



**EVALUATION OF THE  
DEPARTMENT OF LABOR'S  
POLICIES AND PROCEDURES TO  
DEBAR OR SUSPEND  
FEDERAL CONTRACTORS**

**ASSISTANT SECRETARY FOR ADMINISTRATION AND  
MANAGEMENT**

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**REPORT NO.: 2E-07-740-0001**

**DATE ISSUED: SEPTEMBER 28, 2000**

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## **ACRONYMS AND GLOSSARY**

### **ACRONYMS**

|       |  |
|-------|--|
| CFR   | Code of Federal Regulations                                    |
| DOL   | Department of Labor  |
| DOLAR | Department of Labor Acquisition Regulation                     |
| FAR   | Federal Acquisition Regulation                                 |
| GSA   | General Services Administration                                |
| OALJ  | Office of Administrative Law Judges                            |
| OASAM | Office of Assistant Secretary of Administration and Management |

### **GLOSSARY**

|             |   |
|-------------|---|
| Debarment:  | Action taken by a debarring official under FAR 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period. |
| Suspension: | Action taken by a suspending official under FAR 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting.                    |

## EXECUTIVE SUMMARY

We conducted this evaluation to determine if the Department of Labor (DOL) is adhering to required debarment and suspension policies and procedures. The purpose of the Federal government's debarment and suspension procedures is to: (a) prevent poor performance, fraud, waste, and abuse in Federal procurement and nonprocurement actions; (b) increase agency accountability; and, (c) ensure consistency among agency regulations.

Within DOL, the Secretary of Labor has re-delegated contracting and grant responsibilities, as well as the debarment and suspending of federal contractors, down to the agency level. However, the Office of the Assistant Secretary for Administration and Management (OASAM) has overall responsibility for implementing DOL's procurement and grant programs, and ensuring these programs perform in accordance with appropriate laws and regulations. OASAM's Business Operations Center (BOC) has been assigned the operational responsibilities for these programs, as well as managing the debarment and suspension program.

## RESULTS OF EVALUATION

Our evaluation identified areas where improvements can be made to DOL's debarment and suspension process. Implementation of our recommendations will reduce the potential for debarred or suspended contractors to be awarded contracts or grants by DOL. Furthermore, OASAM will more effectively oversee DOL's debarment and suspension process.

### **FINDING A - DOL NEEDS TO PROVIDE ADDITIONAL GUIDANCE AND MONITORING OF ITS PROCUREMENT, DEBARMENT AND SUSPENSION PROGRAM**

We found the following discrepancies based on our review and comparison of DOL's debarment and suspension practices with federal and DOL statutes and regulations.

1. **Contracting Officers' Responsibilities.** Many contracting officers are not following the procedures outlined in the Federal Acquisition Regulation (FAR). For example, contracting officers told us they review the GSA list of debarred contractors only once instead of twice as required in the FAR.
2. **Debarment and Suspension Procedures.** DOL agency staff involved in the contracting or grant process are not familiar with the debarment or suspension process, and we found that little emphasis is placed on the process.
3. **Technical Discrepancies in DOL Documentation.** A number of technical discrepancies were identified in the Department of Labor Acquisition Regulation (DOLAR) with similar information found on the DOL's website or in the Department of Labor Manual Series (DLMS). Some examples include the following: (a) the definition of Procurement Executive in the DOLAR

(292.101) differs from the DLMS (884k), (b) the definition of Agency Head in the DOLAR (2902.101) differs from the DLMS (884b), and (c) the DOLAR and DLMS needs to be updated to show the functions of the Business Operations Center and that the name changed from the National Capital Services Center.

## **FINDING B - OASAM NEEDS TO INCREASE ITS EMPHASIS OF THE DEBARMENT AND SUSPENSION PROGRAM THROUGHOUT DOL**

1. **Information Sharing.** We found that OASAM has not developed a uniform approach to address issues related to debarment and suspension. There is a lack of information sharing between agencies which can ultimately have a negative impact on DOL. For example, from our sampling of contractors, we identified one contractor debarred by DOL in April 1999; however, the contractor's name was never sent to GSA to add to the debarment list. As a result, this contractor continued to receive multiple federal contracts from other government agencies because DOL had not provided the contractor's name to GSA.
2. **DOL Debarment Activity.** We found the number of DOL debarments has dropped significantly from 54 in 1999 to 8 in the first half of 2000. DOL employees who have gone through the process of debarring or suspending a contractor complained about the time it takes to debar a Federal contractor.
3. **Interagency Committee on Debarment and Suspension.** We found that DOL is not officially represented at the government-wide Interagency Committee on Debarment and Suspension.

