

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

#### § 98.910 Agency.

*Agency* means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.

#### § 98.915 Agent or representative.

*Agent or representative* means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.

#### § 98.920 Civil judgment.

*Civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complainant of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

#### § 98.925 Conviction.

*Conviction* means—

(a) 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

(b) Any other resolution that is the functional equivalent of a judgment, 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.

#### § 98.930 Debarment.

*Debarment* means an action taken by a debarment official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

#### § 98.935 Debarment official.

(a) *Debarment official* means an agency official who is authorized to impose debarment. A debarment official is either—

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

#### § 98.940 Disqualified.

*Disqualified* means that a person is prohibited from participating in specified Federal procurement or non-procurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

#### § 98.945 Excluded or exclusion.

*Excluded or exclusion* means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

#### § 98.950 Excluded Parties List System

*Excluded Parties List System (EPLS)* means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The *EPLS* system includes the printed version entitled, “List of Parties Excluded or Disqualified from Federal Procurement and

**§ 98.955**

Nonprocurement Programs,” so long as published.

**§ 98.955 Indictment.**

*Indictment* means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

**§ 98.960 Ineligible or ineligibility.**

*Ineligible or ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

**§ 98.965 Legal proceedings.**

*Legal proceedings* means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

**§ 98.970 Nonprocurement transaction.**

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.
- (9) Insurances.
- (10) Payments for specified uses.
- (11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

**§ 98.975 Notice.**

*Notice* means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 98. 615.)

**§ 98.980 Participant.**

*Participant* means any person who submits a proposal for or who enters into a covered transaction, including

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an agent or representative of a participant.

**§ 98.985 Person.**

*Person* means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

**§ 98.990 Preponderance of the evidence.**

*Preponderance of the evidence* means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

**§ 98.995 Principal.**

*Principal* means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

- (1) Is in a position to handle Federal funds;
- (2) Is in a position to influence or control the use of those funds; or
- (3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

**§ 98.1000 Respondent.**

*Respondent* means a person against whom an agency has initiated a debarment or suspension action.

**§ 98.1005 State.**

(a) *State* means—

- (1) Any of the states of the United States;
- (2) The District of Columbia;
- (3) The Commonwealth of Puerto Rico;
- (4) Any territory or possession of the United States; or
- (5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.