

## OMB Guidance, Grants and Agreements

## Pt. 176, Subpt. B, App.

States	Entities covered	Exclusions	Relevant international agreements
U.S. Department of Housing and Urban Development, Office of Community Planning and Development, <i>Community Development Block Grants Recovery</i> (CDBG-R) (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.
U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, <i>Public Housing Capital Fund</i> (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.
U.S. Environmental Protection Agency for projects funded by reallocated ARRA funds where the contracts are signed after February 17, 2010 (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.

*General Exceptions:* The following restrictions and exceptions are excluded from U.S. obligations under international agreements:

1. The restrictions attached to Federal funds to States for mass transit and highway projects.

2. Dredging.

*The World Trade Organization Government Procurement Agreement (WTO GPA) Parties:* Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

*The Free Trade Agreements and the respective Parties to the agreements are:*

(1) Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA): Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua;

(2) North American Free Trade Agreement (NAFTA): Canada and Mexico;

(3) United States-Australia Free Trade Agreement (U.S.-Australia FTA);

(4) United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA);

(5) United States-Chile Free Trade Agreement (U.S.-Chile FTA);

(6) United States-Israel Free Trade Agreement (U.S.-Israel FTA);

(7) United States-Morocco Free Trade Agreement (U.S.-Morocco FTA);

(8) United States-Oman Free Trade Agreement (U.S.-Oman FTA);

(9) United States-Peru Trade Promotion Agreement (U.S.-Peru TPA); and

(10) United States-Singapore Free Trade Agreement (U.S.-Singapore FTA).

*United States-European Communities Exchange of Letters (May 30, 1995) (U.S.-EC Exchange of Letters)* applies to EC Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

*Agreement between the Government of Canada and the Government of the United States of*

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*America on Government Procurement (Feb. 10, 2010) (U.S.-Canada Agreement): Applies only to Canada.*

[75 FR 14324, Mar. 25, 2010]

### **Subpart C—Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act of 2009**

#### **§ 176.180 Procedure.**

The award official shall insert the standard award term in this subpart in all awards funded in whole or in part with Recovery Act funds.

#### **§ 176.190 Award term—Wage rate requirements under Section 1606 of the Recovery Act.**

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606,

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contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

### **Subpart D—Single Audit Information for Recipients of Recovery Act Funds**

#### **§ 176.200 Procedure.**

The award official shall insert the standard award term in this subpart in all awards funded in whole or in part with Recovery Act funds.

#### **§ 176.210 Award term—Recovery Act transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.**

The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at <http://www.whitehouse.gov/omb/circulars/a133/>

*a133.html*. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

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### APPENDIX A TO PART 180—COVERED TRANSACTIONS

AUTHORITY: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 103-355; Pub. L. 109-282; Pub. L. 110-252; Pub. L. 111-84; Pub. L. 113-101; Pub. L. 115-232; Pub. L. 117-40; E.O. 12549; E.O. 12689.

SOURCE: 89 FR 30115, Apr. 22, 2024, unless otherwise noted.

### § 180.5 What does this part do?

This part provides guidance for Federal agencies on how to implement the government-wide debarment and suspension system for nonprocurement programs and activities.

### § 180.10 How is this part organized?

This part is organized into two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I.

(b) Subparts A through I contain uniform government-wide standards that Federal agencies are to use to specify:

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the government-wide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

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## **§ 180.15**

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### **§ 180.15 To whom does the guidance apply?**

This part provides guidance to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of this guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

### **§ 180.20 What must a Federal agency do to implement these guidelines?**

As Section 3 of Executive Order 12549 requires, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

### **§ 180.25 What must a Federal agency address in its implementation of the guidance?**

Each Federal agency's implementing regulation:

(a) Must establish policies and procedures for that Federal agency's nonprocurement debarment and suspension programs and activities consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect on that Federal agency's programs and activities.

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must:

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under § 180.135 to let an excluded person participate in a covered transaction.

(2) State whether the Federal agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under § 180.220(c).

(3) Identify the method(s) a Federal agency official may use when entering into a covered transaction with a primary tier participant to communicate to the participant the requirements described in § 180.435. Examples of methods are an award term that requires compliance as a condition of the award,

an assurance of compliance obtained at the time of application, or a certification.

