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Description of document: Department of Education (ED) Small Business Innovation Research Program (SBIR) Policy and Procedures Manual for Preventing and Detecting Fraud, Waste, and Abuse, 2017

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U.S. Department of Education  
Office of Management  
Office of the Chief Privacy Officer  
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**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF MANAGEMENT**

**Office of the Chief Privacy Officer**

April 12, 2017

RE: FOIA Request No. 17-00611-F

This letter is in response to your letter dated December 26, 2016, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was forwarded to the appropriate office to search for documents that may be responsive to your request.

You requested the following:

- A copy of the current policies and procedures for the SBIR process in the Institute of Education Sciences. These policies exist according to Ruth Curran Neild.

Attached to this e-mail are 23 pages of fully releasable documents responsive to your request. The documents provided are:

- Innovation Research Program (ED/IES SBIR) Policy and Procedures Manual for Preventing and detecting Fraud, Waste and Abuse (FWA).

Provisions of the FOIA allow us to recover the costs pertaining to your request. The Department has concluded that you fall within the category of an "other" requester. However, the Department has provided you with these responsive documents, at no cost. The Department's release of information at no cost does not constitute the grant of a fee waiver, and does not infer or imply that you will be granted a fee waiver for future requests made under FOIA to the Department.

If you have any questions, please contact the FOIA Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Arthur Caliguiran".

Arthur Caliguiran  
FOIA Analyst  
FOIA Service Center

Attachments

**U.S. Department of Education, Institute of Education Sciences  
Small Business Innovation Research Program (ED/IES SBIR)  
Policy and Procedures Manual for Preventing and Detecting  
Fraud, Waste, and Abuse (FWA)**

**Last Updated: January 31, 2017**

As required by the SBIR Policy Directive, the U.S. Department of Education / Institute of Education Sciences' Small Business Innovation Research Program (ED/IES SBIR) created this manual for preventing and detecting instances of fraud, waste, and abuse (FWA). The manual will be maintained and updated on an as needed basis.

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**1. FWA Contacts on SBIR at ED**

- ED/IES SBIR FWA Liaison: Edward Metz (Edward.Metz@ed.gov)
- Office of the Inspector General (OIG): Robinette Brown (Robinette.Brown@ed.gov)
- Suspension and Debarment Official (SDO) for Procurement: Angela Billups (Angela.Billups@ed.gov)

**2. ED/IES SBIR FWA Indicators**

The following are indicators of FWA at ED/IES SBIR

- Falsification of eligibility.
- Current status of the Principal Investigator not meeting program requirements.
- Providing false information in a proposal, in reports, or during monitoring calls.
- Allocating funds for improper purpose.
- Accepting duplicate funding which overlaps with SBIR funding (or any Federal R&D funding) from different Federal agencies for essentially equivalent work.
- Theft, misappropriation, or false statements.
- Cover up of underlying problems by creating false documents, by destroying documents, or by not being truthful with investigators or others.

### 3. ED/IES SBIR FWA Template

The below template will be used by ED/IES SBIR to report and provide documentation to the Department of Education's Office of Inspector General when potential cases of FWA occur.

#### **Standardized Template for Reporting Potential Cases of FWA to OIG**

Indicate the area/s in which the FWA potentially occurred. As well, at the end of the document, provide specific information detailing the potential case/s of FWA:

\_\_\_\_\_ Falsification of Eligibility

\_\_\_\_\_ Principal Investigator status

\_\_\_\_\_ Providing false information in a proposal, in reports or during monitoring calls.

\_\_\_\_\_ Allocating funds for improper purpose.

\_\_\_\_\_ Accepting duplicate funding which overlaps with SBIR funding from different Federal agencies for essentially equivalent work.

\_\_\_\_\_ Theft, misappropriation, or false statements.

\_\_\_\_\_ Cover up underlying problems by creating false documents, by destroying documents, or by not being truthful with investigators or others.

