

**Review of GSA's
Suspension and Debarment Program
Report Number A070105/O/A/F08004
December 20, 2007**



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

Date: December 20, 2007

Reply to: Deputy Assistant Inspector General for
Attn of: Acquisition Audits (JA-A)

To: Molly A. Wilkinson
Chief Acquisition Officer (V)

Subject: Review of GSA's Suspension and Debarment Program
Report Number A070105/O/A/F08004

This report presents the results of our review of GSA's Suspension and Debarment program. The FAR contains policies and procedures governing the suspension and debarment process. The GSA Office of the Chief Acquisition Officer is responsible for the GSA Suspension and Debarment program, and our review examined the processes used by the GSA OCAO in handling suspension and debarment cases. We found that a lapse in staffing caused a backlog of suspension and debarment cases in FY 2006. The OCAO brought in a contractor to work alongside the suspension and debarment division in an effort to eliminate the backlog. Although we determined that the work performed by the contractor was appropriate and not inherently governmental, the contractor did not obtain the proper security clearances and sign the required non-disclosure agreements prior to performing the work. Controls need to be put in place to ensure that case backlogs do not occur in the future. In addition, we believe that improved controls are needed to ensure that contractor roles are clearly defined, and contractors have the proper security clearances and have signed non-disclosure agreements. Considering the nature of the suspension and debarment function, we believe that the OCAO should make every effort in the future to avoid utilizing contractors to perform SDD work.

Written comments provided by your office have been included in their entirety in Appendix A.

I wish to express my appreciation to all of your staff and other persons who cooperated during the audit. If you have any questions, please contact me on (816) 926-8610 or Kenneth Crompton, the Deputy Assistant Inspector General for Acquisition Audits, on 703-603-0189.


for Erin Priddy
Audit Manager
Acquisitions Audit Office (JA-A)

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Review of GSA’s Suspension and Debarment Program
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REVIEW OF GSA's
SUSPENSION AND DEBARMENT PROGRAM
REPORT NUMBER A070105/O/A/F08004

EXECUTIVE SUMMARY

Purpose

Our audit addressed whether the U.S. General Services Administration (GSA) Office of the Chief Acquisition Officer (OCAO) addressed the backlog of suspension and debarment cases, and whether there are enhancements that can be made to improve the suspension and debarment process at GSA. In addition, we examined the appropriateness of the OCAO utilizing a contractor to assist with reducing the backlog of cases.

Background

The U.S. General Services Administration (GSA) Office of the Chief Acquisition Officer (OCAO) is responsible for the GSA Suspension and Debarment Program. GSA has agency-wide responsibility for the suspension and debarment of contractors under the Federal Acquisition Regulations (FAR). GSA is also responsible for oversight of the Excluded Parties List System (EPLS)--a publication of the Government-wide list of parties excluded from Federal procurement programs, and provides advice and guidance related to suspension and debarment to other Government agencies, states and local Governments, and the private sector.

The FAR prescribes policies and procedures governing the suspension and debarment of contractors by agencies for cause. The serious nature of suspension and debarment requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action. All final suspension/debarment decisions are made by an appointed Suspension and Debarment Official (SDO).

Results in Brief

In FY 2006, a backlog of suspension and debarment cases occurred because the Office of the Chief Acquisition Officer (OCAO) allowed a lapse in staffing the Suspension and Debarment Division (SDD) for approximately 6 months. During this time, 159 entities¹ were referred to the division, and some were not processed until up to one year after referral. As of the time we began our review in February 2007, the OCAO's office had eliminated the backlog by assigning staff to the division, which included both government and contractor employees. The staff also established controls to manage the caseload and standardize processes. These controls appear to be effective in

¹ Entities refers to all individuals and subsidiaries related to the subject of the referral.

ensuring the SDD processes cases timely and in accordance with the FAR. Nevertheless, continued management attention is needed to ensure that backlogs do not occur.

Relative to the OCAO's hiring of contractor personnel to assist with eliminating the backlog of referrals, we determined that the existing Statement of Work was not deficient with respect to limiting the contractor's role and authority, and that the work was performed under a fully competitive task order. We also determined that the work performed by the contractor was not inherently governmental because government staff retained authority over suspension and debarment decisions. However, we found that improved controls are needed to ensure that contractor roles are clearly defined, and contractors have the proper security clearances and signed non-disclosure agreements. Considering the nature of the suspension and debarment function, we believe that the OCAO should make every effort in the future to avoid utilizing contractors to perform SDD work.

