

POLISH PUBLIC PROCUREMENT LAW ASSOCIATION CONFERENCE
GROUNDS FOR EXCLUSION – APPLICATION PRACTICE IN EU/EFTA COUNTRIES AND
THE UNITED STATES

Suspension and Debarment in the U.S. Government -- Comparative Lessons for the EU's Next Steps in Procurement

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INTRODUCTION

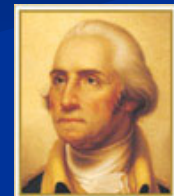


George Washington University Law School

Providing traditional and online procurement law classes to students from around the world



Government Procurement Law
Program, established 1960



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Procurement Law Centers: 2000

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Procurement Law Centers Today

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RESEARCH RESOURCES



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King's College, London – GWU Law School Annual Symposium: Exclusion and Debarment – 18 March 2019

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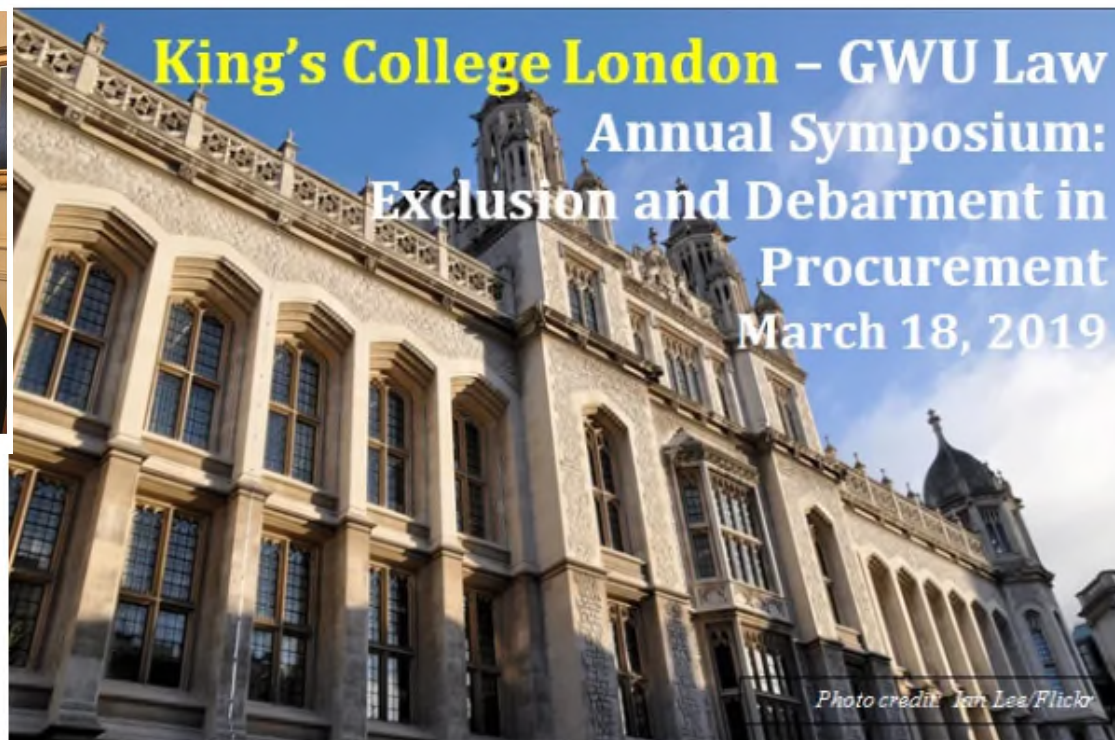
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Collin Swan (World Bank), Michał Kapła (University of Katowice) and Dominique Casimir (Arnold & Porter, Washington DC)

Edit

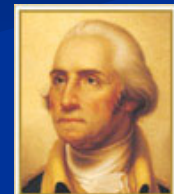


<https://publicprocurementinternational.com/2019/01/14/kings-college-london-gwu-law-school-annual-symposium-exclusion-and-debarment-18-march-2019/>

misconduct in tender processes. But at this point, the purchaser's primary tools to maintain integrity — debarment or exclusion — remain wildly out

Readings

- Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law* (PPLR 2002), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=304620
- Christopher R. Yukins, *A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model* (PCLJ 2010), <https://ssrn.com/abstract=1776295>
- Johannes Schnitzer & Christopher Yukins, *Combating Corruption in Procurement*, in UNOPS: Future-Proofing Procurement 26-29 (2015), https://content.unops.org/publications/ASR/ASR-supplement-2015_EN.pdf?mtime=20171214185135
- Christopher Yukins & Michal Kania, *Suspension and Debarment in the U.S. Government: Comparative Lessons for the EU's Next Steps in Procurement*, 19-2 UrT 47 (2019), <https://ssrn.com/abstract=3422499>