*Provide specific information detailing the potential case of FWA:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### 4. ED/IES SBIR Potential FWA Referral List to OIG

Any potential cases of FWA will be documented in the below referral list. The list will be maintained in the electronic files of the ED/IES SBIR FWA Liaison and the OIG FWA Liaison.

**U.S. Department of Education  
Institute of Education Sciences  
Small Business Innovation Research Program  
  
Referral List for Cases of FWA**

List the Date, Key Parties, and Details of each case of potential FWA:

- 1)
- 2)
- 3)

## **5. Procedures for Referrals to the SDO for Procurement**

The Department's regulations regarding referrals to the Suspension and Debarment Official for Procurement can be found in the Education Department Acquisition Regulations (EDAR) at EDAR 3409.4 - Debarment, Suspension, and Ineligibility. The EDAR is available online at: <https://www2.ed.gov/policy/fund/reg/clibrary/edar.html>. The Department's policies and procedures can be found in Chapter 9.4 Suspension and Debarment of the Acquisition Procedures Manual (see Appendix A). The standardized template for procurement suspension or debarment referrals can be found in Appendix B.

## **6. Tracking Referrals to the SDO for Procurement**

The ED/IES SBIR FWA Liaison will work with the SDO for Procurement to ensure that any referrals for suspension and debarment involving SBIR awardees are documented and maintained in the files of the ED/IES SBIR FWA Liaison.

## **7. Certifications and Language in Solicitations for Preventing and Detecting FWA**

### **A. Language in Solicitation to Detect and Prevent FWA**

To prevent and detect FWA within each annual solicitation, ED/IES SBIR includes the below language and certifications.

### ***Notice and information on reporting fraud, waste, abuse and mismanagement***

#### **I. Report Fraud, Waste and Abuse**

The Office of Inspector General Hotline at the U.S. Department of Education accepts tips from all sources about potential fraud, waste, abuse, and mismanagement in Department of Education programs. The reporting individual should indicate that the fraud, waste, and/or abuse concerns an SBIR grant or contract, if relevant.

<http://www2.ed.gov/about/offices/list/oig/hotline.html>



## ***Required Certifications***

### **(ii) Required Certification Form for Awardees to Complete and Submit with all Interim Reports and the Final Report**

All SBIR Phase I awardees must complete the below certification at all times set forth in the funding agreement (see §8(h) of the SBIR Policy Directive), including with Interim Reports and with the Final Report. This includes checking all of the boxes and having an authorized officer of the awardee sign and date the certification each time it is requested.

#### **SBIR Funding Agreement Certification – Life Cycle Certification**

Please read carefully the following certification statements. The Federal government relies on the information to ensure compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, the SBIR Policy Directive, and any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):  
(1) The principal investigator spent more than one half of his/her time as an employee of the awardee or the awardee has requested and received a written deviation from this requirement from the funding agreement officer.

☐ Yes ☐ No ☐ **Deviation approved in writing by funding agreement officer: %**

(2) All, essentially equivalent work, or a portion of the work performed under this project (check the applicable line):

☐ **Has not been submitted for funding by another Federal agency.**

☐ **Has been submitted for funding by another Federal agency but has not been funded under any other Federal grant, contract, subcontract or other transaction.**

☐ **A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the funding agreement officer.**

(3) Upon completion of the award it will have performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the funding



agreement officer (check the applicable line and fill in if needed):

☐ **SBIR Phase I: at least two-thirds (66 2/3%) of the research.**

☐ **Deviation approved in writing by the funding agreement officer: %**

(4) The work is completed and it has performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):

☐ **SBIR Phase I: at least two-thirds (66 2/3%) of the research.**

☐ **Deviation approved in writing by the funding agreement officer: %**

☐ **N/A because work is not completed**

(5) The research/research and development is performed in the United States unless a deviation is approved in writing by the funding agreement officer.

