

by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

DAVID A. STOCKMAN,
Director.

ATTACHMENT—CIRCULAR A-128

Definition of Major Program as Provided in Pub. L. 96-502

Major Federal Assistance Program, for State and local governments having Federal assistance expenditures between \$100,000 and \$100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of \$308,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed \$100,000,000, the following criteria apply:

| Total expenditures of Federal financial assistance for all programs | | Major Federal assistance program means any program that exceeds |
|---|-------------------|---|
| More than | But less than | |
| \$100 million | \$1 billion | \$3 million. |
| \$1 billion | \$2 billion | \$4 million. |
| \$2 billion | \$3 billion | \$7 million. |
| \$3 billion | \$4 billion | \$10 million. |
| \$4 billion | \$5 billion | \$13 million. |
| \$5 billion | \$6 billion | \$16 million. |
| \$6 billion | \$7 billion | \$19 million. |
| Over \$7 billion | | \$20 million. |

[51 FR 6353, Feb. 21, 1986. Redesignated at 53 FR 8076, Mar. 11, 1988]

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT); AND STATUTORY DISQUALIFICATION UNDER THE CLEAN AIR ACT AND CLEAN WATER ACT

- Sec.
32.25 How is this part organized?
32.50 How is this part written?
32.75 Do terms in this part have special meanings?

Subpart A—General

- 32.100 What does this part do?
- 32.105 Does this part apply to me?
- 32.110 What is the purpose of the non-procurement debarment and suspension system?
- 32.115 How does an exclusion restrict a person's involvement in covered transactions?
- 32.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 32.125 Does an exclusion under the non-procurement system affect a person's eligibility for Federal procurement contracts?
- 32.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 32.135 May the EPA exclude a person who is not currently participating in a non-procurement transaction?
- 32.140 How do I know if a person is excluded?
- 32.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 32.200 What is a covered transaction?
- 32.205 Why is it important to know if a particular transaction is a covered transaction?
- 32.210 Which nonprocurement transactions are covered transactions?
- 32.215 Which nonprocurement transactions are not covered transactions?
- 32.220 Are any procurement contracts included as covered transactions?
- 32.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

- 32.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 32.305 May I enter into a covered transaction with an excluded or disqualified person?
- 32.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 32.315 May I use the services of an excluded person as a principal under a covered transaction?
- 32.320 Must I verify that principals of my covered transactions are eligible to participate?

- 32.325 What happens if I do business with an excluded person in a covered transaction?
- 32.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

- 32.335 What information must I provide before entering into a covered transaction with the EPA?
- 32.340 If I disclose unfavorable information required under §32.335, will I be prevented from participating in the transaction?
- 32.345 What happens if I fail to disclose the information required under §32.335?
- 32.350 What must I do if I learn of the information required under §32.335 after entering into a covered transaction with the EPA?

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

- 32.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 32.360 What happens if I fail to disclose the information required under §32.355?
- 32.365 What must I do if I learn of information required under §32.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of EPA Officials Regarding Transactions

- 32.400 May I enter into a transaction with an excluded or disqualified person?
- 32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 32.410 May I approve a participant's use of the services of an excluded person?
- 32.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 32.425 When do I check to see if a person is excluded or disqualified?
- 32.430 How do I check to see if a person is excluded or disqualified?
- 32.435 What must I require of a primary tier participant?
- 32.440 What method do I use to communicate those requirements to participants?
- 32.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 32.450 What action may I take if a primary tier participant fails to disclose the information required under §32.335?

32.455 What may I do if a lower tier participant fails to disclose the information required under §32.355 to the next higher tier?

Subpart E—Excluded Parties List System

32.500 What is the purpose of the Excluded Parties List System (EPLS)?
 32.505 Who uses the EPLS?
 32.510 Who maintains the EPLS?
 32.515 What specific information is in the EPLS?
 32.520 Who places the information into the EPLS?
 32.525 Whom do I ask if I have questions about a person in the EPLS?
 32.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

32.600 How do suspension and debarment actions start?
 32.605 How does suspension differ from debarment?
 32.610 What procedures does the EPA use in suspension and debarment actions?
 32.615 How does the EPA notify a person of a suspension or debarment action?
 32.620 Do Federal agencies coordinate suspension and debarment actions?
 32.625 What is the scope of a suspension or debarment?
 32.630 May the EPA impute conduct of one person to another?
 32.635 May the EPA settle a debarment or suspension action?
 32.640 May a settlement include a voluntary exclusion?
 32.645 Do other Federal agencies know if the EPA agrees to a voluntary exclusion?

