

10 Recommended Steps to Take Following Receipt of a Notice of Proposed Debarment or Suspension

For individuals working as and for government contractors, the prospect of a suspension or debarment proceeding looms large.

For government contractors, a debarment immediately renders them ineligible for government contracting and, in turn, cuts off revenue, leading to potential irreparable harm. For individuals facing debarment, the effect is equally as dire, as most government contractors will immediately terminate an employee who has been proposed for debarment, or at a minimum, place the employee on leave pending a resolution. With such high stakes, those who find themselves in the crosshairs of such proceedings inevitably have questions. What should I do if I am debarred, and how does debarment affect me? How will my reputation be impacted by debarment? What can I do to avoid debarment? Unfortunately, adequate answers can be difficult to find.

But when it comes to the practice of suspension and debarment, Pillsbury's government contracts practice has you covered and can quickly demystify the process leaving you with answers to your questions and supporting you with strategy recommendations. While each case is unique and our guidance and strategy development turns on the particular facts of each client's case, here are 10 recommended steps you should consider taking should you receive a notice of proposed debarment or suspension:

- 1 Immediately retain experienced debarment counsel.** Whomever you choose, make sure they are familiar with suspension and debarment proceedings and ask for client references who can attest to their experience. Retaining counsel who has been there before and knows what to expect is critical. If you retain counsel, then much of what follows on this list should be handled by them. If you do not retain counsel, your likelihood of avoiding debarment is low.
- 2 Make note of the date of the notice of proposed debarment and the due date for a response.** Typically, proposed debarment notices afford you 30 days to respond. Timeliness is imperative—if you are late in doing so, expect to be debarred.
- 3 Make note of the point of contact set forth in the notice and endeavor to correspond via email.** Typically, the notice will indicate that all inquiries and responses should be directed to a particular attorney in the debarring office and most offices provide email contact information. This will be your point of contact as you respond to the notice. Responding via email will avoid delays and save time.
- 4 When writing the debarment office, always be respectful and professional.** Again, we do not recommend that you handle this yourself. Understand that everything you say can (and will) be used against you. The debarment official and his/her counsel are not your friends. They are not there to help you through the process. They likely process hundreds of cases a year and do not have the time or resources to provide you guidance.

- 5 Confirm important details in your first correspondence with the debarment office.** When corresponding with the debarment office, confirm the response due date, which should initially be 30 days from receipt of the notice. Oftentimes, the debarring office will grant an extension of time if needed. You should also request a copy of the “administrative record,” which should reflect all evidence supporting the proposed debarment notice, and read through it carefully. Ensure that you fully understand the evidence against you and the “present responsibility” concerns in play. Your response will need to address the evidence fully and establish your present responsibility.
- 6 Respond fully and address allegations first.** In responding to the notice, you will either be disputing allegations and evidence or admitting to all or some of them, and offering mitigating facts and remedial measures to demonstrate your present responsibility. Regardless of your position, we recommend always addressing your present responsibility after addressing the allegations. Where you dispute evidence, you must offer rebuttal evidence, and, in some cases, consider submitting a declaration signed by you under penalty of perjury if possible. But this, too, comes with risks that must be taken into account. When admitting to alleged conduct, you will need to identify mitigating facts and remedial measures to demonstrate that, notwithstanding past conduct, you are presently responsible today and do not present a threat to the Government’s business interests.
- 7 Protect yourself from unnecessary exposure.** Where appropriate, be sure to mark your submission and any exhibits with an appropriate legend to keep it exempt from FOIA requests.
- 8 Be prepared for the debarring office to supplement the record with rebuttal evidence.** In some cases, the debarring official will share your submission with the source of the referral and seek their input. This is typical in cases referred by investigators. Where this occurs, the investigator may furnish rebuttal evidence, which the debarring office likely will share with you if they intend to continue the case. If you have made misrepresentations in your submission, be prepared for the investigators to point them out.
- 9 If you request an in-person meeting with the debarring office, come prepared.** Upon responding to the notice, you have the right to request an in-person meeting with the debarring official. This is a strategic decision and requires much thought. Additionally, prior to the meeting, you may ask the office who will be present at the meeting, which is useful to know as you prepare. If you request a meeting, prepare for the meeting, come with a written agenda to guide you through the meeting and be prepared to answer any questions you may receive. Prior to meetings, we often recommend spending one to two days preparing our clients for the panoply of questions they may receive. It is your meeting and the debarring official will expect that you come prepared to make a presentation. Again, we do not recommend doing this on your own.
- 10 Expect a decision in 30 days.** Following your submission and/or in-person meeting, the debarring official will add your submissions to the record and endeavor to make a decision within 30 days. Naturally, sometimes a decision is delayed.

Again, we highly recommend that you retain experienced counsel to guide you through the process, which is complex, with many unwritten rules and principles.

Our group—which includes former government insider Todd J. Canni, who served as a debarment official with the Department of Air Force and has chaired the American Bar Association, Suspension and Debarment Committee—can help you develop a comprehensive strategy for responding to a notice of proposed debarment or notice of suspension and then implement it.

If you are interested in talking to our team about your case, contact Todd Canni (todd.canni@pillsburylaw.com or 202.384.6223), or visit our [website](#).

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