



AUDIT OF ADMINISTRATIVE SUSPENSION, DEBARMENT, AND OTHER INTERNAL REMEDIES WITHIN THE DEPARTMENT OF JUSTICE

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EXECUTIVE SUMMARY

Suspension and debarment are administrative enforcement tools aimed at protecting the integrity of federal funding.¹ A federal agency may temporarily or permanently exclude individuals and entities from receiving federal funding to protect the public interest by ensuring federal agencies only award contracts to responsible parties.

Suspension and debarment actions preclude individuals or entities from transacting with the government on procurements, grants, and other government funding mechanisms.² While a single agency may impose suspension or debarment, the effect is government-wide.³ Suspension and debarment decisions are made either administratively, by each agency's suspending and debarring official (SDO), or statutorily, as a matter of law following convictions for qualifying offenses. The Attorney General has designated the Senior Procurement Executive as the SDO for the Department of Justice (DOJ).

Suspension and debarment actions are communicated to all government agencies through the Excluded Parties Listing System (EPLS). The General Services Administration (GSA) maintains the EPLS. However, when a federal agency takes an action to exclude a party, the agency is responsible for entering and updating the information about the excluded

¹ Debarment is a final exclusion decision for a specified period of time, generally as a result of a conviction, while suspension is a temporary action immediately effective to protect public interest pending the completion of an investigation or legal proceedings.

² Procurement activities include, but are not limited to contracts, leases, delivery and purchase orders, and blanket purchase agreements. Non-procurement activities include, but are not limited to, grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.

³ Subpart 9.4 of the FAR sets forth guidelines covering suspension and debarment for procurement activities. Executive Order 12549 designated the Office of Management and Budget (OMB) as the federal agency responsible for establishing non-procurement suspension and debarment guidelines for all Executive branch agencies. Executive Order 12689 expanded the scope of procurement and non-procurement suspension and debarment actions by mandating government-wide, reciprocal effect. This means that no agency shall allow a party to participate in any procurement or non-procurement activity if the party has been debarred, suspended, or otherwise excluded from participation in either a procurement or non-procurement activity.

party into the EPLS.⁴ As of May 19, 2011, the EPLS contained 77,864 currently excluded parties, 4,945 of which are DOJ's responsibility. Awarding officials from all federal agencies are required to review the EPLS prior to making awards in order to ensure that no award is made to suspended or debarred parties.

In addition to suspension and debarment actions, DOJ components may take action against a poorly performing contractor or grantee through the use of other internal remedies. These include imposing additional conditions on high-risk grantees or restricting grantees from receiving component awards for a period of time. DOJ may also terminate contracts for convenience, cause, or default to address deficiencies identified in completing contract requirements. Unlike suspension and debarment, these internal remedies are performed at the component level. Internal remedy actions taken against grantees and other non-procurement award recipients do not have a government-wide effect. However, contract terminations and internal remedies related to procurement are reported in the Contractor Performance Assessment Reporting System for use by all federal government contracting officers in selecting contractors to receive awards.

Office of the Inspector General Audit Approach

This audit examines DOJ suspension, debarment, and other internal remedies by evaluating DOJ's implementation and oversight of activities to exclude parties.

We surveyed 41 DOJ components and determined that 10 components should be included in the scope of our audit.⁵ We interviewed officials

⁴ The Justice Management Division's (JMD) Procurement Policy and Review Group is responsible for entering DOJ administrative suspension and debarment actions into the EPLS, and the Denial of Federal Benefits and Defense Procurement Fraud Debarment Clearinghouses within the Bureau of Justice Assistance (BJA) are responsible for entering drug and defense related fraud and felony statutory debarments into the EPLS.

⁵ Through our survey, we identified 11 components that engaged in procurement and non-procurement activities, including awarding grants, contracts, cooperative agreements, loans or loan guarantees in fiscal years (FY) 2005 through 2010: the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Federal Bureau of Prisons (BOP); Community Oriented Policing Services (COPS); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); JMD; Office of the Federal Detention Trustee (OFDT); OIG; Office of Justice Programs (OJP); Office on Violence Against Women (OVW); and United States Marshals Service (USMS). However, we excluded the Office of the Inspector General (OIG) from our audit because the Generally Accepted Government Auditing Standards require auditors to decline to perform work where impairments to independence can affect, or be perceived to affect, the independence of the audit organization. We did

responsible for suspension and debarment activities, examined case files for suspension and debarment actions, and reviewed contract and award documentation to evaluate DOJ's implementation and enforcement of suspension and debarment policies.

We also reviewed DOJ policies and procedures, and interviewed component officials to determine internal remedies, other than suspension and debarment, utilized by DOJ to address poorly performing award recipients, and the extent to which these actions have been coordinated and communicated by the components.

The results of our audit are detailed in the Findings and Recommendations section of this report. Appendix I contains a more detailed description of our audit objectives, scope, and methodology.

Results in Brief

We reviewed all of the approximately 700,000 awards made by all DOJ components from fiscal years (FY) 2005 through 2010 totaling approximately \$65.9 billion. From our review of these awards, we identified 77 contracts and modifications to contracts (0.01 percent) totaling approximately \$15.6 million that were made to six separate suspended or debarred parties by DOJ components.⁶ We found that 14 of these awards, totaling approximately \$140,000, were made because the awarding official failed to review the EPLS to ensure that no award is made to a suspended or debarred party immediately prior to making an award, even though that final review is required by the FAR. Sixty-one of the remaining 63 awards were made to two companies that as a whole had not been debarred. However, federal funding was indirectly provided to debarred facilities operated by the companies. We were unable to identify a cause for two of the awards because the contracts were outside of the record retention period and documentation was not available.

Additionally, we found that from FYs 2005 through 2010, DOJ components made 17 referrals for suspension or debarment involving 35 individuals and firms, resulting in 13 debarment actions against individuals or firms.

not include the remaining 30 components in the scope of our audit because they indicated that they had not awarded any funding during the time period of our audit.

⁶ Our analysis identified 60 contracts and 17 modifications to contracts that had been made to six separate suspended or debarred parties. We did not identify any grants or other non-procurement awards made to suspended or debarred parties.

We also found that DOJ did not have a formal system to track the status of suspension and debarment referrals, and as a result was unable to accurately monitor the timeliness of its suspension and debarment decisions.⁷ In addition, DOJ did not promptly or accurately communicate its debarment decisions to the EPLS. We concluded that the inaccurate and untimely entries by DOJ create the potential for awards to be inadvertently made to suspended or debarred parties by awarding officials throughout the federal government.

Our report includes eight recommendations to improve the effectiveness of DOJ's suspension and debarment program. The remaining sections of this Executive Summary describe our audit findings in more detail.

Background

Suspension and debarment are tools established by executive order to protect the government's financial interests from unethical, dishonest, or otherwise irresponsible entities and to and reduce fraud, waste, and abuse in federal programs.⁸ According to the executive order and implementing regulations, suspension and debarment actions are based on entities' "present responsibility" to handle federal funds, which means that use of these tools is based on an assessment of entities' current and prospective capabilities, not their past misconduct.⁹ Their use is not designed to be punitive. Suspension differs from debarment in the purpose and duration of exclusion. While debarment is a final exclusion decision for a specified period of time, generally as a result of a conviction, suspension is a temporary action immediately effective to protect public interest pending the completion of an investigation or legal proceedings.

Once a suspension or debarment decision has been made, the information is entered into the EPLS, a web-based system maintained by the GSA. The EPLS is the mechanism used to communicate information regarding suspended or debarred entities to all federal agencies. Each

⁷ JMD officials informed us that as a result of our audit work, the SDO has begun to implement a case tracking system.

⁸ Executive Order 12549.

⁹ FAR Subpart 9.407 is the implementing regulation for procurement related suspension, FAR Subpart 9.406 is the implementing regulation for procurement related debarment, and 2 C.F.R. § 180 is the implementing regulation for non-procurement suspension and debarment.

federal agency is responsible for updating its individual suspension and debarment records within the EPLS.¹⁰

DOJ Awards to Suspended or Debarred Parties

Prior to making awards, the FAR requires awarding officials to verify within the EPLS if a potential recipient is eligible to receive federal funds.¹¹ We compared a listing of all awards made by DOJ from FYs 2005 through 2010 to the listing of excluded parties in the EPLS. We identified 75 contracts and modifications to contracts made by the Federal Bureau of Prisons (BOP) totaling approximately \$15.6 million and 2 awards made by the Justice Management Division (JMD) totaling \$30,000 to suspended or debarred parties.¹²

We found that the awards to excluded parties were made because:

1. There was a delay between the time a suspension or debarment action became effective and when that action was reported to the EPLS.
2. BOP and JMD awarding officials failed to perform a final verification of the EPLS immediately prior to awarding a contract, exercising contract options, or otherwise extending work under an existing contract.

¹⁰ DOJ is responsible for entering two types of records within the EPLS. Suspension and debarment actions decided by federal or state courts through a judgment under a statute of law are referred to as statutory debarments, and actions related to awards made by DOJ at the discretion of the SDO are referred to as administrative suspensions and debarments. This audit focused on DOJ's administrative suspensions and debarments and other internal remedies. Statutory debarments decided by state and federal courts where the information on the debarment is maintained in the EPLS by the DOJ is the subject of a subsequent OIG audit.

¹¹ FAR subpart 9.404(c)(7) states that the agency must establish procedures to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors whose names are in the EPLS, except as otherwise provided in this subpart.

¹² We reviewed all of the approximately 700,000 awards made by all DOJ components in FYs 2005 through 2010, totaling approximately \$65.9 billion. Of the 77 contracts and modifications we identified, 61 were awarded by the BOP to two utility companies totaling approximately \$15.4 million. These utility companies were not debarred at the time of the awards. However, both companies operated individual facilities that had been debarred from receiving federal funding. The remaining 16 contracts and modifications, totaling approximately \$200,000, were made to companies that were listed in the EPLS at the time of the awards.

3. Contracts were issued to eligible entities that provided funding to debarred facilities within the eligible entities.

DOJ Suspension and Debarment Decisions

From FYs 2005 through 2010, DOJ components referred 17 cases covering 35 individuals and firms to the SDO for suspension or debarment decisions.¹³ Suspension or debarment referrals may be made in connection with a criminal conviction, civil judgment or settlement, or as a “fact-based” referral based upon circumstances that would qualify an individual or entity for suspension or debarment, but may or may not be pursued criminally or civilly. Sixteen of the 17 referrals reviewed during our audit were made in connection with criminal conviction, civil judgment, or civil settlement. One of the referrals was “fact based.”¹⁴ We found there is no formal system in place to track the receipt of referrals or the status of each referral. However, officials described that as a general process, referrals forwarded to the SDO are assigned to a staff attorney within JMD’s Office of General Counsel (OGC) to conduct fact finding for procurement or non-procurement referrals.¹⁵ These fact finding procedures include reviewing the facts of the referral and affording a party proposed for suspension or debarment the opportunity to submit information and argument in opposition of a proposed debarment. If the suspension or debarment is not based upon a conviction, civil judgment or indictment, and the proposed party’s submission raises a genuine dispute over facts material to the proposed action, the proposed party may request to appear with counsel, submit documentary evidence, present witnesses, and confront any person presented by DOJ. Following completion of fact finding, the staff attorney discusses the case with the SDO who makes the final decision.

We identified one referral for an individual and the associated firm that was sent to the SDO in 2006, but had never been processed. According to JMD officials, this case simply “fell through the cracks.” JMD officials stated that they did not believe there was a sufficient basis to find that the entity

¹³ Of the 17 referrals to the SDO, 13 were from the OIG, 1 from the U.S. Marshals Service, 1 from the BOP, 1 was self-reported by a contractor, and 1 from the United States Attorney’s Office (USAO) in the Western District of Wisconsin.

¹⁴ Instances for which a component suspects potential criminal activity are referred to an investigative agency. In these cases suspension or debarment may not be pursued to avoid compromising an investigation or criminal and civil legal proceedings. In these circumstances, it is important for components to coordinate its determination of whether to make a referral with the involved investigators and prosecutors.

¹⁵ FAR subpart 9.4 contains guidance for procurement referrals. Guidelines for non-procurement referrals are in 2 C.F.R. § 180.

was not presently responsible because of the passage of time since the event that gave rise to the referral, and therefore took no action.¹⁶ We also identified 4 referrals, covering 10 individuals and firms, where JMD officials indicated that the cases were declined for suspension or debarment actions due to a lack of evidence. However, the case files did not contain any documentation of the disposition of these cases. As a result, we were unable to verify if a decision had been made. Justice Acquisition Regulations require contracting staff to document the contract file accordingly if a determination is made that available facts do not justify beginning debarment or suspension proceedings.¹⁷ In our judgment, the SDO should ensure that a written record of each decision by the SDO is maintained within the case file. Of the remaining 23 individuals and firms referred for suspension or debarment, 3 were referred to another federal agency for debarment, 7 were not debarred, and 13 were debarred.