Subpart G—Suspension

32.700 When may the suspending official issue a suspension?
 32.705 What does the suspending official consider in issuing a suspension?
 32.710 When does a suspension take effect?
 32.715 What notice does the suspending official give me if I am suspended?
 32.720 How may I contest a suspension?
 32.725 How much time do I have to contest a suspension?
 32.730 What information must I provide to the suspending official if I contest a suspension?
 32.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
 32.740 Are suspension proceedings formal?
 32.745 How is fact-finding conducted?
 32.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
 32.755 When will I know whether the suspension is continued or terminated?

32.760 How long may my suspension last?
 32.765 How may I appeal my suspension?

Subpart H—Debarment

32.800 What are the causes for debarment?
 32.805 What notice does the debarring official give me if I am proposed for debarment?
 32.810 When does a debarment take effect?
 32.815 How may I contest a proposed debarment?
 32.820 How much time do I have to contest a proposed debarment?
 32.825 What information must I provide to the debarring official if I contest a proposed debarment?
 32.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
 32.835 Are debarment proceedings formal?
 32.840 How is fact-finding conducted?
 32.845 What does the debarring official consider in deciding whether to debar me?
 32.850 What is the standard of proof in a debarment action?
 32.855 Who has the burden of proof in a debarment action?
 32.860 What factors may influence the debarring official's decision?
 32.865 How long may my debarment last?
 32.870 When do I know if the debarring official debars me?
 32.875 May I ask the debarring official to reconsider a decision to debar me?
 32.880 What factors may influence the debarring official during reconsideration?
 32.885 May the debarring official extend a debarment?
 32.890 How may I appeal my debarment?

Subpart I—Definitions

32.900 Adequate evidence.
 32.905 Affiliate.
 32.910 Agency.
 32.915 Agent or representative.
 32.920 Civil judgment.
 32.925 Conviction.
 32.930 Debarment.
 32.935 Debarring official.
 32.940 Disqualified.
 32.945 Excluded or exclusion.
 32.950 Excluded Parties List System.
 32.955 Indictment.
 32.960 Ineligible or ineligibility.
 32.965 Legal proceedings.
 32.970 Nonprocurement transaction.
 32.975 Notice.
 32.980 Participant.
 32.985 Person.
 32.990 Preponderance of the evidence.
 32.995 Principal.
 32.1000 Respondent.
 32.1005 State.
 32.1010 Suspending official.

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- 32.1015 Suspension.
- 32.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

- 32.1100 What does this subpart do?
- 32.1105 Does this subpart apply to me?
- 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?
- 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?
- 32.1120 What is the purpose of CAA or CWA disqualification?
- 32.1125 How do award officials and others know if I am disqualified?
- 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?
- 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?
- 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?
- 32.1200 How will I know if I am disqualified under the CAA or CWA?
- 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?
- 32.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?
- 32.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

- 32.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?
- 32.1225 When will the EPA debarring official make a decision on my reinstatement request?
- 32.1230 How will the debarring official notify me of the reinstatement decision?
- 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?
- 32.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?
- 32.1400 How may I appeal a decision denying my request for reinstatement?
- 32.1500 If I am reinstated, when will my name be removed from the EPLS?
- 32.1600 What definitions apply specifically to actions under this subpart?

APPENDIX TO PART 32—COVERED TRANSACTIONS

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p.189; E.O. 12689, 3 CFR, 1989 Comp., p.235.

SOURCE: 68 FR 66544, 66620,66622, Nov. 26, 2003, unless otherwise noted.

§ 32.25 How is this part organized?

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

| In subpart . . . | You will find provisions related to . . . |
|------------------|---|
| A | general information about this rule. |
| B | the types of EPA transactions that are covered by the Governmentwide nonprocurement suspension and debarment system. |
| C | the responsibilities of persons who participate in covered transactions. |
| D | the responsibilities of EPA officials who are authorized to enter into covered transactions. |
| E | the responsibilities of Federal agencies for the <i>Excluded Parties List System</i> (Disseminated by the General Services Administration). |
| F | the general principles governing suspension, debarment, voluntary exclusion and settlement. |
| G | suspension actions. |
| H | debarment actions. |
| I | definitions of terms used in this part. |
| J | [Reserved] |

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

| If you are . . . | See subpart(s) . . . |
|--|----------------------|
| (1) a participant or principal in a non-procurement transaction. | A, B, C, and I. |
| (2) a respondent in a suspension action | A, B, F, G and I. |
| (3) a respondent in a debarment action | A, B, F, H and I. |

| If you are . . . | See subpart(s) . . . |
|--|-------------------------|
| (4) a suspending official | A, B, D, E, F, G and I. |
| (5) a debarring official | A, B, D, E, F, H and I. |
| (6) a (n) EPA official authorized to enter into a covered transaction. | A, B, D, E and I. |
| (7) Reserved | J. |