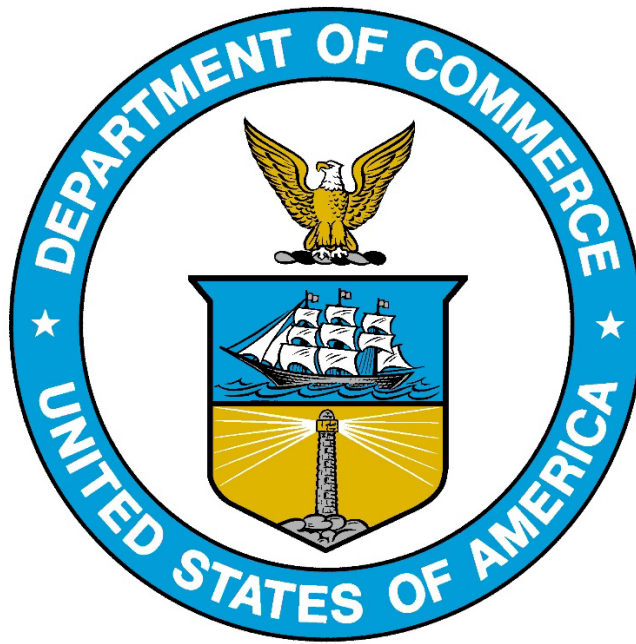




Department of Commerce

Suspension and Debarment Handbook

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I. Introduction

The Department of Commerce (DOC) is required to award contracts and financial assistance only to responsible sources. One way to achieve this vital goal is through administrative actions. Administrative actions include suspensions and debarments, which are actions taken to exclude organizations or individuals from receiving contracts or financial assistance based on various types of misconduct.

These administrative actions (also referred to as administrative remedies) are not intended as punishment, but rather as processes to ensure that federally funded business is conducted with responsible entities. The Federal Acquisition Regulation (FAR) and the Nonprocurement Common Rule (NCR) both recommend that agencies implement procedures for coordinating administrative remedies. Additionally, in 1994 Congress passed the Federal Acquisition Streamlining Act of 1994, mandating reciprocity of suspension and debarment determinations between procurement and nonprocurement programs.

A. Purpose

This Handbook establishes policy, procedures, and roles and responsibilities for procurement and nonprocurement administrative remedies, including suspensions and debarments.

B. Scope

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

This Handbook represents a comprehensive administrative remedies program and applies to both actions involving contracts under the FAR and Federal financial assistance or Other Transactions under the NCR.

C. Authorities

The following is a list of governing authorities that provide DOC with the authority and guidance to take administrative actions, including suspension and debarment, with federal awardees:

1. Executive Order 12689, August 16, 1989 (54 FR 34131).
2. Executive Order 12549, Feb. 18, 1986 (51 FR 6370)
3. FAR Subpart 9.4—Debarment, Suspension, and Ineligibility (48 CFR § 9.4, et seq.).
4. Department of Commerce Nonprocurement Debarment and Suspension Rule, 2 CFR Part 1326.
5. Nonprocurement Common Rule, 2 CFR Part 180.
6. Department of Commerce Class Deviation 2026-06, Federal Acquisition

Regulation (FAR) Class Deviation for FAR Parts 1 through 53 in Support of Executive Order on Restoring Common Sense to Federal Procurement.

The information provided in this Handbook is supplemental to the material set forth in FAR Subpart 9.4—Debarment, Suspension, and Ineligibility (48 CFR § 9.4, et seq.); Nonprocurement Common Rule, 2 CFR Part 180; and DOC’s Nonprocurement supplemental guidance at 2 CFR Part 1326. Any perceived or actual conflict or inconsistency between the regulations and this Handbook should be reported to the Program Coordinators, who will seek guidance from the Office of the Assistant General Counsel for Transactions and Program Management as appropriate. To the extent that there is any conflict or inconsistency between the regulations and the information in this Handbook, the regulations apply.

D. Policy

1. Suspension and debarment actions shall be imposed only in the public interest for the Government’s protection and not for the purposes of punishment.
2. To protect the Government’s interest, the DOC shall award contracts and financial assistance only to responsible sources.
3. Unless the SDO 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 CFR § 9.4, et seq.) and all matters being considered for suspension or debarment that arise under or in relation to a nonprocurement action shall be processed in accordance with the NCR (2 CFR Part 180) as supplemented by DOC specific guidance at 2 CFR Part 1326.

