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INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

2 CFR Chapter XVI

Nonprocurement Suspension and Debarment

AGENCY: U.S. International Development Finance Corporation.

ACTION: Final rule.

SUMMARY: The U.S. International Development Finance Corporation (DFC) is issuing a final rule to implement its nonprocurement debarment and suspension regulations. With this regulatory action, DFC adopts Office of Management and Budget (OMB) regulations with some agency specific additions and clarifications. This final rule states what contracts are covered under this regulation, identifies the official authorized to grant exceptions to an excluded persons list, and states the person responsible for communicating requirements to both first and second tier program participants. Elements not addressed in this regulation are covered by the Governmentwide sections in the common rule.

DATES: This rule is effective May 30, 2024.

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 established 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.

DFC published its proposed rule regarding nonprocurement suspension and debarment on January 5, 2024 (89 FR 714). During the public comment period, we received two comments, which are addressed in §§ 1600.220 and 1600.890 (see the corrections published on January 22, 2024 (89 FR 3896), and March 8, 2024 (89 FR 16701)).

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 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 1600

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 adds 2 CFR chapter XVI, consisting of parts 1600 through 1699, to read as follows:

Chapter XVI—US International Development Finance Corporation

PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION

PARTS 1601–1699 [RESERVED]

PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION

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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 2 CFR part 180, subpart B, 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 debarment 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?

First-tier procurements (*i.e.*, primary contracts) under a covered nonprocurement transaction are covered transactions. 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 the OMB guidance in 2 CFR part 180, subpart C, 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 2 CFR part 180, subpart C, 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–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 debarment 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.

(c) DFC may debar a person or entity for refusing to engage in efforts to remediate identified environmental, social, and human rights harm stemming from their activities, including harm that may be identified through a DFC Office of Accountability complaints process.

(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.

PARTS 1601–1699 [RESERVED]

Dated: April 10, 2024.

Lisa Wischkaemper,

Assistant General Counsel, Office of the General Counsel, U.S. International Development Finance Corporation.

[FR Doc. 2024–08855 Filed 4–30–24; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Parts 1719, 1738, 1739, 1774, 1775, 3570, 4274, 4279, 4280, and 4288

[Docket Number: RHS–22–ADMIN–0025]

Rural Development Regulations With the Unique Entity Identifier (UEI) for Federal Awards

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBCS), Rural Housing Service (RHS), and Rural Utilities Services (RUS), agencies in the United States Department of Agriculture (USDA) Rural Development (RD) Mission area, are issuing a final rule to update RD program regulations by removing references to the Data Universal Numbering System (DUNS) numbers and replacing them with the new Unique Entity Identifier (UEI) as the primary means of identifying entities registered for Federal awards government-wide in the System for Award Management (SAM).

DATES: Effective date: May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Lauren Cusick, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–1414. Email: lauren.cusick@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

RD is a mission area within USDA comprised of RBCS, RHS, and RUS that strives to increase economic opportunity and improve the quality of life for all rural Americans. RD invests in rural America with loan, grant, and loan guarantee programs to help drive economic security and prosperity. These programs help expand access to high-speed internet, electric, telecommunications, and transportation infrastructure as well as support business growth, healthcare, education, housing, and other community essentials.

In 2016, the Federal Government revised both the Federal Acquisition Regulation (FAR) and title 2 of the Code of Federal Regulations (CFR) to remove any proprietary references to the DUNS. On July 10, 2019, the General Services Administration (GSA) published a notice in the **Federal Register** at 84 FR 32916, announcing a public meeting that was held on July 25, 2019. During this meeting, GSA presented information on replacing the DUNS with a governmentwide UEI. A universal identifier is required under titles 2 and 48 of the CFR for all applicants (non-individuals), recipients, and subrecipients of Federal agency awards.

On April 4, 2022, the universal identifier used across the Federal Government transitioned from using the DUNS number to the UEI, which is now

the official identifier for doing business with the Federal Government. UEIs are required in accordance with 2 CFR part 25, and this transition has resulted in the UEI being issued by the Federal Government through SAM which is a government-wide registry for any entity doing business with the Federal Government, from securing Federal contracts to receiving Federal financial assistance. SAM centralizes information in conducting the acquisition and financial assistance which includes grants and cooperative agreements processes and provides a central location for Federal award recipients to change organizational information. The use of an UEI means entities no longer rely on a third party to obtain an identifier which has allowed the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the Federal Government.

The Administrative Procedures Act exempts from prior notice any actions “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(b)(A)); therefore, RD is issuing this action as a final rule.

II. Summary of Changes

This final rule will update the remaining RBCS, RHS, and RUS regulations that are still using a DUNS number reference and replace it with the UEI. This change will make it clear that the UEI will be required, unless exempt, when applying for Federal awards from RD. The following is a summary, by regulation, of the changes made:

1. *7 CFR part 1719*. Section 1719.5(b)(2)(ii) was updated to replace the requirement for a DUNS number with the UEI.

2. *7 CFR part 1738*. Section 1738.202 was updated to remove paragraph (b) that addressed the DUNS number, the remaining paragraphs were redesignated, and the new paragraph (b) was updated to incorporate the UEI with the SAM registration information and the reference to a commercial and Government Entity (CAGE) code in paragraph (c) was removed as that is no longer required.

3. *7 CFR part 1739*. Section 1739.10 was updated to remove paragraph (c) that addressed the DUNS number, paragraph (d) was redesignated as paragraph (c) and the new paragraph (c)(1) was updated to incorporate the UEI with the SAM registration information.

4. *7 CFR part 1774*. Section 1774.2 was updated to remove the definition of