

TESTIMONY OF
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BEFORE THE
COMMISSION ON WARTIME CONTRACTING IN
IRAQ AND AFGHANISTAN

“ENSURING CONTRACTOR ACCOUNTABILITY:
PAST PERFORMANCE AND SUSPENSION AND DEBARMENTS”

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I am pleased to appear before you to testify on behalf of the Office of Inspector General (OIG) for the U.S. Agency for International Development (USAID) and to be joined by such distinguished panelists. Today, I would like to share information on the progress of USAID’s suspension and

debarment efforts and discuss the current contractor accountability environment.

Past Problems

As you may know, a year and half ago, in October 2009, we issued an audit report of USAID's suspension and debarment practices.¹ At the time, we observed a number of problems with Agency practices and decision-making processes.

We found that USAID had not considered the use of suspension and debarment in many cases in which such action might have been warranted. In fact, the Agency had only taken suspension or debarment actions in response to indictments and convictions reported by our office. The Agency did not take action in response to other kinds of cases, such as those stemming from matters that had been declined for prosecution by U.S. authorities, or those arising from referrals from contracting officers or other Agency employees. In two instances, USAID did not take action to suspend or debar firms even when the firms had acknowledged making significant false and inflated claims for reimbursement. This limited approach to suspensions and debarments led USAID to apply these sanctions in

¹ *Audit of USAID's Process for Suspension and Debarment*, Report No. [9-000-10-001-P](#), October 1, 2009.

relatively few cases. During the period covered by our audit (fiscal years 2003–2007), USAID documented or reported suspension and debarment actions in response to only nine investigative cases.

Our audit found that even when USAID had pursued suspension and disbarment actions, it did not always execute them properly. USAID did not routinely abide by Federal guidelines on providing notice of its final debarment decisions, entering suspension and debarment information into the Federal database of excluded parties, or documenting the actions it took. A key step in the process of effectively suspending or debarring an organization from Government contracts and awards is listing the entity in the Excluded Parties List System (EPLS)—the system for tracking entities that have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded or disqualified. Despite the acquisition regulation requirement to post information about exclusion actions in EPLS within 5 workdays, we found that USAID failed to meet this requirement in six of nine cases. In one case, the Agency omitted four debarred entities from EPLS. In another case, we had difficulty discerning what steps, if any, the Agency had taken to implement a debarment decision because the division responsible for maintaining debarment records had no documentation of the matter.

Finally, we found that USAID had not consistently used available information on excluded firms during the contracting process. Federal agencies must perform EPLS checks at two points before awarding funds: during the bidding process and during the award process. To determine whether USAID had consulted EPLS as required, we reviewed a random sample of Agency contracts. We found that USAID generally lacked documentation that it had checked EPLS during the bidding process, and documentation of such checks during the award process was inconsistent. USAID could not establish that it had performed required EPLS checks at any point for 20 of the 54 contracts we examined.

Present Observations

I am happy to report that USAID's current suspension and debarment posture stands in sharp contrast to its past efforts. Although we have not had an opportunity to thoroughly reevaluate the Agency's suspension and debarment process since 2009, we have observed considerable progress in its application of these tools. Since our audit, USAID has established a Compliance and Oversight of Partner Performance Division focused on suspension and debarment actions in response to one of our recommendations. Whereas in 2009 USAID had no staff exclusively

dedicated to such efforts, the Agency is now building a division of eight acquisition, assistance, and audit personnel supported by an attorney from the Agency's Office of the General Counsel to handle these matters and other contractor accountability functions.

Rather than waiting for OIG referrals, USAID has taken the initiative to identify cases suitable for suspension or debarment consideration. In fact, for the first time in recent history, USAID debarred an individual based on information that did not originate from our office. In September 2010, USAID responded to independent reports that an employee of a USAID grantee pleaded guilty to stealing federal funds, and took action to debar this individual.

Provided dedicated Agency staff to work with on suspension and debarment actions, OIG has been able to engage USAID earlier in the investigative process. Whereas in the past we generally waited for investigations to be completed before referring matters to USAID's suspension and debarment official, absent limitations imposed by the Department of Justice, we now share "real-time" case information that the Agency needs to determine if suspension or debarment action is warranted. This close collaboration has helped us develop a clearer understanding of the information Agency officials need to make prudent decisions.