II. Roles and Responsibilities

All DOC employees are responsible for reporting, upon discovery, any misconduct that may give rise to a suspension and/or debarment action.

A. Suspending and Debarring Official

The DOC Senior Procurement Executive (SPE) is designated by the Secretary of Commerce as the Suspending and Debarring Official (SDO) for procurement and nonprocurement administrative remedies, including suspensions and debarments, within DOC. The SDO is the only individual with authority to take action pursuant to administrative remedies. The SDO shall:

1. Issue policy and manage the DOC suspension and debarment program.
2. Establish roles and responsibilities of all relevant parties regarding administrative remedies within DOC.
3. Make final determinations regarding whether a person/entity will be

suspended and/or debarred.

4. Determine whether fact-finding proceedings shall be conducted.
5. Conduct or delegate responsibility to conduct fact-finding proceedings related to suspensions and proposed debarments.
6. Make the final determination regarding whether the suspension and/or debarment shall remain in effect or whether the period of debarment is extended or reduced.
7. In rare circumstances, make determinations based on compelling reasons to conduct business with debarred or suspended individuals/entities.
8. Execute administrative agreements.

B. Suspension and Debarment Program Coordinators

The Suspension and Debarment Program Coordinators (Program Coordinators) are the program managers for the Suspension and Debarment Program and advise the SDO. The Program Coordinators shall:

1. Receive referrals and prepare an analysis of referrals submitted by the OIG or any operating unit or office within DOC.
2. Coordinate all correspondence between the SDO and affected entities.
3. Coordinate all intra-agency communications.
4. In consultation with the Office of the General Counsel (OGC), review referrals 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. Enter information regarding any administrative agreement, suspension, or debarment into the System for Award Management (SAM).
7. Manage the Lead Agency Coordination for potential respondents.
8. Perform other duties as may be assigned or delegated by the SDO as required to carry out the Program.

C. Office of the General Counsel

The Office of the Assistant General Counsel for Transactions and Program Management serves as legal counsel for the Suspension and Debarment Program. The Office of the Assistant General Counsel for Transactions and Program Management shall:

1. Review and clear all administrative actions, including suspensions, debarments, and administrative agreements to ensure that they satisfy all legal and regulatory requirements.
2. Upon request, provide legal advice and counsel regarding administrative action matters to:

- a. the SDO,
 - b. the Program Coordinators, and
 - c. Contracting Officers, Grants Officers, Program Managers and Contracting Officer Representatives and other individuals regarding suspension and debarment matters.
3. Attend fact-finding proceedings.

D. Office of Inspector General

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

E. Operating Unit Heads

Each Head of an Operating Unit (OU) with contracting or financial assistance activities shall designate a suspension and debarment point of contact to assist in the development and processing of referrals for the SDO's consideration.

F. OU Suspension and Debarment Point of Contact

The OU Suspension and Debarment Point of Contact is responsible for coordinating with the Program Coordinators on suspension and debarment matters originating from their OU. The OU Suspension and Debarment Point of Contact participates in training and receives guidance from the Program Coordinators and conveys this information to the appropriate parties within their respective OUs. The OU Suspension and Debarment Point of Contact may also assist with the suspension and debarment investigatory processes by locating documents, resources, and people related to potential responsibility related matters and OIG investigations.

G. Contracting Officers

Contracting Officers shall:

1. Review SAM Exclusions after receipt of offers and quotations, prior to contract award, placing orders under indefinite delivery vehicles such as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts and blanket purchase agreements, adding new work or extending the duration of a contract, and exercising options to ensure the potential awardee is not excluded.
2. Oversee and monitor procurement transactions for indications of fraud or behavior that could indicate grounds for administrative action.
3. In consultation with the OGC, assemble available information of potential misconduct and submit a referral, through their respective leadership chain, to the SDO for consideration of administrative action when, during the execution of a contract, there are indications of fraud or lack of responsibility.

