

GAO

Testimony

Before the Subcommittee on Technology,
Information Policy, Intergovernmental
Relations and Procurement Reform,
Committee on Oversight and Government
Reform, House of Representatives

For Release on Delivery
Expected at 9:30 a.m. EDT
Thursday, October 6, 2011

SUSPENSION AND DEBARMENT

Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved

Statement of William T. Woods, Director
Acquisition and Sourcing Management

U.S. Government Accountability Office

GAO90

YEARS

1921-2011

ACCOUNTABILITY ★ INTEGRITY ★ RELIABILITY

Mr. Chairman and Members of the Committee:

I am pleased to be here to discuss the Federal government's use of suspensions and debarments. In 2010, spending on contracted goods and services was more than \$535 billion. To protect the government's interests, federal agencies are required to award contracts only to responsible sources—those that are determined to be reliable, dependable, and capable of performing required work. One way to do so is through the use of suspensions and debarments, which are actions taken to exclude firms or individuals from receiving contracts or assistance based on various types of misconduct. The Federal Acquisition Regulation (FAR) prescribes overall policies and procedures governing the suspension and debarment of contractors by agencies and directs agencies to establish appropriate procedures to implement them. This flexibility enables each agency to establish a suspension and debarment program suitable to its mission and structure.

Even though the FAR specifies numerous causes for suspensions and debarments, including fraud, theft, bribery, tax evasion, or lack of business integrity, the existence of one of these does not necessarily require that the party be suspended or debarred. Agencies are to establish procedures for prompt reporting, investigation, and referral to the agency suspension and debarment official. Parties that are suspended, proposed for debarment, or debarred are precluded from receiving new contracts, and agencies must not solicit offers from, award contracts to, or consent to subcontracts with these parties, unless an agency head determines that there is a compelling reason for such action.

Today, we are publicly releasing a report that addresses (1) the nature and extent of governmentwide exclusions reported in the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA); (2) the relationship between practices at selected agencies and the level of suspensions and debarments under federal acquisition regulations; and (3) governmentwide efforts to oversee and coordinate the use of suspensions and debarments across federal

agencies.¹ My statement will highlight the key findings and recommendations of our report.

We analyzed data for fiscal years 2006 through 2010 for all agency actions reported in EPLS to identify (1) suspension and debarment actions taken under the FAR; (2) suspension and debarment actions taken under the Nonprocurement Common Rule (NCR), which covers grants and other assistance; and (3) other exclusions. To provide information on the level of agency activity, we aggregated related actions, such as those involving affiliates and related parties, to identify the number of cases. We used cases to provide a common comparison among the agencies, even though a case may include separate actions for an individual, a business, and each affiliate and entail dedication of resources and the potential for separate representation by a party's counsel and separate resolution. We assessed the reliability of EPLS data by performing electronic testing, reviewing system documentation, and interviewing knowledgeable officials about data quality and reliability. We determined that the data were sufficiently reliable for the purpose of this review.

We also reviewed a mix of 10 agencies from among all agencies having more than \$1 billion in contract obligations in fiscal year 2009. These agencies included the Defense Logistics Agency (DLA), the Department of the Navy (Navy), GSA, and the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE)—all of which had relatively more cases involving actions taken under the FAR than other agencies—as well as the Departments of Commerce (Commerce), Health and Human Services (HHS), Justice (Justice), State (State), and the Treasury (Treasury), and DHS's Federal Emergency Management Agency (FEMA)—all of which had relatively few or no suspensions or debarments under the FAR. At these 10 agencies, we focused on certain attributes of the suspension and debarment process, including the organizational placement of the suspension and debarment official, staffing and training, guidance, and the referral process, including triggering events.

¹ GAO, *Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved*, [GAO-11-739](#) (Washington, D.C.: Aug. 31, 2011).