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Suspension and Debarment in the U.S. Government: Comparative Lessons for the EU's Next Steps in Procurement

Christopher Yukins & Michal Kania, Suspension and Debarment in the U.S. Government: Comparative Lessons for the EU's Next Steps in Procurement, 19-2 UrT 47 (2019), [GWU Law School Public Law Research Paper No. 2019-39](#), [GWU Legal Studies Research Paper No. 2019-39](#)

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“Introduction to U.S. Federal Procurement”

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Video

Text



Christopher Yukins

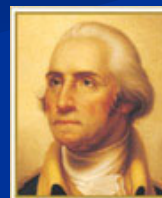
Professor of Government Procurement Law

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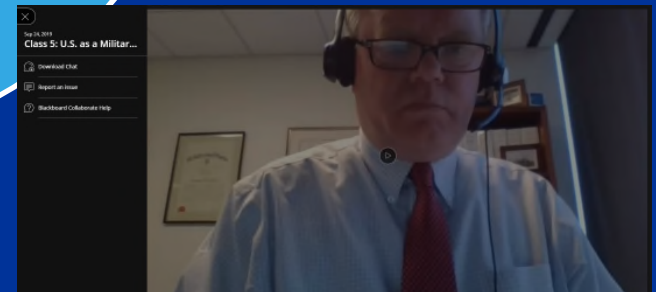
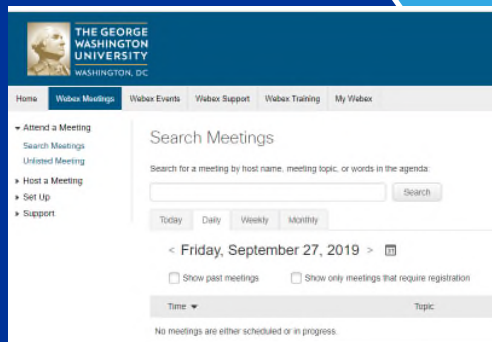
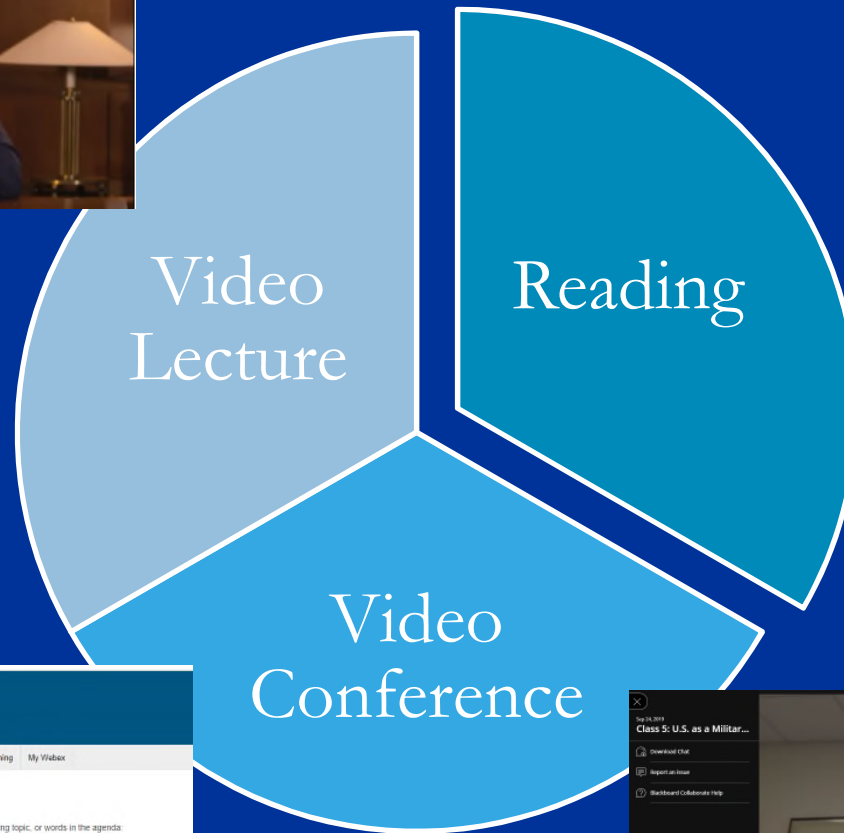


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Basic Elements of Online Teaching