### **RECOMMENDATIONS**

OASAM should:

1. Ensure that all contracting and grant officers are fully aware of their responsibilities and obligations under the FAR, DOLAR, and DLMS regulations and procedures. This includes the requirement of reviewing the GSA list for debarred contractors prior to awarding a contract or grant.
2. Ensure that the procedures to initiate debarment or suspension action described in the DOLAR are disseminated to all contracting and grant officers.
3. Make the necessary corrections to procedures outlined in their regulations, manuals, and other documents which address DOL's procurement, nonprocurement, debarment and suspension processes.
4. Carry out its responsibilities under DLMS Chapter 818 to "periodically monitor DOL agency procurement and grant functions to determine their effectiveness and adherence to Federal and DOL requirements."

5. Develop Departmental procedures to track and share information from DOL agencies on all proposed and final debarment and suspension actions.
6. Assign a representative to attend the Interagency Committee on Debarment and Suspension. That representative should act as a liaison and provide pertinent information to appropriate DOL agencies.

### **OASAM RESPONSE AND OIG CONCLUSIONS**

The agency's response to the OIG's official draft report generally agrees with our recommendations. Recommendations one, three, four and six have been resolved and OASAM has initiated corrective actions. These recommendations will be closed, pending OIG's receipt of appropriate documentation. OIG report recommendations two and five remain unresolved, pending receipt of OASAM's corrective action plan for these two recommendations.

Specific reporting requirements, as well as requested dates for these submissions, are specified in the report. The agency's complete response is found in the Appendix.



## **BACKGROUND**

We conducted this evaluation to determine if DOL is adhering to required debarment and suspension policies and procedures. The purpose of the Federal government’s debarment and suspension procedures is to: (a) prevent poor performance, fraud, waste, and abuse in Federal procurement and nonprocurement actions; (b) increase agency accountability; and, (c) ensure consistency among agency regulations.

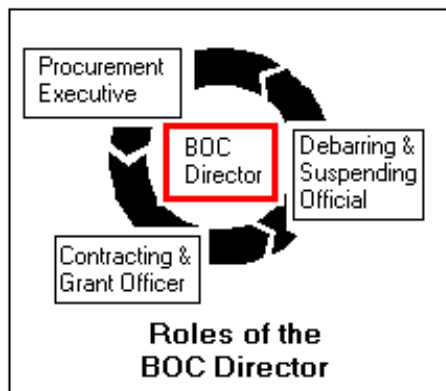
Within DOL, the Secretary of Labor has re-delegated contracting and grant responsibilities, as well as the debarment and suspending of federal contractors, down to the agency level. However, the Office of the Assistant Secretary for Administration and Management (OASAM) has overall responsibility for implementing DOL’s procurement and grant programs, and ensuring these programs perform in accordance with appropriate laws and regulations. OASAM’s Business Operations Center (BOC) has been assigned the operational responsibilities for these programs, as well as managing the debarment and suspension program.

### **Procurement Executive**

As Procurement Executive, the BOC Director is responsible for periodically monitoring DOL agency contracting and grant functions, and determining their effectiveness and adherence to Federal and DOL requirements.

In 1999, DOL awarded more than \$10 billion in contracts and grants to private sector companies. DOL, like all government agencies, has great latitude in determining its contracting and grant needs, as well as contractor selection. Because the procurement system is a varied and complex process, there is the potential for abuse to occur.

### **Contracting and Grant Officer**



As part of DOL’s decentralized procurement structure, the Secretary of Labor delegated Contracting and Grant Officer authority and responsibility to the BOC Director and seven other officials or agency heads (excluding Regional Administrators), through the Assistant Secretary for Administration and Management. In this capacity, they re-delegate the role of contracting and grant officers to employees within their respective agencies. These contracting and grant officers enter into and/or review, modify or terminate any contracts or financial assistance awards within their agency, and make related determinations and

findings.

