

Federal Government Debarment and Suspensions

34 C.F.R. Part 85

DATE OF ISSUE: July 1, 1999

DATE OF REVIEW: June 30, 2004

REPLACES: Federal Government Debarment and Suspensions,
BEC 34 C.F.R. Part 85, issued September 1, 1997

PURPOSE

This BEC alerts school entities to their responsibilities under the federal regulations regarding government-wide debarment and suspension. The regulations took effect on October 1, 1988 and are set forth at 34 C.F.R. Part 85. The regulations are intended to implement federal government policy to conduct business only with responsible persons.

BACKGROUND

Under the regulations, persons or entities that have committed fraud or other similar offenses may be excluded from contracting with the federal government. Those who desire to contract with the federal government must certify that they are not debarred or suspended (excluded) from entering into such contracts. The regulations apply to all Commonwealth agencies that receive federal funds and to all entities that receive federal funds under subgrants or subgrants from Commonwealth agencies.

The regulations provide generally that persons or entities that are debarred or suspended "shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities." 34 C.F.R. Section 85.100(a). Cases for debarment or suspension include conviction for fraud, antitrust violations, embezzlement, bribery, falsification of records, or other similar offenses; violation of the terms of a public agreement or transaction so serious as to affect the integrity of the program; failure to pay substantial debts owed to any Federal agency; or knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person. See 34 C.R.F. Section 85.305.

PROCEDURES

School entities have the following responsibilities under the regulations:

1. Each application or other proposal to participate in a federally- funded transaction must include the certification form that the U.S. Department of Education has provided. 34 C.R.F. Section 85.510(b) (1). A copy of the form is attached to this BEC.

The form calls for certification that neither the applicant (whether school district, intermediate unit, area vocational- technical school, or other school entity) nor its principals are presently debarred, suspended, or voluntarily excluded from participation in the transaction by any Federal department or agency.

2. In order to submit the certification, the school entity must determine the eligibility of their "principals" to participate in federally-funded transactions. "Principals" are "key" employees, those with "primary management or supervisory responsibilities" or those who have a "critical influence on" or "substantive control" over covered transactions. 34 C.F.R. Section 85.105.

The regulations leave to the school entity's discretion the method and frequency with which the eligibility of your principals is determined. 34 C.R.F. Section 85.510(b) (2). The U.S. General Services Administration maintains and distributes a "List of Parties Excluded from Federal Procurement or Nonprocurement Programs." The regulations do not require checking this list. The list is available from:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
Phone: (202) 783-3238

3. The school entity must provide immediate written notice to PDE if it learns that certification was erroneous when submitted or has become erroneous because of changed circumstances. 34 C.F.R. Section 85.510(c).

4. With any further subgrant or subcontract of the federal funds, the school entity must obtain the same certification form from the subcontractor. A school entity must not knowingly enter into any such transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in federal transactions. 34 C.F.R. Pt. 85, App. B.

To implement this federal requirement, PDE will attach the required certification form to all applications and requests for proposals for federally funded programs. These include program applications, EHA applications, applications for vocational education funds, and others. Ensure that the certification form is signed before returning the application or proposal. If the school entity participates in numerous federal programs, please contact the Division of Student and School Services, to discuss alternative arrangements to signing a new certification with each application.

REFERENCES:

Federal Regulations

34 C.R.F. Section 85.100(a)
34 C.R.F. Section 85.105
34 C.R.F. Section 85.305
34 C.R.F. Section 85.510(b) and (c)
34 C.R.F. Section App. B.

ATTACHMENT:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

CONTACT BUREAU/OFFICE:

Pennsylvania Department of Education
School Services Unit
333 Market Street
Harrisburg, PA 17126-0333
Phone: (717) 783-3750

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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