

Export-Import Bank of the U.S.

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(2) To debar you. In this event, the notice:

- (i) Refers to the Notice of Proposed Debarment;
- (ii) Specifies the reasons for your debarment;
- (iii) States the period of your debarment, including the effective dates; and
- (iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 413.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ 413.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

§ 413.885 May the debarring official extend a debarment?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional pe-

riod is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ 413.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 413.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

- (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.

§ 413.910 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.

§ 413.915 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.

§ 413.920 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 complained of wrongful

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acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-3812).

§ 413.925 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.

§ 413.930 Debarment.

Debarment means an action taken by a debarring 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.

§ 413.935 Debarring official.

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

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ 413.940 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).

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§ 413.945 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.

§ 413.950 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 Nonprocurement Programs," so long as published.

§ 413.955 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.

§ 413.960 Ineligible or ineligibility.

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

§ 413.965 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.

§ 413.970 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.