(4) State whether the Federal agency specifies a particular method that participants must use to communicate compliance requirements to lower tier participants, as described in § 180.330(a). If there is a specified method, the regulation must require Federal agency officials to communicate that requirement when entering into covered transactions with primary tier participants.

(c) May also, at the Federal agency's option:

(1) Identify any specific types of transactions the Federal agency includes as "nonprocurement transactions" in addition to the examples provided in § 180.970.

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under § 180.215(g)(2).

(3) Identify specific examples of types of individuals who would be "principals" under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described in § 180.995.

(4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.

(5) Identify by title the officials designated by the Federal agency head as debarring officials under § 180.930 or suspending officials under § 180.1010.

(6) Include a subpart covering disqualifications, as authorized in § 180.45.

(7) Include any provisions authorized by OMB.

### **§ 180.30 Where does a Federal agency implement these guidelines?**

Each Federal agency that participates in the government-wide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title.

### **§ 180.40 How are these guidelines maintained?**

The Interagency Committee on Debarment and Suspension, established by section 4 of Executive Order 12549,

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recommends to the OMB any needed revisions to the guidelines in this part. The OMB publishes proposed changes to the guidelines in the FEDERAL REGISTER for public comment, considers comments with the help of the Interagency Committee on Debarment and Suspension, and issues the final guidelines.

### § 180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

A Federal agency may add a subpart covering disqualifications to its regulation implementing these guidelines, but the guidelines in subparts A through I:

(a) Address disqualified persons only to:

(1) Provide for their inclusion in the System for Award Management (SAM.gov) Exclusions; and

(2) State the responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Do not specify the:

(1) Transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal agency takes and may include special procedures.

### Subpart A—General

### § 180.100 How are subparts A through I organized?

(a) Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in table 1:

TABLE 1 TO PARAGRAPH (a)

In subpart . . .	You will find provisions related to . . .
A .....	general information about Subparts A through I.
B .....	the types of transactions that are covered by the government-wide nonprocurement suspension and debarment system.
C .....	the responsibilities of persons who participate in covered transactions.
D .....	the responsibilities of Federal agency officials who are authorized to enter into covered transactions.
E .....	the responsibilities of Federal agencies for entering information into <i>SAM.gov</i> Exclusions.
F .....	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G .....	suspension actions.
H .....	debarment actions.
I .....	definitions of terms used in this part.

(b) Table 2 shows which subparts may be of special interest to you, depending on who you are:

TABLE 2 TO PARAGRAPH (b)

If you are . . .	See Subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction .....	A, B, C and I.
(2) a respondent in a suspension action .....	A, B, F, G and I.
(3) a respondent in a debarment action .....	A, B, F, H and I.
(4) a suspending official .....	A, B, E, F, G and I.
(5) a debarring official .....	A, B, D, F, H and I.
(6) a Federal agency official authorized to enter into a covered transaction .....	A, B, D, E and I.

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### § 180.105 How is this part written?

(a) This part uses a “plain language” format to make it easier for the general public and business community. The section headings and text must be read together, as they are often in the form of questions and answers.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed.

(c) The “Covered Transactions” diagram in the appendix to this part shows the levels or “tiers” at which a Federal agency may enforce an exclusion.

### § 180.110 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meanings. Those terms are defined in subpart I. For example, three important terms are:

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debarring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition Regulations (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of a Federal agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

### § 180.115 What do subparts A through I of this part do?

Subparts A through I provide for the reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulations and provide for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order or other legal authority.

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### § 180.120 Do subparts A through I of this part apply to me?

Portions of subparts A through I (see table at § 180.100(b)) apply to you if you are a:

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom a Federal agency has initiated a debarment for suspension action);

(c) Federal agency debarring or suspending official; or

(d) Federal agency official who is authorized to enter into covered transactions with non-Federal parties.

### § 180.125 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude persons who are not presently responsible from Federal programs.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

### § 180.130 How does an exclusion restrict a person’s involvement in covered transactions?

With the exceptions stated in §§ 180.135, 315, and 420, a person who is excluded by any Federal agency may not:

(a) Be a participant in a Federal agency transaction that is a covered transaction; or

(b) Act as a principal of a person participating in one of those covered transactions.