☐ **Yes** ☐ **No Waiver has been granted**

(6) The research/research and development is performed at my facilities with my employees, except as otherwise indicated in the SBIR application and approved in the funding agreement.

☐ **Yes** ☐ **No**

☐ **It will notify the Federal agency immediately if all or a portion of the work authorized and funded under this award is subsequently funded by another Federal agency.**

☐ **I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.**

☐ **I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern, that the information provided in this certification, the application, and all other information submitted in connection with the award, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 et seq.); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 et seq.); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.**

Signature	Date __/__/__
Print Name (First, Middle, Last)	
Title	
Business Name	



## ***SBIR Funding Agreement Certification***

### **Certification G.3**

Please read carefully the following certification statements. The Federal government relies on the information to determine whether the business is eligible for a Small Business Innovation Research (SBIR) Program award. A similar certification will be used to ensure continued compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 C.F.R. Part 121), the SBIR Policy Directive and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business may not meet certain eligibility requirements at the time of award, they are required to file a size protest with the U.S. Small Business Administration (SBA), who will determine eligibility. At that time, SBA will request further clarification and supporting documentation in order to assist in the verification of any of the information provided as part of a protest. If the funding agreement officer believes, after award, that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):

(1) The business concern meets the ownership and control requirements set forth in 13 C.F.R. §121.702.

☐ Yes ☐ No

(2) If a corporation, all corporate documents (articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock) evidence that it meets the ownership and control requirements set forth in



13 C.F.R. §121.702.

☐Yes ☐No ☐N/A Explain why N/A:

(3) If a partnership, the partnership agreement evidences that it meets the ownership and control requirements set forth in 13 C.F.R. §121.702.

☐Yes ☐No ☐N/A Explain why N/A:

(4) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments, evidence that it meets the ownership and control requirements set forth in 13 C.F.R. §121.702.

☐Yes ☐No ☐N/A Explain why N/A:

(5) The birth certificates, naturalization papers, or passports show that any individuals it relies upon to meet the eligibility requirements are U.S. citizens or permanent resident aliens in the United States.

☐Yes ☐No ☐N/A Explain why N/A:

(6) It has no more than 500 employees, including the employees of its affiliates.

☐Yes ☐No

(7) SBA has not issued a size determination currently in effect finding that this business concern exceeds the 500 employee size standard.

☐Yes ☐No

(8) During the performance of the award, the principal investigator will spend more than one half of his/her time as an employee of the awardee or has requested and received a written deviation from this requirement from the funding agreement officer.

☐Yes ☐No ☐Deviation approved in writing by funding agreement officer: %

(9) All, essentially equivalent work, or a portion of the work proposed under this project (check the applicable line):

☐ Has not been submitted for funding by another Federal agency.

☐ Has been submitted for funding by another Federal agency but has not been funded under any other Federal grant, contract, subcontract or other transaction.

☐ A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the funding agreement officer.

(10) During the performance of award, it will perform the applicable percentage of work unless a deviation from this requirement is approved in writing by the funding

agreement officer (check the applicable line and fill in if needed):

☐ **SBIR Phase I: at least two-thirds (66 2/3%) of the research.**

☐ **Deviation approved in writing by the funding agreement officer: %**

(11) During performance of award, the research/research and development will be performed in the United States unless a deviation is approved in writing by the funding agreement officer.

☐ **Yes** ☐ **No** ☐ **Waiver has been granted**

(12) During performance of award, the research/research and development will be performed at my facilities with my employees, except as otherwise indicated in the SBIR application and approved in the funding agreement.

☐ **Yes** ☐ **No**

(13) It has registered itself on SBA's database as majority-owned by venture capital operating companies, hedge funds or private equity firms.

☐ **Yes** ☐ **No**

☐ **N/A Explain why N/A:**

(14) It is a Covered Small Business Concern (a small business concern that: (a) was not majority- owned by multiple venture capital operating companies (VCOCs), hedge funds, or private equity firms on the date on which it submitted an application in response to an SBIR solicitation; and (b) on the date of the SBIR award, which is made more than 9 months after the closing date of the solicitation, is majority-owned by multiple venture capital operating companies, hedge **funds, or private equity firms**).