We reviewed DOJ case files and determined that the suspension and debarment decisions were generally made in a timely manner. However, due to the lack of documentation in the case files, we were unable to verify the timeliness of 4 of the 17 referrals. Based on our initial review, we found for the 10 procurement cases referred, it took between 42 and 64 working days for the SDO to reach a decision for 3 cases.¹⁸ However, JMD officials subsequently informed us that the case files did not reflect phone conversations held with the parties proposed for debarment to obtain additional information in order to make the final debarment decision. According to JMD officials, the decision on these cases had occurred within 30 days of the final telephone conversations. Additionally, we found that for the 10 non-procurement cases referred, it took 47 and 125 days for the SDO to reach a decision on two of these cases.¹⁹ However, for the case that took 125 days, JMD officials informed us that they had several conversations with

¹⁶ Federal regulations state that the SDO must determine that an entity is not "presently responsible" in order to pursue a suspension or debarment action against it. Neither the FAR nor 2 C.F.R. § 180 defines the term "present responsibility," and leaves this determination to the discretion of the SDO.

¹⁷ 48 C.F.R. § 2809.402.

¹⁸ FAR subpart 9.406-3(c)(4) states that if no suspension is in effect for a procurement case where a notice of proposed debarment has been issued, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

¹⁹ 2 C.F.R § 180.870(a) requires the debarring official to make a written decision whether to debar within 45 working days of closing the official record in non-procurement cases. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

the awarding component, criminal investigators, and the party proposed for debarment to obtain additional information before the final decision was made. According to JMD officials, the decision on this case occurred within 45 days of the final conversation. Because there was no mechanism to track referrals, the SDO was unable to easily monitor the status and timeliness of suspension and debarment decisions. However, as a result of our audit, JMD officials have begun to implement a case tracking system. Suspension and debarment decisions that are not made in a timely manner increase the potential for irresponsible parties to obtain federal funding while a decision is pending.

JMD's Procurement Policy and Review Group is responsible for entering DOJ exclusions into the EPLS following the SDO's decision. Of the 4 procurement exclusions and 9 non-procurement funding exclusions imposed by the SDO, we found 2 of the 4 procurement debarment actions exceeded the maximum time allowed between the SDO's decision and upload to the EPLS by 3 days.²⁰ Additionally, we found that 4 of the 8 non-procurement actions exceeded the maximum time to upload to the EPLS by 119 to 164 days.²¹ We identified one non-procurement debarment action that was never uploaded into the EPLS, and one non-procurement action that had been entered into the EPLS by JMD within 2 working days of imposing the exclusion. However, due to an apparent error within the EPLS, the record was not saved in the system. JMD is currently working with GSA to determine the cause of this error in order to ensure the omission is communicated to other EPLS users. Suspension and debarment actions that are not communicated in a timely manner increase the potential for awarding officials to inadvertently make awards to suspended or debarred parties.

We also reviewed the accuracy of DOJ entries in the EPLS to ensure that awarding officials searching the EPLS would be able to identify debarred parties and found that only 3 of the 11 records entered into the EPLS were accurate. While we did not identify any such instances in our review of DOJ awards, the potential exists for awards to be inadvertently made to suspended or debarred parties as a result of these data inaccuracies.

²⁰ FAR subpart 9.404(c)(3) requires agencies to report procurement suspension and debarment actions to the EPLS within 3 working days after the action becomes effective.

²¹ 2 C.F.R § 180.520(c)(1) requires federal agencies to report non-procurement suspension and debarment actions to the EPLS within 5 working days after taking a exclusion action.

As a result of our discussions during the audit, JMD officials are in the process of establishing an internal tracking log for suspension and debarment cases and implementing policies and procedures to ensure that records are promptly and accurately reported to the EPLS.

Other Internal Remedies Utilized by DOJ

In addition to suspension and debarment, the Office of Justice Programs (OJP), the Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) utilize internal remedies to address poorly performing grantees such as determining the awardees to be ineligible for additional component funding or imposing special conditions on an award.

Grantees may be internally restricted by DOJ grant-awarding components to remedy grant violations including, but not limited to, unsupported or unallowable costs, non-conformance to the terms and conditions of previous awards, or being otherwise not responsible. Internally restricted grantees are placed on either COPS' restricted grantee list, or OJP's high-risk list and may be subject to additional project monitoring and reporting, required training, or ineligibility for future component awards.²² Sanctions applied by one component are not reciprocal throughout DOJ.²³ For example, denial of additional COPS funding does not preclude other granting components from making additional awards.

We reviewed COPS' and OJP's current policies and found that violations such as serious violations of the terms of a contract or public agreement, or convictions for fraud or embezzlement that qualify grantees to be placed on the high-risk or restricted list would also meet the requirements for consideration of these grantees for suspension or debarment. From FYs 2005 through 2010, COPS had taken action to restrict 65 grantees from receiving additional COPS funding, but did not refer any of the 65 grantees to the SDO for suspension or debarment. OJP also had not referred grantees on the high-risk to the SDO for suspension or debarment because the list is a management tool used to address risk in providing funding to certain grantees. However, OJP and COPS said that they would consider

²² During our audit, we reviewed OJP's Internal High-risk Policy. This internal policy has since been implemented on a DOJ-wide basis to include all three major grant making components of DOJ (COPS, OJP, and the OVW). The new DOJ-wide High-risk Policy is managed by OJP's Office of Audit, Assessment, and Management (OAAM).

²³ According to OJP officials, OJP has added grantees to its high-risk list on behalf of the OVW. Additionally, on June 13, 2011, COPS changed the name of its internal remedy policy from the "bar" policy to the "Restricted Grantees Policy" for all future actions.

recommending a grantee for suspension or debarment on a case-by-case basis. COPS and OJP said that being placed on the high-risk and restricted lists does not preclude other DOJ granting agencies from making awards to entities on the lists.

OJP and COPS officials also informed us that they are currently working with the OVW on an integrated approach to the application of internal remedies within the DOJ grant-awarding components through the Grant Challenges Working Group. This group will combine elements from both OJP's high-risk list and COPS' restricted list into one combined policy to internally address poorly performing grantees. This combined policy is expected to be implemented for grants beginning in FY 2012.

We also asked OJP if there was a maximum time period that a grantee was allowed to remain on the high-risk list without addressing the underlying deficiency. We were informed that although OJP's high-risk program was authorized in September 2007, it was not implemented until January 2009. Therefore, no grantees had been designated as high-risk prior to 2009. Since the list is relatively new, there has not yet been a need to address this situation. However, OJP should consider including such a time limit in future revisions to the policy.

Conclusion

We reviewed approximately 700,000 contracts, grants, and cooperative agreements totaling approximately \$66 billion and identified 77 contracts and modifications totaling approximately \$15.6 million made to suspended or debarred parties between FYs 2005 and 2010. We found that DOJ awarding officials have generally complied with the rules and regulations of the FAR and Code of Federal Regulations (C.F.R.). However, we identified deficiencies in DOJ's suspension and debarment process and noted that BOP and JMD officials are not uniformly checking the EPLS immediately prior to making awards. Additionally, we found that corrective action had not been taken to address the improper awards to suspended or debarred parties when the BOP discovered the improper awards.

For the remaining eight components of the DOJ included in the scope of our audit: the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Community Oriented Policing Services (COPS); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); Office of the Federal Detention Trustee (OFDT); Office of Justice Programs (OJP); Office on Violence Against Women (OVW); and United States Marshals Service (USMS), we did not identify any awards that were made to suspended or debarred parties from FYs 2005 through 2010.

Seventeen referrals, covering 35 individuals and firms, were made for suspension or debarment by DOJ components from FYs 2005 through 2010, resulting in 13 debarment actions against individuals or firms. For the limited number of suspension or debarment decisions that had been made, these decisions were generally made in a timely manner. However, these decisions were not promptly or accurately communicated through the EPLS. Suspension and debarment actions must be communicated to awarding officials throughout the government accurately and in a timely manner in order to effectively protect the federal government's interests. Inaccurate and untimely entries reported to the EPLS by JMD create the potential for awards to be inadvertently made to suspended or debarred parties by awarding officials throughout the federal government.

DOJ statutory debarments are the subject of a separate ongoing OIG audit. That audit examines the DOJ litigating divisions' processes for referring convictions qualifying for statutory debarment pursuant to 10 U.S.C. § 2408 and reporting to the EPLS through the Defense Procurement Fraud Debarment (DPFD) Clearinghouse. The audit will also examine the Denial of Federal Benefits (DFB) Clearinghouse's process for reporting statutory debarments for drug trafficking and possession convictions imposed by state and federal courts to the EPLS.

In addition to suspension and debarment, the grant-awarding components of DOJ utilize internal remedies to address poorly performing award recipients. From FYs 2005 through 2010, DOJ components had taken action to internally address approximately 500 poorly performing award recipients. These remedies include, but are not limited to, additional special award conditions, increased programmatic and financial monitoring, and withholding of award funds. These internal actions are utilized as a management tool to salvage a working relationship with the award recipients and address deficiencies identified in the implementation and oversight of the grants. However, internal actions taken by OJP to address poorly performing award recipients do not provide for a maximum period of time that a poorly performing award recipient may have to address these deficiencies before being referred for suspension or debarment.

Recommendations

In this report we make eight recommendations to improve the utilization and effectiveness of suspension and debarment within DOJ. Key recommendations include:

- All components should ensure awarding officials check the EPLS immediately prior to making awards as required by the FAR, and terminate awards or seek a waiver should a component become aware of an award to a suspended or debarred party after the award has been made;
- The SDO should implement a case tracking system to ensure referrals are followed up on and exclusion decisions are made and reported to the EPLS in a timely manner;
- The SDO should include written documentation of the final disposition of each referral and a brief statement of why suspension or debarment was not pursued in accordance with the Justice Acquisition Regulations in each case file;²⁴
- JMD should implement quality control procedures to ensure that suspension and debarment actions are completely and accurately reported in the EPLS, and immediately correct any errors and omissions in the EPLS data; and
- COPS, OJP, and OVW should consider including a maximum period of time an eligible grantee may remain designated as high-risk before they are referred for suspension or debarment when drafting the policy developed by the grant challenges working group.

²⁴ 48 C.F.R. Chapter 28 Subpart 2809.402.

TABLE OF CONTENTS

INTRODUCTION	1
Suspension.....	2
Debarment.....	2
Excluded Parties List System	3
OIG Audit Approach.....	4
FINDINGS AND RECOMMENDATIONS	5
I. ENFORCEMENT OF SUSPENSION AND DEBARMENT ACTIONS ...	5
DOJ Awards to Suspended or Debarred Parties	5
Conclusion.....	12
Recommendations	13
II. IMPLEMENTATION AND OVERSIGHT OF SUSPENSION AND DEBARMENT ACTIVITIES	14
DOJ Referrals for Suspension and Debarment	14
DOJ Suspension and Debarment Decisions	15
Other Internal Remedies Utilized by DOJ.....	19
Conclusion.....	26
Recommendations	27
STATEMENT ON INTERNAL CONTROLS	28
STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS	30
APPENDIX I – OBJECTIVE, SCOPE, AND METHODOLOGY	32
APPENDIX II – CAUSES FOR DEBARMENT	35
APPENDIX III – FEDERAL BUREAU OF PRISONS RESPONSE TO THE DRAFT REPORT	37
APPENDIX IV – JUSTICE MANAGEMENT DIVISION RESPONSE TO THE DRAFT REPORT	40
APPENDIX V – OFFICE OF COMMUNITY ORIENTED POLICING SERVICES RESPONSE TO THE DRAFT REPORT	43

APPENDIX VI – OFFICE OF JUSTICE PROGRAMS RESPONSE TO THE DRAFT REPORT	45
APPENDIX VII – OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT	48

INTRODUCTION

Suspension and debarment are tools established by executive order to protect the government's financial interests from unethical, dishonest, or otherwise irresponsible entities and to reduce fraud, waste, and abuse in federal programs. Statutory debarment actions may be imposed by state and federal courts as a punitive measure. However, administrative suspension or debarment actions taken by federal agencies are not designed to be punitive. Instead, under the executive order and implementing regulations, use of these tools is based on entities' "present responsibility" to handle federal funds, which means that use of these tools is based on an assessment of entities' current and prospective capabilities, not their past misconduct.¹ Suspension and debarment decisions are made either administratively, by each agency's suspending and debarring official (SDO), or statutorily, as a matter of law as a result of convictions for qualifying offenses. The Attorney General has designated the Senior Procurement Executive as the SDO for the Department of Justice (DOJ).

