

DESCRIPTION OF SRF PROJECT CONSULTANT CONTRACT ASSURANCES
For consultant contracts using funds from American Recovery and Reinvestment Act of 2009

- A. Removed
- B. Removed
- C. Anti-Discrimination - The enclosed “Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination” information sheet (Appendix G-1) and the “State of Kansas Act Against Discrimination Contract Revisions” certification form (Appendix G-2) must be included in the contract documents.
- D. Removed
- E. Removed
- F. Disadvantaged Business Enterprise Participation- The Federal SRF program requires the following documents be included in the contract documents: Participation By Disadvantaged Business Enterprises Information Sheet (Appendix E-1), EPA form 6100-2 (Subcontractor Participation Form), EPA form 6100-3 (DBE Subcontractor Performance Form), and EPA Form 6100-4 (DBE Subcontractor Utilization Form).
- G. Removed
- H. Removed
- I. Removed
- J. Removed
- K.L. Removed
- M. Removed
- N. Payment Provisions - The KDHE SRF program demands prompt progress payments be made by the Recipient to contractors. Adequate provisions for such payments must be included in the contract. Delays in payment to contractors for SRF-funded portions of the project may result in monetary penalty to the Recipient due to the “Rebate” requirements of Federal tax law.
- O. Debarred or Suspended Contractors- Subpart C of 2 CFR part 180 must be included as part of the contract documents.
- P. If Arbitration is included in the contract, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent.
- Q. State and Local Laws, Ordinances, and Restrictions - The contract documents and must be in compliance with all State and Local laws, ordinances, and restrictions.
- R. Removed
- S. Anti-Lobbying Act - The Contract Documents must include the Anti-Lobbying Certification form.
- T. Removed

U. Removed

V. Trafficking Victim Protection Act of 2000 – The Contract Documents must contain the following Clause:

“The Contractor, its employees, subcontractors and subcontractors’ employees may not engage in severe forms of trafficking in persons during the period of time that the contract is in effect; procure a commercial sex act during the period of time that the contract is in effect; or use forced labor in the performance of the contract or subcontract.”

W. Reporting The Use of Funds – The Contractor agrees to comply with all requests for data related to the use of the funds provided by this Contract, including the information required in section 1512 of American Recovery and Reinvestment Act of 2009, and to report to the Owner all uses of the fund no less than weekly, as EPA specifies for the Clean Water Benefits Project Tracking System.

X. Inspector General Reviews – The Contract Documents must include a provision that the Contractor must allow any appropriate representative of the EPA Office of Inspector General to (1) examine any of its records and subcontractors’ records, that pertain to, and involve transactions relating to, the procurement contract or subcontract for this project, (2) interview any officer or employee of the contractor or subcontractor regarding such transactions.

Y. Protection of Whistleblowers – The Contract Documents must include a provision the in accordance with section 1553 of the American Recovery and Reinvestment Act of 2009 (Act), the Contractor agrees that employees and subcontractors receiving funds from this agreement may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee’s duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.

Z. Removed

AA. Invoices – All invoices submitted for reimbursement from the loan fund must provide information on hours worked regardless of whether the contract bases compensation on hourly rates or lump sum. Information must also be submitted that indicates if the hours worked belonged to a job retained, or job created. A job created is a new position created and filled or an existing unfilled position that is filled as a result of the Recovery Act; a job retained is an existing position that would not have been continued to be filled were it not for Recovery Act funding. A job cannot be counted as both created and retained. Also, only compensated employment in the United States or outlying areas should be counted. See 74 FR 14824 for definitions.

The following section titled **KDHE ARRA CONTRACT PROVISIONS FOR CONSULTING CONTRACTS** must be added to the consulting contract prior to any KDHE Disbursements covering costs associated with the contract.

**KDHE ARRA CONTRACT PROVISIONS
FOR CONSULTING CONTRACTS**

CONTRACT PROVISIONS OF KANSAS STATE ANNOTATED
(K.S.A.) 44-1030
KANSAS ACT AGAINST DISCRIMINATION

Except as provided by subsection (c) of this section, every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)

STATE OF KANSAS
ACT AGAINST DISCRIMINATION
CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
 - (b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.
 - (c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY _____

CONTRACTOR'S
SIGNATURE _____

TITLE _____

KWPCRF NO. _____

DATE _____

KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
DIVISION OF ENVIRONMENT
BUREAU OF WATER

KANSAS PUBLIC WATER SUPPLY LOAN FUND
KANSAS WATER POLLUTION CONTROL REVOLVING LOAN FUND

Participation By Disadvantaged Business Enterprises Information Sheet

As a recipient of EPA SRF Capitalization Grants, the Kansas Department of Health and Environment (KDHE) is required by 40 CFR Part 33 to seek and is encouraged to utilize small, minority, and women-owned businesses in procurement under loan agreements associated with those grants . Because this project will receive funding, at least in part, from KDHE through a Kansas Public Water supply Loan Fund (KPWSLF) or a Kansas Water Pollution Control Revolving Loan Fund (KWPCRLF) loan agreement, those requirements are applicable to the loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor.

