



U.S Department of Transportation
Office of the Assistant Secretary
for Administration

ORDER

DOT 4200.5G

MAR 28 2019

Subject: Suspension and Debarment, and Ineligibility Policies

1. **PURPOSE.** This Order updates policy and assigns roles, responsibilities and timelines for all suspension (defined at 5.b(19)), debarment (defined at 5.b(6)), and other administrative remedies taken to exclude organizations or individuals (both direct or imputed) from receiving contracts or assistance based on various types of misconduct. The Order supports Government-wide and department-wide compliance with relevant laws and guidance for suspension and debarment.
2. **CANCELLATION.** DOT 4200.5F, Government-wide Debarment, Suspension and Ineligibility.
3. **APPLICABILITY.** This Order applies to the Office of the Secretary (OST) and all operating administrations (OAs) in the Department of Transportation (DOT) that make, execute, or approve procurement and nonprocurement transactions. The provisions of this order shall not interfere with the authorities, procedures, or independence of the Office of Inspector General (OIG). The policies and requirements contained in this Order are effective immediately, and pursuant to any additional implementing guidance.
4. **REFERENCES AND AUTHORITIES.** The following are current references and authorities for suspension and debarment activities:
 - a. *Federal Acquisition Regulation (FAR) Subpart 9.4 – Debarment, Suspension, and Ineligibility* (48 CFR 9.4, et seq.); <https://www.acquisition.gov/>;
 - b. *U.S. Department of Transportation Acquisition Manual (TAM), Subpart 1209.4 – Debarment, Suspension and Ineligibility*; <http://one10.dot.gov/office/ost/ospe/TAMwiki/Home.aspx>
 - c. *U.S. Department of Transportation Acquisition Regulation (TAR), Part 1201*; <https://www.transportation.gov/administrations/assistant-secretary-administration/transportation-acquisition-regulation-tar>
 - d. *Federal Aviation Administration (FAA) Acquisition Management System (AMS)*; <https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.7.pdf>

DISTRIBUTION: All Office of the Secretary
All Operating Administrations

OPE: Office of the Senior Procurement
Executive

- e. *Department of Transportation Nonprocurement Suspension and Debarment (2 CFR Part 1200)*;
https://www.ecfr.gov/cgi-bin/text-idx?SID=a56daea3438334f037bf92805705da03&mc=true&tpl=/ecfrbrowse/Title02/2cfr1200_main_02.tpl
- f. *OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) (2 CFR 180 (Nonprocurement Common Rule))*;
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr180_main_02.tpl
- g. *OMB Memorandum M-12-02, Suspension and Debarment of Federal Contractors and Grantees, Nov. 15, 2011*;
<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2012/m-12-02.pdf>
- h. *Executive Order 12549 (Nonprocurement Rule), Feb. 18, 1986 (51 FR 6370)*;
<https://www.archives.gov/federal-register/codification/executive-order/12549.html>
- i. *Executive Order 12689, August 16, 1989 (54 FR 34131)*; and
<https://www.govinfo.gov/content/pkg/FR-1995-06-26/pdf/95-14725.pdf>
- j. *Federal Acquisition Streamlining Act of 1994*.
<https://www.govinfo.gov/content/pkg/BILLS-103s1587enr/pdf/BILLS-103s1587enr.pdf>

The information provided in this document summarizes the material set forth in the FAR Subpart 9.4 – Debarment, Suspension, and Ineligibility (48 CFR 9.4, et seq.); Nonprocurement Debarment and Suspension Rule, 2 CFR Part 180; and DOT’s nonprocurement supplemental guidance at 2 CFR Part 1200. To the extent that there is any conflict or inconsistency between the regulations and the summaries, the regulations control and apply. For cases arising from the FAA, the equivalent AMS sections aligned with the above regulatory requirements will be used.

5. ACRONYMS AND KEY TERMS. The following acronyms and key terms are used throughout this DOT Order:

a. **Acronyms:**

AMS	Acquisition Management System
ARM	Action Referral Memorandum
CFR	Code of Federal Regulations
CO	Contracting Official/Officer
DOT	Department of Transportation (“Department”)
FAA	Federal Aviation Administration
FAPIIS	Federal Awardee Performance and Integrity Information System
FAR	Federal Acquisition Regulations (48 CFR 9.4, et seq.)
GO	Grants Authorizing Official/Officer
GSA	General Services Administration
IDIQ	Indefinite Delivery Indefinite Quantity
ISDC	Interagency Suspension and Debarment Committee

NARA	National Archives and Records Administration
NCR	Nonprocurement Common Rule (2 CFR Part 180; 2 CFR Part 1200 (DOT))
OA	Operating Administration
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OSPE	Office of the Senior Procurement Executive
OST	Office of the Secretary of Transportation or any Secretarial Office within
S&D	Suspension and Debarment (as in S&D Tracking System)
SAM	System of Award Management (as in SAM.gov)
SAO	Senior Accountable Official
SDC	Suspension and Debarment Coordinator
SDO	Suspending and Debarring Official
SPE	Senior Procurement Executive
TAM	Transportation Acquisitions Manual
TAR	Transportation Acquisition Regulation

- b. **Key Terms:** Unless otherwise specified below, all terms used in this Order have the meaning required by the regulations as set forth in 2 CFR Parts 180 and 1200 for nonprocurement suspension and debarment actions, and in FAR Subpart 9.4 for procurement suspension and debarment actions. Key terms listed alphabetically:

- (1) **Administrative Record (Official Record):** The set of information, documents and records which, together, identify the allegations, facts, process, and determination for each potential suspension or debarment referral. The Administrative Record contains all the documents that the Suspension and Debarment Official uses to determine the outcome of a referral, including any further information and argument presented in support of, or in opposition to the proposed action. (FAR 9.406-3(d)(1) and 2 CFR § 180.845). Management of these records are governed by NARA regulations and authorities (<https://www.archives.gov/records-mgmt/policy>).
- (2) **Affiliate:** Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third person controls or has the power to control both. Indicia of 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 debarment, suspension, or proposed debarment of an entity which has the same or similar management, ownership, or principal employees as the entity that was debarred, suspended, or proposed for debarment. (FAR 9.403 and 2 CFR § 180.905 and AMS T3.2.2.7 A 5 D).