☐ **Yes** ☐ **No**

☐ **It will notify the Federal agency immediately if all or a portion of the work authorized and funded under this award is subsequently funded by another Federal agency.**

☐ **I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.**

☐ **I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not**



limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 et seq.); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 et seq.); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

Signature	Date __ / __ / __
-----------	-------------------

Print Name (First, Middle, Last)
----------------------------------

Title
-------

Business Name
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***Additional areas of the RFP with language to prevent and detect FWA:***

- Appendix A [Documentation and Status of Previous Phase II Awards](#)
- Appendix B [Biographical Summary Certification and Résumé Pages](#)
- Appendix C [Similar or Related Awards or Proposals](#)
- Appendix D [Phase I Budget](#)
- Appendix G [Department of Education Required Certifications](#)

**8. Process for detecting and preventing FWA**

ED/IES SBIR uses the following procedures to detect and prevent FWA:

- For all proposals, ED/IES SBIR and CAM team members check certifications to determine eligibility, and check the whole of each proposal to determine and validate eligibility, prevent duplication, and determine any indicators of possible FWA.
- During the Reviewer Training sessions, reviewers are instructed to report anything that may be considered FWA to the ED/IES SBIR and CAM representatives, and to the OIG hotline. Reviewers (and all personnel who work on ED/IES SBIR) are required to sign the form listed below under **9. Required Information for ED/IES Personnel Working on SBIR**
- Prior to an award recommendation being made, ED/IES SBIR checks SBIR.gov data base, and corresponds with NSF SBIR and with other SBIR agencies as appropriate to determine that awards will not be duplicative.
- ED/IES SBIR reviews related R&D section, and additional certification sections where awardees are required to detail R&D that may be duplicative or if similar proposals are submitted to other programs.
- CAM representatives check the SBIR Registry.
- ED/IES SBIR checks company websites.



- **Post-Award Monitoring**
  - All ED/IES SBIR awards are monitored through regular communication with ED/IES SBIR, not less than quarterly.
  - ED/IES SBIR requires certifications within interim/annual reports and with final report.
  - ED/IES SBIR requires letters from educational institutions to verify that the entities have agreed to participate in education research.
  - ED/IES SBIR requires video demonstrations and login information to the education technology products developed through the program, that is used to review and confirm that the technology was developed as stated.
  - For Phase II awardees, ED/IES SBIR requires attendance at an annual meeting in Washington DC, where awardees demonstrate the latest version of their technology.
  - ED/IES SBIR will refer any suspected cases of FWA to OIG.

#### **9. Awardee Trainings on FWA**

- All new ED/IES SBIR awardees are required to attend a webinar training on FWA.
- The training is led by the OIG.
- The most recent slides and presentation are posted here:



SBIR Presentation on  
FWA 2015.pptx

#### **10. Information On FWA**

- The ED/IES SBIR Websites provide information on reporting FWA, and provide the FWA Webinar Training Slides as follows:
  - <http://ies.ed.gov/sbir/disclaimer.asp>
  - <http://www2.ed.gov/programs/sbir/index.html>

#### **11. Required Information for ED/IES Personnel Working on SBIR**

- All government officials who serve as proposal reviewers or who participate on ED/IES SBIR in anyway will be responsible for signing this certification on an annual basis:

#### **Report Fraud, Waste, and Abuse**

If at any time you become aware of fraud, waste, abuse, or any kind of wrongdoing under any SBIR award, please contact the U.S. Department of Education's (ED) Office of Inspector General (OIG).

The ED Office of Inspector General Hotline accepts tips from all sources about potential fraud, waste, abuse, and mismanagement in Department of Education programs. The reporting individual should indicate that the fraud, waste and/or abuse concerns an SBIR grant or contract, if relevant. For more information, please visit the ED OIG Website:

<http://www2.ed.gov/about/offices/list/oig/hotline.html>.