Before a contract or grant is awarded, the contracting or grant officer must determine whether the

prospective contractor is considered “responsible.” In general, the FAR<sup>1</sup> defines “responsible” as *having resources and skills to perform the work in a satisfactory and timely manner and having a satisfactory record of integrity and business ethics*. According to the FAR, the General Services Administration’s “*List of Parties Excluded From Federal Procurement Programs*” (referred to as the GSA List<sup>2</sup>) is used to verify if a contractor is considered not responsible.

### **Debarring and Suspending Official**

As the Debarring and Suspending Official, the BOC Director takes action against contractors to exclude them from Government contracting (and subcontracting), or from participating in a covered transaction, for a reasonable specified period of time (debarment), or on a temporary basis (suspension). Some reasons for debarment or suspension are: civil judgments or convictions,<sup>3</sup> fraud or other seriously improper conduct or poor contract performance. (Exhibit 2 describes the causes and treatment for debarment and suspension action which were taken from the GSA List of Parties Excluded From Federal Procurement and Nonprocurement Programs). Additionally, unless there are compelling<sup>4</sup> reasons, contractors who are debarred or suspended are not eligible, directly or indirectly, to submit offers or be awarded a Government contract or subcontract, to participate in a covered transaction, or to act as an agent or representative of another contractor.

In addition, there are some DOL agencies with enforcement authority to debar a contractor for violating certain statutory, executive orders or other kinds of regulations.<sup>5</sup> Some examples are:

- (a) the Division of Wage and Hour may propose a debarment action against a contractor who failed to pay prevailing wages and benefits under the Service Contract Act or the Davis-Bacon Act; or,
- (b) the Office of Federal Contract Compliance Programs may propose a debarment action against a contractor who failed to meet equal employment opportunity or affirmative action obligations under Executive Order 11246 (et. al.). These debarment or suspension decisions fall outside the responsibility of the Debarring and Suspending Official in BOC.

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<sup>1</sup>The FAR is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds. Authority for revising the FAR is shared by the three executive agencies represented on the Federal Acquisition Regulatory Council by the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space or their designees.

<sup>2</sup>Through its database, GSA compiles, maintains, and distributes a current list of the names of all companies whose contracting privileges have been removed (through debarment or suspension action) because they were found to be not responsible.

<sup>3</sup>According to Part 9.403 of the FAR, conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

<sup>4</sup>An agency head or an authorized designee must provide documentation stating the reason(s) why a contractor who is debarred or suspended, (or proposed), should be granted a contract or grant. However, these are infrequently granted.

<sup>5</sup>Agencies with enforcement authority can debar a contractor, regardless of the government agency who has awarded the contract or grant.

The procedures to debar or suspend a contractor from procurement activities are in the FAR. The procedures for DOL agencies to debar or suspend a contractor from nonprocurement activities, or on the basis of enforcement authority, are in Office of the Secretary of Labor regulations (29 C.F.R.).

## **PURPOSE AND METHODOLOGY**

### **PURPOSE**

We conducted this evaluation to determine if DOL is adhering to required debarment and suspension policies and procedures. The purpose of the Federal government's debarment and suspension procedures is to: (a) prevent poor performance, fraud, waste, and abuse in Federal procurement and nonprocurement actions; (b) increase agency accountability; and, (c) ensure consistency among agency regulations.

Within DOL, the Secretary of Labor has re-delegated the contracting and grant responsibilities, as well as the debarring and suspending of federal contractors, down to the agency level. However, the Office of the Assistant Secretary for Administration and Management (OASAM) has overall responsibility for implementing DOL's procurement and grant programs, and ensuring these programs perform in accordance with appropriate laws and regulations. OASAM's Business Operations Center (BOC) has been assigned the operational responsibilities for these programs, as well as managing the debarment and suspension program.

