequently use RFIs when the public record (*i.e.*, a press report) raises concerns about the potential respondent’s responsibility but there is no reliable record to perform a responsibility review
- SCLs and RFIs often clarify the situation and result in establishing a potential respondent’s present responsibility without the need for an exclusion
- However, a potential respondent’s failure to respond to an SCL or RFI, or failure to adequately address the concerns raised, may result in an action for exclusion

Administrative Agreement

- An Administrative Agreement (“AAs”) can arise as a result of a respondent’s response to an SCL, suspension, or notice of proposed debarment
- In essence, it focuses on the trust from the SDO that the respondent will comply with the terms and conditions spelled out in the terms of the AA (ex. ethics or fraud training, working to fix internal controls inside the organization, etc.)
- It’s an excellent example of how Barry does not want to punish contractors and financial aid recipients, but rather help them
- Effectively, an AA is the SDO giving a respondent a chance to prove responsibility and that they are capable of getting more awards and work from the government

Voluntary Exclusion

- Voluntary exclusions are essentially voluntary debarments
- Provide the respondent with the time to get issues remedied and become responsible without the need for debarment
- Voluntary exclusions appear in SAM.
- Often, under the terms of an AA, a voluntary exclusion is lifted when the respondent completes all the terms designated in the AA as necessary (i.e., training, etc.) and provides sufficient documentation upon completion

Suspension

- Temporary ineligibility for an indefinite period of time
- When there is an immediate need to protect the government from a non-responsible respondent (*i.e.*, indictment)
- Usually implemented during and through the completion of an investigation or related legal proceeding
- May not exceed one year with limited exceptions (*i.e.*, legal proceedings)
- SDOs may suspend a respondent to protect the public's interest based on adequate evidence of the commission of specified crimes (*i.e.*, indictments)
- Additional reasons an SDO may suspend include other specified misconduct, or the commission of any other offense indicating a lack of business integrity (or business honesty) that seriously and directly affects the *present responsibility* of a respondent

Debarment

- An ineligibility for a specific duration of time (not to exceed three years) used to protect the government from non-responsible respondents
- SDOs may propose respondents for debarment or debar respondents based on a conviction or civil judgment for specified crimes and other misconduct
- SDOs may also debar contractors and financial aid recipients based upon a preponderance of the evidence for specified conduct, including willful or repeated violations of the terms of a government contract or subcontract, and for any other cause of so serious or compelling a nature that it affects the present responsibility of the respondent
- If a suspension precedes a debarment, the period of suspension must be deducted from the ordered period of debarment

Complete List of POCs and Email Addresses

- NIST – Todd Hill (todd.hill@nist.gov)
- Census – Brigid Boykin (brigid.boykin@census.gov)
- PTO – Lisa Wade (lisa.wade@uspto.gov)
- NOAA – Rebecca Pedroza (rebecca.pedroza@noaa.gov)
- *MBDA – Nakita Chambers (nchambers@mbda.gov)
- *ITA – Brad Hess (brad.hess@trade.gov)
- *NTIA – Jeff Link (jlink@ntia.gov)
- EDA – William Bethel (wbethel@eda.gov)
- ES-A – Steven McClellan (smcclellan@doc.gov)
- OGC – James Latoff (jlatoff@doc.gov), *Sarah Schwartz (sschwartz@doc.gov)
- OAM – Greg Coss (gcoss1@doc.gov) – general questions
- OIG Hotline – 1-800-424-5197 or Hotline@oig.doc.gov
- MAX Website:
<https://community.max.gov/pages/viewpage.action?spaceKey=DOC&title=Suspension+and+Debarment+Office+of+Acquisition+Management>
- Contains **S&D handbook**, last three year's breakout sessions, S&D guidance, fraud indicators, ISDC meeting notes

* Grants Only

Office of Suspension and Debarment Contact Information

- suspenddebar@doc.gov
- (202) 482-5286
- Greg Coss (gcoss1@doc.gov) 202-482-3134
- James Latoff (jlatoff@doc.gov) 202-322-4112
- S&D Office Website:
<https://www.commerce.gov/oam/policy/suspension-and-debarment>
- MAX Website:
<https://community.max.gov/pages/viewpage.action?spaceKey=DOC&title=Suspension+and+Debarment+Office+of+Acquisiton+Manageme+nt>

Questions?



Summary: Kinder and Gentler

- Barry does not want to use suspension or debarment unless necessary
- Barry wants to work with non-responsible contractors and financial aid recipients to get them to responsible status
- We need to work together to keep people working!
- Barry wants to enhance, not detract, from commerce
- We all work together to get to mission success

Stay Gold!