To keep up with the pace of exchange on these matters, we have also increased the frequency with which we communicate. Early last year, we initiated monthly meetings with suspension and debarment staff. Now, our exchanges with them are routine and occur many times a week.

This earlier and more intensive engagement between the OIG and USAID staff has produced greater results. Accordingly, of the 37 USAID suspensions and debarments currently in effect, more than three-quarters—or 28 in total—are based on actions taken within the last year.

While there has been a major uptick in the quantity of work that USAID is doing in the suspension and debarment arena, the most notable sign of progress over the last year relates to a single case. In December 2010, following months of consultation with our office, USAID took the extraordinary step of suspending one of its largest funding recipients, the Academy for Educational Development (AED). USAID's suspension decision underscored the seriousness of its commitment to responding to mismanagement of U.S. Government funds and established that no implementing partner was too large to escape accountability. Indeed, at the time USAID took this extraordinary step, it had 65 active awards valued at approximately \$640 million with AED and work underway in countries like

Afghanistan and Pakistan. And the implications were felt across the Government, as AED's portfolio extended to other federal agencies.

As you might imagine given the ramifications, USAID did not make this decision lightly. OIG opened the underlying investigation in the spring of 2009 and began sharing information with the Agency's suspension and debarment staff last summer. USAID determined to proceed with the suspension after we presented it with evidence of serious corporate misconduct, mismanagement, and a lack of internal controls that raised grave concerns about the firm's integrity.

This significant step followed on another notable case in which a major firm was held to account for its work with USAID. After years of investigative work, OIG established that high-level Louis Berger Group (LBG) employees had conspired to charge the U.S. Government falsely inflated overhead costs. In November 2010, our work in unraveling the complex accounting scheme behind this effort produced plea agreements from LBG's former Chief Financial Officer and Controller, and a \$69.3 million settlement with the company.

This settlement and USAID's new approach to suspension and debarment have helped reset the accountability environment in foreign

assistance. Individuals and organizations working with USAID now have heightened awareness that they will be held accountable.

OIG intends to capitalize on this new momentum by increasing our engagement with those who come forward with information about possible violations. We are intensifying outreach efforts and reinforcing opportunities for fraud reporting. We have increased our permanent staff presence in priority countries and are working closely with host government investigators and prosecutors to secure convictions of local law breakers affecting USAID programs. These efforts all serve to extend our reach and enforce a culture of accountability.

These measures would not be as successful as they have been had USAID not expanded the use of its suspension and debarment authorities. We applaud the Administrator for his determination to hold the Agency's "implementing partners to strict account, regardless of their size." And we are hopeful that in establishing a new suspension and debarment task force with the Deputy Administrator as its lead, the Agency will ensure that suspension and debarment considerations remain at the forefront of efforts to promote accountability.

This type of senior leadership engagement is needed because effective suspension and debarment efforts require continuing vigilance. One case in

particular illustrates this point. In December 2008, after months of investigation and following the successful prosecution of its husband and wife owners for conspiracy and fraud, USAID debarred U.S. Protection and Investigations, LLC (USPI), a firm that provided security services to the Agency in Afghanistan. In addition to debarring the Texas-based firm, USAID also debarred the couple who owned it. Despite these measures, the couple was later found to be associated with a new firm, SERVCOR, which was performing work on other federally funded contracts. USAID promptly took action to debar the company last December.

Our recent efforts and those of the Agency have had the effect of strengthening the integrity of USAID's contractor base. However, much work remains to be done. Despite our renewed emphasis on suspension and debarment, we are still identifying new opportunities to use these tools and refining our follow through on case referrals. The Agency can strengthen its efforts to independently identify cases suitable to suspension or debarment. It can also do more to ensure that past performance information is entered into corresponding systems.

Proper stewardship of U.S. taxpayer dollars requires a solid accountability framework and the steps that the Agency has begun to take can serve as a sound basis for the future of foreign assistance. We will

continue to work with the Agency to ensure that these steps only represent the start of efforts to provide taxpayers with greater assurance that foreign assistance funds are administered with integrity.

I thank you for this opportunity to address the Commission and appreciate your interest in our work and perspectives on these important topics. I would be happy to answer any questions you may have at this time.