

Common Misconceptions about Suspension and Debarment

Frequently Asked Questions (Part 2)



For Common Misconceptions Part 1, refer to:

https://www.acquisition.gov/sites/default/files/page_file/uploads/ISDC_FY_2020_Common_Misconceptions_about_Suspension_and_Debarment.pdf

Question: May potential respondents proactively contact suspension and debarment (S&D) program officials prior to an indictment or conviction?

Answer: Yes. Proactive efforts may be taken early to notify S&D program officials of corrective actions being taken by the party to address business risks. Such steps may potentially mitigate or negate the necessity for a suspension or debarment. Before arriving at any debarment decision, the debarring official will consider factors such as timely self-reporting that may be one of the indicators of present responsibility. Suspension and debarment program points of contact are available at <https://www.acquisition.gov/isdc-debarring-officials>.

Question: Will a guilty plea automatically result in a discretionary debarment action?

Answer: Not necessarily. Although a conviction for certain offenses may constitute cause for a discretionary debarment action, other factors, such as acceptance of responsibility and corrective actions, are mitigating factors that a suspending and debarring official (SDO) may consider in support of demonstrating present responsibility. Suspension and debarment proceedings are parallel proceedings to criminal proceedings. SDOs consider whether there is cause for a discretionary debarment action based on a criminal conviction and provide respondents with notice and an opportunity to respond as part of the debarment proceedings.

Question: Is it generally beneficial if the SDO hears directly from respondents?

Answer: Acceptance of responsibility and understanding and appreciation of the seriousness of the cause(s) for suspension or proposed debarment may, among other factors, be effectively conveyed directly by business leadership, senior management, and/or the affected individual. Their counsel and/or representative(s) are usually present and participate when the individual and/or senior management are conveying matters directly. High-level officials reflect the tone at the top of an organization. Inclusion of individuals who are responsible for the implementation of corrective actions may enhance presentations.

Question: Is the SDO the only individual at a Federal agency with whom respondents can initiate discussions about suspension and debarment-related remedies?

Answer: Generally no, but it depends on the structure of the agency's debarment program. The Interagency Suspension and Debarment Committee (ISDC) provides information at <https://www.acquisition.gov/isdc-debarring-officials> on the points of contact (POCs) for Federal SDOs. These officials often make preliminary assessments and recommendations to the SDO, including any potential actions in lieu of suspension and debarment. To ensure that the administrative record relied upon by the SDO is clear, contacting these POCs also enables respondents to provide additional information that POCs anticipate the SDO would want addressed before a presentation of matters in opposition or a meeting.

Question: Can a debarment extend beyond a period of three years?

Answer: Generally, debarment should not exceed three years but, depending on the circumstances, a debarment may be shorter or longer than three years, based on the seriousness of the cause and mitigating and other factors, as applicable. In addition, reconsideration may be requested when additional mitigating measures have been taken by the respondent(s) to address the cause(s) for which debarment was imposed.

Question: Is it the SDO's role to outline or identify corrective actions needed to be taken by respondents?

Answer: No. Respondents are best situated to know their operations and conduct and what they need to do to address risk(s) created by their conduct. Respondents, both individuals and entities, need to identify, propose, or present corrective actions already taken and those pending to address business risks to demonstrate present responsibility. Once cause for debarment is established, it is the respondent's burden to demonstrate to the SDO that it is presently responsible and that suspension or debarment is not necessary.

Question: Can respondents concurrently negotiate Federal discretionary suspensions or debarments when negotiating criminal plea agreements or civil settlements?

Answer: Discretionary S&D matters are those subject to subpart 9.4 of the Federal Acquisition Regulation and/or 2 C.F.R. Part 180, and such authority is exercised by Federal agency SDOs to protect Federal agency programmatic and business interests. Administrative parallel proceedings are those in which an SDO for the lead agency may enter into a separate agreement to concurrently resolve such discretionary suspension and debarment administrative matters. Respondents should contact the relevant suspension and debarment office(s), which can be found at <https://www.acquisition.gov/isdc-debarring-officials>.