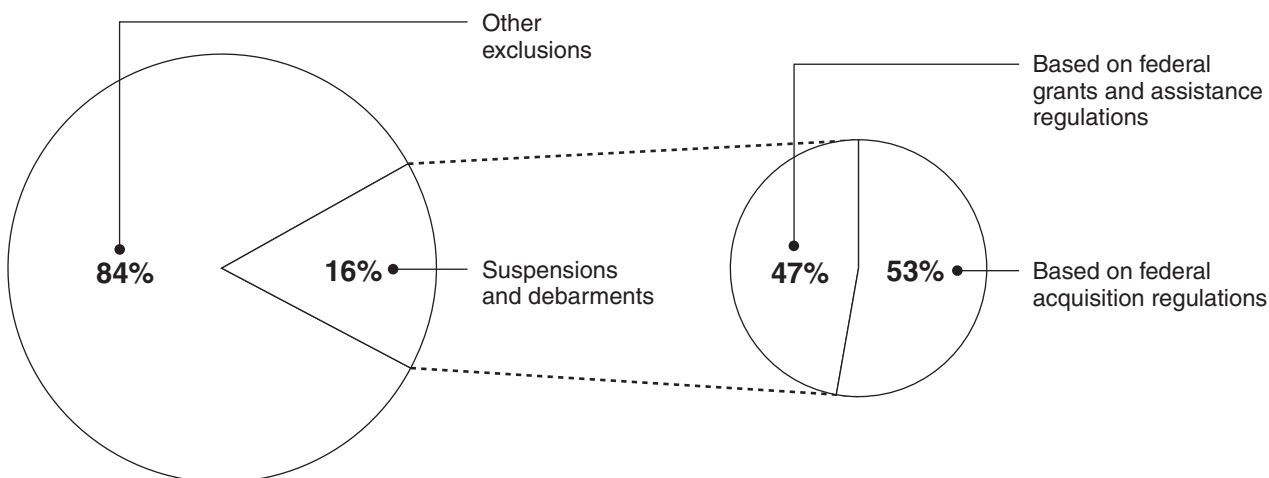
In addition, we met with officials from the Office of Federal Procurement Policy which provides overall direction of governmentwide procurement policies, including suspensions and debarments under the FAR; officials at the Interagency Suspension and Debarment Committee (ISDC); the Council of the Inspectors General on Integrity and Efficiency's (CIGIE) Suspension and Debarment Working Group; and GSA. We also met with or obtained information from suspension and debarment and inspector general officials at the 10 selected agencies. Our work was performed in accordance with generally accepted government auditing standards.

Suspension and Debarment Cases Make Up a Small Percentage of All Exclusions in the Governmentwide Database

For fiscal years 2006 through 2010, about 4,600 cases—about 16 percent of all cases in EPLS—involved suspension and debarment actions taken at the discretion of agencies against firms and individuals based on any of the numerous causes specified in either the FAR or NCR, such as fraud, theft, or bribery or history of failure to perform on government contracts or transactions. Such cases generally result in exclusion from all federal contracts, grants, and benefits. About 47 percent of suspension and debarment cases were based on the NCR, which covers federal grants and assistance, with the Department of Housing and Urban Development accounting for over half of these grant and assistance-related cases. The other 53 percent of suspension and debarment cases were based on causes specified in the FAR and related to federal procurements.

During this same time period, about 84 percent—or about 24,000 of the approximately 29,000 total cases reported in EPLS—were other exclusions based on a determination that the parties had violated certain statutes or regulations. For example, prohibited conduct, such as health care fraud, export control violations, or drug trafficking, can result in an EPLS listing. In these types of cases, once an agency with the designated authority has determined that a party has engaged in a prohibited activity, such as fraudulently receiving payments under federal health care programs, or violating export control regulations, the law generally requires that the party be declared ineligible for specified government transactions or activities. Although most other exclusions are based on violations that are not related to federal procurements or grants, the party is excluded from some or all procurement and nonprocurement transactions as set out in the statute. HHS, Justice, and Treasury recorded the most other exclusion type cases. Figure 1 shows the basis of all EPLS cases for fiscal years 2006 through 2010.