- (3) **Case Creation:** The entry into the DOT Suspension and Debarment Tracking System by the OIG, OA or OST of an initial recommendation to suspend and/or propose to debar as supported by information showing an indictment, conviction, civil judgment, any resolution that is the functional equivalent of a judgment (2 CFR §180.920(b)), or factual investigation and in consultation with DOT OIG. See also "Proper notification".
- (4) **Contracting Officer:** The Contracting Officer is a person in a direct Federal procurement transaction with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the Contracting Officer. (FAR FAR 2.101)
- (5) **Covered transaction:** A nonprocurement or procurement transaction that is subject to the prohibitions of 2 CFR Part 180. It may be a transaction at: (a) The primary tier, between a Federal agency and a person (see appendix in 2 CFR Part 180); or (b) a lower tier, between a participant in a covered transaction and another person. (2 CFR § 180.205)
- (6) **Debarment:** A debarment is imposed for a specified period as a final determination that an individual/entity/organization is not presently responsible. To impose a debarment, the SDO must conclude, based on a preponderance of evidence that the individual/entity/organization has engaged in conduct that warrants debarment. A debarment is imposed only after giving the respondent notice of the action and an opportunity to contest the proposed debarment. (FAR 2.101, 2 CFR § 180.925 and AMS T3.2.2.7 A 5 D)
- (7) **Decline to Act:** The SDO has decided that the Agency will not exclude or monitor an individual or legal entity in a referral for action to suspend, propose to debar or debar based on the information provided in a referral, either because:
 - (a) the information is insufficient to support an action to exclude under a suspension, proposal to debar or debarment, because the agency finds the individual or entity to be presently responsible, or
 - (b) the agency has agreed to transfer lead agency status over a particular individual or company to another Federal agency through the Interagency Suspension and Debarment Committee (ISDC).
- (8) **Disqualified:** Excluded from participation in federal nonprocurement programs pursuant to a determination of exclusion or disqualification under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders (2 CFR 180.935).
- (9) **DOT Suspension and Debarment Tracking System:** The DOT-owned database that is used to track and report on DOT progress in suspension and debarment actions against individuals and entities entered into the system through a DOT referral.

- (10) **Grants Authorizing Official:** The Grants Authorizing Official is a person within a Federal Agency or the prime recipient organization using Federal funds in a nonprocurement transaction who can bind his or her organization to the terms and conditions of the Federal nonprocurement award, program or project, including financial assistance (e.g. grants, cooperative agreements, loans and other transactions).
- (11) **Ineligible:** A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction. See also "Disqualified" (FAR 2.101, 2 CFR § 180.960 and AMS T3.2.2.7 A 5 D)
- (12) **Interagency Suspension and Debarment Committee (ISDC):** A Committee established through Section 4 of Executive Order 12549 on Debarment and Suspension to monitor Federal implementation of the Order. The ISDC also facilitates lead agency coordination, serves as a forum to discuss current suspension and debarment related issues, and assists in developing unified Federal policy. When requested by OMB, the ISDC serves as a regulatory drafting body for revisions to the Government-wide NCR and the FAR Subpart 9.4.
- (13) **Legal proceedings:** Any criminal proceeding, any civil proceeding, and any proceeding to which the federal government or a state or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings. (Source: FAR 9.403, and AMS T3.2.2.7 A 5 D. For nonprocurement, it is any proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801-12) (2 CFR § 180.965)
- (14) **Nonprocurement:** Any transaction, regardless of type (except procurement contracts), including, but not limited to the following: (a) Grants, (b) Cooperative agreements, (c) Scholarships, (d) Fellowships (e) Contracts of assistance, (f) Loans, (g) Loan guarantees, (h) Subsidies, (i) Insurances, (j) Payments for specified uses, and (k) Donation agreements. A nonprocurement transaction at any tier does not require the transfer of Federal funds. (2 C.F.R § 180.970).
- (15) **Proper OIG notification:** A notification from the OIG that includes either a copy of the conviction order, a copy of the sentencing order, a copy of an order of a judgment, or other official correspondence or documentation evidencing the conviction, judgment or any resolution that is the functional equivalent of a judgment, from the Department of Justice/United States Attorney or other law enforcement entity or court. Internet sources or local newspaper articles as well as unverified news sources are unacceptable for documentation.
- (16) **Referral:** A written request prepared in accordance with agency procedures and guidelines, supported by documentary evidence, presented to the SDO for issuance of a notice of suspension and debarment action as defined in this Order, as appropriate under FAR Subpart 9.4 and 2 C.F.R. Part 180.
- (17) **Suspension and debarment action:** A suspension and debarment action is an action to do one or more of the following: suspend, propose to debar, debar, show cause, settle with an administrative monitoring agreement, settle with a voluntary exclusion agreement, or decline to exclude or monitor an individual or legal entity.