### § 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?

(a) A Federal agency head or designee may grant an exception permitting an

excluded person to participate in a particular covered transaction. If the Federal agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

(b) An exception granted by one Federal agency for an excluded person does not extend to the covered transactions of another Federal agency.

**§ 180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?**

When a Federal agency excludes a person under Executive Order 12549 or Executive Order 12689 on or after August 25, 1995, the excluded person is also ineligible for Federal procurement transactions under the Federal Acquisition Regulations. Therefore, an exclusion under this part has a reciprocal effect on Federal procurement transactions.

**§ 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?**

When a Federal agency excludes a person under the Federal Acquisition Regulations (FAR) on or after August 25, 1995, the excluded person is also ineligible to participate in Federal agencies' nonprocurement covered transactions. Therefore, an exclusion under the FAR has a reciprocal effect on Federal nonprocurement transactions.

**§ 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 System for Award Management (*SAM.gov*) Exclusions to determine whether a person is excluded. The General Services Administration (GSA) maintains *SAM.gov* Exclusions and makes it available, as detailed in subpart E. When a Federal agency takes action to exclude a person under the

nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into *SAM.gov* Exclusions.

**Subpart B—Covered Transactions**

**§ 180.200 What is a covered transaction?**

A covered transaction is a nonprocurement or procurement transaction subject to this part's prohibitions. 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**

### **§ 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, when 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.
- (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

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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 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 SAM.gov Exclusions on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements, or commitments with the United States (see section 1290 of the National Defense Authorization Act for Fiscal Year 2017). The head of a Federal agency may grant an exception to this requirement under 2 CFR 180.135 and with the concurrence of the OMB Director.

### **§ 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 under 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 covered under §180.210, and the contract amount 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 is always a covered transaction regardless of the amount or who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a non-procurement 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.

**§ 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 of 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.

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

**§ 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?**

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking *SAM.gov* Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person.

**§ 180.305 May I enter into a covered transaction with an excluded or disqualified person?**

(a) As a participant, you may not enter into a covered transaction with an excluded person unless the Federal agency responsible for the transaction grants an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction unless you have obtained an exception under the dis-

qualifying statute, Executive Order, or regulation.

**§ 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?**

(a) As a participant, you may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person unless the Federal agency responsible for the transaction grants an exception under § 180.135.

**§ 180.315 May I use the services of an excluded person as a principal under a covered transaction?**

(a) As a participant, you may continue to use the services of an excluded person as a principal under a covered transaction if you were using that person's services in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should decide whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under § 180.135.

**§ 180.320 Must I verify that principals of my covered transactions are eligible to participate?**

(a) Yes. As a participant, you are responsible for determining whether your principals of your covered transactions are excluded or disqualified from participating in the transaction.

(b) You may decide the method and frequency by which you do so. You may, but are not required to check *SAM.gov* Exclusions.

## § 180.325

### **§ 180.325 What happens if I do business with an excluded person in a covered transaction?**

As a participant, if you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

### **§ 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?**

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to:

(a) Comply with this subpart as a condition of participating in the transaction. You may do so using any method(s) unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person the participant enters into a covered transaction at the next lower tier.

#### **DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS**

### **§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?**

Before you enter into a covered transaction at the primary tier, you, as the participant, must notify the Federal agency office that is entering into the transaction with you if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with the commission of any of the offenses listed in § 180.800(a); or

(d) Have had one or more public transactions (Federal, State, or local)

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terminated within the preceding three years for cause or default.

### **§ 180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?**

As a primary tier participant, disclosing unfavorable information about yourself or a principal under § 180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The Federal agency will consider the information when determining whether to enter into the covered transaction. The Federal agency will also consider any additional information or explanation you elect to submit with the disclosed information.

### **§ 180.345 What happens if I fail to disclose information required under § 180.335?**

If a Federal agency later determines that you failed to disclose information under § 180.335 that you knew at the time you entered into the covered transaction, the Federal agency may:

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

### **§ 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?**

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that:

(a) You failed to disclose information earlier, as required by § 180.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.335.

