



U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

2 CFR Chapter XVI

Nonprocurement Suspension and Debarment

AGENCY: U.S. International Development Finance Corporation.

ACTION: Proposed rule.

SUMMARY: The U.S. International Development Finance Corporation (DFC) invites the general public and other Federal agencies to take this opportunity to comment on proposed nonprocurement debarment and suspension regulations. Under this system, a person who is debarred or suspended is excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. The proposed regulations adopt the common rule format established by the Office of Management and Budget (OMB). In this document DFC proposes establishing a new CFR chapter that adopts OMB's final Governmentwide guidance on nonprocurement debarment and suspension and contains supplemental DFC nonprocurement debarment and suspension provisions.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

- Mail: Deborah Papadopoulos, Records and Information Management Specialist, U.S. International Development Finance Corporation, 1100 New York Avenue, NW, Washington, DC 20527.
- E-mail: fedreg@dfc.gov.

Instructions: All submissions received must include the subject “DFC Proposed Rule on Suspension and Debarment.” Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357-3979, *Email: fedreg@dfc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12549 (51 FR 6370, February 18, 1986) established a Governmentwide debarment and suspension system covering the full range of Federal procurement and nonprocurement activities, and to establish procedures for debarment and suspension from participation in Federal nonprocurement programs. Section 6 of the Executive order authorized OMB to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by the Executive order, prescribe Governmentwide criteria and Governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines. Section 3 directed agencies to issue implementing regulations that are consistent with OMB guidelines.

OMB issued an interim final guidance that implemented a common rule for Governmentwide Debarment and Suspension (Nonprocurement). This common rule is codified in part 180 of title 2 of the Code of Federal Regulations (70 FR 51864, August 31, 2005). In addition to restating and updating its guidance on nonprocurement debarment and suspension, the interim final guidance requires all Federal agencies to adopt a new approach to Federal agency implementation of the guidance. OMB requires each agency to issue a brief rule that: (1) Adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions, clarifications, and exceptions to the Governmentwide policies and procedures contained in the guidance.

Under this system, a person who is debarred or suspended is excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency is registered with the General Services Administration (GSA)-maintained System for Award Management (SAM)

exclusion list and has Governmentwide, reciprocal effect on that participant's ability to obtain procurement and nonprocurement contracts.

After notice and comment by the public, DFC intends to adopt the OMB regulations found in 2 CFR part 180 with agency specific additions and clarifications. To adopt these regulations, 2 CFR 180.25 requires Federal agencies to address certain agency specific elements.

Accordingly, the following proposed regulations state what contracts are covered under this policy, identify the official authorized to grant exceptions to an excluded persons list, and state the person responsible for communicating requirements to both first and second tier program participants. By default, elements not addressed in the agency specific regulations will be covered by the Governmentwide sections in the common rule.

Invitation to Comment

We intend the proposed new chapter in 2 CFR to adopt the OMB guidelines with specified agency additions and clarifications as outlined in this notice of proposed rulemaking. We invite comments on the provisions contained in the common rule as well as any aspect of this proposed rulemaking.

Regulatory Analysis

Executive Order 12866

DFC is an independent agency and is not subject to Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal Governments, in aggregate, or by the private sector of \$100 million or more in any one year.

Paperwork Reduction Act of 1995

This proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 2 CFR Part XVI

Administrative practice and procedure, Assistance programs, Debarment and suspension, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority at 2 CFR 180.30, the United States International Development Finance Corporation proposes to add 2 CFR chapter XVI (16), consisting of parts 1600-1699, to read as follows:

Chapter XVI (16)—US International Development Finance Corporation

PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION PARTS 1601-1699 [RESERVED]

PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION Sec.

1600.10 What does this part do?

1600.20 Does this part apply to me?

1600.30 What regulations must I follow?

Subpart A—General

1600.137 Who in DFC may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1600.215 Which nonprocurement transactions are not covered transactions?

1600.220 What contracts and subcontracts are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1600.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1600.437 What method do I use to communicate to a participant the requirements for participating in a covered transaction?

Subparts E and F [Reserved]

Subpart G – Suspension

1600.765 How may I request reconsideration of my DFC suspension?

Subpart H - Debarment

1600.890 How may I request reconsideration of my DFC debarment?

Subpart I—Definitions

1600.930 Debarring official.

1600.1010 Suspending official.

Authority: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

§ 1600.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the U.S. International Development Finance Corporation (DFC) regulations for non-procurement debarment and suspension. It thereby gives regulatory effect for DFC to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR, 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR, 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (31 U.S.C. 6101 note).

§ 1600.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a -

- (a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “non-procurement transaction” at 2 CFR 180.970);
- (b) Respondent in a DFC suspension or debarment action;
- (c) DFC suspending or debaring official; and
- (d) DFC investment, guarantee, insurance or grant official authorized to enter into any type of non-procurement transaction that is a covered transaction.

§ 1600.30 What regulations must I follow?

The DFC regulations that you must follow are the regulations specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 as that section is supplemented by the section in this part with the same section number or by additional provisions with no corresponding section number. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, DFC regulations are those in the OMB guidance.

Subpart A - General

§ 1600.137 Who in DFC may grant an exception to let an excluded person participate in a covered transaction?

The Chief Executive Officer (CEO) of DFC or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the CEO of DFC or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the Governmentwide policy in Executive Order 12549.

Subpart B - Covered Transactions

§ 1600.215 Which nonprocurement transactions are not covered transactions?

In addition to the nonprocurement transactions which are not covered transactions under 2 CFR 180.215, any nonprocurement transaction entered into under a primary tier nonprocurement transaction that does not require DFC explicit prior consent is not a covered transaction under 2 CFR 180.215(g)(2).

§ 1600.220 What contracts and subcontracts are covered transactions?

None. Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (see also optional lower tier coverage in the figure in the appendix to 2 CFR part 180), DFC does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement under a covered nonprocurement transaction. Moreover, for purposes of determining whether a procurement contract is included as a covered transaction, the threshold in 2 CFR 180.220(b) is increased from \$25,000 to the “simplified acquisition threshold” as defined in 48 CFR 2.101.

Subpart C - Responsibilities of Participants Regarding Transactions

§ 1600.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions that are covered transactions, requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D - Responsibilities of Federal Agency Officials Regarding Transactions

§ 1600.437 What method do I use to communicate to a participant the requirements for participating in a covered transaction?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include provisions in the contractual documentation of the transaction to ensure compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part. The provisions must also require the participant to include similar terms or conditions of compliance in lower-tier covered transactions.

Subparts E and F [Reserved]

Subpart G – Suspension

§ 1600.765 How may I request reconsideration of my DFC suspension?

(a) If the DFC suspending official issues a decision under 2 CFR 180.755 to continue your suspension after you present information in opposition to that suspension under 2 CFR 180.720, you can ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) The suspending official must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart H - Debarment

§ 1600.890 How may I request reconsideration of my DFC debarment?

(a) If the DFC debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(d) The debarring official must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart I - Definitions

§ 1600.930 Debarring official.

The debarring official for DFC is the Vice President & Chief Administrative Officer, Office of Administration, or designee as delegated in Agency policy.

§ 1600.1010 Suspending official.

The suspending official for DFC is the Vice President & Chief Administrative Officer, Office of Administration, or designee as delegated in Agency policy.

Subpart J [Reserved]

Dated: December 14, 2023.

Dev Jagadesan,

Deputy General Counsel, Office of the General Counsel,

U.S. International Development Finance Corporation.

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