Our evaluation focused on the following questions: (1) are DOL's practices, policies and procedures regarding debarment and suspension in conformance with current statutes and regulations; and, (2) is information shared between OASAM and other DOL agencies to ensure consistent application of the debarment and suspension policy and procedures?

### **METHODOLOGY**

Our methodology included quantitative and qualitative methods, as well as document review.

#### Quantitative Methods

We used the GSA database to conduct statistical analyses on the number of contractors debarred or suspended by DOL. However, we could not conduct an in-depth analysis of DOL agencies because the GSA database does not include information by specific agencies. As of June 30, 2000, the GSA list reflected a total of 151 contractors debarred by DOL. However, we limited the scope of our analysis to debarments from 1995 to June 30, 2000 (totaling 132).

We conducted another analysis using 2,318 contractors' names we collected during our document review. These 2,318 contractors had either bid on or were awarded contracts or grants by DOL. Also, through DOL's intranet website, we collected 22 contractors' names who had been debarred by the Office of Administrative Law Judges (OALJ) or by the Administrative Review Board. From the total universe of 2,340 contractors, we randomly selected a judgmental sample of 235 (10%) contractors for our statistical analysis. We did not independently verify the accuracy of the information we received. In conducting the analysis of our sample, we used both the published version of the GSA list, issued monthly (which most contracting offices use), as well as the electronic version available through GSA's website.

## Qualitative Methods

We applied qualitative methods in our interviews and contract files review. We conducted interviews with 20 employees from ten DOL agencies, including contracting officers, program analysts (i.e., who provide technical support on bids or proposals), division chiefs, and other managers. We also spoke with employees from the Office of the Solicitor and the OALJ. We met with members of the government-wide Interagency Committee on Debarment and Suspension<sup>6</sup> to discuss pending regulations, the committee's responsibilities, DOL's participation, and to identify other government agencies whose organizational structure is similar to DOL.

## Document Review

We examined DOL's current practices, policies, and procedures, federal statutes covering contracts (procurements) and grants (nonprocurements), as well as debarments and suspensions. An entrance conference was held with BOC officials on April 27, 2000. Field work was conducted at DOL offices in the Washington D.C. area.

We conducted our evaluation in accordance with the *Quality Standards for Inspections* published by the President's Council on Integrity and Efficiency.

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<sup>6</sup>This committee was originally established in 1986 as a means to help foster consistency among Federal agency regulations concerning debarment and suspension, and continues to address ongoing debarment/suspension issues.

## FINDINGS

### **FINDING A - DOL NEEDS TO PROVIDE ADDITIONAL GUIDANCE AND MONITORING OF ITS PROCUREMENT, DEBARMENT AND SUSPENSION PROGRAM**

We found the following discrepancies based on our review and comparison of DOL's debarment and suspension practices with federal and DOL statutes and regulations.

#### **1. Contracting Officers' Responsibilities**

We determined that many contracting officers are not following the procedures outlined in the FAR, evidenced by the following:

- (a) According to the FAR, the GSA list "shall" be reviewed twice by contracting officers. The first review is after the opening of bids or receipt of proposals. The second review is immediately prior to award to ensure that no award is made to a debarred or suspended contractor. More than 80 percent of the contracting employees we interviewed stated they only review the GSA list before awarding the contract or grant. When questioned further, they said they were not aware that the list should be reviewed after the opening of bids or receipt of proposals.
- (b) Most contracting officers said that the published GSA list, issued monthly, is reviewed instead of the electronic version, available through GSA's website. The date of review is documented on a checklist maintained in the contract file. We reviewed approximately 15 contract or grant files from four DOL agencies to verify use of the checklist. However, with the exception of only two files, we could not verify that the GSA list had been reviewed by contracting officers.

#### **2. Debarment and Suspension Procedures**

Reviewing the GSA list for debarred contractors is only one part of the procurement process. We found that some DOL agency staff who are involved in the contracting or grant process are not familiar with the debarment and suspension process, and that little emphasis is placed on debarments, evidenced by the following:

We spoke to a number of employees who were unfamiliar or indifferent about the debarment and suspension process. Less than twenty percent of the employees we interviewed were familiar with some of the procedures. The remaining had never been involved with a debarment, nor were they familiar with the procedures. However, they said they would contact their supervisor if they had questions about debarring a contractor. Furthermore, we were told that prospective contractors and grantors would contact DOL if they (DOL) had inadvertently awarded a contract or grant to a debarred contractor.