- (18) **Suspending and Debarring Official (SDO):** Individual designated responsibility to impose procurement and nonprocurement suspensions and debarments, exclusions, and other related matters pursuant to FAR part 9, 2 CFR Part 180 and for FAA AMS. The SDO is responsible for management of the Suspension and Debarment program in accordance with OMB Memorandum M-12-02.
- (19) **Suspension:** A suspension is a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceeding. To impose a suspension, there must be adequate evidence that there may be a cause for debarment of the individual/entity/organization and a determination that immediate action is necessary to protect the Federal interest. A suspension is usually imposed prior to notifying the individual/entity/organization and providing the opportunity to contest the suspension. (FAR 2.101, 2 CFR §180.1015)
- (20) **System for Award Management (SAM.gov):** A web-based system operated by the General Services Administration (GSA), containing, among other data, the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689, supporting regulations, or persons who have been proposed for debarment under FAR subpart 9.4, and those persons who have been determined to be ineligible or disqualified. (FAR 2.101, and 2 CFR § 180.945).
6. **POLICY.** The Senior Procurement Executive, as delegated by the Secretary, is the Senior Accountable Official (SAO) for Suspension and Debarment for all suspensions and debarments within DOT. The SAO sets forth the departmental standards for suspension and debarment policies and procedures, including review of OA and OST policies and procedures, as well as roles and responsibilities for the Suspending and Debarring Officials (SDOs) (defined at 5.b(18)) at each of the OAs and OST (OA/OST), as well as any relevant parties, excluding the Office of the Inspector General (OIG), regarding suspensions and debarments within the Department. The general requirements of the suspension and debarment regulations are:
- a. Suspension and debarment sanctions shall be imposed only in the public interest for the Government's protection and not for purposes of punishment.
 - b. To protect the Government's interest, the Department shall solicit and award contracts and financial assistance only to responsible sources.
 - c. Unless the SDO determines otherwise, all matters being considered for suspension and debarment that arise under or in relation to a procurement shall be processed in accordance with Federal Acquisition Regulations (FAR) subpart 9.4 – Debarment, Suspension, and Ineligibility (48 CFR Subpart 9.4, et seq.). All matters being considered for suspension and debarment that arise under or in relation to a procurement from the Federal Aviation Administration (FAA) shall be processed in accordance with Acquisition Management System (AMS) Procurement Guidance T3.2.2.7 A 3. All matters being considered for suspension and debarment that arise under or in relation to a nonprocurement action shall be processed in accordance with the Nonprocurement

Common Rule (NCR) (2 CFR Part 180) as supplemented by DOT specific guidance at 2 CFR Part 1200.

This Order does not create any rights or benefits, substantive or procedural, enforceable at law or in equity by any individual or legal entity against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

7. **RESPONSIBILITIES.** Every employee of the DOT is responsible for reporting, upon discovery, any misconduct that may give rise to a suspension or debarment action. However, certain personnel positions have specific relevant duties for suspension and debarment on the department level as well as the OA level.

At DOT, suspension and debarment activities are carried out within each of the OAs/OST. Each OA has an SDO, and commensurate staff to assist with the suspension and debarment activities. The SDO for OST is the Senior Procurement Executive. Each of the OAs maintains personnel for the suspension and debarment functions. The staff at each of the OAs and OST may have other functions in addition to suspension and debarment, but will participate in suspension and debarment activities when they arise. This Order does not recommend a specific office structure for suspension and debarment; it only requires that OA/OST personnel perform the responsibilities as set forth in this Order. Each OA/OST is responsible for facilitating the completion of its suspension and debarment responsibilities.

The SAO at DOT is responsible for maintaining a current roster of the SDO(s) and SDCs. The roster will be updated annually on January 31, corresponding with the annual roster for the Interagency Suspension and Debarment Committee (defined at 5.b(12)).

- a. **Office of the Senior Procurement Executive** -- The Secretary is the SAO for Suspension and Debarment, but may delegate this authority to another Senior Official. At DOT, the SAO for Suspension and Debarment is the Senior Procurement Executive in the Office of the Secretary, as delegated by the Secretary. The Office of the Senior Procurement Executive (OSPE) is responsible for overall program oversight, which involves:
- (1) Performing administrative activities to maintain continuity of the Department's Suspension and Debarment Program:
 - (a) Maintain DOT's internal Suspension and Debarment Tracking System;
 - (b) Update annually the roster of Suspension and Debarment Officials and Coordinators on January 31, corresponding with the annual roster for the Interagency Suspension and Debarment Committee;
 - (c) Maintain the Department-wide Suspension and Debarment web pages;
 - (d) Coordinate Department-wide communications across Suspension and Debarment offices;
 - (e) Coordinate administrative activities of the Integrated Award Environment in SAM.gov through the Office of Integrated Systems Management and Reporting (M-62), as follows:

- i. Provide access to SAM.gov exclusions for reporting by OAs;
 - ii. Provide systems administrator functions.
 - (f) Notify OAs and OST of ISDC monthly meetings to encourage OA meeting attendance.
 - (2) Collect, confirm and consolidate suspension and debarment data and information from OA and OST for executive and Departmental reporting requirements.
 - (3) Distribute ISDC data calls to all OAs/OST. The OAs/OST shall coordinate and collaborate with each other and other Federal agencies to the maximum extent possible.
 - (4) Reporting on the consolidated departmental suspension and debarment activities to Congress in the first quarter of each fiscal year. The OSPE is responsible for conducting the data call, consolidating the information and preparing the reports. Reports include: Unpaid Tax Liability and Felony Criminal Violations Congressional Report and the Annual Section 873 Interagency Suspension and Debarment Committee Report to Congress; providing statistics on suspension and debarment actions taken in the previous fiscal year.
- b. ***Operating Administrations and Office of the Secretary*** -- Each OA/OST shall designate at least one SDO, with delegated authority by either the Secretary of Transportation or the Head of the Operating Administration with authority to undertake a suspension and/or debarment action. The personnel responsibilities for OAs/OST are as follows:
- (1) SDO -- At each OA and the OST, at least one SDO is designated by either the Secretary of Transportation or the Head of the Operating Administration with delegated authority to undertake a suspension and/or debarment action. Each SDO shall work within their OA to ensure that the OA:
 - (a) Provides input into policy and procedures to manage the Suspension and Debarment program. This includes;
 - i. Establishing/updating procedures for Suspension and Debarment processes;
 - ii. Reviewing and tracking delegation of authorities for Suspension and Debarment activities within the OA/OST;
 - iii. Ensuring that information is entered into the DOT Suspension and Debarment Tracking System and SAM.gov in a timely and accurate manner;
 - iv. Ensuring that all personnel working in the OA's Suspension and Debarment Program have relevant Suspension and Debarment training;
 - v. Submitting lead agency requests to the ISDC
 - (b) Coordinates, as necessary, with OIG on the agency case creation of documents;
 - (c) Makes final decisions regarding what suspension and debarment action is taken regarding an individual or legal entity;