Figure 1: Basis of EPLS Cases, Fiscal Years 2006 through 2010



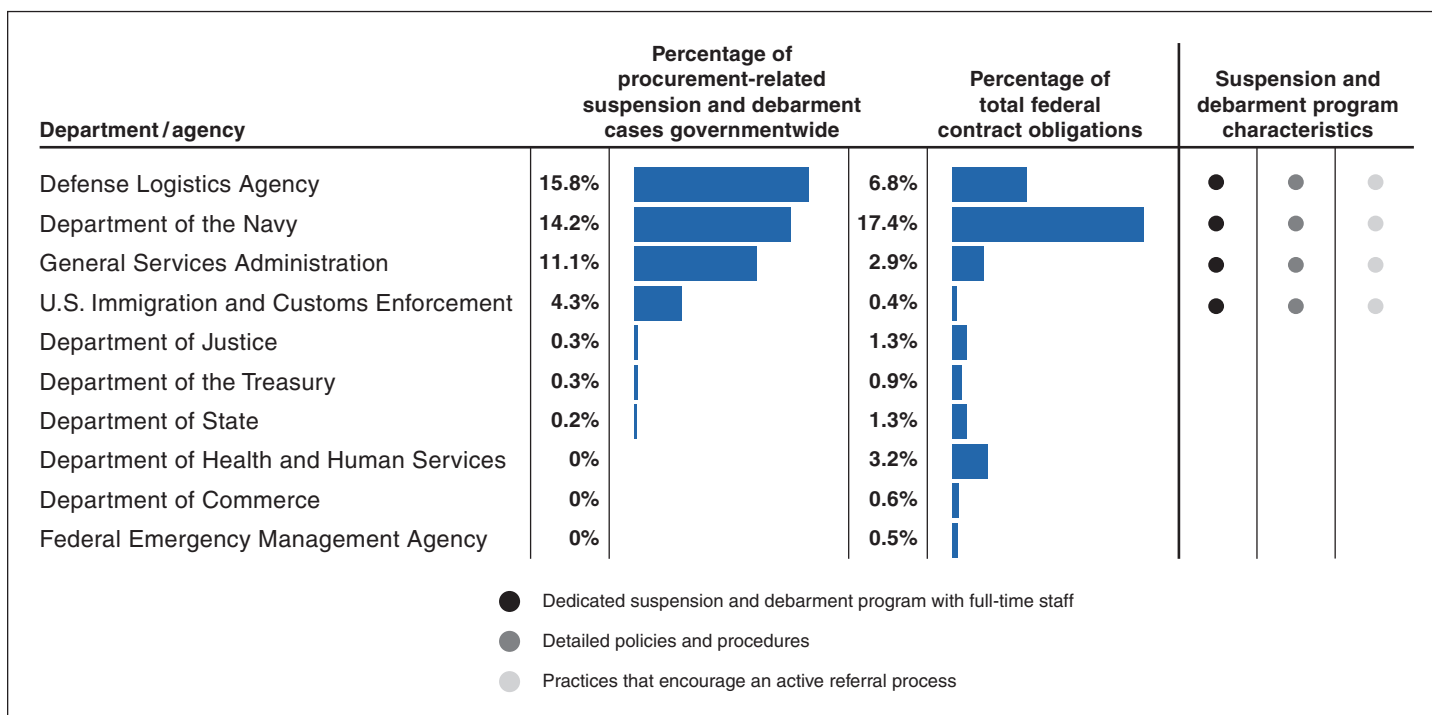
Source: GAO analysis of EPLS data.

The number of suspension and debarment cases related to federal procurement varied widely among departments or agencies over the last 5 fiscal years as shown in Appendix I. DOD accounted for about two-thirds of all suspension and debarment cases related to federal procurements with almost 1,600 cases. Of all the agencies, almost 70 percent had fewer than 20 suspension and debarment cases related to federal procurements. Six agencies—HHS, Commerce, and the Departments of Labor, Education, and Housing and Urban Development and the Office of Personnel Management—had no such cases over the last 5 fiscal years.

Agencies with Most Suspension and Debarment Cases Share Common Characteristics Missing at Agencies with Few Cases

While each agency suspension and debarment program we reviewed is unique, the four with the most suspension and debarment cases for fiscal years 2006 through 2010—DLA, Navy, GSA, and ICE—share certain characteristics. These include a dedicated suspension and debarment program with full-time staff, detailed policies and procedures, and practices that encourage an active referral process, as shown in figure 2.

Figure 2: Analysis of Selected Agency Contract Obligations, Procurement-Related Suspension and Debarment Cases for Fiscal Years 2006 through 2010, and Program Characteristics



Source: GAO analysis of Federal Procurement Data System-Next Generation, EPLS data, and agencies' procedures and guidance.

Officials from the four agencies stated that having dedicated staff cannot be accomplished without the specific focus and commitment of an agency's senior officials. ISDC officials also stated that without dedicated staff, none of the other essential functions of an agency suspension and debarment program can be carried out.