4. Submit, through their respective leadership chain, a referral to the SDO for consideration of administrative action of entities that have been terminated for default, cause, or have a history of underperformance.
5. Refer activity that 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. Grants Officers

Grants Officers shall:

1. Review SAM Exclusions prior to awarding, renewing, or extending a financial assistance transaction to ensure the potential recipient is not excluded.
2. Oversee and monitor financial assistance transactions for indications of fraud or behavior that could be grounds for administrative action.
3. In consultation with the OGC and Program Manager, assemble available information of potential misconduct and submit a referral, through their respective leadership chain, to the SDO for consideration of administrative action when, during and/or after the execution of a financial assistance transaction, there are indications of fraud or lack of responsibility.
4. Submit, through their respective leadership chain, a referral to the SDO for consideration of administrative action for entities that have a history of underperformance.
5. Refer activities that may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to the OIG in accordance with DAO 207-10.

I. Program Managers and Contracting Officer Representatives

Program Managers and Contracting Officer Representatives shall:

1. Oversee and monitor procurement and financial assistance transactions for indications of fraud or behavior that could indicate grounds for administrative action.
2. In consultation with the OGC and award officials, assemble available information of potential misconduct and refer it to the SDO for consideration of administrative action when, during and/or after the execution of a contract or financial assistance transaction, there are indications of fraud or lack of responsibility.
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 DAO 207-10.

III. Standards for Suspension and Debarment

A. Suspension

A suspension is a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal or debarment proceeding. To impose a suspension, there must be adequate evidence that there may be a cause for debarment of the person or entity and a determination that immediate action is necessary to protect the Federal interest.

1. Causes for Suspension - Procurement

The SDO may issue a suspension when he/she determines that immediate action is necessary to protect the Government's interest (FAR 9.407-1) and there exists an indictment for, or adequate evidence of, any of the causes listed in FAR 9.407-2.

2. Causes for Suspension - Nonprocurement

The SDO may issue a suspension when he/she determines that immediate action is necessary to protect the public interest (2 CFR § 180.700) and there exists an indictment for, or other adequate evidence to suspect, an offense listed in 2 CFR § 180.800(a), or there exists adequate evidence to suspect any other cause for debarment listed in 2 CFR § 180.800 (b) through (d).

3. Period of Suspension-Procurement and Nonprocurement

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

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

B. Debarment

A debarment is imposed for a specified period as the final determination that a person or entity is not presently responsible. To impose a debarment, the SDO must conclude, based

on a preponderance of evidence, that the person or entity 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.

1. Causes for Debarment - Procurement

The SDO may debar a person or entity when he/she determines that debarment is necessary to protect the Government's interest (FAR 9.406-1(a)) and for causes listed in FAR 9.406- 2.

2. Causes for Debarment – Nonprocurement

The SDO may debar a person or entity, as defined by 2 CFR § 180.985, for the causes listed in 2 CFR § 180.800.

3. Period of Debarment-Procurement and Nonprocurement

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

IV. Scope of Suspension and Debarment

This section of the Handbook discusses how a Respondent's conduct may be imputed to other individuals and organizations, and how the conduct of these individuals and organizations may be imputed to a Respondent. Additionally, this section discusses the extension of suspension and debarment through affiliation.

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 to whom 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 suspension and/or 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:

1. Interlocking management or ownership.
2. Identity of interests among family members.
3. Shared facilities and equipment.
4. Common use of employees.
5. 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.

V. Procedures for Suspension and Debarment

The suspension and debarment procedures begin with the Program Coordinators receiving a referral for consideration of the SDO. The Program Coordinators will conduct an analysis of the referral and supporting documentation and recommend an initial action to the SDO. The SDO will make a final decision after the respondent is provided with an opportunity to respond to the initial action after considering all information provided in the administrative record. See Appendix B of this handbook for a general overview of suspension and debarment procedures.

A. Referral for Consideration of Suspending and Debarring Official

Operating units, program managers, contracting officers, contracting officer representatives, grants officers and staff shall promptly notify the Program Coordinators using the Referral for Consideration of Suspending and Debarring Official form (Referral) (Appendix C) 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 administrative action exist. Within the timeframe communicated by the Program Coordinators, the referring entity shall, in consultation with the OGC, assemble all available relevant information for consideration and forward it to the Program Coordinators. For matters that involve more than a single entity or individual, the referral must include information that separately set forth the grounds and bases for proceeding against each individual or entity.

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.