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## § 180.420

### DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

#### **§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

Before you enter into a covered transaction with a person at the next higher tier, you, as a lower tier participant, must notify that person if you know that you or any of the principals are presently excluded or disqualified.

#### **§ 180.360 What happens if I fail to disclose information required under § 180.355?**

When a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

#### **§ 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?**

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that:

- (a) You failed to disclose information earlier, as required by § 180.355; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

### **Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

#### **§ 180.400 May I enter into a transaction with an excluded or disqualified person?**

- (a) As a Federal agency official, you may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.
- (b) You may not enter into any transaction with a person disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is

the basis for the person's disqualification.

#### **§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?**

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded unless you obtain an exception under § 180.135.

#### **§ 180.410 May I approve a participant's use of the services of an excluded person?**

After entering into a covered transaction with a participant, you, as a Federal agency official, may not approve a participant's use of an excluded person as a principal under that transaction unless you obtain an exception under § 180.135.

#### **§ 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?**

(a) As a Federal agency official, you may continue covered transactions with an excluded person or under which an excluded person is a principal if the transactions were in existence when the person was excluded. However, you are not required to continue the transactions, and you may consider termination. You should decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person or under which an excluded person is a principal unless you obtain an exception under § 180.135.

#### **§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?**

If a transaction at a lower tier is subject to your approval, you, as a Federal agency official, may not approve:

- (a) A covered transaction with a person who is currently excluded unless you obtain an exception under § 180.135; or

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(b) A transaction with a person who is disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

### **§ 180.425 When do I check to see if a person is excluded or disqualified?**

As a Federal agency official, you must check to see if a person is excluded or disqualified before you:

- (a) Enter into a primary tier covered transaction;
- (b) Approve a principal in a primary tier covered transaction;
- (c) Approve a lower tier participant if your Federal agency's approval of the lower tier participant is required; or
- (d) Approve a principal in connection with a lower tier transaction if your Federal agency's approval of the principal is required.

### **§ 180.430 How do I check to see if a person is excluded or disqualified?**

You check to see if a person is excluded or disqualified in two ways:

- (a) As a Federal agency official, you must check *SAM.gov* Exclusions when you take any action listed in § 180.425.
- (b) You must review the information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.

### **§ 180.435 What must I require of a primary tier participant?**

As a Federal agency official, you must require each participant in a primary tier covered transaction to:

- (a) Comply with subpart C as a condition of participation in the transaction; and
- (b) Communicate the requirement to comply with subpart C to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

### **§ 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?**

If a participant knowingly does business with an excluded or disqualified person, you, as a Federal agency official, may refer the matter for suspension and debarment consideration. You

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may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

### **§ 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?**

As a Federal agency official, if you determine that a participant failed to disclose information, as required by § 180.335, at the time it entered into a covered transaction with you, you may:

- (a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or
- (b) Pursue any other available remedies, including suspension and debarment.

### **§ 180.450 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?**

As a Federal agency official, if you determine that a lower tier participant failed to disclose information, as required by § 180.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

## **Subpart E—System for Award Management (SAM.gov) Exclusions**

### **§ 180.500 What is the purpose of the System for Award Management (SAM.gov) Exclusions?**

The *SAM.gov* Exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

### **§ 180.505 Who uses SAM.gov Exclusions?**

- (a) Federal agency officials use *SAM.gov* Exclusions to determine whether to enter into a transaction with a person, as required under § 180.430.

(b) Participants also may, but are not required to, use *SAM.gov* Exclusions to determine if:

(1) Principals of their transactions are excluded or disqualified, as required under § 180.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *SAM.gov* Exclusions are available to the general public.

#### **§ 180.510 Who maintains SAM.gov Exclusions?**

GSA maintains *SAM.gov* Exclusions. When a Federal agency takes an action to exclude a person under the non-procurement or procurement debarment and suspension system, the agency enters the information about the excluded person into *SAM.gov* Exclusions.

#### **§ 180.515 What specific information is in SAM.gov Exclusions?**

(a) At a minimum, *SAM.gov* Exclusions indicate:

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross-references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The unique entity identifier approved by the GSA of the excluded or disqualified person, if available.