- (d) Determines whether a request for fact-finding proceedings raises a genuine dispute over facts material to the suspension or proposed debarment that supports a fact-finding proceeding;
 - (e) For a case creation based on criminal indictment, conviction or civil judgement, the OA/OST will take a suspension or debarment action for that individual or legal entity within 45 calendar days of the case creation documents necessary for action being uploaded into the DOT S&D Tracking System. For case creation documents based on factual investigations, including evidence involving an imputation, affiliation, or civil settlement, the OA/OST will take a suspension or debarment action for that individual or legal entity within 90 calendar days of sufficient factual evidence for a suspension and debarment action being entered into the DOT Suspension and Debarment Tracking System. The SDO will ensure that the following decisions are made, where appropriate to the case:
 - i. Conduct or delegate responsibility to conduct fact-finding proceedings related to suspensions and proposed debarments;
 - ii. Make the final determination regarding whether to impose suspension or debarment, and whether matters provided in opposition to a suspension or debarment support a finding that the suspension and/or debarment shall remain in effect or whether a period of debarment is extended, reduced, or ended, based on the evidence in the case;
 - iii. In rare circumstances make a written determination and justification that there is a compelling reason to conduct business with debarred or suspended individuals/entities/organizations, in accordance with 2 CFR§180.135 and FAR 9.405(a);
 - iv. Execute and oversee implementation of administrative agreements; and,
 - v. Certify accuracy and timeliness of data submitted to SAO for information requests.
- (2) Suspension and Debarment Coordinator (SDC) -- The SDC is the program manager for the Suspension and Debarment Program at each OA/OST and advises the SDO. The SDC shall:
- (a) Coordinate all materials for presentation to the SDO for proposed suspension or debarment activities, including intra-agency communications;
 - (b) Coordinate all correspondence between the SDO and affected entities;
 - (c) If the SDC is not located within the OA's Legal Office, consult with the OA's respective Legal Office or, in the case of OST, the General Counsel's Office, to obtain drafting advice and legal review of requests for case creation, notices to respondent of the SDO's decisions, recommendation memos for the SDO, and proposed administrative agreements;

- (d) Where the OIG has not created a case that is entered into the DOT S&D Tracking System involving an individual or entity as an affiliate or imputed party, the SDC will conduct research to determine if any individual or entity meets the definition of affiliation or imputation concerning the proposed respondent, such that the individual or entity should also be proposed for suspension and debarment;
 - (e) Submit information regarding any administrative agreement into the Federal Awardee Performance and Integrity Information System (FAPIIS);
 - (f) Enter information regarding suspensions and debarments into SAM.gov;
 - (g) Coordinate with the OIG before taking action on any case not referred directly by the OIG; and
 - (h) Perform other duties as assigned or delegated by SDO.
- (3) Legal Office -- The Office of Chief Counsel at each OA, and the Office of General Counsel for OST, serve as the legal counsel for the Suspension and Debarment Program. As part of the SDC administration of the OA's Suspension and Debarment Program, whether the Legal Office is the SDC or is separate from the SDC within the OA, the Legal Office shall:
- (a) Review and concur with all suspensions, debarments, and administrative agreements to ensure that they satisfy all legal and regulatory requirements;
 - (b) Upon request, provide legal advice and counsel regarding suspension and debarment matters to:
 - i. the SDO;
 - ii. the SDC; and,
 - iii. Contracting Officers, Grants Authorizing Officials, Program Managers and Contracting Officer Representatives, and other individuals regarding potential suspension and debarment cases; and.
 - (c) Attend fact-finding proceedings.
- (4) OIG -- The OIG may, to the extent appropriate to the case and permissible by law, coordinate with the SDO and SDC when the Inspector General deems suspension and/or debarment action to be appropriate for the SDO's consideration. When notified by OAs of an impending Agency generated case needing coordination of any future suspension and debarment action, the OIG will respond to the OA within 5 working days. The Office of the Assistant Inspector General for Investigations will contact the appropriate U.S. Attorney's Office or the Department of Justice to ensure that there are no pending or contemplated actions that may be affected by any recommended suspension or debarment action. To ensure continued timely processing of the suspension or debarment action, the Office of the Assistant Inspector General for Investigations will respond to the OAs/OST within five (5) working days of receipt of OA/OST notification (defined at 5.b(15)).

(5) Contracting Officers (CO) and Grants Authorizing Officials (GO) -- Each OA/SDO shall designate at least one suspension and debarment point of contact (may be the SDC) to assist in the processing and development of requests to the SDO for a suspension and debarment case and case party processing. Multiple points of contact may be used by the OA/OST when both contracts and financial assistance awards are executed, to ensure that appropriate personnel are involved in the suspension and debarment activities.

(a) CO -- COs shall:

- i. Review the System for Award Management (SAM.gov) Exclusions at the following events to ensure that the potential awardee is not excluded:
 - A. after receipt of proposals;
 - B. prior to contract award;
 - C. prior to placing orders under indefinite quantity/indefinite delivery (IDIQ) contracts, Federal Supply Schedules (FSS), Multiple Award Schedules (MAS) or Blanket Purchase Agreements (BPA);
 - D. prior to providing consent to subcontract for proposed subcontracts;
 - E. prior to adding new work or extending the duration of a contract; and
 - F. prior to exercising options;
- ii. Oversee and monitor administered procurement transactions for indications of fraud or behavior that could indicate grounds for suspension and/or debarment;
- iii. In consultation with the appropriate Legal Office, assemble available information of potential misconduct and refer it to the SDO for consideration of suspension and/or debarment when, during the execution of the contract, there are indications of fraud or lack of responsibility;
- iv. Submit request for consideration packages, through their appropriate leadership chain, to the SDO for review of entities that have been terminated for default, cause, or have a history of underperformance; and
- v. Refer activity which may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to proper officials (management or Legal Office) for referral to OIG or make a direct referral to an appropriate official with the Inspector General.

