Office of the Secretary of Labor

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 98.840 How is fact-finding conducted?
(a) If fact-finding is conducted—
(1) You may present witnesses and other evidence, and confront any witness presented; and
(2) The fact-finder must prepare written findings of fact for the record.
(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Department of Labor agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 98.845 What does the debarring official consider in deciding whether to debar me?
(a) The debarring official may debar you for any of the causes in § 98.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 98.860.
(b) The debarring official bases the decision on all information contained in the official record. The record includes—
(1) All information in support of the debarring official’s proposed debarment;
(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and
(3) Any transcribed record of fact-finding proceedings.
(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 98.850 What is the standard of proof in a debarment action?
(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.
(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 98.855 Who has the burden of proof in a debarment action?
(a) We have the burden to prove that a cause for debarment exists.
(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 98.860 What factors may influence the debarring official’s decision?
This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:
(a) The actual or potential harm or impact that results or may result from the wrongdoing.
(b) The frequency of incidents and/or duration of the wrongdoing.
(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.
(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.
(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but
§ 98.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § 98.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ 98.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official’s receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § 98.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.