Suspension and debarment cover both procurement and non-procurement activities, and have a government-wide, reciprocal effect to limit affected parties' ability to obtain any federal funding.² Procurement activities include, but are not limited to contracts, leases, delivery and purchase orders, and blanket purchase agreements. Non-procurement funding activities include, but are not limited to, grants, cooperative agreements, contracts of assistance, loans, and loan guarantees. Both suspension and debarment are tools available to federal agencies to exclude individuals or entities from receiving benefits of federal programs in order to protect the public interest. However, suspension and debarment differ from each other in the duration, process, and effective date of the exclusion. Suspension allows federal agencies to immediately address concerns over unethical or improper actions of an award recipient pending the outcome of

¹ FAR Subpart 9.407 is the implementing regulation for procurement related suspension, FAR Subpart 9.406 is the implementing regulation for procurement related debarment, and 2 C.F.R. § 180 is the implementing regulation for non-procurement suspension and debarment.

² Executive Order 12549 designated the Office of Management and Budget (OMB) as the federal agency responsible for establishing non-procurement suspension and debarment guidelines for all Executive branch agencies. Subpart 9.4 of the Federal Acquisition Regulation (FAR) sets forth guidelines covering suspension and debarment for procurement activities. These guidelines define the causes for suspension and debarment, the procedures to impose a suspension or debarment action, and the scope and duration of suspension and debarment actions. Executive Order 12689 expanded the scope of procurement and non-procurement suspension and debarment actions by mandating government-wide, reciprocal effect.

an investigation or legal proceeding, while debarment allows federal agencies to protect the financial interests of the government against fraud, waste, or abuse in future federal awards.

Suspension

Suspension is a temporary action immediately effective to protect public interest pending the completion of an investigation or legal proceedings. A suspending official may impose suspension as an immediate and temporary status of ineligibility of up to 18 months or at the conclusion of legal or debarment proceedings. In order to impose suspension, a suspending official must determine that: (1) adequate evidence exists to suspect that an individual or entity committed an offense that would qualify them for debarment, and (2) immediate action is necessary to protect the public interest.

Debarment

Debarment is a final decision to exclude an individual or entity from receiving federal funding after a formalized process.³ A federal agency may debar an individual or entity for a lack of “present responsibility” and convictions of offenses such as fraud, embezzlement, theft, forgery, and bribery, among others, or civil judgments indicating a lack of business integrity or honesty.⁴ Federal regulations state that the SDO must determine that an entity is not “presently responsible” in order to take a suspension or debarment action against them.⁵ Neither the executive order,

³ The process for debarment for procurement actions is defined in subpart 9.406 of the FAR, and the process for non-procurement actions is defined in 2 C.F.R. § 180, subparts A through I (this process has been codified by the DOJ at 2 C.F.R. § 2867). Federal agencies are required to establish procedures for reporting, investigation, and referrals to the SDO. The SDO shall review the facts of the referral and afford a proposed party the opportunity to submit information and argument in opposition to a proposed debarment. A notice of proposed debarment shall be issued by the SDO to the proposed party outlining the reasons for debarment. Because suspension actions are immediate, no notification of proposed suspension is required. In actions not based upon a conviction, civil judgment or indictment, and the proposed party’s submission raises a genuine dispute over facts material to the proposed action, the proposed party may request to appear with counsel, submit documentary evidence, present witnesses, and confront any person presented by DOJ. In matters not based upon conviction or civil judgment, the cause for debarment must be established by a preponderance of evidence. Parties shall be given prompt notice by certified mail of the SDO’s decision on whether or not to impose suspension or debarment.

⁴ A complete list of offenses that are eligible for debarment can be found in Appendix II.

⁵ FAR Subpart 9.407 is the implementing regulation for procurement related suspension, FAR Subpart 9.406 is the implementing regulation for procurement related

Federal Acquisition Regulation (FAR), nor Code of Federal Regulations (C.F.R.) defines the term "present responsibility," and leaves this determination to the discretion of the SDO. However, according to interviews conducted during our audit work and information obtained from suspension and debarment training, assessment of an entity's "present responsibility" is generally based on remedial steps the entity has taken to demonstrate its effort and willingness to address the circumstances that had qualified them for suspension or debarment. For example, an entity may attempt to show its "present responsibility" by removing from the entity employees or officials who were responsible for past misconduct, establishing internal controls, and implementing a compliance program.

An agency's debarment official is responsible for determining whether debarment is in the government's best interest. Before a debarment decision can be made, the debarment official will notify the individual or entity of a proposed debarment and consider any response to the proposed debarment in making a decision. Debarment is imposed for a specified period of time following a final determination by a federal agency's debarment official. Guidelines set forth in the FAR state that generally, debarment should not exceed 3 years. However, the debarment official may impose a longer exclusion, including a permanent debarment, if circumstances warrant.⁶

Excluded Parties List System

The Excluded Parties List System (EPLS) is a web-based system maintained by the General Service Administration (GSA) that contains government-wide information concerning suspensions and debarments. The system is available to government agencies and the public. After an agency imposes a suspension or debarment, the agency is responsible for uploading that information to the EPLS.

As of May 19, 2011, the EPLS database contained a total of 124,475 records, representing 77,864 currently excluded parties and 46,611 exclusions that have expired. DOJ is responsible for entering two types of records into EPLS: (1) data on parties that DOJ has administratively suspended or debarred; and (2) data on parties who have

debarment, and 2 C.F.R. § 180 is the implementing regulation for non-procurement suspension and debarment.

⁶ FAR subpart 9.406-4.

been debarred as a result of certain statutory requirements.⁷ As of May 19, 2011, there were 124,475 records entered into EPLS by DOJ, which included 49 administrative debarments and 12,136 statutory debarments. DOJ reports the statutory debarments to the EPLS through the Defense Procurement Fraud Debarment (DPFD) Clearinghouse and the Denial of Federal Benefits (DFB) Program.⁸

OIG Audit Approach

This audit examined DOJ's implementation and enforcement of suspension, debarment, and other internal remedies by evaluating DOJ's implementation and oversight of activities to exclude parties.

We conducted an initial survey of DOJ's 40 components, and determined that 10 components should be included in the scope of our audit.⁹ These components were the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); Federal Bureau of Prisons (BOP); Community Oriented Policing Services (COPS); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); Justice Management Division (JMD); Office of the Federal Detention Trustee (OFDT); Office of Justice Programs (OJP); Office on Violence Against Women (OVW), and the United States Marshals Service (USMS). Appendix I contains a more detailed description of our audit objective, scope, and methodology.

⁷ The DOJ is responsible for entering two types of statutory debarments: (1) debarments imposed by state and federal courts upon conviction for drug trafficking and drug possession offenses, and (2) fraud and felony convictions arising from Department of Defense contracts pursuant to 10 U.S.C. § 2408.

⁸ DOJ statutory debarments are the subject of a separate ongoing OIG audit. That audit examines the DOJ litigating divisions' processes for referral of convictions qualifying for statutory debarment pursuant to 10 U.S.C. § 2408 and the reporting of those qualifying cases to the EPLS by the DPFD Clearinghouse. The audit will also examine the DFB Clearinghouse's reporting of statutory debarment for drug trafficking and possession convictions imposed by state and federal courts.

⁹ There are 41 components of the DOJ. However, we excluded the OIG from our audit because the Generally Accepted Government Auditing Standards require auditors to decline to perform work where impairments to independence can affect, or be perceived to affect, the independence of the audit organization.

FINDINGS AND RECOMMENDATIONS

I. ENFORCEMENT OF SUSPENSION AND DEBARMENT ACTIONS

Federal and DOJ acquisition regulations require awarding agencies to verify the eligibility of a potential award recipient with the EPLS when selecting a contractor and again immediately prior to making awards to determine if potential recipients are eligible for federal funding. We identified 77 contracts and modifications to contracts totaling approximately \$15.6 million that DOJ made to suspended or debarred parties. We found that DOJ made these awards for three reasons: (1) there was a delay between the time suspension or debarment was imposed and when that action was reported to the EPLS, which was not within the 3-day requirement for procurement awards and 5-day requirement for non-procurement awards; (2) DOJ awarding officials failed to check the EPLS just prior to making an award, exercising an option, or otherwise extending work under an existing contract, as required by the Federal Acquisition Regulation (FAR), or (3) DOJ issued contracts to eligible entities that provided funding to debarred facilities within the eligible entities.

DOJ Awards to Suspended or Debarred Parties

From FYs 2005 through 2010, DOJ awarded approximately 700,000 contracts, grants, and cooperative agreements totaling nearly \$66 billion. We obtained a list of all awards made by each component as well as a list of suspended and debarred parties from the EPLS, maintained by the GSA. In a February 2009 audit report on the EPLS, the Government Accountability Office (GAO) found that the EPLS data was insufficiently reliable for determining how many excluded parties received federal awards due to the number of missing entries in certain data fields and the lack of a historical archive populated from record modifications.¹⁰ Despite these data limitations, we utilized the EPLS data to identify awards made by DOJ to suspended or debarred parties because no other resource exists to obtain a list of government-wide suspended or debarred parties. Therefore, due to the unreliability of the EPLS data, our analysis of suspended or debarred

¹⁰ U.S. Government Accountability Office, *Excluded Parties Listing System: Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds*, GAO-09-174 (February 2009), 30-31.

may not identify all instances of awards to suspended or debarred parties by DOJ, and should not be treated as a comprehensive listing of such awards.

We compared the list of DOJ awards to the EPLS list of suspended and debarred parties to identify any awards made to suspended or debarred parties. Records were matched based on each entity’s Data Universal Numbering System (DUNS) number, name, and address to identify suspended or debarred parties. For each match returned by these queries, we reviewed the reasons for the exclusion listed in the EPLS and the contract file from each component in order to verify each potential award made to suspended or debarred parties. As shown in Table 1, our review identified 75 awards totaling over \$15 million dollars made by the BOP to suspended or debarred parties and that 2 awards totaling \$30,000 were made to suspended or debarred parties by JMD.¹¹

**TABLE 1
AWARDS TO SUSPENDED OR DEBARRED PARTIES
IN FYS 2005 THROUGH 2010 BY COMPONENT**

COMPONENT	NUMBER OF AWARDS	DOLLAR AMOUNT
Federal Bureau of Prisons	75 ¹²	\$15,561,794
Justice Management Division	2	30,000
TOTAL	77	\$15,591,794

Source: USASpending, EPLS, BOP, and JMD

From our analysis of the contracts made to suspended or debarred parties, we determined that the 75 improper awards made by the BOP occurred because:

- In three improper awards, the BOP made the awards during the time between the start of a suspension or debarment action and when that action was reported to the EPLS by other federal agencies. Because of

¹¹ Of the 77 contracts and modifications we identified, 61 were awarded by the BOP to two utility companies totaling approximately \$15.4 million. These utility companies were not debarred at the time of the awards. However, both companies operated individual facilities that had been debarred from receiving federal funding. The remaining 16 contracts and modifications, totaling approximately \$200,000, were made to companies that were listed on the EPLS at the time of the awards.

¹² This figure for the BOP represents 58 contracts and 17 modifications to contracts made by the BOP.

this delay, the BOP was not aware of the ineligibility of the award recipient.

- In eight awards, the BOP properly conducted an initial verification of the EPLS at the start of the award process. However, during the time between the initial review of the information in the EPLS and the award by the BOP, the entities had become suspended or debarred, but the BOP did not perform a second, final review of the information in the EPLS immediately prior to award as required by the FAR.
- In 61 awards, the BOP awarded contracts to eligible entities that provided funding to debarred facilities within the eligible entities. These contracts were provided to companies that were eligible to receive federal funding. However, the individual facilities operated by the companies performing the work under the contracts had been debarred.
- In one award, a contracting official had checked the Centralized Contractor Registry (CCR) instead of the EPLS.
- In two awards, BOP officials informed us that because the contracts were outside of the retention requirements, the contract files were no longer available. Therefore, we were unable to determine why these awards had been made to suspended or debarred parties.