Recommendations

We recommend that the GSA Chief Acquisition Officer:

1. Ensure that the Suspension and Debarment Division maintains adequate staffing levels at all times to avoid future case backlogs.
2. Establish controls to ensure that any future similar contract actions clearly define contractor roles and authorities with respect to inherently governmental work.
3. Establish controls to ensure that in future contracts requiring security clearances and non-disclosure agreements, the Contracting Officer's Technical Representative ascertain that these requirements are met prior to the start of work.

Management Comments

In her December 14, 2007 response to the draft report, the Chief Acquisition Officer concurred with the recommendations. The Chief Acquisition Officer's response is included in its entirety in Appendix A of this report.

INTRODUCTION

Background

The U.S. General Services Administration (GSA) Office of the Chief Acquisition Officer (OCAO) is responsible for the GSA Suspension and Debarment Program. GSA has agency-wide responsibility for the suspension and debarment of contractors under the Federal Acquisition Regulations (FAR). GSA is also responsible for oversight of the Excluded Parties List System (EPLS)--a publication of the Government-wide list of parties excluded from Federal procurement programs, and provides advice and guidance related to suspension and debarment to other Government agencies, states and local Governments, and the private sector.

The FAR prescribes policies and procedures governing the suspension and debarment of contractors by agencies for cause. The serious nature of suspension and debarment requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action. All final suspension/debarment decisions are made by an appointed Suspension and Debarment Official (SDO).

In GSA, almost all suspension and debarment cases are referred to the Suspension and Debarment Division (SDD) by the GSA Office of Inspector General Office of Investigations (OIGI). A SDD staff member reviews the OIGI case referral and conducts research for background information on the party in question. Using the information gathered in research and the OIG case referral, the suspension and debarment staff member prepares a case summary to be sent to the SDO. In addition, the SDD enters relevant information pertaining to the case into a case inventory database. The database is used to track the status of all cases at any point in time.

Once the SDO reviews the case summary prepared by the SDD staff member and obtains any additional information needed pertaining to the case, the SDO renders a decision on the referral. The SOP manual outlines four options for the SDO to take:

- 1) Request additional information from the entity by way of a Show Cause letter,
- 2) Send a Notice of Suspension,
- 3) Send a Notice of Proposed Debarment, or
- 4) Take no action because the SDO has determined that the entity does not represent a present threat to the Government's interests.

The SDO issues a Show Cause letter when the Government has proof of past irresponsibility but wishes to initiate discussions to obtain evidence as to the entity's

current responsibility, or the SDO decides that more information is needed to make a determination. The entity has 10 days from receipt of the Show Cause letter to respond and provide information and argument specifying why the entity should be allowed to continue to contract with the Federal Government.

The SDO issues a Notice of Suspension when the SDO determines that adequate evidence exists that the entity has not cured its past irresponsible or illegal conduct. The SDO issues a Notice of Proposed Debarment if there has been a conviction or civil judgment. The SDO allows entities 30 days to respond to notices of suspension and proposed debarment.

If the entity submits information and argument in response to a Show Cause letter, Notice of Suspension, or Notice of Proposed Debarment, the SDD staff reviews the information, often consulting with GSA Legal Counsel. When requested, the SDD staff and GSA Legal Counsel will meet with the entities and/or their legal counsel to ensure that all relevant information is known before the SDO issues a final decision to either continue with suspension or debarment, or to terminate administrative action against the entity.

In addition to these measures, the SDD has a performance measure of 30 days to review all OIG suspension and debarment referrals. Within 30 days, the SDD's goal is to read and digest the OIG referral, respond to the OIG with a proposed course of action, or request additional information.

Objective, Scope, and Methodology

In FY 2006, GSA experienced a backlog in processing suspension and debarment cases. The objectives of our review were to determine:

- What has been done to address the backlog of suspension and debarment cases?
- What can be done to process suspension and debarment cases more effectively and efficiently?

In addition to these objectives, our review also addressed concerns as to whether the OCAO's hiring of temporary contractor personnel to assist with eliminating the backlog of suspension and debarment cases was appropriate; specifically, in the context of FAR 7.5, Inherently Governmental Functions and competition requirements.

To accomplish the audit objectives, we reviewed relevant GSA policies and procedures; applicable FARs and GSA Acquisition Manual (GSAM) regulations; Executive Orders 12549 and 12689; GSA Order 5450; the OCAO's Suspension and Debarment Standard Operating Procedure manual; suspension and debarment case inventory databases; and sixteen suspension and debarment case files. We also interviewed the Acting GSA SDO and individuals within GSA who worked on suspension and debarment cases. We

also interviewed officials from the GSA Office of Inspector General, Office of Investigations, where the large majority of referrals originate.