(b)(1) The *SAM.gov* Exclusions includes a field for the Taxpayer Identification Number (TIN), or the social security number (SSN) for an individual, of an excluded or disqualified person.

(2) Agencies disclose an individual's SSN to verify an individual's identity only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

#### **§ 180.520 Who places the information into SAM.gov Exclusions?**

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into *SAM.gov* Exclusions:

(a) Information required by § 180.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under the law;

(c) Information about an excluded or disqualified person, within three business days, after:

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

#### **§ 180.525 Whom do I ask if I have questions about a person in SAM.gov Exclusions?**

If you have questions about a listed person in *SAM.gov* Exclusions, ask the point of contact for the Federal agency that placed the person's name into *SAM.gov* Exclusions. You may find the Federal agency point of contact from *SAM.gov* Exclusions.

#### **§ 180.530 Where can I find SAM.gov Exclusions?**

You may access *SAM.gov* Exclusions through the internet, currently at <https://www.sam.gov>.

### **Subpart F—General Principles Relating to Suspension and Debarment Actions**

#### **§ 180.600 How do suspension and debarment actions start?**

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it, and the agency will investigate. The officials refer the question of whether to

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suspend or debar you to their suspending or debarring official for consideration, if appropriate.

### § 180.605 How does suspension differ from debarment?

Suspension differs from debarment in that:

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal or debarment proceeding.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must: (1) Have <i>adequate evidence</i> that there may be a cause for debarment of a person; and (2) Conclude that <i>immediate action</i> is necessary to protect the Federal interest.	Must conclude, based on a <i>preponderance of the evidence</i> , that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension <i>first</i> , and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.

### § 180.610 What procedures does a Federal agency use in suspension and debarment actions?

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and subpart G.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and subpart H.

### § 180.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or email address of:

- (1) You or your identified counsel; or
- (2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

### § 180.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one Federal agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

### § 180.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions unless the suspension or debarment decision is limited:

- (1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or
- (2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official:

- (1) Officially names the affiliate in the notice; and
- (2) Gives the affiliate an opportunity to contest the action.

### § 180.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated

with an organization to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, corporation, company, or similar arrangement or with the organization's knowledge, approval, or acquiescence, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

**§ 180.635 May a Federal agency resolve an administrative action in lieu of debarment or suspension?**

Yes. A Federal agency may resolve an administrative action in lieu of debarment or suspension by entering into an agreement at any time if it is in the Federal Government's best interest.

**§ 180.640 May an agreement to resolve an administrative action include a voluntary exclusion?**

Yes. If a Federal agency enters into an agreement to resolve an administrative action with you in which you agree to be excluded, it is called a vol-

untary exclusion and has a government-wide effect.

**§ 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?**

(a) Yes. The Federal agency agreeing to the voluntary exclusion enters information about it into SAM.gov Exclusions.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

**§ 180.650 May an administrative agreement be the result of a settlement?**

Yes. A Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

**§ 180.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?**

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement in SAM.gov within three business days after entering into the agreement. The suspending and debarring official must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

**§ 180.660 Will administrative agreement information about me in SAM.gov be corrected or updated?**

Yes. The suspending or debarring official who entered information into SAM.gov about an administrative agreement with you:

(a) Must correct the information within three business days if the official subsequently learn that any information is erroneous.

(b) Must correct in SAM.gov, within three business days, the ending date of the period during which the agreement is in effect if the agreement is amended to extend that period.

(c) Must report any other modification to the administrative agreement in SAM.gov within three business days.

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(d) Is strongly encouraged to amend the information in *SAM.gov* in a timely way to incorporate any update that the official obtains and that could be helpful to Federal agencies who must use the system.

### Subpart G—Suspension

#### § 180.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that:

- (a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 180.800(a), or
- (b) There exists adequate evidence to suspect any other cause for debarment listed under § 180.800(b) through (d); and
- (c) Immediate action is necessary to protect the public interest.