We also determined that the two improper awards made by JMD occurred because it appears JMD did not re-check the EPLS prior to exercising options or otherwise extending work under an existing contract.¹³

Awards Made Between the Start of a Suspension and Debarment Action and Reporting to EPLS

We determined that 3 of the 77 BOP contracts awarded were for the purchase of less lethal munitions and had been made as a result of a delay between the effective date of a suspension or debarment action and when that action was reported to the EPLS by other federal agencies. The FAR requires that each agency enter suspension and debarment information into the EPLS within 3 working days after an action becomes effective.¹⁴ During

¹³ JMD officials stated that the designated contracting officer had retired. Therefore, there is no additional information available to determine the exact reason for the improper awards.

¹⁴ FAR subpart 9.404(c)(3).

our review, we found that the BOP made three awards to one suspended party on March 9, 2010. The entity was suspended by another federal agency effective March 9, 2010, but was not entered into the EPLS until March 10, 2010. Although the other federal agency uploaded the action to the EPLS in a timely manner, the BOP unknowingly made awards to a suspended or debarred party during the time between the start of the suspension or debarment action and when the action was reported to the EPLS because this information was not available in the EPLS prior to the BOP making these awards.

Additionally, the BOP awarded three additional contracts to the same company for additional less lethal munitions. The fourth contract to the same entity was made on March 10, 2010, and two more contracts to the same entity on March 11, 2010. Each contract was awarded independently by BOP institutions. Documentation contained in the BOP contract file shows that the EPLS was checked February 23, 2010, during the solicitation process for the award made on March 10, 2010, and one of the awards on March 11, 2010. However, contracting officials appear to have neglected to perform a final check of the EPLS immediately prior to making the awards. For the final award, documentation showed that the EPLS was checked on March 12, 2010. This sixth award was subsequently cancelled on March 15, 2010.

The C.F.R. and the FAR allow an agency to terminate the award for material failure to comply with the terms and conditions of the award, or pursue any other available remedies, including suspension and debarment, if a federal agency later determines that an award recipient knowingly failed to disclose in a transaction that they were presently excluded, convicted or indicted for an offense qualifying for debarment, or had one or more public transactions terminated for cause or default when they entered into the transaction.¹⁵ However, BOP officials took no action to correct five of the six awards that were inappropriately made to the excluded party. Despite the fact that the BOP was unaware of the debarment when they had made the original three awards on March 9, 2010, an e-mail notifying BOP contracting

¹⁵ For procurement actions, the FAR only requires disclosure by the award recipient in solicitations where the contract value is expected to exceed the simplified acquisition threshold. "Simplified acquisition threshold" means \$100,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. § 428a). In those instances, the term means: (1) \$250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and (2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

officers of the debarment action was sent on March 15, 2010. At that point, the BOP could have considered cancelling the remaining awards when they subsequently learned of the exclusion. As a result, the BOP failed to enforce suspension and debarment actions and made awards to suspended or debarred parties.

EPLS Not Checked Prior to Award

We identified one award for the purchase of food for inmates of federal detention facilities made by the BOP where a contracting official had checked the CCR instead of the EPLS.¹⁶ Documentation in the contract file showed that the awarding official checked the CCR on March 17, 2009, and determined from that query that the entity receiving the award was eligible. The award was subsequently made on March 24, 2009. However, the EPLS showed that the award recipient had been debarred on March 9, 2009. We followed up with BOP officials on this award and were informed that contracting officials routinely check the CCR instead of EPLS to determine eligibility of a potential award recipient. According to information posted to the CCR website, the CCR displays a debarred or suspended message if an organization is debarred or suspended from doing business with the federal government, and the EPLS provides debarment and suspension information to CCR. In this instance it appears that a communication error between the CCR and the EPLS occurred. However, because the operation of the CCR is outside of the purview of the OIG and the scope of our audit, we were unable to fully verify the cause of this communication error.

¹⁶ The CCR is the primary registrant database for the federal government. The CCR collects, validates, stores, and disseminates data in support of agency acquisition missions, including federal agency contract and assistance awards. Both current and potential federal government registrants are required to register in the CCR in order to be awarded contracts by the federal government. Registrants are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions.

Final Check of EPLS Prior to Award Not Performed

We identified five contracts for the purchase of food for inmates of federal detention facilities made by the BOP totaling approximately \$70,000 where the company was not listed as debarred during an initial check of the EPLS. However, between the time the company submitted its bid in response to the solicitation and the time the award was made, the company had been debarred. There was no indication in the contract documentation provided by the BOP that a final check of the EPLS was performed immediately prior to award as required by the FAR.¹⁷

Five different BOP facilities independently awarded five contracts to this company. However, the company only informed one of the BOP facilities of its debarment when the orders were placed. As a result of this notification, the BOP procurement official cancelled a contract totaling \$10,569. However, because the contracting officials at the other four facilities were not notified by the company, those four contracts were not cancelled.

Contracts Issued to Eligible Entities Provided Funding to Debarred Facilities

We identified several BOP contracts and modifications to contracts that had indirectly provided funding to debarred facilities within two different companies. BOP awarded the first company 30 contracts and 10 modifications to those contracts totaling approximately \$11.8 million to provide electricity to a BOP facility. The company as a whole had not been debarred. However, one generating facility operated by the company had been debarred for violations of the Clean Air or Clean Water Act by the Environmental Protection Agency (EPA). When electricity is generated by a generation facility the electric output is fed into the electrical grid for delivery to customers. Once electricity enters the grid the electrons produced by one generating facility are indistinguishable from electrons produced at any other facilities. Because of this fact, it is impossible to separate the electricity generated from a specific facility when purchasing electricity. Therefore, BOP funds were indirectly provided to the debarred facility.

The BOP awarded the second company 14 contracts and 7 modifications to those contracts totaling approximately \$3.6 million for water and wastewater treatment to a BOP facility. The company as a whole had not been debarred. However, several wastewater treatment facilities

¹⁷ FAR subpart 9.4.

operated by the company had been debarred for violations of the Clean Air or Clean Water Act by the EPA. The BOP contracts were made with the parent company, and do not specify which wastewater facilities within the company will provide water and wastewater services. The debarment information within the EPLS lists a total of 15 debarred facilities, 7 of which are in the service region of the BOP facility. Therefore, we concluded that there is a high probability of services being provided to the BOP by debarred facilities.

EPLS Not Checked Prior to Exercise of Option or Extension of Additional Work

JMD made two sole source contract awards for servicing previously installed building security equipment, while the entities were eligible to receive federal funding. However, when JMD exercised options attached to the original contracts, it appears that JMD awarding officials did not recheck the EPLS to ensure the contractor was still eligible to receive federal funding as required by the FAR.¹⁸ Provisions of the FAR and C.F.R. require federal agencies to request a written waiver from the agency head, or their designee, justifying continued business dealings with the suspended or debarred party. At the time of our review, no waivers had been requested or approved related to these contracts.

The C.F.R. and the FAR allow an agency to terminate an award for material failure to comply with the terms and conditions of the award, or pursue any other available remedies, including suspension and debarment, if a federal agency later determines that an awardee knowingly failed to disclose in a transaction that they were presently excluded, convicted or indicted for an offense qualifying for debarment, or had one or more public transactions terminated for cause or default when the awardee entered into the transaction.¹⁹

¹⁸ FAR subpart 9.405(d)(4) and subpart 9.405-1(b)(3).

¹⁹ For procurement actions, the FAR only requires disclosure by the contractor in solicitations where the contract value is expected to exceed the simplified acquisition threshold. "Simplified acquisition threshold" means \$100,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. § 428a). In those instances, the term means: (1) \$250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and (2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

Contract Records Outside of Retention Period

We identified two awards that appear to have been made to a suspended or debarred party by the BOP. However, BOP officials informed us that because the contracts were outside of the retention requirements, the contract files were no longer available. Therefore, we were unable to determine the exact cause of the awards. BOP officials were able to provide us with a general description of the two contracts from the Federal Procurement Data System. This information showed that one of the two awards was terminated approximately 1 year after the initial award was made. However, BOP officials took no action to correct the other award that was inappropriately made to the excluded party. As a result, the BOP failed to enforce suspension and debarment actions and made awards to suspended or debarred parties.

Conclusion

We reviewed approximately 700,000 contracts, grants, and cooperative agreements totaling nearly \$66 billion, which represented the total universe of awards by DOJ from FYs 2005 through 2010. Of those awards, we identified 77 contracts and modifications (0.01 percent of the total awards) totaling approximately \$15.6 million (0.02 percent of the total amount awarded) awarded to suspended or debarred parties. Seventy-five of these contracts totaling over \$15.5 million were awarded by the BOP, and 2 contracts totaling \$30,000 were awarded by JMD. For the remaining eight DOJ components included in the scope of our audit: ATF, COPS, the DEA, the FBI, the OFDT, OJP, the OVW, and the USMS, we did not identify any awards that were made to suspended or debarred parties from FYs 2005 through 2010.

Our review found that DOJ awarding officials have generally complied with the rules and regulations of the FAR and C.F.R.²⁰ However, we identified significant deficiencies in checking the EPLS prior to making awards within the BOP. Additionally, we identified instances where no corrective action was taken to address the improper awards when DOJ awarding officials made awards to suspended or debarred parties. The success of suspension and debarment in reducing fraud, waste, and abuse depends on the enforcement of suspension and debarment actions by agency officials when making awards. Failure to ensure that funding is not awarded to suspended or debarred parties increases the potential of financial loss in federal programs, and prevents more responsible parties from obtaining scarce federal funding.

²⁰ FAR subsection 9.4 and 2 C.F.R. § 180.

Recommendations

We recommend that the BOP and JMD:

1. Ensure awarding officials check the EPLS prior to making awards or exercising options as required by the FAR;
2. Seek a waiver for any justified ongoing contract work utilizing suspended or debarred parties;
3. Consider termination of awards should a component become aware of an award to a suspended or debarred party after the award has been made, and document any justifications for not terminating any improper awards.

II. IMPLEMENTATION AND OVERSIGHT OF SUSPENSION AND DEBARMENT ACTIVITIES

From FYs 2005 through 2010, DOJ has referred 17 cases for suspension and debarment, resulting in 13 debarment actions. Suspension and debarment decisions for these 17 cases were generally made in a timely manner. However, these decisions generally were not promptly or accurately communicated to other federal agencies through the EPLS. During this time period, DOJ's grant-awarding components internally restricted approximately 500 award recipients as a result of performance issues, none of which had been referred for suspension or debarment. However, according to component officials, the list of internally restricted entities is meant to be utilized as a management tool in addressing deficiencies identified in award recipients' administration of federal awards, and not to serve as the basis for awarding decisions outside of the grant-awarding components.

DOJ Referrals for Suspension and Debarment

The C.F.R. allows an awarding component to determine if violations by a contractor or grantee would warrant imposing suspension or debarment.²¹ Awarding component officials consult with their appropriate legal counsel prior to making a decision to initiate suspension or debarment proceedings. If the decision is made to initiate suspension or debarment proceedings, the component will immediately prepare a draft notice of proposed suspension or debarment. This notice, along with the administrative file containing all relevant facts and analysis is then forwarded to the SDO, following review by the components legal counsel and the Bureau Procurement Chief. From FYs 2005 through 2010, DOJ components referred 17 cases covering 35 individuals and firms to the SDO for suspension or debarment decisions.²² Suspension or debarment referrals may be made in connection with a criminal conviction or civil judgment or settlement, or as a "fact based" referral based upon circumstances that would qualify an individual or entity for suspension or debarment, but may or may not be pursued criminally or civilly. Sixteen of the 17 referrals reviewed during our audit had been made

²¹ 48 C.F.R. § 28 and 2 C.F.R § 180.

²² Of the 17 referrals to the SDO, 13 were from the OIG, 1 from the U.S. Marshals Service, 1 from the BOP, 1 was self-reported by a contractor, and 1 from the USAO in the Western District of Wisconsin.

in connection with criminal conviction, civil judgment, or civil settlement. One of the referrals was “fact based.”²³

DOJ Suspension and Debarment Decisions

According to JMD officials, after receiving a referral, the SDO assigns a staff attorney to conduct fact finding in accordance with the procedures in the FAR and C.F.R.²⁴ These procedures include reviewing the facts of the referral and affording a proposed party the opportunity to submit information and argument in opposition of a proposed debarment. Following completion of fact-finding, the staff attorney will discuss the case with the SDO for a decision. If the suspension or debarment is not based upon a conviction, civil judgment or indictment, and the proposed party’s submission raises a genuine dispute over facts material to the proposed action, the proposed party may request to appear with counsel, submit documentary evidence, present witnesses, and confront any person presented by DOJ.

