

§ 180.150 Against whom may a Federal agency take an exclusion action?

Given a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.

§ 180.155 How do I know if a person is excluded?

Check the Governmentwide System for Award Management Exclusions (SAM Exclusions) to determine whether a person is excluded. The General Services Administration (GSA) maintains the SAM Exclusions and makes it available, as detailed in Subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the SAM Exclusions.

[70 FR 51865, Aug. 31, 2005, as amended at 79 FR 75879, Dec. 19, 2014]

Subpart B—Covered Transactions**§ 180.200 What is a covered transaction?**

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

- (a) The primary tier, between a Federal agency and a person (see appendix to this part); or
- (b) A lower tier, between a participant in a covered transaction and another person.

§ 180.205 Why is it important if a particular transaction is a covered transaction?

The importance of whether a transaction is a covered transaction depends upon who you are.

- (a) As a participant in the transaction, you have the responsibilities laid out in subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter

into other covered transactions with persons at the next lower tier.

- (b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

- (c) As an excluded person, you may not be a participant or principal in the transaction unless—

- (1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 180.310 or § 180.415; or

- (2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under § 180.135.

§ 180.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 180.970, are covered transactions unless listed in the exemptions under § 180.215.

§ 180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

- (a) A direct award to—
 - (1) A foreign government or foreign governmental entity;
 - (2) A public international organization;
 - (3) An entity owned (in whole or in part) or controlled by a foreign government; or
 - (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.
- (b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.
- (c) Federal employment.

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(d) A transaction that a Federal agency needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate or similar instrument issued as a means to regulate public health, safety or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if—

(1) The application of an exclusion to the transaction is prohibited by law; or

(2) A Federal agency's regulation exempts it from coverage under this part.

(h) Notwithstanding paragraph (a) of this section, covered transactions must include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements or commitments with the United States. Federal awarding agencies and primary tier non-procurement recipients must not award, renew, or extend a non-procurement transaction or procurement transaction, regardless of amount or tier, with any entity listed in the System for Award Management Exclusions List on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements or commitments with the United States, pursuant to section 1290 of the National Defense Authorization Act for Fiscal Year 2017, unless the head of a Federal agency grants an exception pursuant to 2 CFR 180.135 with the concurrence of the OMB Director.

[70 FR 51865, Aug. 31, 2005, as amended at 83 FR 31038, July 3, 2018]

§ 180.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal partici-

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pants in nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 180.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for Federally-required audit services.

(c) A subcontract also is a covered transaction if,—

(1) It is awarded by a participant in a procurement transaction under a non-procurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed \$25,000.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

§ 180.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the Federal agency regulations governing the transaction, the appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.