(b) GO -- GOs shall:

- i. Review SAM.gov to determine whether a potential awardee is excluded prior to awarding, renewing or extending a financial assistance transaction to ensure that the potential awardee is not excluded. This may be delegated to the grant recipient for sub-awards, except where regulatory authority does not require such a search;

- ii. Oversee and monitor administered procurement transactions for indications of fraud or behavior that could indicate grounds for suspension and/or debarment;
 - iii. In consultation with the appropriate Legal Office and Program Managers, assemble available information of potential misconduct and prepare case creation documents for consideration by the SDC to create a case to be submitted to the SDO for consideration of a suspension and debarment action when, during and/or after the execution of the financial assistance transaction, if there are indications of fraud or lack of responsibility;
 - iv. Request through their appropriate leadership chain, to the SDO for review of entities that could meet the standards for suspension or debarment, including a history of failure to perform or of unsatisfactory performance on one or more public agreements or transactions; and
 - v. Submit case creation information about activity which may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation to proper officials (SDC or Legal Office) for investigation by OIG or make a direct request for investigation to an appropriate official within OIG.
- (c) Program Managers and Contracting Officer Representatives-- Program Managers and Contracting Officer Representatives shall:
- i. Oversee and monitor administered procurement and financial assistance transactions for indicia of fraud or behavior that could indicate grounds for suspension and/or debarment, including a history of failure to perform or of unsatisfactory performance on one or more public agreements or transactions;
 - ii. In consultation with Legal Office and award officials, assemble available information of potential misconduct and send case creation information to the SDC and SDO for consideration of suspension and/or debarment when, during and/or after the execution of a contract or financial assistance transaction, there are indications of fraud or lack of responsibility;
 - iii. Notify proper officials (management, Legal Office, SDO, OIG or OIG hotline) of activity which may constitute mismanagement, waste of funds, abuse of authority, or a violation of law or regulation for investigation by the OIG, or make a direct request for investigation to an appropriate official with the Inspector General.
- (d) OAs/OST will prepare timely responses to data calls made by OSPE for consolidation for government-wide and/or department-wide reporting requirements issued to each of the suspension and debarment offices of the OA and OST.
- (e) Prior to taking a suspension or debarment action, OAs/OST shall:

- i. Check the Federal Government-wide exclusions website at SAM.gov, or alternate approved Federal-wide system as directed by OMB, to ensure the individual or legal entity is not already debarred or suspended.
- ii. Check the DOT Suspension and Debarment Tracking System to ensure the individual or legal entity is not already debarred, suspended or another OA has not initiated a case action.
- iii. Determine whether another Federal agency has an interest in initiating a debarment or suspension action against the individual or legal entity, using the ISDC procedure for "Lead Agency" requests. If more than one agency has an interest in initiating action against the individual or legal entity, the interested agencies should discuss and agree upon a lead agency and/or joint responsibilities per Executive Order 12549 under the ISDC.
- iv. Determine whether another OA or OST has an interest in initiating a suspension or debarment action against an individual or legal entity, by following the same procedures as identified in (iii) above. If another DOT office has an interest in acting against the individual or legal entity, the two offices should discuss and agree upon a lead office and/or joint responsibilities.
- v. Except for those individuals or legal entities with cases created in the DOT S&D Tracking System for the OAs/OST by the OIG, OAs/OST must notify the Office of the Assistant Inspector General for Investigations, before a case creation recommending a suspension or debarment action is entered in the DOT Suspension and Debarment Tracking System.

- 8. STANDARDS FOR SUSPENSION AND DEBARMENT.** A suspension is a temporary status of ineligibility for new procurement and nonprocurement transactions, pending completion of an investigation or legal proceeding. To impose a suspension, there must be adequate evidence that there may be a cause for debarment (defined at 5.b(6)) of the individual/entity and a determination that immediate action is necessary to protect the Federal interest. A suspension is effective on the date of the decision, with the OA providing notice to the individual/entity as required by the regulations and providing the opportunity to contest the suspension.

A debarment is imposed for a specified period as a final determination that an individual/entity is not presently responsible. To impose a debarment, the SDO must conclude, based on a preponderance of evidence that the individual/entity has engaged in conduct that warrants debarment. A debarment is imposed only after giving the respondent notice of the action and an opportunity to contest the proposed debarment.

- a. ***Causes for Suspension and Debarment – Procurement*** -- In general, the causes for suspension established at FAR 9.407-2 and AMS T3.2.27 A 3 a, are similar to those for debarment; however, the standard for taking action differs. The suspending official may suspend a contractor "suspected, upon adequate evidence" of any of the causes at FAR 9.407-2, an indictment for any of those same causes, or "upon adequate evidence for any

other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor” and it is determined that there is an immediate need for such action.

For debarment, a higher evidentiary standard applies: the SDO must conclude, based on a preponderance of the evidence, that the individual/entity has engaged in conduct that warrants debarment, or a contractor has a conviction of or a civil judgment for any of the enumerated activities in FAR 9.406-2(a) and AMS T3.2.2.7 A 3b.

- b. **Causes for Suspension and Debarment – Nonprocurement** -- DOT has adopted and supplemented 2 CFR Part 180 in its entirety at 2 CFR Part 1200. In nonprocurement actions, the causes for suspension are identified in 2 CFR § 180.700, and debarment in 2 CFR § 180.800. These causes apply to all covered transactions (defined at 5.b(5)), as identified in 2 CFR § 180.220, and supplemented at 2 CFR § 1200.220.

9. **DURATION OF SUSPENSION AND DEBARMENT.** Suspension for both procurement and nonprocurement transactions shall be for a temporary period, pending the completion of an investigation and any ensuing legal proceedings (5.b(13)). However, if legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General, United States Attorney, or other responsible prosecuting official requests its extension in writing, in which case it may be extended for an additional six months. A suspension may only extend beyond 18 months when legal or debarment proceedings have been initiated within that period. The SDO must notify the appropriate officials of a pending termination of the suspension at least 30 days before the 12-month period expires to allow those officials to request an extension. (FAR 9.407-4 and 2 CFR § 180.760 and AMS T3.2.2.7 3 c (5.))