Timeliness of SDO Decisions

Between FYs 2005 and 2010, the DOJ components referred 35 individuals and firms to the SDO for consideration for suspension or debarment. Of those 35 referrals, the SDO debarred 13, the SDO referred 3 to another agency because that agency had more funding at risk, the SDO decided not to debar 17, and the SDO received 2 referrals but did not review them.²⁵

According to the FAR, a debarment decision in procurement cases shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause. Non-procurement funding debarment decisions must be made within 45 days of the SDO’s receipt of final submissions from

²³ Instances for which a component suspects potential criminal activity are referred to an investigative agency. In these cases suspension or debarment may not be pursued to avoid compromising an investigation or criminal and civil legal proceedings. In these circumstances, it is important for components to coordinate its determination of whether to make a referral with the involved investigators and prosecutors.

²⁴ FAR subsection 9.4 and 2 C.F.R. § 180.

²⁵ The Attorney General has designated the Senior Procurement Executive as the SDO for DOJ. Final authority to suspend or debar parties within DOJ lies with the Senior Procurement Executive. We did not evaluate, nor do we provide an opinion on, the validity or accuracy of each suspension and debarment decision.

the party proposed for debarment.²⁶ We reviewed supporting documentation and determined the number of working days from receipt of the final response from the party proposed for debarment until the debarment decision by the SDO. Based on our initial review, we found that for 3 of the 10 procurement cases referred, it took between 42 and 64 working days for the SDO to reach a decision. However, JMD officials subsequently informed us that the case files did not reflect phone conversations held with the parties proposed for debarment to obtain additional information in order to make the final debarment decision. According to JMD officials, the decision on these cases had occurred within 30 days of the final telephone conversations. In accordance with the FAR, a party proposed for debarment is included on the EPLS upon issuance of the notice of proposed debarment.²⁷ This practice reduces the potential for untimely debarment decisions by the SDO to allow irresponsible parties to obtain federal funding while a decision is pending.

Based on our initial review, 2 of the 10 non-procurement decisions took longer than 45 days. These decisions were made within 47 and 125 days. However, for the case that took 125 days, JMD officials informed us that they had several conversations with the awarding component, criminal investigators, and the party proposed for debarment to obtain additional information before the decision was made. According to JMD officials, the decision on this case occurred within 45 days of the final conversation. Unlike procurement debarment actions, non-procurement debarments are not entered into the EPLS until a final decision is made by the SDO.²⁸ As a result, non-procurement suspension and debarment decisions that are not made in a timely manner increase the potential for irresponsible parties to obtain federal funding while a decision is pending.²⁹ Of the remaining individuals or firms referred for suspension or debarment, 10 did not contain documentation on the final disposition, and 3 were referred to another agency.

During our review, we found that there is no formal system in place to track the receipt of referrals or the status of each referral. Lack of a

²⁶ Submissions by parties proposed for debarment include any information to dispute the facts material to the proposed debarment.

²⁷ FAR subpart 9.405(a).

²⁸ 2 C.F.R. § 180.810

²⁹ JMD has implemented a procedure to issue a notice of suspension in conjunction with the notice of proposed debarment to prevent untimely decisions from increasing the potential of irresponsible parties obtaining additional federal funding for non-procurement referrals based upon a conviction.

tracking system makes it difficult for the SDO to monitor the timeliness of each suspension and debarment decision. Additionally, we identified one referral, for an individual and an associated firm, which had been sent to the SDO, but had never been processed. We asked JMD officials why the case had never been followed up on, and were informed that the case simply “fell through the cracks.” JMD officials stated that they did not believe there was a sufficient basis to find that the entity was not “presently responsible” because of the passage of time since the event that gave rise to the referral, and therefore took no action.³⁰

As previously mentioned, we identified four referrals, covering six individuals and four firms, where we were informed by JMD officials that the cases had been declined for suspension or debarment due to a lack of evidence. However, the case files did not contain any disposition documentation to support this decision. As a result, we were unable to verify whether a decision was reached or if the cases had been resolved. Justice Acquisition Regulations require contracting staff to document the contract file accordingly if a determination is made that available facts do not justify beginning debarment or suspension proceedings.³¹ In our judgment, this requirement should apply to the SDO as well, to ensure that a written record of each decision by the SDO is maintained within the case file.

Entry of Suspension and Debarment Decisions into the EPLS

As stated previously, the EPLS serves as the central repository for suspension and debarment information, and is the only mechanism available to communicate suspension and debarment decisions to the entire government. Records uploaded to the EPLS must be accurate to ensure awarding officials identify debarred parties when making awards. Within DOJ, the responsibility for timely and accurate reporting rests with JMD’s Procurement Policy and Review Group. As discussed in the following sections, we reviewed DOJ suspension or debarment actions entered into the EPLS to determine the timeliness and accuracy of reported information.

³⁰ Federal regulations state that the SDO must determine that an entity is not “presently responsible” in order to pursue a suspension or debarment action against it. Neither the FAR nor 2 C.F.R. § 180 defines the term “present responsibility,” and leaves this determination to the discretion of the SDO.

³¹ 48 C.F.R. § 2809.402.

Timeliness of Entry

The FAR states that an agency must enter information on procurement actions into the EPLS within 3 working days after a suspension or debarment is imposed. Two of the four procurement debarment actions taken by the DOJ were reported to EPLS within 6 days rather than within the 3 days required. Suspension and debarment actions that are not communicated in a timely manner increase the potential for awarding officials to inadvertently make awards to suspended or debarred parties.

The nine remaining debarment actions were non-procurement funding suspensions or debarments imposed by DOJ. The C.F.R. regulations state that information about an excluded party in a non-procurement funding activity must be entered into the EPLS within 5 working days of imposing an exclusion.³² During our review, we found that three of the nine exclusions were reported within 5 days as required. However, DOJ's reporting for the remaining four exclusions materially exceeded the 5 day requirement because they were entered into the EPLS after more than 124 days. One non-procurement funding exclusion had never been uploaded into the EPLS, and the final non-procurement action had been entered into the EPLS within 2 working days of imposing the exclusion. However, due to an apparent error within the EPLS, the record was not saved in the system. JMD is currently working with GSA to determine the cause of this error in order to ensure the omission is communicated to other EPLS users.

Accuracy of Entry

We also verified the accuracy of the entries uploaded to the EPLS by JMD's Procurement Policy and Review Group by comparing information contained in the case files to the electronic records in the EPLS. During our review, we found that only 3 of the 11 records entered into the EPLS had been accurately reported. Six records contained inaccurate start or end dates of debarment, one contained errors in the address fields, and one inaccurately reported the individual's name. Additionally, for 8 of the 11 entries, the information entered into EPLS related to the addresses, social security numbers, and DUNS numbers was not documented in the case file. JMD officials said they obtained the information instead from the prosecuting attorney, investigators, or an on-line legal research tool.

Suspension and debarment actions must be communicated to awarding officials throughout the government accurately and in a timely

³² 2 C.F.R. § 180.

manner in order to effectively protect the federal government's interests. Inaccurate and untimely entries reported to the EPLS by JMD create the potential for awards to be inadvertently made to suspended or debarred parties by awarding officials throughout the federal government. An official tracking system for suspension and debarment decisions would allow JMD officials to monitor the status of each decision, including the timeliness of upload to the EPLS.

We also asked JMD officials about the timeliness of reporting and the errors and omissions in the EPLS data. We were told that the entire office, consisting of four people responsible for data entry, had retired within a week of each other in late FY 2009, leaving a gap in the oversight of data entered into the EPLS. As a result of our discussions during the audit, JMD officials are in the process of establishing an internal tracking log for suspension and debarment cases and implementing policies and procedures to ensure that records are promptly and accurately reported to the EPLS. These policies include requiring training for staff uploading suspension and debarment actions to the EPLS, entering and verifying suspension or debarment actions in the EPLS, recording actions in the Procurement Policy and Review Group suspension and debarment log, providing the OGC a print out from EPLS of the suspension or debarment action for inclusion in the case file, and notifying DOJ Bureau Procurement Chiefs via email of suspension and debarment actions.

Other Internal Remedies Utilized by DOJ

In addition to suspension and debarment, DOJ components may utilize internal remedies to address poorly performing contractors or grantees. Each component may independently impose these internal remedies, which do not have a government-wide effect. However, procurement-related internal remedies are communicated to other federal agencies' contracting officers to facilitate their procurement award process. Non-procurement internal remedies are only shared between DOJ's three grant-awarding components – COPS, OJP, and OVW. During our audit we identified approximately 200 contracts totaling approximately \$23 million that had been terminated by DOJ components as a result of performance issues from FYs 2005 through 2010. During that period, DOJ components referred 8 procurement cases involving 16 individuals and firms to the SDO for suspension and debarment.

Procurement Related Internal Remedies

DOJ components may terminate contracts for convenience, cause, or default to address deficiencies identified in completing contract requirements. The rules and regulations for terminating contracts are defined in the FAR.³³ Termination for convenience allows the government to terminate the work under a contract in whole or in part whenever it determines that such action is in the best interest of the government. Termination for cause remedies may be used in the event the contractor defaults on the contract, fails to comply with contract terms or conditions, or fails to provide the government, upon request, with adequate assurances of future performance.³⁴ Termination for default is generally the exercise of the government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.³⁵ Unlike suspension and debarment, these internal remedies are imposed at the component level.

Contract terminations are reported through the Contractor Performance Assessment Reporting System for use by all contracting officers of the federal government in selecting contractors to receive awards. The Contractor Performance Assessment Reporting System is a web-based system maintained by the Department of Defense used to collect data on contractor performance. It can be used to effectively communicate contractor strengths and weaknesses to source selection officials.

In addition, DOJ components may also utilize internal remedies to address deficiencies identified in the performance of grantees. Three DOJ components - the OJP, COPS, and OVW - utilize internal remedies to address poorly performing grantees, such as determining the awardees to be ineligible for additional component funding or imposing special conditions on an award.

³³ FAR subpart 12.403 and FAR subpart 49.4.

³⁴ FAR subpart 12.403.

³⁵ FAR subpart 49.4.

OJP's High-Risk List

OJP utilizes a "high-risk" list to internally address poorly performing grantees.³⁶ A grantee or subgrantee may be considered high-risk if an awarding agency determines that a grantee or subgrantee:

- has a history of unsatisfactory performance,
- is not financially stable,
- has a management system which does not meet OJP's management standards,
- has not conformed to terms and conditions of previous awards, or
- is otherwise not responsible.

OJP automatically designates a grantee as high-risk if the grantee:

- has audit recommendations under OMB Circular A-133 (Single Audit) or OIG grant audit recommendations that remain open for more than 1 year, and has not submitted documentation that adequately addresses the recommendations;
- has open audit report recommendations with questioned costs that exceed \$500,000 - regardless of the amount of time that the report has been open - and OJP's Office of Audit, Assessment, and Management (OAAM) has reviewed the questioned costs and agrees with the OIG that the questioned costs were unallowable, unsupported, or unauthorized;
- does not provide a Corrective Action Plan within 105 days of OJP's transmission of the audit report to the grantee;
- is on the list of grantees prohibited from receiving funding from COPS; or,
- has been recommended for suspension or debarment by DOJ.

³⁶ According to OJP officials, OJP has added grantees to its high-risk list on behalf of the OVW and COPS. Additionally, we reviewed OJP's Internal High-risk Policy. This internal policy has since been implemented on a DOJ-wide basis to include all three grant making components of DOJ (COPS, OJP, and the OVW). The new DOJ-wide High-risk Policy is managed by OJP's OAAM.

In addition to these automatic triggers, any OJP component may refer a grantee for high-risk designation if the component becomes aware of serious programmatic or financial non-compliance issues. Sources of information on these issues include, but are not limited to, OJP programmatic and financial monitoring, OIG audits and investigations, Single Audits, referrals from other DOJ components or federal agencies, and the media.

To address non-compliance issues related to grantees or subgrantees designated as high-risk for current or future awards, OJP will consider imposing sanctions such as additional special award conditions, increased programmatic and financial monitoring (on short notice), withholding of grant funds as part of the "draw down" process, mandatory financial and grants management training, mandatory third party management of grant funds, and referral for official suspension and debarment.³⁷ From FYs 2005 through 2010, OJP did not make any referrals to the SDO for suspension or debarment. In addition, being placed on the high-risk list does not preclude a grantee from obtaining additional funding from OJP or other DOJ components.

The list of grantees designated as high risk is updated on a monthly basis and posted on OJP's internal web page. The list of high-risk grantees is also provided to OVW and COPS. OVW and COPS use the list to identify new grant awards that are being made to grantees on the high-risk list and subsequently attach the appropriate high-risk special conditions to these awards. The monthly update also includes a list of grantees that have adequately addressed their outstanding non-compliance issues, and as such, have been removed from the high-risk designation list.