#### § 180.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(b) In making this determination, the suspending official may examine:

- (1) The basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents;
- (2) An indictment, criminal information, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual or legal matters constitutes adequate evidence for purposes of suspension actions; and
- (3) Other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect

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the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

#### § 180.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

#### § 180.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you:

- (a) That you have been suspended;
- (b) That your suspension is based on:
  - (1) An indictment;
  - (2) A criminal information;
  - (3) A conviction;
  - (4) A civil judgment;
  - (5) Other adequate evidence that you have committed irregularities that seriously reflect on the propriety of further Federal Government dealings with you; or
  - (6) Conduct of another person that has been imputed to you or your affiliation with a suspended or debarred person;
- (c) Of any other irregularities supporting your suspension in terms sufficient to put you on notice without disclosing certain evidence in the Federal Government's pending or contemplated legal proceedings;
- (d) Of the cause(s) upon which the suspending official relied under § 180.700 for imposing suspension;
- (e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;
- (f) Of the applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing suspension decision-making; and
- (g) Of the government-wide effect of your suspension from procurement and nonprocurement programs and activities.

**§ 180.720 How may I contest a suspension?**

As a respondent, if you wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

**§ 180.725 How much time do I have to contest a suspension?**

(a) As a respondent, you or your representative must either send or make arrangements to appear and present the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) The Federal agency taking the action considers the notice to be received by you:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

**§ 180.730 What information must I provide to the suspending official if I contest the suspension?**

(a) In addition to any information and argument in opposition, as a respondent, your submission to the suspending official must identify:

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) Your submission must also identify any of the paragraphs in § 180.730(a) that do not apply to you.

(c) If you fail to disclose this information or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

**§ 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?**

(a) As a respondent, you will not have an additional opportunity to challenge the facts if the suspending official determines that:

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other findings by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts

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under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

### **§ 180.740 Are suspension proceedings formal?**

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) As a respondent, you or your representative must submit any documentary evidence you want the suspending official to consider.

### **§ 180.745 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 factfinder 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 Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

### **§ 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?**

(a) The suspending official bases the decision on all information contained in the official record. The record includes:

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be ar-

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bitrary, capricious, or clearly erroneous.

### **§ 180.755 When will I know whether the suspension is continued or terminated?**

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information, and findings of fact, if any. The suspending official may extend that period for good cause.

### **§ 180.760 How long may my suspension last?**

(a) If legal or debarment proceedings are initiated at the time of or during your suspension, the suspension may continue until the conclusion of those proceedings. However, a suspension may not exceed 12 months if proceedings are not initiated.

(b) The suspending official may extend the 12-month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other Federal, State, or local responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12-month period expires to allow the officials an opportunity to request an extension.

## **Subpart H—Debarment**

### **§ 180.800 What are the causes for debarment?**

A Federal agency may debar a person for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, violating Federal criminal tax laws, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of a Federal agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 180.135;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 180.640 or of any other agreement that resolves a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause that is so serious or compelling in nature that it affects your present responsibility.

#### **§ 180.805 What notice does the debarring official give me if I am proposed for debarment?**

After consideration of the causes in § 180.800, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 180.615, advising you:

(a) That the debarring official is considering debarring you;

(b) The reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) The cause(s) under § 180.800 upon which the debarring official relied for proposing your debarment;

(d) The applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing debarment; and

(e) The government-wide effect of a debarment from procurement and non-procurement programs and activities.

#### **§ 180.810 When does a debarment take effect?**

Unlike a suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

#### **§ 180.815 How may I contest a proposed debarment?**

As a respondent, if you wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

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### **§ 180.820 How much time do I have to contest a proposed debarment?**

(a) As a respondent, you or your representative must either send or make arrangements to appear and present the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) The Federal agency taking the action considers the Notice of Proposed Debarment to be received by you:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

### **§ 180.825 What information must I provide to the debarring official if I contest the proposed debarment?**

(a) In addition to any information and argument in opposition, as a respondent, your submission to the debarring official must identify:

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

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### **§ 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?**

(a) As a respondent, you will not have an additional opportunity to challenge the facts if the debarring official determines that:

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

### **§ 180.835 Are debarment proceedings formal?**

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you, as a respondent, to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision on whether to debar.