We conducted the review in GSA Central Office, OCAO. We performed the audit between February and June 2007 in accordance with generally accepted government auditing standards.

RESULTS OF REVIEW

In FY 2006, a backlog of suspension and debarment cases occurred because the Office of the Chief Acquisition Officer (OCAO) allowed a lapse in staffing the Suspension and Debarment Division (SDD) for approximately 6 months. During this time, 159 entities² were referred to the division, and some were not processed until up to one year after referral. As of the time we began our review in February 2007, the OCAO's office had eliminated the backlog by assigning staff to the division, which included both government and contractor employees. The staff also established controls to manage the caseload and standardize processes. These controls appear to be effective in ensuring the SDD processes cases timely and in accordance with the FAR. Nevertheless, continued management attention is needed to ensure that backlogs do not occur.

Relative to the OCAO's hiring of contractor personnel to assist with eliminating the backlog of referrals, we determined that the work was performed under a fully competitive task order. We also determined that the work performed by the contractor was not inherently governmental because government staff retained authority over suspension and debarment decisions. However, we found that improved controls are needed to ensure that contractor roles are clearly defined, and contractors have the proper security clearances and have signed non-disclosure agreements. Considering the nature of the suspension and debarment function, we believe that the OCAO should make every effort in the future to avoid utilizing contractors to perform SDD work.

Suspension and Debarment Backlog

Staffing levels within the SDD were affected by employee retirements and reassignment of staff in FY 2006. The OCAO did not replace the staff in a timely manner, resulting in a backlog of suspension and debarment referrals. From January through June 2006, the suspension and debarment division remained unstaffed. A review of a suspension and debarment case inventory listing indicates that there were approximately 39 referrals encompassing 159 entities referred to the OCAO during this six-month period. These cases sat idle until the OCAO's office staffed the suspension and debarment division in June 2006. As result, it took more than a year from the time of referral to process some of these cases. As of the time of our review, the OCAO had eliminated the case backlog and instituted controls to maintain proper management of the suspension and debarment case load.

In June 2006, the OCAO's office assigned two government employees on a temporary detail to work with the Acting SDO to address the backlog. In addition, the OCAO hired a contractor, CACI, Inc. (CACI) to assist in processing cases. By September 2006, the staff eliminated the backlog, and the SDD terminated the contract. In July 2007, the OCAO hired permanent staff for the division.

² Entities refers to all individuals and subsidiaries related to the subject of the referral.

In addition to eliminating the case backlog, the Acting SDO and temporary staff implemented controls to ensure timely processing of referrals and compliance with FAR directives governing suspension and debarment. These controls included (1) developing a spreadsheet to inventory and track the status of referrals and (2) developing a procedural handbook for processing referrals. The case inventory database lists all of the cases referred to the SDD and is color-coded to show the status of each case. By reviewing the database, the SDD can review the cases that are still open and identify the steps to be completed in each open case. The SDD's Standard Operating Procedure (SOP) manual details the steps to be taken from the time the SDD receives a referral until the SDO makes an administrative decision. We determined that these controls generally provide adequate assurance that referrals will be processed timely and in accordance with the FAR.

To prevent a case backlog situation from recurring in the future, the OCAO must ensure that the SDD maintains adequate staffing to attend to the referral case load. A succession plan to account for departing staff could prevent future backlogs.

Recommendation

We recommend that the GSA Chief Acquisition Officer:

1. Ensure that the Suspension and Debarment Division maintains adequate staffing levels at all times to avoid future case backlogs.

Hiring of Contractor Staff to Assist with Backlog

In June 2006, to assist with the suspension and debarment case backlog, the OCAO utilized contractor staff from CACI to assist in eliminating the backlog. GSA's selection of CACI raised questions as to whether the selection constituted a sole source procurement. In addition, the use of a contractor raised questions as to whether it was appropriate for GSA to use a contractor to assist in processing suspension and debarment cases due to the inherently governmental nature of the function. The cost of the SDD assistance was initially \$353,706 for 6 contract specialists for 3 months. However, the SDD was able to eliminate the backlog using less resources than anticipated; accordingly, the OCAO only expended \$150,150 of this amount.

