SUSPENSION AND DEBARMENT
REFERRAL PRACTICES

Travis J. Farris, Counsel to the Inspector General
Small Business Administration OIG
Greg Coss, Grant Specialist, GMD/OAM
Department of Commerce
Goals of this Training

- Identify Suspension and Debarment Referral Opportunities
- Prepare for Issue Spotting
- Discuss How to Incorporate Referrals Into Daily Work
What We Will Cover

- Cause for Debarment
- Identifying Cases
- Procedures and Practices
22 referrals (defined in Section 873 of PL 110-417 as a written request prepared in accordance with agency procedures and guidelines, supported by documentary evidence, presented to the SDO for issuance of a notice of suspension or notice of proposed debarment).

72 actions (a suspension, proposed debarment or debarment).

29 actions related to Suspension and Debarment (includes referrals, show cause letters, declinations, administrative agreements, voluntary exclusions).

2 actions (both proposed debarments) and 1 action related to S&D (administrative agreement) were not OIG referrals.

Cases that rise to the level of fraud, waste and abuse are being reported. However, bureaus should also be presenting referrals for fact-based cases that may or may not rise to the level of fraud, but still need to be raised to the SDO to protect the Government’s interests.
<table>
<thead>
<tr>
<th>Pre-Award Phase</th>
<th>Award Phase</th>
<th>Closeout Phase</th>
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<tbody>
<tr>
<td>Suspicious bidding practices, including collusion, or price fixing</td>
<td>Poor Performance (easier to determine in contract than grant – where it is often determined in audit)</td>
<td>Embezzlement, theft, forgery, bribery, kickbacks, destruction of records (conviction or plea agreement)</td>
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<td>Qualified bidders AREN’T putting in bids</td>
<td>Reporting late or not at all</td>
<td>Delinquent Federal Taxes</td>
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<td>Competing bidders start dropping out and become sub-recipients</td>
<td>Repeated errors and missing documents in reporting</td>
<td>A history of failure to perform throughout multiple grants or contracts, including most recent ones</td>
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<td>Various background checks indicate poor cash flow</td>
<td>Recipient is under investigation by another agency</td>
<td>A history of shifting costs from one category to another and double-dipping on cost claims</td>
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<tr>
<td>Price Fixing and pricing agreements</td>
<td>Either too many or no budget revisions</td>
<td>A history of audit findings, some of which remain unresolved</td>
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Who to Contact?

- OS – Kirk Boykin (kboykin@doc.gov)
- NIST – Lisa Bucci (lisa.bucci@nist.gov) or Leonard Schlaak (leonard.schlaak@nist.gov)
- Census – Samantha Brady (samantha.brady@census.gov)
- PTO – Lisa Wade (lisa.wade@uspto.gov)
- NOAA – Justin Cofer (justin.l.cofer@noaa.gov) or Dale Henderson (dale.henderson@noaa.gov)
- *MBDA – Nakita Chambers (nchambers@mbda.gov)
- *ITA – Brad Hess (brad.hess@trade.gov)
- *NTIA – Michael Dame (mdame@ntia.doc.gov)
- EDA – Susan Shanahan (sshanahan@eda.gov)
- OGC – Wilmary Bernal (wbernal@doc.gov)

* Grants Only
Fraud, Waste and Abuse Concerns

- If there are concerns of waste of funds, abuse of authority, or a violation of law or regulation relating to a Federal award.

- OIG Hotline – (800)-424-5197 or Hotline@oig.doc.gov

- The misconduct should also be reported to your appropriate contact from list on previous slide
SUSPENSION AND DEBARTMENT
Suspension and Debarment is The Government’s Way of Making a Business Decision.

Suspension and Debarment may not be used for punishment.

These remedies are prospective only.
Suspension

- Used when:
  - you have adequate evidence of cause for debarment; and,
  - immediate action is necessary.

- Lasts for up to one year (possible extension) or until legal proceedings have concluded

- Effective Immediately
Debarment

- Used when:
  - cause for debarment exists by a preponderance of the evidence; and,
  - debarment is in the public interest.