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

### **§ 180.840 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 factfinder 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 Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

**§ 180.845 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 § 180.800. 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 § 180.860.

(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.

**§ 180.850 What is the standard of proof in a debarment action?**

(a) In any debarment action, the Federal agency 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.

**§ 180.855 Who has the burden of proof in a debarment action?**

(a) The Federal agency has 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.

**§ 180.860 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 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 government-wide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or implemented remedial or protective measures in the form of procedures, policies, and programs to effectively address the activity cited as a basis for the debarment.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Whether your business, technical, or professional license(s) has been suspended, terminated, or revoked.

(t) Other factors that are appropriate to the circumstances of a particular case.

**§ 180.865 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 § 180.860. 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.

**§ 180.870 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 § 180.615, 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 Regulations (48 CFR chapter 1) throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

**§ 180.875 May I ask the debarring official to reconsider a decision to debar me?**

Yes. As a debarred person, you may ask the debarring official to reconsider

the debarment decision or to reduce the time period or scope of the debarment. However, you must submit your request in writing and support it with documentation.

**§ 180.880 What factors may influence the debarring official during reconsideration?**

The debarring official may reduce or terminate your debarment based on:

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

**§ 180.885 May the debarring official extend a debarment?**

- (a) Yes. The debarring official may extend a debarment for an additional period if that official determines that an extension is necessary to protect the public interest.
- (b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.
- (c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F, to extend the debarment.

## Subpart I—Definitions

**§ 180.900 Adequate evidence.**

*Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

**§ 180.905 Affiliate.**

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways a Federal agency may determine control include, but are not limited to:

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity organized following the exclusion of a person with the same or similar management, ownership, or principal employees as the excluded person.

**§ 180.910 Agent or representative.**

*Agent or representative* means any person who acts on behalf of or who is authorized to commit a participant in a covered transaction.

**§ 180.915 Civil judgment.**

*Civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, or other disposition which creates a civil liability for the complained of wrongful acts or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

**§ 180.920 Conviction.**

*Conviction* means:

- (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or
- (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

**§ 180.925 Debarment.**

*Debarment* means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1). A person so excluded is debarred.

**§ 180.930 Debarring official.**

*Debarring official* means a Federal agency official who is authorized to

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impose debarment. A debarring official is either:

- (a) The agency head; or
- (b) An official designated by the agency head.

## § 180.935 Disqualified.

*Disqualified* means that a person is prohibited from participating in specified Federal procurement or non-procurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689), or other authority. Examples of disqualifications include persons prohibited under—

- (a) The Davis-Bacon Act (40 U.S.C. 3142);
- (b) The equal employment opportunity acts and Executive orders; or
- (c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368), and Executive Order 11738 (38 FR 25161).

## § 180.940 Excluded or exclusion.

*Excluded or exclusion* means:

- (a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or
- (b) The act of excluding a person.

## § 180.945 System for Award Management (SAM.gov) Exclusions.

*System for Award Management (SAM.gov) Exclusions* means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about ineligible persons.

## § 180.950 Federal agency.

*Federal agency* means any United States executive department, military department, defense agency, or any other executive branch agency. For the purposes of this part, other agencies of the Federal Government are not considered “agencies” unless they issue regulations adopting the government-wide Debarment and Suspension system under Executive Orders 12549 and 12689.

## § 180.955 Indictment.

*Indictment* means an indictment for a criminal offense. A presentment, infor-

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mation, or other filing by a competent authority charging a criminal offense will be given the same effect as an indictment.

## § 180.960 Ineligible or ineligibility.

*Ineligible or ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

## § 180.965 Legal proceedings.

*Legal proceeding* means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

## § 180.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to, the following:

- (1) Grants;
- (2) Cooperative agreements;
- (3) Scholarships;
- (4) Fellowships;
- (5) Contracts of assistance;
- (6) Loans;
- (7) Loan guarantees;
- (8) Subsidies;
- (9) Insurances;
- (10) Payments for specified uses; and
- (11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

## § 180.975 Notice.

*Notice* means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by email or facsimile. (See § 180.615.)

## § 180.980 Participant.

*Participant* means any person who submits a proposal for or enters into a covered transaction, including an agent or representative of a participant.