B. Analysis of Referrals

All referrals shall be evaluated for potential administrative action. The Program Coordinators shall review referrals and prepare an analysis and recommendation for the SDO. The Program Coordinators may request assistance or input from the OGC, OIG or any other source at any time during the processing of a case. If sufficient evidence is presented, the Program Coordinators shall submit a recommendation to the SDO that includes: (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; and (6) supporting documentation.

C. Administrative Record

The Program Coordinators shall maintain and document all information that will be considered by the SDO. This information will form the Administrative Record.

The official record will close upon the SDO's receipt of final submissions, information, and findings of fact, if any. Upon the conclusion of the fact-finding proceedings, the Program Coordinators 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 of Suspension or Proposed Debarment, and clarify or supplement the case.

D. Lead Agency

If the SDO determines administrative action is necessary, the Program Coordinators will request Lead Agency status through the Interagency Suspension and Debarment Committee (ISDC).

Lead Agency is a designation determined by reviewing a potential respondent's Federal agency dollar distribution on USAspending.gov and coordinating with the ISDC to identify which agency should properly evaluate a referral for administrative action. The USAspending.gov evaluation determines the agency with the highest contract and financial assistance award dollar distribution amount with a potential respondent. Whether or not the seeking agency has the highest dollars with the potential respondent, that agency must submit a Lead Agency Coordination Request through the ISDC. When more than one agency has an interest in the potential respondent, the ISDC resolves the lead agency issue and coordinates resolution among all interested agencies *prior* to the initiation of any related

administrative action.

E. Suspending and Debarring Official's Decision-Making Process

The SDO shall review the recommendation and take one of the following initial actions:

1. Declination of the Referral

The SDO may determine that there are insufficient grounds to pursue administrative action, or administrative action is not appropriate under the circumstances. This decision shall be documented in a Declination and added to the Administrative Record. If the SDO declines the referral, the referring entity or individual should continue to monitor the situation, when appropriate, and may submit a revised referral upon discovery of additional supporting evidence.

2. Issue Pre-Notice Letter

The SDO may issue a Pre-Notice Letter (PNL). PNLs are used by the SDO to inform the recipient that the SDO is reviewing matters for potential suspension or debarment actions and provide the recipient an opportunity to respond to the SDO's concerns. When a PNL is used, there is no immediate exclusion for the respondent. PNLs are often used 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. PNLs 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 a PNL, or failure to adequately address the concerns raised, may result in an action for exclusion.

The PNL shall be sent to the recipient through United States Postal Service certified mail, return receipt requested or electronic mail, to the last known address or e-mail address of the recipient. A PNL 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 thirty (30) calendar days from the date of receipt).
- e) Consequences for failure to respond to the letter or adequately address the allegations of misconduct.

3. Issue Notice of Suspension

The SDO may issue a Notice of Suspension and accompanying Memorandum in Support. To the extent possible, a Notice of Suspension and Memorandum in Support should set forth the basis for suspension with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances. The Notice of Suspension shall contain all information required by FAR 9.407-3, or 2 CFR § 180.715, based on the authority appropriate to the matter.

The Notice of Suspension and Memorandum in Support shall be sent by United States Postal Service certified mail, return receipt requested, or electronic mail, to the last known address or e-mail address of the respondent.

4. Issue Notice of Proposed Debarment

The SDO may issue a Notice of Proposed Debarment and accompanying Memorandum in Support. To the extent possible, a Notice of Proposed Debarment and Memorandum in Support should set forth the basis for debarment with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances. The Notice of Debarment shall contain all information required by FAR 9.406-3, or 2 CFR § 180.805, based on the authority appropriate to the matter.

The Notice of Proposed Debarment and Memorandum in Support shall be sent by United States Postal Service certified mail, return receipt requested, or electronic mail, to the last known address or e-mail address of the respondent.

F. Presentation of Matters in Opposition

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

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

1. In-person meeting,
2. Conference call, and/or
3. 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 SDO will review all materials presented and determine whether the respondent has raised a genuine dispute regarding material facts. A general denial is insufficient to raise a genuine dispute over facts.

G. Fact-Finding Proceeding for Proposed Debarment

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 their own initiative or in response to a written request. Schedule modifications shall be documented in the Administrative Record.

H. Suspending and Debarring Official's Final Decision

The SDO'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, or electronic mail, to the last known address or email address of the respondent.

In making a final decision, the SDO, at a minimum, should consider the aggravating and mitigating factors listed at FAR 9.406-1 and 2 CFR § 180.860.

