

Bite-Sized Videos on Hot Questions in Suspension & Debarment

===== Chapter 3 =====

Why Wasn't a Wrong-Doing Contractor Excluded?

JOHN: Denise Roberson is the Suspension & Debarment Official at the Department of Homeland Security, Immigration and Customs Enforcement. She'll take us on an exploration of why a contractor that has engaged in bad acts that demonstrate a lack of integrity, or even constitute a crime, may be allowed to continue to receive Government contracts.

Hi, Denise. Thanks for taking some time to share some insights into your role as a Suspension & Debarment Official.

DENISE: Hi John, it's nice to be here with you today!

JOHN: Now, you have a pretty awkward situation to describe, one that will make most of us cock our heads and say, "What?!?" Why do bad actors sometimes not get suspended or debarred?

DENISE: Well, to answer your question, it's first important to understand the purpose of the U.S. Suspension & Debarment system. An SDO's goal is not to punish wrong-doing contractors; but instead, an SDO's goal is to protect the Government and limit future harm by preventing non-responsible contractors—both businesses and individuals—from doing business with the Government and receiving future Government contracts or any further money.

SDOs achieve this goal by helping contractors become and stay responsible, or, if necessary, excluding non-responsible contractors. SDOs receive allegations of wrong-doing from Offices of Inspector General, the Acquisition Workforce – Contracting Officers, Contracting Officers' Representatives, Program Managers – and the general public, including the media, other contractors, and individual citizens.

SDOs review these allegations of wrong-doing via a two-part analysis. One, is there a cause established under the Federal Acquisition Regulation, and the second part, is the contractor presently responsible today?

JOHN: Can you expand on what a Suspension & Debarment Official looks for when determining whether a contractor is *presently responsible*?

DENISE: The SDOs inquiry focuses on whether the contractor is presently responsible to do business with the Government. Despite the prior misconduct, is the contractor presently responsible today? Can the contractor be trusted to perform in accordance with contract's terms and conditions and applicable laws? And, can the contractor conduct itself ethically? Has sufficient time passed to allow the contractor to institute remedial measures and eliminate or significantly reduce the sources of the misconduct?

JOHN: So then, how can contractors show they're presently responsible?

DENISE: Well, first, the contractor has the burden to demonstrate that they are presently responsible. Have they disclosed the misconduct? Have they accepted responsibility for the misconduct? Have they examined what went wrong and have taken appropriate, mitigating steps and remedial measures to

eliminate the misconduct? Have they had an independent party come in and provide an audit that they are willing to share with the Government? Have they instituted training, contractor FAR training, ethics training? And, also, have they instituted new hiring procedures? The aggravating and mitigating factors will be considered in each case, along with whatever remedial measures are presented to the SDO.

JOHN: Then it sounds like there are lots of ways for a contractor to show that it is presently responsible. But, what if the Suspension & Debarment Official has questions about a contractor's ability to remain presently responsible?

DENISE: Well that's a good question. When a contractor is presently responsible but the Government is unsure whether the contractor will remain presently responsible, sometimes an Administrative Compliance Agreement is an appropriate remedy for the situation. ACAs are appropriate when the contractor has taken some steps towards present responsibility, but may or may not quite be at the level of present responsibility, and its an insurance that the Government can monitor the contractor for a set period of time to ensure that the Government is protected from the risk that contractor poses. Administrative Compliance Agreements require Government oversight, and most likely an Independent Monitor to monitor the contractor's compliance with the agreement, and they would report that back to the Government.

JOHN: Well this has explained a lot, and you've really explained that the Suspension & Debarment Official's goal is to protect the Federal Government and not punish wrong-doing contractors.

Thank you, again, Denise, for shedding some light on this issue.

DENISE: Thank you, John.