For both procurement and nonprocurement (defined at 5.b(14)) transactions, debarment shall be for a period commensurate with the seriousness of the cause(s) for debarment. Generally, the period of debarment:

- a. should not exceed three years;
- b. should not exceed five years if the debarment is for violation of the provisions of 41 U.S.C. chapter 81, Drug-Free Workplace Act of 1988;
- c. if preceded by a suspension, the debarring official must consider the suspension period in determining the debarment period. (FAR 9.406-4 and 2 CFR § 180.865 and AMS T.3.2.2.7 3 b. (2)(d)(v))

In determining the length of the period of debarment, the SDO may consider mitigating or aggravating factors. In addition, the SDO may change the length of the period of debarment based upon mitigating or aggravating factors. For nonprocurement transactions, these factors are listed in 2 CFR § 180.860. For procurement transactions under the FAR, the mitigating and aggravating factors are located at FAR 9.406-1.

10. **SCOPE OF SUSPENSION AND DEBARMENT.** For actions taken under suspension and debarment, conduct may be imputed or affiliated to other individuals and organizations per 2

CFR § 180.625(b), § 180.630, and § 180.905 and FAR 9.406-5. Examples of these conducts include:

- a. **Conduct Imputed from an Individual to an Organization** -- The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an entity may be imputed to the entity when the conduct occurred in connection with the individual's performance of duties for or on behalf of the entity, or with the entity's knowledge, approval, or acquiescence.
- b. **Conduct Imputed from an Organization to an Individual or Between Individuals** -- The fraudulent, criminal or other seriously improper conduct of an entity or individual may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the entity when the individual to whom the improper conduct is imputed, either participated in, knew of, or had reason to know of the entity's conduct.
- c. **Conduct Imputed from One Organization to another Organization, including Joint Ventures or Similar Arrangements** -- The OAs should consider whether evidence exists to show that fraudulent, criminal, or other seriously improper conduct of an entity participating in a joint venture or similar arrangement may be imputed to other participating entities if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these entities.
- d. **Conduct to Include Affiliates** -- The SDO may extend the suspension or debarment decision to include any affiliates if they are specifically named in the written notices. 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.

11. SUSPENSION AND DEBARMENT REPORTING: GOVERNMENT-WIDE AND DEPARTMENT-WIDE.

The SAO is responsible for reporting on the consolidated departmental suspension and debarment activities to Congress. Two reports Congress has historically requested are:

- a. Unpaid Tax Liability and Felony Criminal Violations Congressional Report; and
- b. Annual Section 873 Interagency Suspension and Debarment Committee Report to Congress

For each of these reports and any future similar reporting request, OSPE will conduct a data call to each of the suspension and debarment offices of the OA and OST. The requisite information for each data call will be collected by the respective office personnel, and will be submitted to the SDO for confirmation. The SDO will certify that the information is correct, and the SDO, or personnel designated by the SDO, will submit the correct and completed information and the SDO's certification to the OSPE. OSPE will consolidate the information for the department and circulate it to the necessary offices for submission to Congress.

12. GENERAL DOT GUIDELINES FOR SUSPENSION AND DEBARMENT. These guidelines govern suspension and debarment actions within DOT. While each SDO

establishes operating procedures for these actions, these guidelines highlight areas included in suspension and debarment activities.

a. ***Case Creation in the DOT's S&D Tracking System:***

- (1) The appropriate OA staff, or OIG, will promptly notify the Suspension and Debarment Coordinator whenever, during or subsequent to the execution or performance of a contract or federal financial assistance award, there are indications of fraud or grounds for suspecting that any of the bases or causes for suspension and debarment exist. If the agency is generating the case, prior coordination with OIG is required.

Within the time period communicated by the Suspension and Debarment Coordinator, the requesting OA/OST shall, in consultation with its Legal Office, assemble all available relevant information and forward it to the Suspension and Debarment Coordinator for consideration. Requests shall be made in writing and routed through their appropriate leadership chain. Requests that include more than a single entity or individual shall include sections that separately set forth the grounds and bases for proceeding against each individual or entity. The OAs/OST shall ensure, working together with the SDC, the case creation document includes all information supporting an imputation and/or affiliation determination. All recommendations and conclusions should properly reference supporting documentation. Once the SDC determines that the evidence in a case is sufficient to support an action and has completed coordination with the OIG as required by this Order, the SDC will create a case in the DOT S&D Tracking System.

- (2) The OIG may submit actions for suspension and/or debarment, where appropriate, to an OA/OST SDC, through information provided to the OAs or OST through proper notification to the DOT S&D Tracking System in case creation documents.
- (3) Once a case is created in the DOT S&D Tracking System, and the case creation documents including supporting evidence from the OA, OST, or OIG have been uploaded into the DOT S&D Tracking System, the deadlines described at paragraph 7.b(1)(e) will become effective.

b. ***Analysis of Information from the Case Creation Documents***-- All case creation documents shall be evaluated for potential suspension and/or debarment action. The OA/OST office shall review all information and prepare an analysis and recommendation for the SDO. The OA/OST office should obtain input from its Legal Office and, when appropriate, OIG or any other source at any time during the processing of a case.

c. ***Decision making process for Referral to SDO*** -- Based on the case creation documents, the SDC shall develop an Action Referral Memorandum (ARM) and analysis, and send the ARM to the SDO for consideration, along with notice providing the procedural rights to each respondent excluded by the action. If insufficient evidence is available, the SDC may request additional documentation prior to consideration. For each of the decisions below, the SDO shall provide written notice to the last known street address, facsimile number, or email address of the party, identified counsel, agency for service of process, or any company partners, officers, directors, owners, or joint venture participants. Such

notice is effective if sent to any of these persons for nonprocurement suspension and debarment actions (2 CFR §§ 180.615 and 180.975). If the notice is issued in a procurement-based action, FAR 9.407-3(c) requires certified mail, return receipt requested. The SDO shall review the ARM and take one of the following actions:

