

## PART 1125—NONPROCUREMENT DEBARMENT AND SUSPENSION

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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; 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 72 FR 34984, June 26, 2007, unless otherwise noted.

#### § 1125.10 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

Department of Defense (DoD) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Defense 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 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

#### § 1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?

This part implements the OMB guidelines in 2 CFR part 180 for most DoD nonprocurement transactions. However, it does not implement the guidelines as they apply to prototype projects under the authority of Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160), as amended. The Director of Defense Procurement and Acquisition Policy maintains a DoD issuance separate from this part that addresses section 845 transactions.

#### § 1125.30 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 “nonprocurement transaction” at 2 CFR 180.970, as supplemented by subpart B of this part), other than a section 845 transaction described in § 1125.20;

(b) Respondent in a DoD Component’s nonprocurement suspension or debarment action;

(c) DoD Component’s debarment or suspension official; or

(d) DoD Component’s grants officer, agreements officer, or other official authorized to enter into a nonprocurement transaction that is a covered transaction.

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**§ 1125.40 What policies and procedures must I follow?**

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in subparts A through I of 2 CFR part 180, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 180, this part supplements eight sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 180.135 .....	§ 1125.137	Who in DoD may grant an exception for an excluded person to participate in a covered transaction.
(2) 2 CFR 180.220 .....	§ 1125.220	Which lower-tier contracts under a nonprocurement transaction are covered transactions.
(3) 2 CFR 180.330 .....	§ 1125.332	What method a participant must use to communicate requirements to a lower-tier participant.
(4) 2 CFR 180.425 .....	§ 1125.425	When a DoD awarding official must check to see if a person is excluded or disqualified.
(5) 2 CFR 180.435 .....	§ 1125.437	What method a DoD official must use to communicate requirements to a participant.
(6) 2 CFR 180.930 .....	§ 1125.930	Which DoD officials are debarment officials.
(7) 2 CFR 180.1010 .....	§ 1125.1010	Which DoD officials are suspending officials.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through I of 2 CFR 180 that is not listed in paragraph (b) of this section, DoD policies and procedures are the same as those in the OMB guidance.

**Subpart A—General**

**§ 1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?**

Within the Department of Defense, the Secretary of Defense, Secretary of a Military Department, Head of a Defense Agency, Head of the Office of Economic Adjustment, and Head of the Special Operations Command have the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

**Subpart B—Covered Transactions**

**§ 1125.220 What contracts and sub-contracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2

CFR part 180), the Department of Defense does not extend coverage of non-procurement suspension and debarment requirements beyond first-tier procurement contracts under a covered non-procurement transaction.

**Subpart C—Responsibilities of Participants Regarding Transactions**

**§ 1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

You as a participant in a covered transaction must include a term or condition in any lower-tier covered transaction into which you enter, to require the participant of that transaction to—

- (a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and
- (b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

**Subpart D—Responsibilities of DoD Officials Regarding Transactions**

**§ 1125.425 When do I check to see if a person is excluded or disqualified?**

In addition to the four instances identified in the OMB guidance at 2

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CFR 180.425, you as a DoD Component official must check to see if a person is excluded or disqualified before you obligate additional funding (*e.g.*, through an incremental funding action) for a pre-existing grant or cooperative agreement with an institution of higher education, as provided in 32 CFR 22.520(e)(5).

**§ 1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

You as a DoD Component official must include a term or condition in each covered transaction into which you enter, to communicate to the participant the requirements to—

(a) Comply with subpart C of 2 CFR part 180, as supplemented by subpart C of this part; and

(b) Include a similar term or condition in any lower-tier covered transactions into which the participant enters.

**Subparts E–H [Reserved]**

**Subpart I—Definitions**

**§ 1125.930 Debarring official (DoD supplement to Governmentwide definition at 2 CFR 180.930).**

DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as debarring officials for procurement contracts.

**§ 1125.937 DoD Component.**

In this part, DoD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, a DoD Field Activity, or any other organizational entity of the Department of Defense that is authorized to award or administer grants, cooperative agreements, or other nonprocurement transactions.

**§ 1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).**

DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as suspending officials for procurement contracts.