The ED OIG toll free Hotline number is: 1-800-MIS-USED.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix A: Department of Education Acquisition Procedures Manual Chapter 9.4



## Chapter 9.4 – Suspension and Debarment

Effective Date: 14 Feb 2011

### **Purpose:**

The purpose of this chapter is to establish Department of Education procedures for coordinating and conducting procurement suspension and debarment. This policy does not address nonprocurement suspension and debarment.

### **Policy:**

The FAR requires agencies to solicit offers from, award contracts to, and consent to subcontract only with responsible contractors. Suspension and debarment are administrative remedies available to disqualify contractors or individuals from obtaining federal government contracts and nonprocurement (e.g., grants) instruments. The effect of a suspension or debarment is Government-wide. A suspension or debarment excludes contractors and individuals from all federal procurement and nonprocurement programs unless the Debarring Official determines there is a compelling reason not to exclude the contractor or individual from a specific acquisition. Suspensions are temporary in nature and are used to protect the Government until investigations and any ensuing proceedings that could lead to debarment actions are completed.

Because the effect of suspension and debarment is so severe, FAR 9.4 requires that agencies follow a due process procedure that affords the intended contractor or individual with advance notice of the suspension or debarment action and allows for it to submit evidence that may convince the Federal Government to not proceed with the action.

### **Definitions:**

***Debarment:*** Action taken by a Debarring Official under FAR 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.” Debarments generally do not exceed three years, but can be extended if doing so is in the Government’s best interest. Causes for debarment include convictions or civil judgments, willful violations of the terms and conditions of one or more contracts, or other causes so serious or compelling that it affects the responsibility of the contractor.

***Debarring Official:*** The Senior Procurement Executive (SPE) is designated as the “Debarring Official” as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.4.

***Suspending Official:*** The SPE is designated as the “Suspending Official” as defined in FAR 9.403 and is designated as the agency official authorized to make decisions as required in FAR 9.4.

***Suspension:*** Action taken by a Suspending Official under FAR 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.” Suspensions typically do not exceed 18 months.

***Fact-finder:*** The individual appointed by the SPE when the SPE believes a genuine dispute of material fact exists. The fact-finder investigates the facts and circumstances for which the

fact-finder is specifically appointed to investigate. The fact-finder must be an impartial party, who will report directly to the SPE.

**Requirements:**

1. Preparing the Suspension or Debarment Package  
The Contracting Officer shall use the following format when referring a matter to the SPE for consideration. To the extent practicable, provide all specified information:
  - 1.1 Name, address, and telephone number of the point of contact for the activity making the report
  - 1.2 Name, Contractor and Government Entity (CAGE) code, Data Universal Numbering System (DUNS) number, and address of the Contractor
  - 1.3 Name and addresses of the members of the board, principal officers, partners, owners, and managers
  - 1.4 Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship
  - 1.5 For each contract affected by the conduct being reported:
    - 1.5.1 The contract number
    - 1.5.2 Principal Office and Organization
    - 1.5.3 Description of supplies or services
    - 1.5.4 The total estimated contract value amount including options
    - 1.5.5 The percentage of completion
    - 1.5.6 The amount paid to the contractor
    - 1.5.7 Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom
    - 1.5.8 The amount still due the contractor
    - 1.5.9 The contract accounting string involved, to expedite accurate return of funds to open accounts and organizations, as appropriate
  - 1.6 For any other known contracts outstanding with the contractor or any of its affiliates:
    - 1.6.1 The contract number
    - 1.6.2 The amount