THEORETICAL MODELS



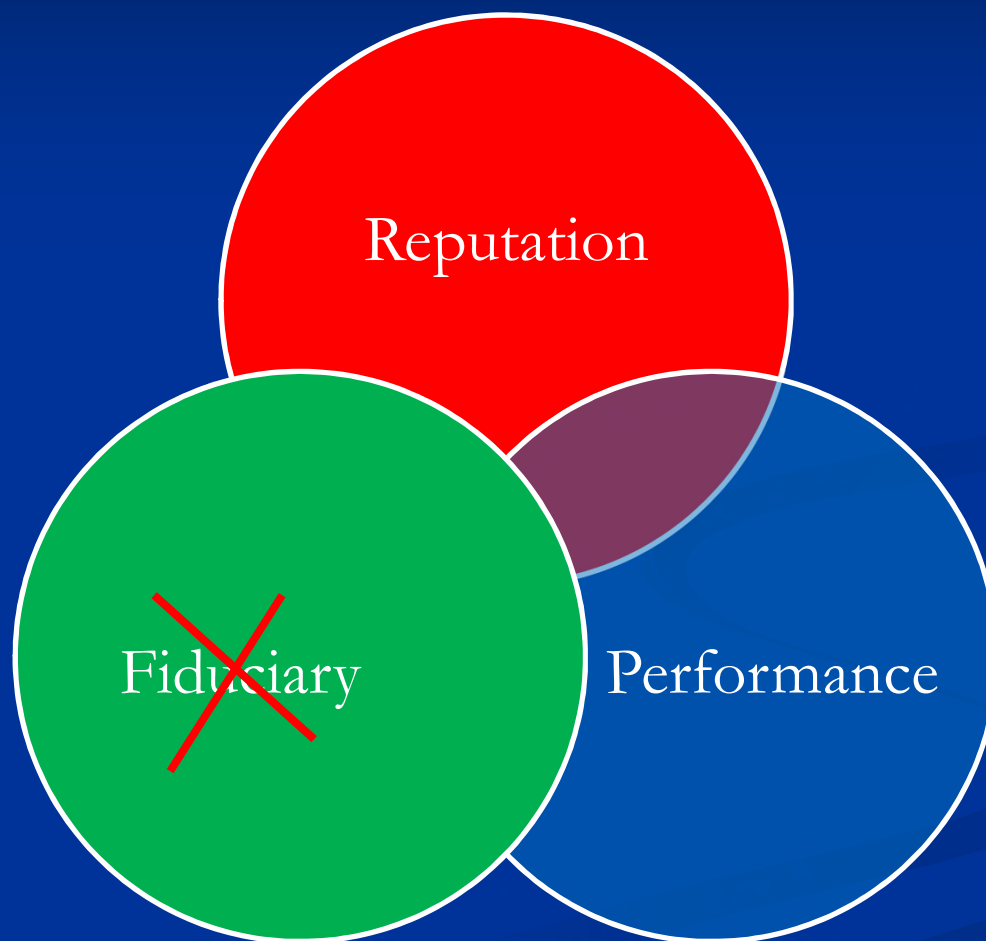
Protecting Procurement



Principal-Agent Model



What Corruption Risks Does Qualification or Exclusion Address?



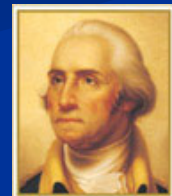
IS QUALIFICATION THE
SAME ALL OVER THE
WORLD?





U.S. vs. UNCITRAL

QUALIFICATION
STANDARDS: UNIFORM



How To Exclude?



Exclusion by Non-Qualification



U.S. Federal Discretionary Debarment



World Bank Sanctions System

Compliance

Integrity Compliance
Officers (within INT)

- Monitors integrity compliance by sanctioned companies (or codes of conduct for individuals)
- Decides whether the compliance condition established by the SDO or Sanctions Board as part of a debarment has been satisfied.

Adjudicative

Sanctions Board

- Comprised of 4 external members and 3 Bank staff
- Reviews case 'de novo'
- May hold a hearing with parties and witnesses
- Imposes sanctions (not bound by SDO's recommendation)
- Decisions are final and not appealable
- **39% of cases resolved at this level**

Suspension and
Debarment Officer
(SDO)

- Evaluates evidence presented by INT
- Issues Notice of Sanctions Proceedings to respondent
- Temporarily suspends respondent
- Recommends a sanction (becomes effective if respondent does not contest)
- **61% of cases resolved at this level**

Integrity Vice
Presidency

- Investigates allegations of fraud, corruption, collusion, coercion and obstruction
- Prepares and submits a Statement of Accusations and Evidence (SAE) to the Office of Suspension and Debarment



Exclusion by Court Order



Four Paradigms for Exclusion

Qualification Only

- On a case-by-case basis
- In U.S. – done by contracting official
- Allowed by new EU Directives

Discretionary Debarment – U.S. Federal

- Based on “present responsibility”: focus on present status
- Debarment is a cross-government “meta-qualification” determination

Adjudicative Debarment for “Bad Acts”