This information sheet explains requirements of the KPWSLF and KWPCRLF for Disadvantaged Business Enterprises (DBE) utilization. A copy of this Information Sheet must be included within engineering contracts for construction phase services and must be included within the contract documents of construction specifications.

Definitions

Disadvantaged Business Enterprise - entities owned and/or controlled by socially and economically disadvantaged individuals (as described in 42 USC 7601 and 42 USC 4370d - which includes Women's Business Enterprises (WBE) and Minority Business Enterprises (MBE) as defined in this information sheet); a Small Business Enterprise (SBE); a Small Business in Rural Area (SBRA); a Labor Surplus Area Firm (LSAF); or a Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

Socially disadvantaged individual – individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and are further defined as:

Black Americans	Asian Pacific Americans	Indian Tribes
Hispanic Americans	Native Hawaiian Organizations	Women
Native Americans	Historically Black Colleges and Universities	

Economically disadvantaged individual - those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital or credit opportunities, as compared to others in the same business area who are not socially disadvantaged.

Women's Business Enterprise (WBE) – a business concern which is at least 51% owned or controlled by women for purposes of 42 USC 7601 of 42 USC 4370d.

Minority Business Enterprises (MBE) - a Disadvantaged Business Enterprise other than a SBE, SBRA, LSAF, or WBE.

KDHE Implementation Requirements for DBE Procurement Opportunities

KDHE has an objective of using an amount equal to 4.1% of the capitalization grant as awarded by EPA to KDHE, for construction procurement performed by MBE entities and 6.9% of the capitalization grant for WBE entities. This is referred to as a fair share objective. The loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor are required to adopt this same fair share objective. The fair share objective is not a quota and EPA cannot penalize KDHE, the loan recipient, engineering firm, or the prime contractor for not meeting MBE or WBE participation objectives.

The prime contractor and consulting engineer responsible for construction phase services **are** required to make the good faith efforts and apply the administrative requirements listed below. If the good faith efforts are not made when subcontracts are considered for the prime construction contract or for engineering construction phase services, the ability of the KDHE to fund this project, or portion thereof, will be jeopardized. Under no circumstances are race and/or gender conscious actions required by EPA or KDHE.

Good Faith Efforts

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.

This step may include sending letters or making other personal contacts with DBEs. DBEs should be contacted when other potential subcontractors/suppliers are contacted, within reasonable time (i.e. minimum of fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

- i. Specific description of the work to be subcontracted or supplies to be purchased;
 - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
 - iii. Date the quotation is due to the prime contractor;
 - iv. Name, address, and phone number of the person in the prime contractor's firm whom the prospective DBE subcontractor/supplier should contact for additional information.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

Administrative Requirements

The prime contractor/engineering firm responsible for construction phase services:

1. Must pay its subcontractor for satisfactory performance not more than 30 days from the prime contractor's receipt of payment.
2. Must notify KDHE in writing prior to termination of a DBE subcontractor for convenience.
3. Must employ the good faith efforts when soliciting a replacement subcontractor, if the original subcontractor fails to complete work for any reason.
4. Shall provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. Subcontractors can submit this form to KDHE if there are any concerns regarding the project.
5. Must have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form, and submit it with the bid or proposal package.
6. Must complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form with the bid or proposal package (use additional copies of form if needed).
7. Shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CRF part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Finding DBE Firms

The Central Contractor Registration (CCR) maintains a database for the U.S. Federal Government that can be searched for various DBE contractors certified by SBA. The database is located on the web at <https://www.bpn.gov/CCRSearch/Search.aspx> .

The Kansas Department of Transportation Directory of Disadvantaged Business Enterprise (DBE) can be found on the web at <http://www.ksdot.org/divAdmin/DBEConstruction/dbedir.aspx>.

The Minority Business Development Agency of the Department of Commerce maintains a business locator database on the web at <http://www.mbda.gov> .

KDHE and the municipality are required to maintain a list of bidders that have competed for loan fund projects. This list can be used in conjunction with the directories listed above to find DBE firms. This list can be found on the web at <http://www.kdheks.gov/pws/loan/SRFbidlist.xls>.

DBE firms are not limited by the directories listed above. Prime contractors should use any means necessary to locate and contact DBE firms.

In order for a DBE to participate as an MBE or WBE, that entity must be certified by one of the following; the (1) Environmental Protection Agency (EPA), (2) Small Business Administration (SBA), (3) US Department of Transportation, or (4) any other state or local government or private organization certification that has standards that meet or exceed the EPA certification program. MBE's and WBE's must be certified in order for procurement to count towards meeting Fair Share Goals.

