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agencies and participants as an exclusion under the Nonprocurement Common Rule.

[60 FR 33065, June 26, 1995]

9.402 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) When more than one agency has an interest in the debarment or suspension of a contractor, the Interagency Committee on Debarment and Suspension, established under Executive Order 12549, and authorized by Section 873 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), shall resolve the lead agency issue and coordinate such resolution among all interested agencies prior to the initiation of any suspension, debarment, or related administrative action by any agency.

(e) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 19814, May 8, 1989; 74 FR 31565, July 1, 2009]

9.403 Definitions.

As used in this subpart—

Affiliates. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking manage-

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ment or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contract or that was debarred, suspended, or proposed for debarment.

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

Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.

Contractor means any individual or other legal entity that—

(1) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(2) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

Debarring official means (1) an agency head or (2) a designee authorized by the agency head to impose debarment.

Indictment means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

Legal proceedings means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

Nonprocurement Common Rule means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

Federal Acquisition Regulation

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Suspending official means (1) an agency head or (2) a designee authorized by the agency head to impose suspension.

Unfair trade practices means the commission of any of the following acts by a contractor:

(1) A violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 19814, May 8, 1989; 56 FR 15149, Apr. 15, 1991; 59 FR 11372, Mar. 10, 1994; 60 FR 33065, June 26, 1995; 66 FR 2128, Jan. 10, 2001]

9.404 Excluded Parties List System.

(a) The General Services Administration (GSA)—

(1) Operates the web-based Excluded Parties List System (EPLS);

(2) Provides technical assistance to Federal agencies in the use of the EPLS; and

(3) Includes in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The EPLS includes the—

(1) Names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified under the non-procurement common rule, with cross-references when more than one name is involved in a single action;

(2) Name of the agency or other authority taking the action;

(3) Cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) Effect of the action;

(5) Termination date for each listing;

(6) DUNS No.;

(7) Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available; and

(8) Name and telephone number of the agency point of contact for the action.

(c) Each agency must—

(1) Obtain password(s) from GSA to access the EPLS for data entry;

(2) Notify GSA in the event a password needs to be rescinded (*e.g.*, when an agency employee leaves or changes function);

(3) Enter the information required by paragraph (b) of this section within 3 working days after the action becomes effective;

(4) Determine whether it is legally permitted to enter the SSN, EIN, or other TIN, under agency authority to suspend or debar;

(5) Update EPLS, generally within 5 working days after modifying or rescinding an action;

(6) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(7) Establish procedures to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors whose names are in the EPLS, except as otherwise provided in this subpart;

(8) Direct inquiries concerning listed contractors to the agency or other authority that took the action; and

(9) Contact GSA for technical assistance with the EPLS, via the support e-mail address or on the technical support phone line available at the EPLS web site provided in paragraph (d) of this section.

(d) The EPLS is available at <http://epls.gov>.

[69 FR 76349, Dec. 20, 2004, as amended at 75 FR 14066, Mar. 23, 2010]

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (*see*