Each of the top four agencies has also developed agency-specific guidance that goes well beyond the suspension and debarment guidance in the FAR. This generally included guidance on things such as referrals, investigations, and legal review. Several of the reports we reviewed by inspectors general and others regarding agency suspension and debarment programs cited the importance of agency-specific, detailed policies and procedures to an active agency suspension and debarment program.

In addition, each of the four agencies engages in practices that encourage an active referral process. The FAR directs agencies to refer

appropriate matters to their suspension and debarment officials for consideration, and it allows agencies to develop ways to accomplish this task that suit their missions and structures. According to agency officials when senior agency officials communicate the importance of suspension and debarment through their actions, speeches, and directives, they help to promote a culture of acquisition integrity where suspension and debarment is understood and utilized by staff.

The remaining six agencies we studied—HHS, FEMA, Commerce, Justice, State, and Treasury—do not have the characteristics common to the four agencies with the most suspension and debarment cases. Based on our review of agency documents and interviews with agency officials, none of these six agencies had dedicated suspension and debarment staff, detailed policies and guidance other than those to implement the FAR, or practices that encourage an active referral process. These agencies have few or no suspensions or debarments of federal contractors.

Governmentwide Efforts to Oversee Suspensions and Debarments Face Challenges

ISDC, established in 1986, monitors the governmentwide system of suspension and debarment. More recently, the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009² strengthened the committee's role by specifying functions ISDC was to perform.

When more than one agency has an interest in the debarment or suspension of a contractor, the FAR requires ISDC to resolve the lead agency issue and coordinate such resolution among all interested agencies prior to the initiation of any suspension or debarment by any agency. According to ISDC officials, ISDC relies on voluntary agency participation in its informal coordination process, which works well when used. However, not all agencies coordinate through ISDC.

Likewise, in part because it could not compel agencies to respond to its inquiries, ISDC took almost 2 years to submit its required annual report to Congress on agencies' suspension and debarment activities. According to ISDC representatives, only about half of the member agencies responded to the initial request for information needed for the report. These officials also noted that their limited resources to devote to

²Pub. L. No. 110-417, § 873 (2008).

committee responsibilities further delayed the report. Consequently, ISDC issued its first report on June 15, 2011, covering both of the reports required for 2009 and 2010.³

ISDC's coordination role concerning the governmentwide suspension and debarment system also has faced other challenges. ISDC holds monthly meetings for members as a forum to provide information and discuss relevant issues, but according to ISDC representatives, agencies without active suspension and debarment programs generally are not represented at these meetings. In addition, ISDC officials noted that the committee does not have dedicated staff and depends on limited resources provided by member agencies, particularly the agencies of the officials appointed as the Chair and Vice-Chair. According to the Chair and Vice-Chair, they do committee work in addition to their primary agency responsibilities, using their own agencies' resources.

Other efforts are under way across government to improve coordination of suspension and debarment programs. CIGIE's Suspension and Debarment Working Group—formed in the summer of 2010—promotes the use of suspension and debarment as a tool to protect the government's interest. The CIGIE working group is taking steps to raise awareness, including sponsoring training and advising the inspector general community about other training opportunities. GSA has begun an effort to improve EPLS by consolidating and simplifying the codes agencies use to identify the basis and consequences of exclusions, referred to as cause and treatment codes. According to a GSA official, the goal of the EPLS effort is to consolidate the codes into categories that clearly define the effect of a listing.

³Interagency Suspension and Debarment Committee, *Report on Federal Agency Suspension and Debarment Activities* (Washington, D.C.: June 15, 2011).

GAO Recommends that Agencies Take Actions to Improve Suspension and Debarment Programs and Government Oversight

Suspensions and debarments can serve as powerful tools to help ensure that the government protects its interests by awarding contracts and grants only to responsible sources. Some agencies could benefit from adopting the practices we identified as common among agencies that have more active suspension and debarment programs. Because agency missions and organizational structures are unique, each agency must determine for itself the extent to which it can benefit from adopting these practices. However, one point is clear: agencies that fail to devote sufficient attention to suspension and debarment issues likely will continue to have limited levels of activity and risk fostering a perception that they are not serious about holding the entities they deal with accountable. Additionally, the suspension and debarment process could be improved governmentwide by building upon the existing framework to better coordinate and oversee suspensions and debarments. As acknowledged by officials at the Office of Federal Procurement Policy, agencies would benefit from guidance on how to establish active suspension and debarment programs and how to work more effectively with ISDC.