Determination of Compliance

Prime contractors must demonstrate compliance with DBE requirements in order to be deemed responsive prior to contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

Engineering firms responsible for construction phase services must demonstrate compliance with DBE requirements prior to the construction contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

The municipality is required to submit a copy of this information to KDHE as well as submit the Applicant Assurance with Respect to Good Faith Efforts for DBE Utilization form prior to the award of the construction contract. The municipality is also required to submit to KDHE by April 15 and October 15 (during project construction), EPA Form 5700-52A - MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements. If MBE/WBE firms are utilized, proof of certification must be submitted with EPA Form 5700-52A

Demonstration of Compliance with DBE Good Faith Efforts Worksheet

Project Name _____

KPWSLF or KWPCRLF Project No. _____

Prime Contract Bidder/Engineering Firm _____

Address _____

Contact Person: _____ Telephone No. _____

The following firms were made aware of subcontracting/supplier opportunities related to the project listed above.

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

Comments _____

Prepared By: _____

Date: _____

(Use additional copies of this sheet if needed)

EPA Project Control Number

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative

(EPA) policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for the EPA 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, Pub. L. 103-355, 108 Stat. 3927).

§ 1532.20 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 "nonprocurement transaction" at 2 CFR 180.970;
- (b) Respondent in an EPA suspension or debarment action;
- (c) EPA debarment or suspension official; or
- (d) EPA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 1532.30 What policies and procedures must I follow?

The EPA policies and procedures that you must follow are the policies and procedures 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. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 1532.220).

For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, EPA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1532.137 Who in the EPA may grant an exception to let an excluded person participate in a covered transaction?

The EPA Debarring Official has 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. If the EPA Debarring Official 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

§ 1532.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the EPA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the EPA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(e) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1532.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the

Environmental Protection Agency

§ 1532.890

OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1532.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower tier covered transactions.

Subparts E–F [Reserved]

Subpart G—Suspension

§ 1532.765 How may I appeal my EPA suspension?

(a) If the EPA 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 for review of the suspending official's decision in two ways:

(1) You may 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; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under 2 CFR 180.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(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) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official's decision.

(d) The EPA suspending official and the OGD Director 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

§ 1532.890 How may I appeal my EPA debarment?

(a) If the EPA 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 for review of the debarring official's decision in two ways:

(1) You may 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; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under 2 CFR 180.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(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) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the debarment pending review of the debarring official's decision.

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

§ 180.220

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(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that a Federal agency needs to respond to a national or agency recognized emergency or disaster.

(e) A permit, license, certificate or similar instrument issued as a means to regulate public health, safety or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if—

(1) The application of an exclusion to the transaction is prohibited by law; or

(2) A Federal agency's regulation exempts it from coverage under this part.

§180.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under §180.210,

and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for Federally required audit services.

(c) A subcontract also is a covered transaction if—

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed \$25,000.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 16, 2006]

§180.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the Federal agency regulations governing the transaction, the appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

§ 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the EPLS; or

(b) Collecting a certification from that person; or

(c) Adding a clause or condition to the covered transaction with that person.

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

§ 180.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Federal agency responsible for the transaction grants an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded.

However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that

person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction.

You may decide the method and frequency by which you do so. You may, but you are not required to, check the EPLS.

§ 180.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

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

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

§ 180.335

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DISCLOSING INFORMATION—PRIMARY
TIER PARTICIPANTS

§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the Federal agency office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

- (a) Are presently excluded or disqualified;
- (b) Have been convicted within the preceding three years of any of the offenses listed in §180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;
- (c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in §180.800(a); or
- (d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under §180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The agency will consider the information when it determines whether to enter into the covered transaction. The agency will also consider any additional information or explanation that you elect to submit with the disclosed information.

§ 180.345 What happens if I fail to disclose information required under § 180.335?

If a Federal agency later determines that you failed to disclose information under §180.335 that you knew at the time you entered into the covered transaction, the agency may—

- (a) Terminate the transaction for material failure to comply with the

terms and conditions of the transaction; or

- (b) Pursue any other available remedies, including suspension and debarment.

§ 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that—

- (a) You failed to disclose information earlier, as required by §180.335; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in §180.335.

DISCLOSING INFORMATION—LOWER TIER
PARTICIPANTS

§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 180.360 What happens if I fail to disclose information required under § 180.355?

If a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

§ 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § 180.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 180.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as a Federal agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 180.135.

§ 180.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as a Federal agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 180.135.

§ 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as a Federal agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the

transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 180.135.

§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as a Federal agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 180.135; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

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

As a Federal agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if your agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your agency's approval of the principal is required.

§ 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as a Federal agency official must check the EPLS when you take any action listed in § 180.425.

(b) You must review information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.