- 1.6.3 The amounts paid the contractor
- 1.6.4 Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom
- 1.6.5 The amount due the contractor
- 1.6.6 A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor
- 1.6.7 An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated)
- 1.7 If the CO initiates the report, the comments and recommendations of the CO and of each higher-level reviewer authority regarding:
  - 1.7.1 Whether to suspend or debar the contractor
  - 1.7.2 Whether to apply limitations to the suspension or debarment
  - 1.7.3 The period of any recommended debarment
  - 1.7.4 Whether to continue any current contracts with the contractor (or explain why a recommendation regarding current contracts is not included)
- 1.8 When appropriate, as an enclosure to the report:
  - 1.8.1 A copy or pertinent extracts of each pertinent contract
  - 1.8.2 Witness statements or affidavits
  - 1.8.3 Copies of investigative reports when authorized by ED
  - 1.8.4 Certified copies of indictments, judgments, and sentencing actions
  - 1.8.5 A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1)
  - 1.8.6 Any other appropriate exhibits or documentation
- 1.9 To the extent that this information is available through the Federal Procurement Data System Next Generation (FPDS-NG), provide a list of other agencies that hold current contracts with the subjects.
- 2. Sending Suspension or Debarment Package to SPE  
Send an electronic copy of the report, including enclosures, to PLG. FSA should send the report to Strategic Initiatives who will then forward it to CAM. If a referral lacks



sufficient evidence for suspension or debarment, the SPE may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., the Office of the Inspector General or criminal investigative agency if the SPE suspects possible criminal activity. Since debarment and suspension are administrative actions, the SPE has the authority to investigate them. However, any suspected criminal action must be referred to the appropriate authorities.

3. Notification to the Contractor

The Contractor will be notified of the suspension or proposed debarment in accordance with FAR 9.406-3 or 9.407-3. A copy of the record which formed the basis for the decision by the SPE will be made available to the Contractor. If there is a reason to withhold from the Contractor any portion of the record, the Contractor will be informed of what is being withheld and why.

4. Nature of Proceeding

Two distinct proceedings may be involved in the suspension or debarment process. These proceedings are overseen by the SPE. The first is the presentation of matters in opposition to the suspension or proposed debarment by the contractor. The second is fact-finding which occurs only in cases in which the contractor's presentation of matters in opposition raises a genuine dispute over one or more material facts. In a suspension action based upon an indictment or in a proposed debarment action based upon a conviction or civil judgment, there will be no fact-finding proceeding concerning the matters alleged in the indictment, or the facts underlying the convictions or civil judgment. However, to the extent that the proposed action stems from the contractor's affiliation with an individual or firm indicted or convicted, or the subject of a civil judgment, fact-finding is permitted if a genuine dispute of fact is raised as to the question of affiliation as defined in FAR 9.403.

4.1 Presentation of matters in opposition

4.1.1. In accordance with FAR 9.406-3(c) and 9.407-3(c), matters in opposition may be presented in person, in writing, or through a representative within 30 days of receipt of the notice of suspension or proposed debarment. Matters in opposition may be presented through any combination of the foregoing methods, but if a contractor desires to present matters in person or through a representative, any written material should be delivered at least five working days in advance of the presentation. Usually, all matters in opposition are presented in a single proceeding. A Contractor who becomes aware of a pending indictment or allegations of wrongdoing that the Contractor believes may lead to suspension or debarment action may contact the SPE to provide information as to the contractor's present responsibility. The opportunity to present matters in opposition to debarment includes the opportunity to present matters concerning the duration of the debarment.

4.1.2 An in-person presentation is an informal meeting, nonadversarial in nature. The SPE or other agency representatives may ask questions of the Contractor or its representative making the presentation. The Contractor may select the individuals who will attend the meeting on the Contractor's behalf; individual respondents or principals of a business firm respondent may attend and speak for themselves.