Competition Requirements

With some exceptions, the FAR generally prohibits the government from awarding contracts without the benefit of competition. In this case, we determined that the OCAO did not violate competition requirements because the SDD ordered the work under an existing contract, which was properly competed. On December 13, 2004, the OCAO Contracts Division awarded Task Order Number M005PDM0018 to CACI for acquisition and contract administration support services within the OCAO. The estimated value of the task order was \$3.4 million for the base year and two option years. Our review of the

file indicated that the OCAO properly competed the work and received two proposals. CACI was the successful offeror.

Inherently Governmental Functions

FAR Part 7.503(a) states that contracts shall not be used for the performance of inherently governmental functions. An inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel. Because suspension and debarment is a tool to prevent irresponsible contractors from receiving government contracts and involves determinations of contractor eligibility to participate in Government programs, we believe that decisions to suspend or debar are clearly inherently governmental in nature. However, the Government can appropriately contract for services to assist in administering such decisions. Office of Management and Budget (OMB) Policy Letter 92-1, *Inherently Governmental Functions*, states that inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. Accordingly, a contract may properly be awarded where the contractor does not have the authority to decide on the course of action to be pursued but is rather tasked to develop options to inform an agency decision maker, or to develop or expand decisions already made by Federal officials. For example, the OMB Policy Letter advises that while the approval of a Government document is an inherently governmental function, its drafting of the document is not necessarily such a function.

The OCAO contracting office provided the following technical direction to CACI for the suspension and debarment work under the task:

“OCAO has a requirement for 6 contractor specialists to assist this office in processing the backlog of suspension and debarment cases. The positions require analytical skills and strong writing skills to analyze OIG recommendations for suspension/debarment and recommend and draft appropriate responses. There are currently 226 open OIG referrals. This number includes multiple affiliate companies and individuals whose OIG referrals arise out of identical facts. OCAO is currently collecting and categorizing the open cases into logical groupings. Contractor employees will be furnished with OIG and OCAO file, checklists for review and templates for responses and will provide OCAO proposed responses for review and signature. Period of performance is immediately through September 30, 2006.”

Based on review of contractor work performed and discussions with SDD staff, the work performed by CACI employees consisted of locating documentation related to the case referrals, organizing the case files, and preparing summaries of the referrals for review by the SDO. In our review of a sample of 16 case files, CACI employees worked on seven, and we found that their work was limited to these tasks, and the Government appropriately retained decision-making authority for the outcome of the referrals.

To prevent the appearance of impropriety when utilizing contractors in support of inherently governmental work, the Government must be vigilant in ensuring that lines of authority and responsibility are clear. In this case, the SDD staff properly ensured that the Government retained all decisions on referrals. While the Statement of Work for the overall task order was not deficient, specific delineation of limitations on contractor responsibilities and authorities with respect to inherently governmental functions would have provided improved clarity for the suspension and debarment portion of the task.

In addition, while we concluded that CACI did not perform inherently governmental work, due to the serious nature of suspension and debarment sanctions, it may not be prudent for GSA to utilize contractors in support of this function.

Recommendation

While we did not identify improprieties with the contractor performing inherently governmental work for the suspension and debarment support work, we recommend that the GSA Chief Acquisition Officer:

2. Establish controls to ensure that any future similar contract actions clearly define contractor roles and authorities with respect to inherently governmental work.

Security Clearances/Non Disclosure Agreements

Due to the nature of the OCAO function, the Statement of Work (SOW) for Task Order M005PDM0018 requires each contractor employee to have a "Public Trust High Risk" clearance prior to being assigned work under the task. In addition, the SOW requires contractor staff to enter into a non-disclosure agreement prohibiting the unauthorized use of proprietary data for as long as the information remains proprietary. However, we found that none of the CACI personnel assigned to the SDD had the required clearances or signed the non-disclosure agreements upon reporting for work. Due to the sensitive nature of the SDD function and the fact that the work necessarily required access to confidential information about contractors and related parties proposed for suspension or debarment, the OCAO should have ensured that contractor personnel had the appropriate clearances and signed the non-disclosure agreements as prescribed in the SOW. Improved controls are needed to ensure contractor employees have the proper clearances and sign the non-disclosure agreements as necessary for future work under this task order.

Recommendation

We recommend that the GSA Chief Acquisition Officer:

3. Establish controls to ensure that in future contracts requiring security clearances and non-disclosure agreements, the Contracting Officer's Technical Representative ascertain that these requirements are met prior to the start of work.

