

TEXAS HIGHER EDUCATION COORDINATING BOARD

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions

"Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities." 2 C.F.R. § 200.214.

This certification is required by the United States Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, for all lower-tier transactions meeting the threshold and tier requirements. *See* 2 C.F.R. §§ 3485.220, .330.

1. By signing this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, the Federal Government or the Texas Higher Education Coordinating Board (THECB) may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to THECB if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective lower tier participant agrees by signing this contract, should the proposed covered transaction be entered into, that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by THECB.
6. The prospective lower tier participant further agrees by signing this contract that it will include a clause titled: "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," stating the Certification listed below without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion— Lower-Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its Proposal/Application and/or by signature on any resulting Agreement/Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
3. The prospective lower tier participant certifies that it will comply with the requirements of 2 CFR part 180, subpart C, as adopted at 2 CFR 3485.12 (2 CFR 3485.330).

Terms Defined: As used in these Provisions and Assurances

- *Nonprocurement Transaction:* Any transaction, regardless of type (except procurement contracts), including, but not limited to the following: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurances, payments for specified uses, and donation agreements. A non-procurement transaction at any tier does not require the transfer of Federal funds. 2 C.F.R. § 180.970.
- *Participant:* “[A]ny person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.” 2 C.F.R. § 180.980.
- *Principal:*“(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or (b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who – (1) Is in a position to handle Federal funds; (2) Is in a position to influence or control the use of those funds; or (3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.” 2 C.F.R. § 180.995.
- *System for Award Management (SAM Exclusions):* “[T]he list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.” 2 C.F.R. § 180.945.
- *Debarment:* “An action taken by a debarring official under Subpart H of [Part 180] 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.” 2 C.F.R. § 180.925.
- *Suspension:* “An action taken by a suspending official under subpart G of [Part 180] that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.” 2 C.F.R. § 180.1015.

- *Ineligible or Ineligibility:* “[A] person or commodity is prohibited from covered transactions because of an exclusion or disqualification.” 2 C.F.R. § 180.960.
- *Person:* “[A]ny individual, corporation, partnership, association, unit of government, or legal entity, however organized.” 2 C.F.R. § 180.985.
- *Proposal:* A solicited or unsolicited bid, application, request, invitation to consider, or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.
- *Voluntary Exclusion or Voluntarily Excluded:*“(a) Voluntary exclusion means a person’s agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect. (b) Voluntarily Excluded means the status of a person who has agreed to a voluntary exclusion.” 2 C.F.R. § 180.1020.