In summary, we recommend that several agencies take steps to improve their suspension and debarment programs ensuring that they incorporate the characteristics we identified as common among agencies with more active programs, including

- assigning dedicated staff resources,
- developing detailed implementing guidance, and
- promoting the use of a case referral process.

We also recommend that the Administrator of the Office of Federal Procurement Policy issue governmentwide guidance to ensure that agencies are aware of the elements of an active suspension and debarment program and the importance of cooperating with ISDC.

Overall, the agencies concurred or generally concurred with our recommendations. In its comments, Justice stated that its existing guidelines are sufficient, but we do not agree. Several other agencies noted that they are taking actions to incorporate the characteristics we identified as common among agencies with more active programs.

Mr. Chairman and Members of the Subcommittee, this concludes my statement. I would be pleased to respond to any questions that you or other members of the Committee may have.

Contacts and Acknowledgments

For questions about this statement, please contact William Woods at (202) 512-4841 or woodsw@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Individuals who made key contributions to this testimony are Assistant Director John Neumann and Russ Reiter.

Appendix I

Table 1: EPLS Suspension and Debarment Cases by Agency and Contract Obligations, Fiscal Years 2006 through 2010

Department/agency ^a	Contract obligations (in billions of dollars)	Suspension and debarment cases related to ^b		Total suspension and debarment cases
		Federal procurement	Grants and other assistance	
Department of Defense	\$1,776.20	1,592	24	1,616
Department of Energy	129.70	82	0	82
Department of Health and Human Services	80.15	0	29	29
General Services Administration	73.44	269	0	269
National Aeronautics and Space Administration	72.56	41	1	42
Department of Homeland Security	70.79	116	8	124
Department of Veterans Affairs	69.00	4	11	15
Department of State	33.20	6	1	7
Department of Justice	31.97	8	3	11
Department of Agriculture	25.55	3	105	108
U.S. Agency for International Development	24.36	18	18	36
Department of the Treasury	23.67	8	1	9
Department of Transportation	23.41	11	193	204
Department of the Interior	23.04	94	10	104
Department of Commerce	14.10	0	0	0
Department of Labor	9.76	0	0	0
Environmental Protection Agency	7.81	1	332	333
Department of Education	7.59	0	163	163
Department of Housing and Urban Development	5.38	0	1,141	1,141
Social Security Administration	5.30	1	0	1
Office of Personnel Management	4.89	0	0	0
National Science Foundation	2.08	40	1	41
All other agencies	9.83	124	136	260
Total		2,418	2,177	4,595

Source: GAO analysis of Federal Procurement Data System–Next Generation and EPLS data.

^aThis table lists departments and agencies with over \$2 billion in contract obligations for fiscal years 2006 through 2010. "All other agencies" includes those agencies with less than \$2 billion in contract obligations.

^bAgencies may suspend or debar federal contractors utilizing the NCR, and such suspensions and debarments would be listed in EPLS as cases related to grants and other assistance.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [facebook](#), [flickr](#), [twitter](#), and [YouTube](#). Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#). Visit GAO on the web at www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548





WILLIAM T. WOODS

Bill Woods is a Director with the Acquisition and Sourcing Management team at the U. S. Government Accountability Office (GAO). He is responsible for providing overall direction for GAO's reviews of contracting activities at defense and civilian agencies. Since joining GAO in 1981, Bill has worked with the agency's evaluators on a broad range of subjects, primarily involving federal procurement. He has dealt with major systems acquisitions, small business and industrial base issues, and procurement reform legislation.

Prior to assuming his current position, Bill served as Assistant General Counsel in GAO's Office of General Counsel. Bill has extensive experience drafting bid protest decisions at GAO. In addition, Bill was the Project Director for the Commercial Activities Panel, a group commissioned by the Congress to review the Government's procedures for determining whether commercially available services should be performed by federal workers or by contractors.

Some of Bill's writings have appeared in The Procurement Lawyer, a quarterly publication of the American Bar Association's Public Contract Law Section. Bill is a former co-chair of the Section's Commercial Products and Services Committee.

Bill is a 1973 graduate of the University of Massachusetts at Amherst. In 1981, he received a J.D. degree from the University of Baltimore School of Law, where he served as legislation editor on the Law Review. He earned a Master of Laws degree from the Georgetown University Law Center in 1988.