## 4.2 Fact-finding.

- 4.2.1 The SPE will determine whether the contractor's presentation has raised a genuine dispute of material fact(s). If the SPE has decided against debarment or continued suspension, or the provisions of FAR 9.4 preclude fact-finding, no fact-finding will be conducted. If the SPE has determined a genuine dispute of material fact(s) exists, a designated fact-finder will conduct the fact-finding proceeding. The fact-finder shall be designated in writing. The proceeding before the fact-finder will be limited to a finding of the facts in dispute as determined by the SPE.
- 4.2.2 The designated fact-finder will establish the date for a fact-finding proceeding, normally to be held within 45 working days of the contractor's presentation of matters in opposition. An official record will be made of the fact-finding proceeding. The Government's representative and the Contractor will have an opportunity to present evidence relevant to the facts at issue. The Contractor may appear in person or through a representative in the fact-finding proceeding.
- 4.2.3 Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact-finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.
- 4.2.4 Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceeding and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination.
- 4.3 Timing Requirements.  
All timing requirements set forth in these procedures may be extended by the SPE for good cause.
- 4.4 Subsequent to Fact-finding
  - 4.4.1 Written findings of fact will be prepared by the fact-finder as mandated by FAR 9.406-3(d)(2)(i) and 9.407-3(d)(2)(i).
  - 4.4.2 The fact-finder will determine the disputed fact(s) by a preponderance of the evidence. A copy of the findings of fact will be provided to the SPE, the Government's representative, and the Contractor.
  - 4.4.3 The SPE will determine whether to continue the suspension or to debar the contractor based upon the entire administrative record, including the findings of fact.
  - 4.4.4 Prompt written notice of the SPE's decision will be sent to the contractor and any affiliates involved, in compliance with FAR 9.406-3(e) and 9.407-3(d)(4).

Appendix B: Department of Education Procurement Suspension or Debarment Referral  
Template



# PROCUREMENT SUSPENSION OR DEBARMENT REFERRAL

## Referring Official Information

Referring Official /  
Contracting Officer

Name:

Title:

Office:

Select or type...

Phone:

Email:

Alternate Referring  
Point of Contact

Enter immediate supervisor of referring official or other alternate:

Date referred

Enter date referring official prepared this referral:

## Entity or Individual Information

Enter information about contractor entity or individual you are referring for suspension or debarment

Identifying  
Information

I am referring a ☐ Contractor Entity OR ☐ Individual

(Submit a separate form for each contractor entity or individual you are referring)

Name of Contractor Entity or Individual:

CAGE CODE:

DUNS:

Address:

Associated  
Individuals

List all known members of the board, principal officers, partners, owners, and managers:

(Select "Insert Item" to add additional lines)

Name

Role / Position

Address / Email / Phone

Associated  
Organizations

List all known affiliates, subsidiaries, or parent firms, and nature of the business relationship:

(Select "Insert Item" to add additional lines)

Name of Associated  
Organization

Nature of relationship  
to referred entity or individual

Address / Email / Phone

Name of Contact Person  
if applicable

## Contract(s) Affected

*Contract Number(s)* List each Department contract number affected by this proposed action:  
(Enter one contract number and press enter; additional lines will automatically appear)  
1.

**Complete a detail section below for each contract listed above**  
(click "Insert Item" to add additional contracts)

CONTRACT NUMBER:

*Contract Descriptors*

Prime Contractor Name:

Small Business status under this contract: ☐ Small ☐ Other than Small

Principal Office / Requiring Office:

ED Contracting Office: Select...

ED Contracting Officer:

ED Contracting Officer's Representative:

ED Program or Project Manager:

Contract Administrator (Contractor Employee):

Description of Supplies or Services:

*Financial Information*

Total Estimated Contract Value Including Options:

Current Total Obligated Value:

Percentage of Completion:

Amount Paid to Contractor to Date:

Is Contract Assigned under the Assignment of Claims Act? If so, to whom?

Select or type...

Accounting String(s) of Funds Obligated Under the Contract:

## Basis for Referral

### DESCRIPTION AND EFFECT OF CONDUCT

*Evidence*

Identify the evidence on which this referral is based (may include statements, documents, and other materials):

*Description of Conduct*

Describe the conduct you believe is grounds for suspension or debarment. Include dates and timing of the conduct.