- E.g., World Bank






Court-Ordered Debarment, After Judicial Proceedings

**Performance
Risk**

**Reputation
Risk**

HOW TO RESOLVE EXCLUSION: SELF-CLEANING ("CORPORATE COMPLIANCE")



26					
1. Standards and procedures	<div>EU Directive</div> <div>Art. 57:</div> <div>“Concrete technical, organisational and personnel measures”</div>	✓	✓	✓	
2. Knowledgeable leadership		✓	✓	✓	
3. Exclude risky personnel		✓	✓	✓	
4. Training		✓	✓	✓	
5. Monitor, evaluate, reporting hotline		✓	✓	✓	
6. Incentives and discipline		✓	<div>Victim Compensation?</div>		
7. Adjust program to risk		✓			

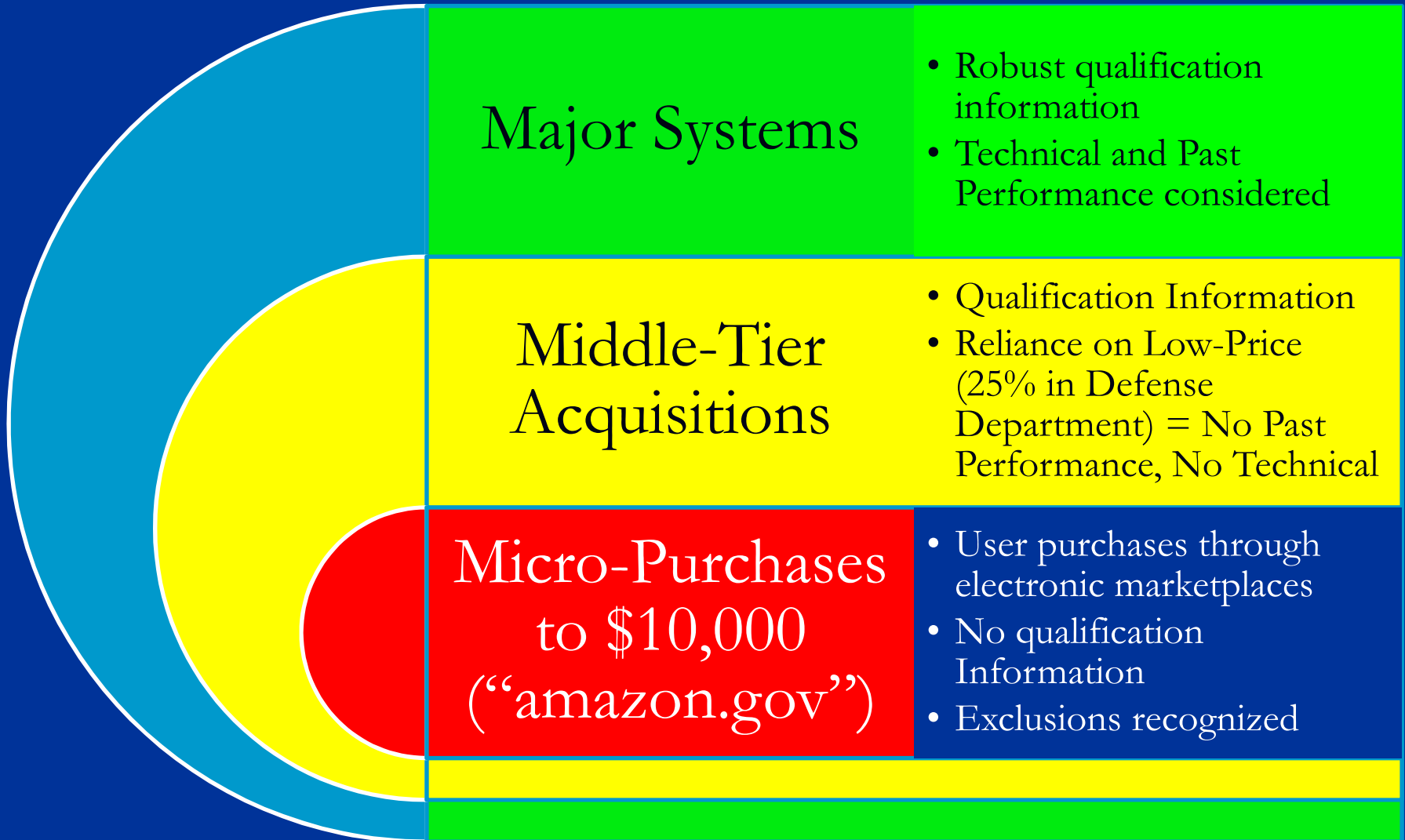
EMERGING ISSUES



Options:

1. Automatic cross-debarment
2. Listed debarments considered
3. Underlying adverse performance information to be available
4. Do nothing

Why Exclusion Grows More Important





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