- (1) Decline to Act: The SDO may determine that there are insufficient grounds to recommend a suspension and/or debarment action or that a suspension and/or debarment is not appropriate. This decision shall be documented in the Administrative Record (defined at 5.b(1)) and in the S&D Tracking System and sent to the OIG, or OA/OST personnel who initially created the case in the S&D Tracking System, where appropriate. If the SDO rejects the referral, the requesting official should continue to monitor the situation, when appropriate, and may submit a revised request upon discovery of additional supporting evidence.
- (2) Issue a Show Cause Letter: The SDO may issue a Show Cause Letter, which shall include the following information:
 - (a) Alleged misconduct;
 - (b) Notice that the misconduct may form the basis for a suspension and/or debarment action;
 - (c) Request for respondent to admit, deny, or explain the alleged misconduct;
 - (d) Time within which the respondent must respond (generally 30 calendar days from the date of receipt); and
 - (e) Consequences for failure to respond to the Letter or adequately address the allegation of misconduct.
- (3) Issue Notice of Suspension: The SDO may issue a Notice of Suspension. A Notice of Suspension should set forth the bases for suspension with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances to the extent possible.
- (4) Issue Notice of Proposal to Debar: The SDO may issue a Notice of Proposed Debarment setting forth the bases for debarment with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstance, to the extent possible.
- (5) Issue of Notice of Suspension and Proposal to Debar: The SDO may issue a Notice of Suspension and Proposal to Debar setting forth the bases for suspending the entity and proposing debarment with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances, to the extent possible. A Suspension and Proposed Debarment decision is placed in the SAM.gov website.
- (6) Issue Notice of Debarment: The SDO may issue a Notice of Debarment setting forth the bases for debarment with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances, to the extent possible. A Notice of Debarment decision is placed in the SAM.gov website.

- d. **Presentation of Matters in Opposition** -- After receiving a Notice of Suspension and/or Notice of Proposal to Debar, the respondent has 30 calendar days, unless otherwise provided by the SDO, to submit and/or schedule its response to the OA's SDO. This response can be called a Presentation of Matters in Opposition with the SDO.

All matters that a respondent wants considered must be presented in writing regardless of the presentation method selected. The respondent may be represented or assisted by counsel and should address all defenses, contested facts, admissions, remedial actions taken, and, if a proposal to debar is involved, mitigating and aggravating factors.

The SDO will review all written materials presented and determine whether or not the respondent has raised a genuine dispute regarding material facts. A general denial is insufficient to raise a genuine dispute over facts.

- e. **Fact Finding Proceeding** -- If a proposed debarment is not based upon a conviction or civil judgment and the respondent's presentation raises a genuine dispute regarding any material facts relevant to the decision whether to suspend or debar as defined by the relevant regulations, the SDO, or a fact-finder requested by the SDO, will conduct a fact-finding proceeding at which the respondent may present evidence, and may call and question witnesses. The fact-finding proceeding shall be transcribed, unless the respondent and the agency agree otherwise. The respondent may purchase a copy of the transcript upon request.

The fact-finding proceeding is an informal evidentiary hearing. The Rules of Evidence and Civil Procedure do not apply. Documentary evidence is taken into the record in conjunction with direct witness testimony and cross-examination. The fact-finder will prepare written findings of fact for the record. To ensure prompt and timely proceedings, established schedules are binding unless modified by the fact-finder upon his own initiative or in response to a written request. Schedule modifications shall be documented in the Administrative Record.

- f. **Administrative Record** (defined in 5.b(1)) -- During the suspension and debarment process, the SDC shall maintain and document all information that will be considered by the SDO. This information will form the Administrative Record, and must also be entered into the DOT Tracking System. The respondent may request a copy of the Administrative Record following the SDO's issuance of a final decision, or the SDO may authorize the OA to provide a copy of the Administrative Record to the respondent with the notice of any decision.

The official record closes upon the SDO determination that the OA has received final submissions, information and findings of fact, if any. Upon the conclusion of any fact-finding proceedings, the SDC in consultation with its Legal Office shall review the entire Administrative Record, discuss the case with the SDO, and forward to the SDO a Final Recommendation that considers the Administrative Record in its entirety. The recommendation shall explain why there is or is not a genuine dispute as to material facts remaining after the hearing, discuss the relevance or weight of any information obtained subsequent to the issuance of the Notice, and clarify or supplement the case.

- g. **Final Decision** -- The SDO's final decision shall be based on all the information in the Administrative Record, including any submission made by the respondent. The decision shall be based on facts as found, together with any information and argument submitted by the respondent and any other information in the Administrative Record. The decision shall be made after the conclusion of the proceedings with respect to the disputed facts. Prompt written notice of the SDO's decision shall be sent to the respondent and any affiliates (defined in 5.b(2)) involved, by certified mail, return receipt requested, by email, and/or by any other method approved by regulation.

In making a final decision, the SDO, at a minimum, may consider the aggravating and mitigating factors listed in FAR 9.406-1, 2 CFR § 180.860 and AMS T3.2.2.7 3 b. and c.

- h. **Written Decision** -- The SDO shall issue a written decision. The decision shall include an assessment of the respondent's present responsibility, identities of affiliates, respondent's conduct, length of suspension or debarment, and, for debarments, the effect of mitigating and aggravating factors on the present case.

(1) **Decision – Nonprocurement Actions.** The SDO must make a written decision on suspension or debarment for nonprocurement actions within 45 days of closing the official record, as determined by the SDO. The SDO may extend the period for good cause.

(2) **Decision – Procurement Actions.** For procurement actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the Administrative Record, including any submission made by the contractor. If no suspension is in effect, the **decision shall be made within 30 working days** after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

- i. **Appeals.** Based on the decision by the SDO, the respondent may elect to take one of the following actions:

(1) **Request for Reconsideration** -- Upon receiving a final decision to debar from the SDO, a debarred individual/entity may ask the SDO to reconsider the debarment decision or to modify the debarment by reducing the time period or narrowing the scope of the debarment. This request must be made in writing and supported with documentation. In the debarment notification, the OA/OST may specify a timeframe during which a request *should* be submitted, but cannot mandate the timeframe.