The SDO shall issue a written decision based on the Administrative Record and issue the decision within the timeline outlined below, depending on the authority under which the decision is governed. The decision 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 as well as the determination.

The SDO must make a written decision on suspension or debarment for procurement and

nonprocurement actions within forty-five (45) days of closing the official record. The SDO may extend the period for good cause (2 CFR Part 180.755, FAR 9.406-3).

The SDO's final decision may include any of the following actions:

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 an administrative action proceeding, such as to suspend or debar, against the respondent, or on a future action by the Department based on new or additional information. This decision shall include:

- a. Reference 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.
- 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 future action by the Department based on new or additional information. This decision shall include:

- a. Reference 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.
- 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. Reference to the Notice of Suspension.
- b. Summary of proceedings.
- c. Outcome of fact-finding proceedings (if applicable).
- d. Reasons for modifying or continuing the suspension.
- e. That respondent may request a copy of the Administrative Record
- f. Scope of Ineligibility.

- g. Consequences of continued suspension.
- h. Effective dates of continued suspension.
- i. 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. Reference to the Notice of Proposed Debarment.
- b. Summary of proceedings.
- c. Outcome of fact-finding proceeding (if applicable).
- 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.
- j. Government-wide effects of the debarment.

I. Excluded Entity's Request for Reconsideration

Upon receiving a final decision to debar from the SDO, a debarred person or entity 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.

J. 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 SDO and any other parties concerned within the agency.

VI. Administrative Agreements

Administrative Agreements are used under appropriate circumstances when an SDO determines suspension and debarment is not necessary to protect the public's interest, provided the respondent is willing to enter into an Administrative Agreement. Administrative Agreements are signed by the SDO and the respondent and generally have a three (3)-year term. Administrative Agreements incorporate remedial measures that the respondent agrees to implement and require the respondent to prepare and submit reports to the SDO to verify compliance. Provided that the respondent complies with the terms of the Administrative Agreement, the respondent establishes its present responsibility. The

respondent acknowledges in the Administrative Agreement that any violation of the Administrative Agreement is evidence of a lack of present responsibility and may form a new (and immediate) basis for debarment. The terms of the Administrative Agreement should serve at least one of two general objectives: (1) helping the respondent to implement appropriate controls, practices, and programs to establish responsibility, and/or (2) providing necessary information to the government to facilitate appropriate oversight of the respondent's efforts.

The SDO may, at any time during administrative proceedings, negotiate an Administrative Agreement with the respondent to resolve a matter, if it is in the Government's interest. An Administrative Agreement may recognize or impose conditions upon a respondent in lieu of exclusion that has government-wide effect. Under the Administrative Agreement, the respondent may remain eligible to enter into contracts and other covered transactions with the Government but must adhere to the terms and conditions of the Administrative Agreement.

Additionally, as noted above, an Administrative Agreement may impose conditions by which an excluded respondent may regain present responsibility and be eligible for a new award/work.

The SDO should consider the following when contemplating an Administrative Agreement:

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

If an Administrative Agreement is deemed appropriate, the Program Coordinators shall draft an Administrative Agreement in consultation with the OGC and the cognizant operating unit or office. Upon agreement with the respondent, a final Administrative Agreement will be distributed for signature. After the Administrative Agreement has been fully executed, the Program Coordinators will enter the Administrative Agreement into the SAM within three (3) business days.

VII. 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 will 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.

VIII. System for Award Management (SAM) Exclusions

Entities that are debarred or suspended are generally excluded from receiving Federal Government contracts or financial assistance awards. SAM 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 from receiving Federal contract or financial assistance awards.

A. Entering Entities into System for Award Management

Upon a final decision of suspension or debarment by the SDO, the Program Coordinators shall update SAM within three (3) business days, to include:

1. Names and addresses of all entities debarred, suspended, proposed for debarment, declared ineligible with cross-references when more than one name is involved in a single action. The type of action.
2. Name of the agency or other authority taking the action.
3. Cause for the action or other statutory or regulatory authority.
4. Effect of the action.
5. Termination date for each listing.
6. Unique Entity Identifier.
7. Social Security Number, Employer Identification Number, or other Taxpayer Identification Number, if available.
8. Name and telephone number of the agency point of contact for the action.