### **3. Technical Discrepancies in DOL Documentation**

We found technical discrepancies when we compared the Department of Labor Acquisition Regulation (DOLAR) with similar information found on the DOL's website or in the Department of Labor Manual Series (DLMS). Many of the words and terms used in these three references are contradictory or outdated. Some examples include the following: (a) the definition of Procurement Executive in the DOLAR (292.101) differs from the DLMS (884k), (b) the definition of Agency Head in the DOLAR (2902.101) differs from the DLMS (884b), and (c) the DOLAR and DLMS needs to be updated to show the functions of the Business Operations Center and that the name changed from the National Capital Services Center.

#### **Recommendations:**

OASAM should:

1. Ensure that all contracting and grant officers are fully aware of their responsibilities and obligations under the FAR, DOLAR, and DLMS regulations and procedures. This includes the requirement of reviewing the GSA list for debarred contractors prior to awarding a contract or grant.
2. Ensure that the procedures to initiate debarment or suspension action described in the DOLAR are disseminated to all contracting and grant officers.
3. Make the necessary corrections to procedures outlined in their regulations, manuals, and other documents which address DOL's procurement, nonprocurement, debarment and suspension processes.
4. Carry out its responsibilities under DLMS Chapter 818 to "periodically monitor DOL agency procurement and grant functions to determine their effectiveness and adherence to Federal and DOL requirements."

#### **OASAM Response to Finding A, Recommendations 1 and 4**

*"Contracting Officer Responsibilities. ...the report states that many DOL contracting officers are not following the procedures for debarment and suspension outlined in the Federal Acquisition Regulation (FAR) due to their practice of reviewing the GSA debarment listing once instead of twice as required by the FAR. In order to ensure that contracting officers are aware of their responsibilities regarding the procedures for reviewing of the debarment listing prior to contract award, the Procurement Executive will issue a policy memorandum to all DOL contracting and grant officers outlining the appropriate procedures to be followed. We will also include these criteria as part of our management reviews of procurement offices to ensure the Department's contracting and grant community are compliant."*

## **OIG Conclusion**

We consider recommendations one and four to be resolved. The recommendation for OASAM to ensure that all contracting and grant officers are fully aware of their responsibilities and obligations, will be closed pending receipt of a copy of the Procurement Executive's policy memorandum to all DOL contracting and grant officers referenced above. In addition, the recommendation for OASAM to periodically monitor DOL agency procurement and grant functions, will be closed pending receipt of OASAM's tentative schedule of management reviews of agency procurement offices during FY 2001. **Please provide the requested written documentation for these two recommendations to this office by November 30, 2000.**

## **OASAM Response to Finding A, Recommendation 2**

*“Debarment and Suspension Procedures. ...the report states that ‘...some DOL agency staff who are involved in the contracting or grant process are not familiar with the debarment and suspension process...’ and that ‘less than twenty percent of the employees interviewed were familiar with some of the procedures.’ As noted in our response to Finding A1 above (last two sentences), the debarment and suspension procedures are implemented by the Department's Debarment and Suspension Officials, not contracting or grant staff and not contracting officers. Contracting officers are required to follow the procedures in the FAR that are applicable to their role in the procurement process. Pursuant to FAR, Sections 9.405(d)(1) and (4) The role of contracting officers is to ensure debarred contractors are not awarded contracts. Debarment and suspension officials are required to be knowledgeable of the debarment and suspension process to perform their responsibilities. It is noted that the report does not show a distinction between the duties performed by contracting officers, other contract staff members, debarment and suspension officials, and program office employees. Although they work as part of the acquisition team, each group has a distinct role to play in the procurement preaward, administration, and postaward process. Therefore, the fact that some DOL agency staff who are involved in the contracting or grant process are not fully knowledgeable of the debarment and suspension procedures is not sufficiently precise to support a conclusion that contracting officers and debarment/suspension officials are not in compliance with required regulatory provisions.”*