(2) **Judicial Review** -- A suspended or debarred individual/entity may seek judicial review after exhausting all administrative remedies. Suspension and debarment decisions are reviewed under the Administrative Procedure Act in Federal District Court and, in some instances, before the Court of Federal Claims. Generally, in preparing for litigation, the OA Legal Office will work with the SDO, and any other concerned parties within the agency. In cases with unique circumstances, the OA Legal Office should consult with OST's Office of the General Counsel.

- 13. ADMINISTRATIVE AGREEMENTS (ADMINISTRATIVE SETTLEMENT AND COMPLIANCE AGREEMENT).** At any time during a suspension and/or debarment proceeding, the SDO may negotiate an administrative agreement with the respondent in order to resolve a suspension and/or debarment matter, if it is in the best interest of the Federal Government.

If an administrative agreement is deemed appropriate, the OA/OST shall draft an agreement in consultation with the Legal Office and the unit administering the procurement or financial assistance transaction. Upon agreement with the respondent, a final administrative agreement will be distributed for signature. Within three (3) business days after the agreement has been fully executed, the SDC will enter the agreement in the current designated integrity and performance system. The current integrity and performance system is the Federal Awardee Performance and Integrity Information System (FAPIIS).

- 14. PARALLEL PROCEEDINGS.** Entities and persons proposed for debarment also may be subject to concurrent criminal or civil remedies (parallel proceedings) by law enforcement activities. It is DOT's policy that to the fullest extent appropriate and permissible by law, the OA's/OST suspension and debarment program timely communicate, coordinate, and cooperate with the OIG and Department of Justice prosecutors and civil attorneys in a manner that ensures the government's administrative remedies are adequately addressed simultaneously with its criminal and civil remedies.

The potential for parallel proceedings arises in many of the Department's suspension and debarment cases. When effectively coordinated, parallel proceedings allow the government to expend resources efficiently and to take appropriate advantage of all available remedies. However, regardless of the extent to which they are coordinated with civil and criminal enforcement actions, suspension or debarment proceedings are to remain sufficiently separate and discrete to ensure that their procedural and substantive requirements are satisfied and their determinations are independent and proper, and are not for the purposes of punishment.

Communication and coordination with the OIG and Department of Justice regarding the potential settlement of a criminal or civil matter is often appropriate. The SDO will consider any available mitigating evidence or evidence that there is no cause to debar submitted by the individual, entity or their counsel, for whom the release is sought, including evidence provided by the respondent.

- 15. SAM.gov.** Entities/persons that are debarred or suspended are generally excluded from receiving Federal Government contracts or financial assistance. If SAM.gov is replaced with a new system, the following procedures apply to whatever successor system is in current use at the time.

- a. **Pre-Award Review** -- Prior to the solicitation and award (or renewal or supplemental funds) of a federal contract (refer to 7.(b)((5)(a)(i)) or financial assistance transaction that is approved by the OA/OST, the OA/OST shall follow their policy and procedures (e.g. SAM.gov, certifications, etc.) for possible exclusions. Prior to the award (or renewal or supplemental funds) of a financial assistance transaction, the recipients of a financial assistance transaction are strongly recommended to consult SAM.gov for possible exclusions. The grants or contracting officers shall not make an award to an entity that is

currently excluded without approval from an agency head or designee 2 CFR § 180.135 or FAR 9.405.

b. **Post-Award Review for Procurement Awards**-- The Contracting Officer shall consult the System for Award Management Exclusions prior to:

- (1) Placing orders exceeding the guaranteed minimum under indefinite quantity contracts;
- (2) Placing orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or
- (3) Adding new work, exercising options, or otherwise extending the duration of current contracts or orders.

For contractors debarred, suspended, or proposed for debarment, unless the Senior Procurement Executive makes a written determination of the compelling reasons for doing so, contracting officers shall not take action to continue contract performance.

c. **Entering Entities into SAM.gov** -- Upon the SDO's final decision of suspension or debarment, the SDC shall update the System for Award Management within three (3) business days, to include:

- (1) Names and addresses of all entities debarred, suspended, proposed for debarment, declared ineligible, or excluded under the nonprocurement common rule, with cross-references when more than one name is involved in a single action;
- (2) The type of action;
- (3) Name of the agency or other authority taking the action;
- (4) Cause for the action or other statutory or regulatory authority;
- (5) Effect of the action;
- (6) Termination date for each listing; and
- (7) Data Universal Numbering System (DUNS) Number.

16. DOT S&D TRACKING SYSTEM. The OST maintains the DOT S&D Tracking System. At present, the DOT S&D Tracking System is maintained by the Office of Integrated Systems Management and Reporting in OSPE. This system is for informational and tracking purposes. If the case is created by the OA/OST, coordination with OIG is required prior to creating the case in the tracking system. A case creation (defined at 5.b(3)) by the OIG or OA/OST occurs when an individual/entity and the documents supporting the proposed action against that individual/entity, are entered into the tracking system, and:

- a. If the suspension or debarment is based upon documents showing indictment, conviction, or civil judgment, the OA/OST will take a suspension or debarment action for that person/entity within 45 calendar days of the case creation documents being entered into the tracking system;

- b. If the suspension or debarment actions are based on factual investigations, the OA/OST will take action within 90 days of the case creation documents being entered into the tracking system.
- c. Supporting documentation must be uploaded at case creation with the beginning date for the deadlines starting when the final document for case creation is entered into the S&D Tracking System.

The procedures for entering information, and reports available to the OAs/OSTs can be found in the *DOT Suspension and Debarment Tracking System* (defined at 5.b(9)) *User Manual*.



A handwritten signature in dark ink, appearing to read "Keith Washington".

*Keith Washington
Deputy Assistant Secretary for
Administration*