



# 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

# DOC Suspension and Debarment Activity

## Fiscal Years 2011-2015

- ▣ 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.



# What to look for: Fraud Indicators and Possible Reasons for Suspension or Debarment

Pre-Award Phase	Award Phase	Closeout Phase
Suspicious bidding practices, including collusion, or price fixing	Poor Performance (easier to determine in contract than grant – where it is often determined in audit)	<b>Embezzlement, theft, forgery, bribery, kickbacks, destruction of records (conviction or plea agreement)</b>
Qualified bidders AREN'T putting in bids	<b>Reporting late or not at all</b>	Delinquent Federal Taxes
Competing bidders start dropping out and become sub-recipients	Repeated errors and missing documents in reporting	A history of failure to perform throughout multiple grants or contracts, including most recent ones
Various background checks indicate poor cash flow	Recipient is under investigation by another agency	A history of shifting costs from one category to another and double-dipping on cost claims
Price Fixing and pricing agreements	Either too many or no budget revisions	A history of audit findings, some of which remain unresolved

# Who to Contact?

- ▣ OS – Kirk Boykin ([kboykin@doc.gov](mailto:kboykin@doc.gov))
- ▣ NIST – Lisa Bucci ([lisa.bucci@nist.gov](mailto:lisa.bucci@nist.gov)) or Leonard Schlaak ([leonard.schlaak@nist.gov](mailto:leonard.schlaak@nist.gov))
- ▣ Census – Samantha Brady ([samantha.brady@census.gov](mailto:samantha.brady@census.gov))
- ▣ PTO – Lisa Wade ([lisa.wade@uspto.gov](mailto:lisa.wade@uspto.gov))
- ▣ NOAA – Justin Cofer ([justin.l.cofer@noaa.gov](mailto:justin.l.cofer@noaa.gov)) or Dale Henderson ([dale.henderson@noaa.gov](mailto:dale.henderson@noaa.gov))
- ▣ \*MBDA – Nakita Chambers ([nchambers@mbda.gov](mailto:nchambers@mbda.gov))
- ▣ \*ITA – Brad Hess ([brad.hess@trade.gov](mailto:brad.hess@trade.gov))
- ▣ \*NTIA – Michael Dame ([mdame@ntia.doc.gov](mailto:mdame@ntia.doc.gov))
- ▣ EDA – Susan Shanahan ([sshanahan@eda.gov](mailto:sshanahan@eda.gov))
- ▣ OGC – Wilmary Bernal ([wbernal@doc.gov](mailto:wbernal@doc.gov))
- ▣ Suspension and Debarment Handbook link:  
[http://www.osec.doc.gov/oam/acquistion\\_management/policy/handbooks/default.htm](http://www.osec.doc.gov/oam/acquistion_management/policy/handbooks/default.htm)

\* 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](mailto:Hotline@oig.doc.gov)
- ▣ The misconduct should also be reported to your appropriate contact from list on previous slide

# SUSPENSION AND DEBARMENT



# Being in a referral frame of mind

♦ ♦ ♦ ♦

- ❑ 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.



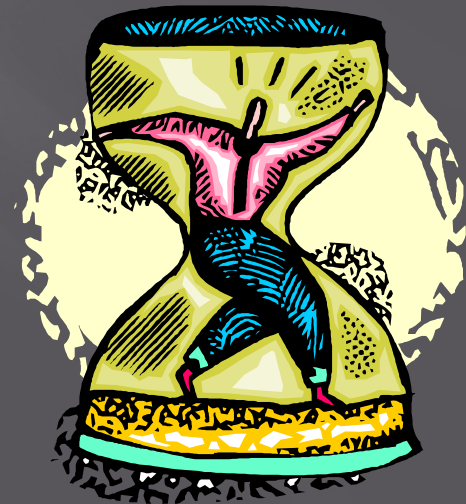
# Suspension

- ▣ 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



# Cause for Debarment

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

# Issue Spotting

- ▣ 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

# Integrity Violation Example

- ▣ 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.

# Early Suspension Case Study

- ▣ 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

# The Big Picture

A suspension or debarment can stop future fraud, waste and abuse.

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



# QUESTIONS?