## **OIG Conclusion**

This recommendation is considered unresolved. We agree with OASAM's position regarding the distinction between the responsibilities of debarment and suspension officials, and those of contracting and grant officers. However, this recommendation deals with ensuring that contracting and grant officers are familiar with the procedures to initiate debarment or suspension actions. Further, as OASAM's response correctly indicates, contracting officers, other contact staff members, debarment and suspension officials, and program office employees work as part of the acquisition team, with each group having a distinct role to play in the procurement preaward, administration, and postaward process. As such, it should be noted that FAR 9.406-3a states that agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration. In addition, DOLAR 2909.406-3(a)(b) states that whenever a cause for debarment, as listed in FAR 9.406-2,



becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor, and the Office of the Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Directorate of Procurement and Grant Management. Further, based upon review of the recommendation to debar ...the Director, Directorate of Procurement and Grant Management, shall initiate proposed debarment by taking the actions listed in FAR 9.406-3c... .

We are not suggesting that contract/grant officers and their staffs possess an intimate knowledge of debarment/suspension policy and procedures but rather that they understand their responsibilities and obligations referenced above to initiate a referral.

**To resolve this recommendation, please provide this office with a specific corrective action plan by November 30, 2000.**

**OASAM Response to Finding A, Recommendation 3**

*“Technical Discrepancies in DOL Documentation. The DOL Procurement Executive is implementing a plan to update all procurement-related regulations and Department of Labor Series Manuals which should be completed by the end of second quarter Fiscal Year 2001. We anticipate implementing this comprehensive review and revision process by a combination of senior procurement analysts that will be hired by mid-October and contractor support where appropriate. Coordination with the DOL procurement community will be a critical part of this process and a special workgroup comprised of the four primary contracting entities within DOL (OASAM, ETA, ETA’s Office of Job Corps, and MSHA), with support from SOL, will be used to effect that interface.*

*Pursuant to Office of Federal Procurement Policy (OFPP) Letter 92-1 (Inherently Governmental Functions) and OFPP Policy Letter 93-1 (Management Oversight of Service Contracting), we will ensure that appropriate management controls are in place for any contractors to avoid potential conflicts of interest in this effort.”*

**OIG Conclusion**

We consider this recommendation to be resolved. The recommendation will be closed pending receipt of documentation that OASAM has completed revision/update of all official documents which address DOL’s procurement, nonprocurement, debarment and suspension processes. **Please provide copies of updated regulations, manuals, and other appropriate documents to this office by April 20, 2001.**

**FINDING B - OASAM NEEDS TO INCREASE ITS EMPHASIS OF THE DEBARMENT AND SUSPENSION PROGRAM THROUGHOUT DOL**

We found that OASAM has not developed a uniform approach to address issues related to debarment and suspension.

**1. Information Sharing**

We conducted interviews and analysis on information pertaining to debarments and suspensions. We wanted to determine what impact, if any, information sharing has on the debarment or suspension process in DOL. We found there is a lack of information sharing between agencies which can ultimately have a negative impact on DOL.

We searched the Intranet site and made numerous telephone inquiries within DOL for evidence of any information sharing between DOL agencies on debarments and suspensions. We found no indication of such information sharing. We were told that there has never been a problem, so the sharing of information was not needed. We disagree. As a result of our sampling of contractors, we found one contractor who had been debarred by DOL, in April 1999, for a period of three years; however, the contractor's name was never sent to GSA to add to the list.<sup>7</sup> We found the contractor had contracts with another government agency at the time DOL initiated debarment action. We notified the contracting officer<sup>8</sup> for that agency, and was told the contractor had multiple contracts, which were just renewed within the past month (July 2000). If GSA had been properly notified of the debarment last year (1999), this contractor would have been on the GSA debarment list, and consequently would not have been eligible to bid on or be awarded contracts. This incident clearly shows the lack of, and the need for, sharing of information.

We discovered this discrepancy using the electronic version of GSA's list, which we found to be more flexible and up-to-date than the GSA printed version. The printed version is issued monthly and used by most contracting offices. The electronic version has the capability to search a contractor by partial name. When we searched the database using only a partial name, we received an increased number of contractors' names, including any variations to the name.

