9.403 Definitions.

As used in this subpart—

Administrative agreement means an agreement between an *agency suspending and debarring official* and the *contractor* used to resolve a *suspension* or *debarment* proceeding, or a potential *suspension* or *debarment* proceeding.

Affiliates.–

(1) Business concerns, organizations, or individuals are *affiliates* of each other if, directly or indirectly–

(i) Either one controls or has the power to control the other; or

(ii) A third party controls or has the power to control both.

(2) Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the *debarment*, *suspension*, or proposed *debarment* of a *contractor* which has the same or similar management, ownership, or principal employees as the *contractor* that was debarred, suspended, or proposed for *debarment*.

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

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition that 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).

Conviction means—

(1) 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

(2) Any other resolution that is the functional equivalent of a judgment establishing a criminal offense by a court of competent jurisdiction, 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.

Contractor means any individual or other legal entity that–

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

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

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

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

Nonprocurement Common Rule means the procedures used by Federal *Executive Agencies* to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, *insurance*, payments for specified use, and donation agreements. See 2 CFR part 180 and *agency* enacting regulations in 2 CFR subtitle B.

Pre-notice letter means a written correspondence issued to a *contractor* in a *suspension* or *debarment* matter, which does not immediately result in an exclusion or ineligibility. The letter is issued at the discretion of the *suspending and debarring official*. The letter is not a mandatory step in the *suspension* or *debarment* process.

Unfair trade practices means the commission of any or the following acts by a *contractor*–

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

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

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

Voluntary exclusion means a *contractor*'s written agreement to be excluded for a period under the terms of a settlement between the *contractor* and the *suspending and debarring official* of one or more *agencies*. A *voluntary exclusion must* have Governmentwide effect.

Parent topic: Subpart 9.4 - Debarment, Suspension, and Ineligibility