We compared suspension and debarment criteria to OJP's high-risk designation criteria and found that violations that would qualify grantees for high-risk designation could also meet the requirements for consideration of these grantees for suspension or debarment. For example, suspension actions may be taken if adequate evidence exists to suspect that an entity may qualify for debarment, and immediate action is necessary to protect the public interest. A federal agency may debar an individual or entity for a violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:³⁸

³⁷ The term "draw down" refers to the process in which a grantee requests and receives reimbursement for qualifying expenditures using grant funds.

³⁸ A public agreement includes, but is not limited to, contracts, grants, cooperative agreements, loans, and loan guarantees made by the federal government.

- a willful failure to perform in accordance with the terms of one or more public agreements or transactions,
- a history of failure to perform or unsatisfactory performance of one or more public agreements or transactions, or
- a willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

We asked OJP officials why grantees on the high-risk list had not been referred to the SDO for suspension or debarment, and were informed that OJP's high-risk list is a management tool used to address risk in providing funding to certain grantees.³⁹ OJP will consider recommending a grantee for suspension or debarment on a case-by-case basis. Grantees that OJP determines do not necessitate suspension or debarment are placed on the high-risk list. We also asked if there was a maximum time period that a grantee was allowed to remain on the high-risk list without addressing the deficiency that had originally designated them as high-risk. We were informed that although OJP's high-risk program was authorized in September 2007, the position responsible for the implementation of the high-risk program was vacant until January 2009. Therefore, no grantees had been designated as high-risk prior to 2009. Since the list is relatively new, there has not yet been a need to address this situation. However, OJP may consider including such a time limit in future revisions to the policy.

COPS' Restricted Grantee List

COPS utilizes a restricted grantee list to internally restrict funding to poorly performing grantees.⁴⁰ According to COPS' Restricted Grantee Policy, a grantee may be restricted from receiving future COPS grant awards for a specific period of time to remedy grant violations including, but not limited

³⁹ OJP officials told us that two OJP high-risk grantees had been the subject of criminal conviction or civil settlement. However, as the investigating component, the OIG had referred the convicted individuals associated with these grantees to the SDO for debarment.

⁴⁰ On June 13, 2011, COPS changed the name of its internal remedy policy from the "bar" policy to the "Restricted Grantees Policy" for all future actions.

to, unsupported costs, unallowable costs, and supplanting after COPS has fully pursued all other applicable remedies.⁴¹

In general, if a grantee has not remedied grant violations through other means such as direct repayment of funds, offset, installment repayment plans, or submission of supporting documentation, within 3 years or less, COPS may impose a restriction. From FYs 2005 through 2010, COPS had taken action to restrict 65 grantees. The length of the restriction is dependent on the dollar amount of the violation, but may last up to 3 years. A COPS restriction does not preclude other DOJ granting agencies from making awards to entities on the COPS restricted list.

COPS staff may request authorization from the Deputy Director for Grant Operation or General Counsel, or their designees to restrict a grantee from receiving additional funding. COPS staff may be informed of a grantee's violations of grant conditions through such means as OIG audits or financial and programmatic monitoring. At any time during a restriction period, a restricted grantee may request that COPS lift the restriction early upon receipt of either a check containing the full amount of funds owed or the signed installment repayment plan and first installment payment. In limited cases, restrictions may also be lifted prior to the completion of the full restriction period under extenuating circumstances.

Before COPS makes an award, applicants are vetted against the restricted list and OJP's high-risk list. Awards are generally not made to applicants on the restricted list. COPS will make an exception to funding an entity on the restricted list when a restricted entity's funding for a specific program is provided as a congressional earmark written into COPS' appropriations. However, an entity will not be awarded funding under any other COPS program.

COPS' restricted list is communicated to OJP and OVW, DOJ's other grant-awarding components. In particular, the list is sent to OJP's OAAM for consideration for inclusion in the high-risk list. Grantees designated as high-risk by OJP are subject to additional special conditions on future OJP and OVW grant awards. However, COPS' restricted list is not communicated to contracting officials, DOJ components awarding cooperative agreements, other federal agencies, or the SDO.

⁴¹ Supplanting means using COPS grant funds to replace state or local funds that otherwise would have been spent on the specific law enforcement purpose of the COPS grant. For some COPS grant awards the grantee is obligated to provide local funding to match a portion of the costs of the program unless a written waiver is obtained from COPS.

We compared COPS' criteria for restricting grantees to the criteria that would qualify an entity for suspension or debarment, and found that violations that would qualify grantees for a COPS restriction could also meet the requirements for consideration for suspension or debarment. For example, suspension actions may be taken if adequate evidence exists to suspect that an entity may qualify for debarment, and immediate action is necessary to protect the public interest. A federal agency may debar a person for a violation of the terms of a public agreement so serious as to affect the integrity of an agency program, such as a willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction. COPS officials informed us that during the scope of our audit, no grantees had been added to the restricted list as a result of criminal convictions or civil settlements.⁴²

We asked COPS officials why internally restricted grantees had not been referred to the SDO for suspension or debarment, and were informed that the COPS restricted list is mainly a last-resort sanction for grantees with an inability to repay dollar-related grant violations. In addition, COPS typically awards funding to state, local, and tribal governments for use by their law enforcement agencies. Therefore, because suspension and debarment have a government-wide effect, suspension or debarment would prevent all agencies of the grantee's government from receiving federal funding, not just the law enforcement agency where the deficiencies may have been identified.

⁴² According to COPS officials, COPS' Restricted Grantees List only includes grantees who could not afford to repay grant funds after the COPS Office found them in violation of non-criminal grant requirements. The restriction period remedies the grant violation in lieu of direct repayment of grant funds.

Communication of Internal Remedies

We asked OJP and COPS officials why their high-risk and restricted lists, respectively, had not been shared with the SDO or components awarding contracts or cooperative agreements. We were informed that the lists are meant to be used as management tools and were not intended to serve as a basis for other funding or suspension and debarment decisions. As such, the legal basis of the high-risk list and restricted list is not the same as the requirements of the FAR and may not be sufficient to deny funding. Additionally, OJP and COPS officials told us that it is important not to take these internal lists out of the context for which they were intended, which is as a management tool to address grant violations. For example, issues that would place a grantee on the high-risk list, such as inadequate accounting of grant funding, would not necessarily apply to the same entity fulfilling a fixed price contract.

OJP and COPS officials also informed us that they are currently working on an integrated approach to the application of internal remedies within DOJ grant-awarding components with the OVW through the Grant Challenges Working Group. This group will combine elements from both OJP's high-risk policy and COPS' restricted grantee policy into one combined policy to internally address poorly performing grantees.

Conclusion

From FYs 2005 through 2010, DOJ components have applied internal remedies to approximately 500 award recipients. These actions were generally taken as a result of criminal investigations, open audit findings, or component site and programmatic reviews. However, 17 referrals were made for suspension or debarment, resulting in 13 debarment actions against individuals or firms. For the limited number of suspension or debarment decisions that had been made, these decisions were generally made in a timely manner. However, these decisions were generally not promptly or accurately communicated through the EPLS.

Suspension and debarment only function as an effective deterrent to fraud, waste, and abuse in federal programs if awarding officials ensure that suspension and debarment actions are upheld, decisions are made in a timely manner, and those decisions are properly communicated throughout the federal government. Delays or deficiencies in decisions and reporting create an opportunity for federal awarding officials to unknowingly make awards to suspended or debarred parties.

Additionally, while internal actions taken by DOJ grant-awarding components to address poorly performing award recipients may serve as management tools for addressing deficiencies in administering federal awards, these internal remedies do not include a maximum amount of time a chronically irresponsible or unresponsive award recipient may remain under internal restriction before they are referred for suspension or debarment. Continued funding to irresponsible parties increases the risk of fraud, waste, or abuse in federal programs, and prevents other more responsible parties from accessing scarce funding resources.

Recommendations

We recommend that the SDO:

4. Implement a case tracking system and ensure referrals are followed up on and exclusion decisions are made and reported to the EPLS in a timely manner, and
5. Include written documentation of the final disposition of each referral and a brief statement in each case file of why suspension or debarment was not pursued in accordance with the Justice Acquisition Regulations.⁴³

We recommend that JMD:

6. Immediately enter missing records into the EPLS, and correct any errors in the data already stored within the EPLS, and
7. Implement quality control procedures to ensure that suspension and debarment actions are completely and accurately reported to the EPLS in a timely manner.

We recommend that COPS, OJP, and OVW:

8. Consider including a maximum period of time an eligible grantee may remain designated as high-risk before they are referred for suspension or debarment when drafting the policy developed by the Grant Challenges Working Group.

⁴³ 48 C.F.R. Chapter 28 Subpart 2809.402.

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards* we tested as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the Department of Justice's (DOJ) internal controls was not made for the purpose of providing assurance on its internal control structure as a whole.⁴⁴ Each DOJ component's management is responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of this report, we identified deficiencies in JMD's internal controls that are significant within the context of the audit objective and, based upon the audit work performed, we believe adversely affect JMD's ability to completely and accurately upload suspension and debarment actions to the EPLS. As a result, awarding officials performing a check of EPLS to determine eligibility of a potential award recipient may not be able to properly identify a suspended or debarred party, and potentially make an award to a restricted party.

We also identified deficiencies in the BOP's internal controls that are significant within the context of the audit objective and, based upon the audit work performed, we believe adversely affect the BOP's ability to detect and prevent awards made to suspended or debarred parties. We identified several awards where it did not appear that the BOP had checked the EPLS prior to awarding contracts. The design of the internal control requires that contracting officials check the EPLS. However, we identified a significant deficiency in the operation of this control.

⁴⁴ We initially surveyed DOJ's 41 components to determine the applicability of suspension and debarment at each component. We identified 11 components where suspension and debarment is applicable: ATF, BOP, COPS, DEA, FBI, JMD, OFDT, OIG, OJP, OVW, and USMS. However, the OIG was excluded from our audit because the Generally Accepted Government Auditing Standards require auditors to decline to perform work where impairments to independence can affect, or be perceived to affect, the independence of the audit organization.

Because we are not expressing an opinion on DOJ's internal control structure as a whole, this statement is intended solely for the information and use of the auditee. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objective, selected transactions, records, procedures, and practices, to obtain reasonable assurance that DOJ's management complied with federal laws and regulations for which non-compliance, in our judgment, could have a material effect on the results of our audit.⁴⁵ DOJ's management is responsible for ensuring compliance with federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objective:

- Executive Order 12549 - Established non-procurement suspension and debarment;
- Executive Order 12689 – Extended the effect of procurement and non-procurement suspension and debarment to be reciprocal and government-wide;
- Subpart 9.4 of the Federal Acquisition Regulation - Debarment, Suspension, and Ineligibility;
- 2 C.F.R. § 180 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement);
- 48 C.F.R. § 28 - Justice Acquisition Regulations;
- 2 C.F.R. § 2867 – Adopts OMB non-procurement guidelines as DOJ policies and procedures for non-procurement suspension and debarment;
- 28 C.F.R. § 67 - Adopts a government-wide system of debarment and suspension for DOJ non-procurement activities;
- 42 U.S.C. § 3782 – Establishes OJP's authority to implement the high-risk list;

⁴⁵ We initially surveyed all 41 components of the DOJ to determine the applicability of suspension and debarment at each component. We identified 11 components where suspension and debarment is applicable: ATF, BOP, COPS, DEA, FBI, JMD, OFDT, OIG, OJP, OVW, and USMS. However, the OIG was excluded from our audit because the Generally Accepted Government Auditing Standards require auditors to decline to perform work where impairments to independence can affect, or be perceived to affect, the independence of the audit organization.

- 28 C.F.R. § 66.43(a)(4) – Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments;
- 28 C.F.R. § 70.62(a)(4) – Uniform Administrative Requirement for Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and
- 28 C.F.R. § 66.12 – Special grant of subgrant conditions for “high-risk” grantees.

Our audit included examining, on a test basis, DOJ’s compliance with the aforementioned laws and regulations that could have a material effect on operations, through interviewing auditee personnel, analyzing data, and examining procedural practices. As noted in the Findings and Recommendations section of this report, we found that the BOP did not comply with the requirements of the Federal Acquisition Regulation when it failed to check the EPLS prior to making awards.

We also found that JMD did not comply with the requirements of the Federal Acquisition Regulation and 2 C.F.R. § 180 when it did not upload suspension or debarment actions in a timely manner.

APPENDIX I

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of this audit was to evaluate DOJ's implementation and oversight of suspension and debarment activities to exclude parties from receiving federal financial and nonfinancial assistance and benefits.

