

OMB Guidance, Grants and Agreements

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APPENDIX TO PART 180—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: 70 FR 51865, Aug. 31, 2005, unless otherwise noted.

§ 180.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for nonprocurement programs and activities.

§ 180.10 How is this part organized?

This part is organized in two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I of this part.

(b) Subparts A through I of this part contain uniform governmentwide standards that Federal agencies are to use to specify—

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the governmentwide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

§ 180.15 To whom does the guidance apply?

The guidance provides OMB guidance only to Federal agencies. Publication

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of the guidance in the CFR does not change its nature—it is guidance and not regulation. Federal agencies' implementation of the guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

§ 180.20 What must a Federal agency do to implement these guidelines?

As required by Section 3 of E.O. 12549, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

§ 180.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency implementing regulation:

(a) Must establish policies and procedures for that agency's nonprocurement debarment and suspension programs and activities that are consistent with the guidance. When adopted by a Federal agency, the provisions of the guidance has regulatory effect for that agency's programs and activities.

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must—

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under §180.135 to let an excluded person participate in a covered transaction.

(2) State whether the agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under §180.220(c).

(3) Identify the method(s) an agency official may use, when entering into a covered transaction with a primary tier participant, to communicate to the participant the requirements described in §180.435. Examples of methods are an award term that requires compliance as a condition of the award; an assurance of compliance obtained at time of application; or a certification.

(4) State whether the Federal agency specifies a particular method that par-

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ticipants must use to communicate compliance requirements to lower-tier participants, as described in §180.330(a). If there is a specified method, the regulation needs to require agency officials, when entering into covered transactions with primary tier participants, to communicate that requirement.

(c) May also, at the agency's option:

(1) Identify any specific types of transactions that the Federal agency includes as “nonprocurement transactions” in addition to the examples provided in §180.970.

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under §180.215(g)(2).

(3) Identify specific examples of types of individuals who would be “principals” under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described at §180.995.

(4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.

(5) Identify by title the officials designated by the Federal agency head as debarring officials under §180.930 or suspending officials under §180.1010.

(6) Include a subpart covering disqualifications, as authorized in §180.45.

(7) Include any provisions authorized by OMB.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

§ 180.30 Where does a Federal agency implement these guidelines?

Each Federal agency that participates in the governmentwide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title of the Code of Federal Regulations.

§ 180.35 By when must a Federal agency implement these guidelines?

Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of these guidelines and issue final regulations within eighteen months of these guidelines.