Immediate Harm  
Analysis

How would the Federal Government be harmed today by entering into contracts with this contractor entity or individual?

Damages

Provide an estimate of damages sustained by the Government as a result of this conduct:

How did you calculate the estimate?

### CAUSES AND STATUS OF PROCEEDINGS

Causes

Check all applicable causes for suspension or debarment.

- ☐ Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract
- ☐ Violation of Federal or State antitrust statutes, relating to the submission of offers
- ☐ Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property
- ☐ Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558))
- ☐ Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor
- ☐ Violations of 41 U.S.C. chapter 81, Drug-Free Workplace, as indicated by failure to comply with the requirements of the clause at 52.223-6
- ☐ Violations of 41 U.S.C. chapter 81, Drug-Free Workplace, as indicated by such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504)
- ☐ Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Pub. L. 102-558))
- ☐ Delinquency in Federal taxes in an amount that exceeds \$3,500
- ☐ Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of:
  - ☐ a. violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code,
  - ☐ b. violation of the civil False Claims Act (31 U.S.C. 3729-3733), or
  - ☐ c. significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in FAR 32.001.
- ☐ Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor

Indictments, Judgments,  
Convictions, Complaints

Has the contractor entity or individual being referred, or one of its affiliates, been named in any of the following:  
(Check all that apply and include copies of relevant documents)

- ☐ An indictment?
- ☐ A judgment, conviction, or other sentencing document?
- ☐ A civil complaint filed by the Federal Government?
- ☐ A civil complaint filed by an individual on behalf of the Federal Gov. ("U.S. ex rel.")?

#### Investigations

To your knowledge, has this matter been the subject of a past or current investigation by the following:

(Check all that apply and include copies of relevant documents)

- ☐ The Contracting Activity
- ☐ The Office of Inspector General
- ☐ Another office within ED
- ☐ The Department of Justice
- ☐ Another Federal agency
- ☐ A Federal, State, or local law enforcement agency

**If any of the above apply, provide the following information about each investigation:**  
(Select "Insert Item" to include information on additional investigations)

Principal Investigator Name:

Title:

Organization:

Contact Information:

Status

Is the investigation open, closed, or pending:

Select or type...

Outcome

To the best of your knowledge, describe the outcome:


## Documentation

Attach to this report the following documents where available and to the extent disclosure is appropriate (check all that apply):

- ☐ A copy of pertinent extracts of each relevant contract
- ☐ Witness statements or affidavits
- ☐ Copies of investigative reports
- ☐ Certified copies of indictments, judgments, and sentencing actions
- ☐ A copy of any available determinations of non-responsibility in accordance with FAR 9.105-2(a)(1)
- ☐ Any other appropriate exhibits or documentation
- ☐ A list of other agencies that hold current contracts with the subjects and a list of those contracts
- ☒

#### ATTACHED DOCUMENTS

Attach supporting documentation to this form:  
(Select "Insert Item" to attach more than one file.)

 File Attachment

#### LINKS TO DOCUMENTATION

Insert hyperlinks to supporting documentation on the web:



(Select "insert item" to include more than one hyperlink.)

[Click here to insert a hyperlink](#)

## Recommendation

*Based on the above, summarize your recommendations below*

*Suspension or  
Debarment*

Are you recommending suspension or debarment?

☐ SUSPENSION

☐ DEBARMENT

*Explain your choice:*

Period of debarment recommended:

Select or type...

*Associated Actions*

What associated individuals or organizations should be suspended or debarred?

*Names (select "Insert Item" to add rows):*

Why should they be suspended or debarred?

*Continued Contracts*

Department contracts ☐ should ☐ should not continue with the suspended or debarred contractor entity or individual.

*Reasoning:*

## Certification

THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AS OF THE DATE I AM SUBMITTING THIS REFERRAL FOR SUSPENSION OR DEBARMENT.