Scope and Methodology Section

We conducted our audit work from August 2010 through April 2011. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We conducted an initial survey of DOJ's 41 components to determine the applicability of suspension and debarment at each component. The survey instrument was emailed to all components. Follow-up was conducted to achieve a 100-percent response rate. This survey asked if each component had awarded grants, contracts, cooperative agreements, loans, or loan guarantees in FYs 2005 through 2010. From the results of our survey, we identified 11 components where suspension and debarment is applicable: ATF, BOP, COPS, DEA, FBI, JMD, OFDT, OIG, OJP, OVW, and USMS. The 30 components eliminated from the scope of our audit as a result of this initial survey indicated that they had not made any such awards. Therefore, suspension and debarment would not be applicable to these components. The OIG was excluded from our audit because the Generally Accepted Government Auditing Standards require auditors to decline to perform work where impairments to independence can affect, or be perceived to affect, the independence of the audit organization.

DOJ Awards to Suspended or Debarred Parties

We contacted the relevant components and requested a complete list of all contracts, grants, and cooperative agreements made within the scope of our audit. We also obtained a list of all grants and contracts for each relevant component through USA Spending. Contracts data within USA Spending comes from the Federal Procurement Data System - Next Generation, and includes procurement contract transactions reported directly

through the contract writing systems since FY 2000. Assistance data from FY 2007 and later comes from Federal Assistance Award Data System PLUS, and includes grants, loans, direct payments and other assistance transactions. Assistance data prior to FY 2007 comes from Federal Assistance Award Data System, and also includes grants, loans, direct payments and other assistance transactions. We did not verify the validity of the data reported by these computer systems, nor did we rely on the computer generated data as the basis of our findings. As described below, we verified all potential awards to suspended or debarred parties to source documentation to support any findings.

We obtained a listing of suspended and debarred parties from the Excluded Parties Listing System (EPLS), maintained by the General Services Administration. In a February 2009 audit report on the EPLS, the Government Accountability Office found that the EPLS data was insufficiently reliable for determining how many excluded parties received federal awards due to the number of missing entries in certain data fields and the lack of an historical archive that results from record modifications.⁷⁰ Despite these data limitations, we utilized the EPLS data to identify awards made by DOJ to suspended or debarred parties due to the fact that there is no other resource available to obtain a listing of suspended or debarred parties. Therefore, due to the insufficient reliability of the EPLS data, our analysis may not identify all instances of awards to suspended or debarred parties by DOJ, and should not be treated as a comprehensive listing of such awards.

We compared the listings of awards obtained directly from the components and through USA Spending to the listing of suspended or debarred parties in the EPLS. This comparison was performed using a match of DUNS numbers, names, and addresses in a relational database software. From the listing of potential awards to restricted parties generated by our queries, we obtained the contract files from the awarding component to determine if the award had violated the specific restriction reported to the EPLS. We also interviewed component officials about the awards in question.

DOJ Debarment Decisions

We reviewed the case files for each of the suspension and debarment referrals sent to the suspension and debarment official (SDO) to determine the referring component, length of time required for the SDO to reach a

⁷⁰ U.S. Government Accountability Office, *Excluded Parties Listing System: Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds*, GAO-09-174 (February 2009), 30-31.

decision, and ultimate outcome of each referral. We compared the data in the case files to the records contained in the EPLS to determine the completeness, accuracy, and timeliness of the data reported to the EPLS. We also interviewed JMD officials to obtain an understanding of the suspension and debarment process within DOJ.

Other Internal Remedies Utilized by DOJ

We reviewed written policies and procedures from OJP and COPS to determine the internal remedies utilized by each component. We also interviewed COPS and OJP officials about the purpose and utilization of internal remedies within each component.

APPENDIX II

CAUSES FOR DEBARMENT

A federal agency may debar a person for—

(a) Conviction of or civil judgment for—

- (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
- (2) Violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
- (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
- (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the entity's present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

- (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
- (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
- (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

- (1) A non-procurement debarment by any federal agency taken before October 1, 1988, or a procurement debarment by any federal agency taken pursuant to 48 C.F.R. part 9, subpart 9.4, before August 25, 1995;
- (2) Knowingly doing business with an ineligible person, except as permitted under §180.135;
- (3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the federal Government under the Internal Revenue Code)

owed to any federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

- (4) Violation of a material provision of a voluntary exclusion agreement entered into under §180.640 or of any settlement of a debarment or suspension action; or
- (5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects the entity's present responsibility.

FEDERAL BUREAU OF PRISONS
RESPONSE TO THE DRAFT REPORT

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

September 12, 2011

MEMORANDUM FOR RAYMOND J. BEAUDET
ASSISTANT INSPECTOR GENERAL
FOR AUDIT

A handwritten signature in cursive script that reads "Thomas R. Kane".

FROM: Thomas R. Kane, Acting Director

SUBJECT: Response to the Office of Inspector General's (OIG) Draft Report: Audit of Administrative Suspension, Debarment, and Other Internal Remedies Within the Department of Justice

The Bureau of Prisons (BOP) appreciates the opportunity to respond to the open recommendations from the draft report entitled Audit of Administrative Suspension, Debarment, and Other Internal Remedies Within the Department of Justice.

Please find the Bureau's response to the recommendation below:

Recommendation #1: Ensure awarding officials check the EPLS prior to making awards or exercising options as required by the FAR.

Response: The Bureau concurs with the recommendation, and issued guidance to the field on June 30, 2011, requiring staff to check the EPLS directly and on the same day as award. See attached memo.

It should be noted that the Unified Financial Management System (UFMS) that is used for all acquisitions has an automatic feed from Central Contractor Registration (CCR) which is fed information from EPLS. Staff were instructed during implementation of UFMS that debarment could be verified through UFMS. During this audit, it was

brought to the attention of the Procurement Executive Branch that EPLS does not feed regularly to CCR, thus EPLS information is not relayed to UFMS timely. Therefore, acquisition staff have been instructed to check EPLS directly. We request this recommendation be closed.

Recommendation #2: Seek a waiver from the SDO for any justified ongoing contract work utilizing suspended or debarred parties.

Response: The BOP concurs with the recommendation except for certain cases that involve utilities. For example, in the case of an award to a parent company with multiple plants, where it cannot be determined which plant supplies the utility, the BOP does not believe a waiver is needed if a particular plant (other than the parent company) is on the EPLS. If the parent company (to whom the award is given) is on the EPLS, then the BOP concurs that award should not be given or a waiver must be obtained due to the nature of the commodity and limited availability of other sources.

Recommendation #3: Consider termination of awards should a component become aware of an award to a suspended or debarred party after the award has been made, and document any justifications for not terminating any improper awards.

Response: The BOP concurs with this recommendation and will provide written guidance to all acquisition staff regarding this recommendation by October 14, 2011.

If you have any questions regarding this response, please contact H. J. Marberry, Assistant Director, Program Review Division, at (202) 353-2302.

Attachment



U.S. Department of Justice


Federal Bureau of Prisons

June 30, 2011

June 30, 2011

MEMORANDUM FOR ALL ACQUISITION STAFF

FROM:


Darlene Ely
Procurement Executive

SUBJECT:

Verifying Contractor Status through the
Excluded Parties List System (EPLS)

The purpose of this memorandum is to remind Bureau of Prisons acquisition staff to review EPLS prior to awarding all new procurements.

A recent review of the EPLS and Central Contractor Registration (CCR) Systems revealed EPLS does not update CCR on a daily basis, which means the Unified Financial Management System is not always current. Therefore, to comply with Federal Acquisition Regulation (FAR) Part 9.4, Debarment, Suspension and Ineligibility, staff shall verify prior to and on the same day as award the EPLS status of all potential awardees and subcontractors. The EPLS is available at <http://epis.gov>.

If you have any further questions, please do not hesitate to contact James D. Smith, Chief, Procurement Policy and Resolution Section at (202) 307-0985.

JUSTICE MANAGEMENT DIVISION RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice
Justice Management Division

Washington, D.C. 20530

September 13, 2011

MEMORANDUM FOR RAYMOND J. BEAUDET
ASSISTANT INSPECTOR GENERAL FOR AUDIT
OFFICE OF THE INSPECTOR GENERAL

FROM: Michael H. Allen *Michael H. Allen*
Deputy Assistant Attorney General

SUBJECT: Response to Office of Inspector General Draft Audit Report,
Audit of the Administrative Suspension, Debarment,
and Other Internal Remedies Within the Department of Justice

The Department of Justice (Department), Justice Management Division (JMD), has reviewed the Office of the Inspector General's (OIG's) Draft Audit Report -- Audit of the Administrative Suspension, Debarment, and Other Internal Remedies Within the Department of Justice (Report). The Report makes 8 recommendations, of which 7 apply to JMD.¹ As explained below, JMD agrees with the Report's findings and concurs with the recommendations and provides a brief summary of steps JMD has taken to implement them.

Recommendations 1 – 3. The Report recommends that JMD (1) ensure that awarding officials check the General Service Administration's (GSA's) Excluded Parties List System (EPLS) prior to making a contract award or exercising options; (2) seek waivers from the Suspension and Debarment Official (SDO) to justify ongoing contract work utilizing suspended or debarred parties;² and (3) consider termination of any contract currently being performed by a suspended or debarred party.

Response. These recommendations are predicated upon the finding that, during the 5-year period under review (Fiscal Year (FY) 2005 - FY 2010), the JMD Procurement Services Staff (PSS) issued a task order on a sole source basis, and subsequently modified the order, while the contractor was listed on the EPLS, in the total amount of \$30K. As explained during the audit, the award and modification was based on the fact that only one contractor was capable of performing the work required by the Department, and it appears that the work was performed

¹ Recommendations 1 – 3 apply to both JMD and the Federal Bureau of Prisons, and Recommendation 8 applies to the Office of Justice Programs and the Office on Violence Against Women. The following comments are limited to those recommendations applicable to JMD only.

² Approval for award of contracts or provision of new work to an individual or organization identified on the EPLS is made by the head of the agency, or his or her delegatee. Federal Acquisition Regulation (FAR) 9.405. For JMD, approval has been delegated to the Assistant Attorney General for Administration.

satisfactorily. Nevertheless, the failure to receive the required approval clearly was an oversight by the contracting officer, now retired. The Director of PSS intends to issue guidance, reminding his staff of the need to check the EPLS to reduce the risk of such oversights in the future. Recommendations 2 and 3 appear inapplicable to JMD, as the subject contract is expired; the former contractor is no longer listed on the EPLS; and JMD is unaware of any excluded party with whom JMD is contracting.

Recommendations 4 – 5. The Report recommends that the SDO (4) implement a case tracking system to ensure that referrals are followed up on and exclusion decisions are reported to the EPLS, and (5) include written documentation of the final disposition of each referral.

Response. These recommendations are predicated on the findings that a 2006 referral was misfiled and "fell through the cracks," and that one debarment decision during the 5-year subject period was issued 47 days after the close of the record, rather than the 45 days provided in the regulation. The Report also notes that, although not required by regulation, a number of case files for which the SDO determined that debarment was either inappropriate or unnecessary did not include documentation summarizing the basis for the decision. As noted in the Report, earlier this year, following a discussion with the OIG Audit Staff regarding means to improve the Department's suspension and debarment program, the SDO implemented an electronic suspension and debarment case tracking system. The system is accessible to those within JMD involved in the suspension and debarment program. Additionally, the SDO directed staff to provide a description or summary in the case files supporting the decision in those matters for which suspension or debarment is not imposed. Accordingly, JMD has implemented both of these OIG recommendations and therefore considers them closed.

Recommendations 6 – 7. The Report recommends that JMD (6) immediately enter missing records into the EPLS and correct any errors in data already stored within EPLS, and (7) implement quality control procedures to ensure that suspension and debarment decision are completely and accurately reported to the EPLS in a timely manner.

Response. As noted in the Report, the entire staff responsible for entering information into the EPLS retired in FY 2009 (representing more than 150 years of combined Government experience), and due to the time required by the federal hiring process it was not possible to replace these individuals immediately. JMD now has staff in place, trained to enter information into the EPLS. Additionally, as also noted in the Report and above, JMD has implemented a suspension and debarment tracking system, accessible to those trained to enter information into the EPLS, and a Standard Operating Procedures (SOP), including providing a process to communicate suspension and debarment decisions to the Department's Bureau Procurement Chiefs. JMD anticipates correcting the inaccurate EPLS records within 30 days.