- Debarment is intended to protect – not punish

- Set period of time
Four General Categories:

- Conviction of, or civil judgment for, certain offenses;
- Violation of the terms of a public agreement so serious as to affect the integrity of an agency program;
- Certain eligibility issues; and,
- Anything else so serious or compelling it affects the respondent’s present responsibility.
Conviction or Civil Judgment

- Fraud or criminal offense in connection with public or private agreement
- Antitrust violations
- Financial crimes (e.g., embezzlement, theft, forgery, bribery, falsification of records, destruction of records, tax evasion, false claims or obstruction of justice)
- Any other offense indicating a lack of business integrity (e.g. criminal contempt)
How could you hear?

- OIG
- FAR Clause 52.209-5(a)(1) or 52.212-3(h)
- Grantee Disclosures 2 C.F.R. §§ 200.112 and 200.113
- Other Contractors/Grantees
- Legal Processes (subpoenas for documents in other litigation)
Violation of Terms of a Public Agreement Affecting Integrity

- Willful failure to perform in accordance with terms of one or more agreements
- History of failure to perform public agreements
- Willful violation of statute, regulation or other requirement pertaining to a public agreement
How would you identify these violations?

- T4D (including T4C when you have evidence that would support a T4D)
- Grant Terminations
- Discuss --
Eligibility Issues

- Knowingly doing business with an ineligible person
- Substantial Federal debt either uncontested or with appeals exhausted (tax debt in some cases)
- Violation of a voluntary exclusion agreement
- Drug-Free Workplace Act of 1988 Violations
Be aware of systemic implications
- Individual abusing Federal programs rarely limit themselves to one transaction.
- Failure to respond may embolden contractors.

Your knowledge of how programs work is crucial to program integrity attorneys.
- Materiality
- Likelihood of Error
- Reasonability
ISSUE SPOTTING
Other Issues Affecting Present Responsibility

- Failure to cooperate with the IG’s office, without an obstruction of justice conviction
- Failure to file tax returns without a criminal conviction
- Misrepresentations
Debt Example

- Podiatrist subject to Program Fraud Civil Remedies Act judgment
- No attempt to pay or make arrangements
- Affiliated company and podiatrist referred for debarment
8(a) front company sued the non-status sub doing all the work on a set-aside 8(a) contract for not kicking back enough money.

State court judge kicked out the suit and sent a referral to the SBA OIG.

Both parties, and key individuals, referred for debarment.
Referral Sources

- Judicial Actions
- Hotline Complaints
- Terminations for Default
- Pending or Closed Investigations
- Program/Contract Officials
- Competitors
- Recycle
BRIEF PROCEDURAL BACKGROUND
Basic Procedures

- SDO Receives a Referral
- SDO Issues a Notice
- Respondent answers the Notice
- Matters in Opposition
- Fact-Finding (If Necessary)
- SDO Decision
- Any Agency Specific Appeal Procedures
- APA Appeal to the District Court for an Unhappy Respondent
WHEN DO YOU START A CASE?

When the Government needs protection.
Why refer early?

- Stops additional harm
- Puts the violations in context
- Information
Key Points

- Suspensions and debarments must have a strong administrative record.
- The SDO must base any decision on the evidence in the record.
HOW DOES IT WORK?
Suggested Practices

- Find out how the SDO prefers to receive referrals.
- Identify any unique concerns the SDO may have.
- Engage in a constant dialogue regarding process improvements.
Three Referral Models

- **Action Referral Memorandum (ARM)**
  - Referral is a memorandum analyzing facts indicating a lack of present responsibility.

- **Draft Notice and Record (DNR)**
  - Referral is a draft administrative record and notice.

- **Notification**
  - Referral attaches evidence that may indicate a lack of present responsibility without analysis.
Contractor set up a sham HUBZone and 8(a) Company.

Evidence from bonding company demonstrated a lack of control.

Multi-Million Dollar contract pending.

Suspension implemented before award.
Resources

- OIG and OGC Personnel
- FLETC National Suspension and Debarment Training Program
- Interagency Suspension and Debarment Committee
A suspension or debarment can stop future fraud, waste and abuse.

Give S&D Officials what they need to protect the Government.
QUESTIONS?