CONCLUSION

The OCAO has effectively eliminated the backlog of case referrals that occurred in FY 2006 due to inadequate staffing. The OCAO has also established controls to manage the caseload and standardize processes, which appear to be effective in ensuring the SDD processes cases timely and in accordance the FAR. Continued management attention and improved staff succession planning is needed to prevent a similar staffing lapse and backlog in the future.

The OCAO did not breach competition requirements when hiring a contractor to assist with eliminating the case backlog. While the OCAO did not violate FAR restrictions relative to using contractors for inherently governmental functions, OCAO contracting officials should ensure that contractor roles and responsibilities are clearly delineated to avoid the potential appearance of impropriety with respect to inherently governmental functions. Further, we found that improved controls are needed to ensure that contractors have the proper security clearances and have signed non-disclosure agreements. It may be more prudent for the OCAO to avoid using contractors for suspension and debarment due to the sensitive nature of the function.

MANAGEMENT COMMENTS

In her December 14, 2007 response to the draft report, the Chief Acquisition Officer concurred with the recommendations. The Chief Acquisition Officer's response is included in its entirety in Appendix A of this report.

INTERNAL CONTROLS

As discussed in the Objectives, Scope, and Methodology section of this report, our audit objective was to identify how GSA could process suspension and debarment cases more effectively and efficiently. Accordingly, we reviewed the GSA OCAO's internal controls related to suspension and debarment case reviews and performed limited testing of these controls.

Although we found that current controls over case processing were effective, we found controls lacking in the areas of staffing and the use of contractors in support of the SDD. We recommended that the GSA OCAO implement controls to ensure adequate staffing levels within the SDD to avoid future case backlogs and improve controls to ensure that (1) the OCAO retains the appropriate authority over inherently governmental functions, and (2) contractors have the required security clearances and sign the required non-disclosure agreements to perform work for the OCAO.

APPENDICES



DEC 14 2007

GSA Office of the Chief Acquisition Officer

MEMORANDUM FOR KENNETH L. CROMPTON
DEPUTY ASSISTANT INSPECTOR GENERAL FOR
ACQUISITION AUDIT
OFFICE OF INSPECTOR GENERAL (OIG)

FROM: MOLLY A. WILKINSON 
CHIEF ACQUISITION OFFICER
OFFICE OF THE CHIEF ACQUISITION OFFICER (V)

SUBJECT: Management Response to Draft Dated
November 27, 2007, Review of GSA's Suspension
and Debarment Program Report, Number A070105

The Office of the Chief Acquisition Officer accepts the recommendations made in the Draft Report provided by the Office of Inspector General, and has the following comments:

To clarify the Suspension and Debarment Division (SDD) use of show cause letters, the following information is provided (Reference: Page 2, Paragraph 4, Page 3, Paragraph 1):

The most common use for a show cause letter arises where the SDD Suspension and Debarment Officer (SDO) determines from a review of the file that the respondent or respondents appear to have engaged in conduct that would support the initiation of a suspension or debarment proceeding but such action is not immediately required to protect the government's interests. The show cause letter informs the respondent(s) of the allegations that appear to support a finding of misconduct and offers those respondents a specified period of time to respond in writing. The SDO requires a written response within 10 days; however, if an extension is requested it will be taken under consideration. If a response is not forthcoming, or is less than sufficient, the SDO would then proceed with the suspension or debarment process.

Please re-word paragraph 4 on page 2 to read as follows:

"In addition to these measures, the SDD has a performance measure of 30 days to review all OIG suspension and debarment referrals. Within 30 days, the SDD's goal is to read and digest the OIG referral, respond to the OIG with a proposed course of action, or request additional information."

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We agree that the work being performed in SDD is serious in nature and that it is an inherently governmental function. We also agree that it is an important goal to avoid the need for performance of SDD work by independent contractor personnel. We note that the OIG determined that the contractor was not in fact performing inherently governmental functions. The Chief Acquisition Officer is committed to maintaining the SDD staff at an adequate level to support the execution of the suspension and debarment function.

cc: Mr. Kevin Gallagher, Auditor, OIG
Ms. Erin Priddy, Audit Manager, GSA OIG Kansas City Field Office
Mrs. Suzanne Neurauter, Director, Office of Acquisition Integrity
Mr. Charles Gray, Director, Suspension and Debarment Division
Mr. Ted Verrill, Chief of Staff, Office of the Chief Acquisition Officer
Ms. Marya Pickering, Senior Advisor, Office of the Chief Acquisition Officer

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