Appendix A - Definitions

Unless otherwise specified, all terms used in this Handbook have the meaning required by the regulations set forth in 2 CFR Parts 180 and 1326 for nonprocurement suspension and debarment actions, and in FAR subpart 9.4 for procurement suspension and debarment actions:

Administrative Record. The Administrative Record is all the information considered by the SDO including, but not limited to reports, notes, emails, newspaper articles, summaries of oral briefings, and respondent submissions. The Administrative Record is the evidentiary basis of the SDO's Final Decision and consists of all the documentary evidence considered by the SDO. The Administrative Record generally starts with a set of documents developed by the government recommending the Suspension and Debarment action and expands as the respondent and government provide additional information over the course of the proceedings. The FAR does not expressly require the government to provide respondents with a copy of the record. However, SDOs may provide respondents with a copy of the Administrative Record including updated copies through the course of the proceedings at the Respondent's request. Respondents are not entitled to conduct discovery.

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

Aggravating Factors. Any facts or circumstances that increases the severity or culpability of a respondent such as the amount of harm or lack of remorse.

Interagency Suspension and Debarment Committee. 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 a potential administrative action in coordination with other interested agencies.

Material Facts. 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.

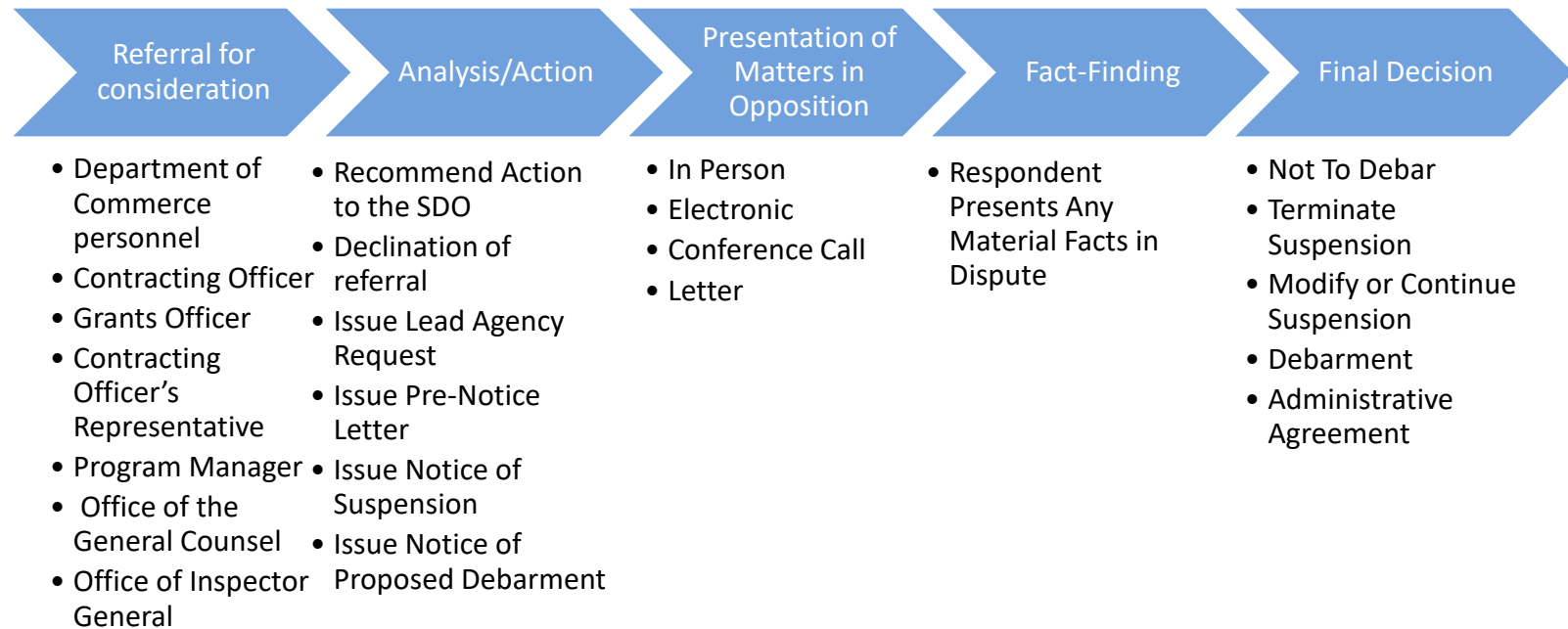
Mitigating Factors. Considerations that reflect favorably on a respondent's present responsibility. Mitigating factors may be considered by the SDO in a suspension and/or debarment decision and should be documented in the Administrative Record.

