

Additional Viewer Submitted Questions and Answers

1. Under the Clark Industries scenario presented, is there any concern that with the establishment of a Government Contracts Division differences could arise within the company between ethical behaviors in the commercial and the Government divisions?

Clark Industries is one company, so it is expected that its new culture of ethics and compliance will take root across all of its divisions and that the same ethical behavior will be exhibited across the entire company. While there are differences in the applicable rules and regulations, there should not be any difference in ethical behavior between Clark Industries' commercial and Government divisions. If differences exist and unethical activity is sanctioned within Clark Industries' Commercial Division, Clark Industries' present responsibility would be questioned.

2. Are Suspension & Debarment Officials' decisions, such as whether or not to exclude Clark Industries, normally made during the meeting with the contractor or afterwards?

There is no uniform rule or practice regarding whether Suspension & Debarment Officials should make their decisions during or after meeting with a contractor. As each case is different, everything, including any decisions, is handled on a case-by-case basis depending on the facts and circumstances. Sometimes Suspension & Debarment Officials will make their decisions during a meeting and sometimes, especially if additional information, documentation, or action is requested, Suspension & Debarment Officials will wait to make any decisions until after the meeting. Usually, however, a formal, signed letter notifying the contractor of the Suspension & Debarment Official's decision is sent to the contractor following a meeting with a Suspension & Debarment Official.

3. How often are Suspension & Debarment actions ceased after the contractor meets with a Suspension & Debarment Official?

This is difficult to quantify because each Suspension & Debarment case is unique. The underlying misconduct and the contractor's response are different in each situation, so the result of each meeting varies widely. Suspension & Debarment Officials, however, are willing to work with any contractor that is on the path to becoming fully presently responsible and will only continue an exclusion if, based on any responses and the meeting, the contractor demonstrates a lack of present responsibility and continued exclusion is necessary to protect the Government's interests.

4. Is Suspension & Debarment considered a purely business decision or a legal/regulatory matter?

Under Federal Acquisition Regulation 9.4 and the Nonprocurement Common Rule (the discretionary debarment regimes), Suspension & Debarment decisions are always based on protecting the public's and the Government's interests. Therefore, although the decision to suspend or debar must be made in accordance with law and regulation,

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the business interests of the Government drive the decision as to whether exclusion is necessary.

Some exclusions, however, are mandatorily required by statute. Therefore, decisions as to these types of exclusions are purely legal or regulatory in nature.

5. If a company who supplies items is debarred, can a Federal contractor buy from them?

Under Federal Acquisition Regulation 9.405-2, Federal contractors cannot subcontract a Federal contract to an excluded company unless that subcontract is for commercially available off-the-shelf items or for a value less than \$35,000.

6. If a contractor contracts with more than one Federal agency, which agency would handle any Suspension & Debarment action?

All of the Federal Government Suspension & Debarment Officials are members of the Interagency Suspension & Debarment Committee. This Committee is charged with, among other things, resolving instances where two or more agencies are interested in considering the same contractor for possible suspension or debarment action. In these situations, the interested agencies compare each agency's connection to the wrongdoing at issue and the amount of contractor dollars awarded to the specific contractor to decide which agency has the primary interest and should handle any suspension or debarment action.