JMD appreciates the opportunity to comment on the OIG's Draft Report. We also appreciate the time and effort of the OIG Audit Staff in its review of the Department's suspension and debarment program. We believe that implementing the recommendations, and in particular the suggestion of the electronic suspension and debarment tracking system, will significantly improve the suspension and debarment process. Should you have any questions regarding this

topic, including JMD's comments, please do not hesitate to contact Richard Theis, Department of Justice, Audit Liaison, on (202) 514-0469.

OFFICE OF COMMUNITY ORIENTED POLICING SERVICES RESPONSE TO THE DRAFT REPORT




U.S. DEPARTMENT OF JUSTICE
OFFICE OF COMMUNITY ORIENTED POLICING SERVICES
Office of the Director
145 N Street, N.E., Washington, DC 20530

COPS

MEMORANDUM

TO: Raymond J. Beaudet
Assistant Inspector General for Audit Office of the Inspector General

FROM: Bernard K. Melekian 
Director
Office of Community Oriented Policing Services (COPS)

SUBJECT: Draft Audit Report -- Audit of Administrative Suspension, Debarment, and Other Internal Remedies within the Department of Justice

DATE: September 13, 2011

This memorandum is in response to the Office of the Inspector General's (OIG) above-referenced draft audit report dated August 31, 2011. The COPS Office thanks the OIG for the opportunity to respond to the auditors' recommendations.

For ease of review, the draft audit recommendation pertaining to the COPS Office is stated in bold and underlined, followed by the COPS Office's response to recommendation.

Recommendation 8. We recommend that COPS, OJP, and OVW consider including a maximum period of time an eligible grantee may remain under internal restriction before they are referred for suspension or debarment when drafting the policy developed by the Grant Challenges Working Group.

The COPS Office agrees with this recommendation. When drafting the Department of Justice (DOJ, Department) High-risk Policy, the DOJ Grants Management Challenges Workgroup will consider including a maximum period of time an eligible DOJ grantee may remain *under internal restriction* (i.e., designated as high-risk) before they are referred for suspension or debarment, if applicable. The DOJ Grants Management Challenges Workgroup, led by a Deputy Associate Attorney General in the Department's Office of Associate Attorney General, is comprised of staff from OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW). Policies and procedures developed by this group are applicable to grants and cooperative agreements issued by all three components. The COPS Office considers this recommendation resolved and requests written acceptance of this action from your office.

The COPS Office thanks the Office of the Inspector General for the opportunity to review and respond to this draft audit. If you have any questions, please contact Marcia Samuels,

Raymond J. Beaudet
Assistant Inspector General for Audit
September 13, 2011
Draft Audit Report -- Audit of Administrative Suspension, Debarment, and Other Internal Remedies within the Department of Justice
Page 2

Acting Deputy Director for Operations, at (202) 514-8507; Cynthia Bowie, Assistant Director, Audit Liaison Division, at (202) 616-3645; or Martha Viterito, Program Audit Liaison, at 202.514.6244.

cc: (copies provided electronically)
Karol V. Mason
Deputy Associate Attorney General

Helaine Greenfield
Deputy Associate Attorney General

Louise Duhamel
Acting Assistant Director
Audit Liaison Group
Justice Management Division

Helen Marberry
Assistant Director
Program Review Division
Federal Bureau of Prisons

Maureen A. Henneberg
Director
Office of Audit, Assessment, and Management
Office of Justice Programs

Jeffrey A. Haley
Deputy Director
Audit and Review Division
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Linda J. Taylor
Lead Auditor
Audit Coordination Branch
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Office of Audit, Assessment, and Management
Office of Justice Programs

Angela Wood
Budget Officer
Office on Violence Against Women

Rodney D. Samuels
Audit Liaison
Office on Violence Against Women

**OFFICE OF JUSTICE PROGRAMS
RESPONSE TO THE DRAFT REPORT**



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

SEP 12 2011

MEMORANDUM TO: Cynthia A. Schnedar
Acting Inspector General
United States Department of Justice

THROUGH: Raymond J. Beaudet
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice

FROM: Laurie O. Robinson *LOR Kell*
Assistant Attorney General

SUBJECT: Response to the Office of the Inspector General's Draft Audit Report, *Administrative Suspension, Debarment, and Other Internal Remedies Within the Department of Justice*

This memorandum provides a response to the Office of the Inspector General's (OIG's) August 31, 2011 draft audit report, entitled *Administrative Suspension, Debarment, and Other Internal Remedies Within the Department of Justice*. The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the draft audit report, and agrees with the conclusions and the recommendations detailed in the report.

The draft audit report contains eight recommendations, of which Recommendation Number 8 pertains to OJP. For ease of review, the draft audit report recommendation is restated in bold and is followed by OJP's response.

8. **We recommend that COPS, OJP, and OVW consider including a maximum period of time an eligible grantee may remain designated as high-risk before they are referred for suspension or debarment when drafting the policy developed by the Grant Challenges Working Group.**

The Office of Justice Programs agrees with the recommendation. When drafting the Department of Justice (DOJ, Department) High-risk Policy, the DOJ Grants Management Challenges Workgroup will consider including a maximum period of time an eligible DOJ grantee may remain designated as high-risk before they are referred for suspension or debarment, if applicable. The DOJ Grants Management Challenges Workgroup, led

by a Deputy Associate Attorney General in the Department's Office of the Associate Attorney General, is comprised of officials from OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW). Policies and procedures developed by this group are applicable to grants and cooperative agreements issued by all three components. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

Thank you for your continued support and assistance. If you have any questions regarding this response, please contact Maureen A. Henneberg, Director, Office of Audit, Assessment, and Management, on (202) 616-3282.

cc: Mary Lou Leary
Principal Deputy Assistant Attorney General

James H. Burch, II
Deputy Assistant Attorney General
for Operations and Management

Denise O'Donnell
Director
Bureau of Justice Assistance

Leigh Benda
Chief Financial Officer

Rafael A. Madan
General Counsel

Phil Merkle
Director
Office of Administration

Maureen A. Henneberg
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Jeffery A. Haley
Deputy Director, Audit and Review Division
Office of Audit, Assessment, and Management

Louise M. Duhamel, Ph.D.
Acting Assistant Director, Audit Liaison Group
Justice Management Division

cc: Karol V. Mason
Deputy Associate Attorney General
Office of the Associate Attorney General

Bernard Melekian
Director
Office of Community Oriented Policing Services

Susan B. Carbon
Director
Office on Violence Against Women

OJP Executive Secretariat
Control Number 20111608

APPENDIX VII

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided recommendations to five components of the Department of Justice (DOJ): the Federal Bureau of Prisons (BOP), Community Oriented Policing Services (COPS), Justice Management Division (JMD), Office of Justice Programs (OJP), and the Office on Violence Against Women (OVW), and provided them a draft of this audit report. Each component's response is incorporated into this final report as a separate Appendix. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendation Number 1:

(BOP) Closed. The BOP agreed with our recommendation to ensure awarding officials check the EPLS prior to making awards or exercising options as required by the FAR. In its response, the BOP provided a memorandum dated June 30, 2011, requiring staff to check the EPLS directly and on the same day as award.

We reviewed this memorandum and determined it adequately addresses our recommendation. Therefore, this recommendation is closed.

(JMD) Resolved. JMD agreed with our recommendation to ensure awarding officials check the EPLS prior to making awards or exercising options as required by the FAR. In its response, JMD explained that the contract in question was an oversight by a now retired contracting officer. However, the Director of Procurement Staff Services intends to issue guidance reminding staff of the need to check the EPLS to reduce the risk of future oversights.

This recommendation can be closed when JMD provides documentation of the guidance from the Director of Procurement Staff Services.

Recommendation Number 2:

(BOP) Resolved. In response to our audit report, the BOP agreed with our recommendation to seek a waiver for any justified ongoing

contract work utilizing suspended or debarred parties except in cases involving utilities. The BOP stated that it does not believe that a waiver is necessary in cases where it cannot be determined which plant supplies the utility and ineligible plants within an otherwise eligible parent company exist. We provide the following reply to this statement before discussing the BOP's actions necessary to close this recommendation.

The OIG acknowledges that electric and water utilities are essential to operating a detention facility, and that in most areas there is only one option in service providers. However, despite the fact that the BOP had only contracted with eligible parent companies, the unique issues that arise from the provision of utility services make it impossible for the BOP to ensure that federal funding is not provided to ineligible facilities operated by an otherwise eligible company. Suspension and debarment are tools designed to prevent irresponsible parties from obtaining federal funding. In this case, the Environmental Protection Agency took steps to ensure that federal funding did not go to support the egregious and continued environmental violations identified at the facilities in question. Provisions of the FAR allow an agency to obtain a waiver for justified ongoing work with excluded parties. This allows essential services to continue while still enforcing suspension and debarment actions.

This recommendation can be closed when the BOP provides documentation that electric or water utility contract services are not provided to the BOP by ineligible plants, or documentation that the BOP has obtained a waiver to continue ongoing contracts for electric and water utilities where an otherwise eligible parent company is providing services to the BOP through ineligible facilities.

(JMD) Closed. JMD agreed with our recommendation with our recommendation to seek a waiver for any justified ongoing contract work utilizing suspended or debarred parties. In its response, JMD stated that this finding is no longer applicable as the subject contract is expired; the former contractor is no longer listed in the EPLS; and JMD is unaware of any excluded parties with whom JMD is currently contracting.

We reviewed JMD's response, concurred with its assessment, and determined it adequately addresses our recommendation. Therefore, this recommendation is closed.

Recommendation Number 3:

(BOP) Resolved. The BOP agreed with our recommendation to consider termination of awards should a component become aware of an award to a suspended or debarred party after the award has been made, and document any justifications for not terminating any improper awards. In its response, the BOP stated that they will provide written guidance to all acquisition staff regarding this recommendation.

This recommendation can be closed when we receive documentation of this written guidance.

(JMD) Closed. JMD agreed with our recommendation with our recommendation to consider termination of awards should a component become aware of an award to a suspended or debarred party after the award has been made, and document any justifications for not terminating any improper awards. In its response, JMD stated that this finding is no longer applicable as the subject contract is expired; the former contractor is no longer listed in the EPLS; and JMD is unaware of any excluded parties with whom JMD is currently contracting.

We reviewed JMD's response, concurred with its assessment, and determined it adequately addresses our recommendation. Therefore, this recommendation is closed.

Recommendation Number 4:

(JMD) Closed. JMD agreed with our recommendation to implement a case tracking system to ensure that referrals are followed up on and exclusion decisions are reported to the EPLS. In its response, JMD stated that they have implemented a case tracking system, and had provided auditors with documentation of the new system.

We reviewed the documentation provided by JMD, and determined it adequately addresses our recommendation. Therefore, this recommendation is closed.

Recommendation Number 5:

(JMD) Closed. JMD agreed with our recommendation to include written documentation of the final disposition of each referral. In its response, JMD stated that the Suspending and Debarring Official

directed staff to provide a description or summary in the case file supporting the decision in those matters for which suspension and debarment is not imposed.

We reviewed JMD's response, and determined it adequately addresses our recommendation. Therefore, this recommendation is closed.

Recommendation Number 6:

(JMD) Resolved. JMD agreed with our recommendation to immediately enter missing records into the EPLS and correct any errors in data already stored within the EPLS. In its response, JMD stated that they have implemented a tracking system and standard operating procedure to improve the accuracy of records entered into the EPLS, and that they anticipate correcting the inaccurate records within 30 days.

This recommendation can be closed when we receive documentation of the corrected errors within the EPLS.

Recommendation Number 7:

(JMD) Closed. JMD agreed with our recommendation to implement quality control procedures to ensure that suspension and debarment decisions are completely and accurately reported in a timely manner. In its response, JMD stated that they have implemented a tracking system and standard operating procedure to improve the accuracy of records entered into the EPLS. JMD also provided auditors with documentation of the new tracking system as well as a standard operating procedure to improve the process of entry of suspension and debarment actions into the EPLS.

We reviewed the documentation provided by JMD, and determined it adequately addresses our recommendation. Therefore, this recommendation is closed.

Recommendation Number 8:

(COPS) Resolved. COPS agreed with our recommendation to consider including a maximum period of time an eligible grantee may remain designated as high-risk before they are referred for suspension and debarment when drafting the policy developed by the Grants Challenges Working Group.

This recommendation can be closed when COPS provides a copy of the final approved DOJ High-risk Policy.

(OJP) Resolved. OJP agreed with our recommendation to consider including a maximum period of time an eligible grantee may remain designated as high-risk before they are referred for suspension and debarment when drafting the policy developed by the Grants Challenges Working Group.

This recommendation can be closed when OJP provides a copy of the final approved DOJ High-risk Policy.