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.

Suspending and Debarring Official. Individual designated responsibility to impose procurement and nonprocurement suspensions and debarments pursuant to FAR Subpart 9.4 and 2 CFR § 1326. The SDO is responsible for the management of the Suspension and Debarment program.

Appendix B - Suspension & Debarment Procedures Flowchart





Appendix C - Referral For Consideration of Suspending and Debaring Official

☐ **SUPPLEMENTAL** (check this box if this referral is a supplement to a previously submitted referral and only include updated information)

REFERRING BUREAU/OFFICE:

BUREAU/OFFICE FILE NUMBER:

BUREAU/OFFICE POINT OF CONTACT:

CONTACT INFORMATION:

RESPONDENT(S) (individual or company name (& POC), address, DOB, phone, email, UEI number, if applicable):

KNOWN AFFILIATES/SUBSIDIARIES/PARENT FIRMS (if known, provide names, identifying info, and relationship to Respondent for affiliates involved in conduct directly or through imputation--e.g., companies owned by individual):

☐ N/A

ASSOCIATION TO DEPARTMENT OF COMMERCE (describe Respondent's past/present nexus to the DOC, including programs impacted, loss amount, and contract/financial assistance agreement file numbers, if applicable):

INVESTIGATIVE AGENCIES (if referral is investigation based, identify, if known, lead investigative agency and any other supporting agencies):

☐ N/A

BASIS OF REFERRAL: Select Option

REASONS FOR REFERRAL (check all that apply):

- ☐ Commission of fraud or a criminal offense in connection with a government contract/subcontract or a public or private agreement or transaction (e.g. a grant)
- ☐ Violation of Federal or State antitrust statutes
- ☐ Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property
- ☐ Misusing "Made in America" inscription
- ☐ Commission of any other offense indicating lack of business integrity or business honesty and directly affects their present responsibility
- ☐ Willful failure to perform in accordance with the terms of one or more contracts
- ☐ A history of failure to perform or unsatisfactory performance, on one or more contracts
- ☐ Failure to make a good faith effort to provide a Drug-Free Workplace
- ☐ Commission of an unfair trade practice as defined in FAR 9.403
- ☐ Delinquent Federal taxes in an amount that exceed \$10,000
- ☐ Knowing failure by a principal to timely disclose, in connection with a government contract, credible evidence of violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity; violations of the civil False Claims Act; or significant overpayment(s) on the contract
- ☐ Other: _____

SUMMARY (provide a brief statement of relevant facts that precipitated this referral; include attachments for details; if judicial-based, do not repeat information in court documents):

AGGRAVATING AND/OR MITIGATING FACTORS (list any known aggravating and/or mitigating factors the SDO should consider, such as restitution, voluntary disclosures, cooperation w/law enforcement/government, implementation of remedial policies/procedures, personnel accountability measures, etc.) ☐ N/A

CURRENT LEGAL PROCEEDINGS AGAINST RESPONDENT:

☐ N/A

Court:

Docket Number:

Status:

Court:

Docket Number:

Status:

TIME CRITICAL EVENTS (highlight any known with which the SDO should be aware):

☐ N/A

LIST OF ATTACHMENTS (select all that apply. Include documents related to the underlying action(s) precipitating this referral, a document showing some relation to the DOC, and any documents demonstrating mitigating factors. Materials will be redacted, and only the relevant portions will be provided to the Respondent in the Administrative Record):

- | | | | |
|---|--|---|---|
| ☐ Indictment/Charging Document | ☐ Statement of Facts | ☐ Report of Investigation | ☐ Financial Records |
| ☐ Judgment | ☐ DOJ Press Release | ☐ Interview Notes/Statements | ☐ Contract Documents |
| ☐ Settlement/Plea Agreement | ☐ Search/Arrest Warrant | ☐ Audit Report/Official Findings | ☐ Grant/Underlying Agreement |

☐ Other Supporting Material:

SIGNATURE OF REFERRING OFFICIAL:

DATE:

Referrals should be emailed to the DOC S&D Office at suspenddebar@doc.gov.