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*Too Little Too Late: An Analysis of the General Service  
Administration's Proposed Debarment of WorldCom*

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Abstract by Raymond R. Janairo

The Federal Acquisition Regulation (FAR) governs how contractors obtain contracts from federal agencies and the procedures agencies should use to terminate agency relationships with irresponsible contractors. In particular, the FAR gives an agency the discretion to debar or suspend a contractor for either violating a contract's terms or for wrongful conduct outside the scope of the contract, indicating the contractor's lack of present responsibility. A debarment or suspension has government-wide effects and also precludes the company from receiving new contracts and from renewing or extending current contracts. Based on the intent of the FAR, agencies are only to use suspension and debarment as preventive measures designed to protect government and citizens, rather than using them as punitive measures against the irresponsible company.

This Comment suggests that the FAR temper agency discretion in granting or denying of debarment by allowing mandatory debarment. Agencies tend to enforce the FAR inconsistently, with evidence showing that it is easily applied to unethical small businesses. In contrast, as in WorldCom, it takes considerable pressure to get an agency to exercise its discretionary power against larger contractors. The author argues that the General Services Administration failed to follow the FAR in its dealings with WorldCom after its misstated earnings debacle. While the Securities and Exchange Commission immediately launched an investigation, the GSA did not. Almost half a year after WorldCom announced its misstatements, the GSA announced its proposed disbarment of the contractor. The Comment speculates on reasons for the GSA's inaction, but concludes that the GSA failed to follow the FAR. Moreover, the GSA continued to issue new contracts to WorldCom during the SEC's investigation and during its suspension. In response, the author proposes an amendment to Sarbanes-Oxley, which would require the use of mandatory debarment similar to a provision in the Clean Water Act. Fraud that leads to violations of Sarbanes-Oxley could similarly trigger mandatory debarment. The new rule could also include a provision allowing the lifting of debarment with evidence of the contractor's implementation of significant remedies.