We could not find a central point in the Department to check on proposed debarments by DOL. Instead, we found a number of employees whose knowledge of debarments was limited to only that portion of the process that involved their agency.

We believe that information sharing is important for agencies when they consider awarding contracts and grants. For example, knowing a contractor's status would be particularly useful if one DOL agency was in

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<sup>7</sup>As a result of our finding, GSA was provided the information necessary to add the contractor to the debarment list.

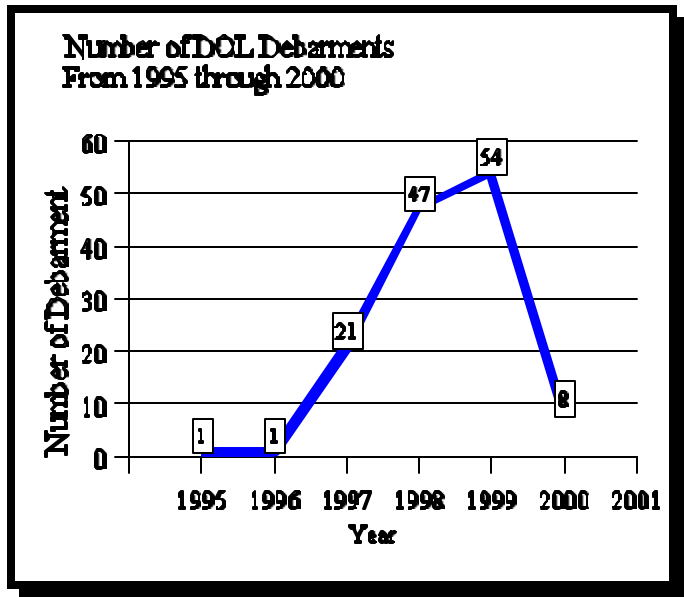
<sup>8</sup>The other governmental agency was faxed a copy of the letter to GSA to add the contractor to the list, along with the supporting documentation.

the early stages of awarding a contract or grant while another DOL agency was in the final stages of debarring the same contractor. Also, the DOL agency would have a history of contractors who have been debarred, if an employee in contracting leaves the agency. The DOL agency would have information necessary to debar a contractor indefinitely for committing the same offense on more than one occasion.

## 2. DOL Debarment Activity

Of the 151 contractors debarred by DOL, almost 90% (130/151) occurred from January 1997 through June 30, 2000. As shown, the number increased from 1997 to 1999, and dropped significantly from 1999 to 2000.

Since there were only 8 debarments for the first six months of 2000, and approximately 5 debarments are in the appeal process, we do not foresee the number of debarments increasing significantly for the remainder of 2000.



One of the reasons for the decline in DOL debarments from 1999 to 2000 may be the time involved to debar a contractor. This was a complaint of many DOL employees who have gone through the process of debarring or suspending a contractor. We were told that the process can even take longer (up to 3 years) if DOL or the contractor files an appeal. These interviewees said it was easier to terminate a contract, or assess monetary penalties against contractors, rather than debar them. Based on our interviews, it appears that the length of time it takes to debar or suspend a contractor is a major factor why alternatives to debarment are considered in DOL. This finding is similar to a recent article published in *The Washington Post*<sup>9</sup>, which states that even though some government agencies work more aggressively than others in banning Federal contractors, some officials offer a variety of reasons why companies remain eligible to receive contracts or grants.

Our research also found, according to a GSA study,<sup>10</sup> officials from other government agencies, value the flexibility of the debarment program, in part, because it does not require the same burden of proof as a court of law.<sup>11</sup>

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<sup>9</sup>John Solomon and Katherine Pflieger, "Avoiding Federal Debarment," *The Washington Post* 21 Aug. 2000: A19.

<sup>10</sup>GAO, *Debarment and Reinstatement of Federal Contractors: In Interim Report*, House Report No 102-1061, November 2, 1992

<sup>11</sup>Debarment is based on the principle that, within certain restrictions, the government has the right to choose with whom it will contract.

### **3. Interagency Committee on Debarment and Suspension**

The Interagency Committee on Debarment and Suspension has an impact on government-wide decision making for debarments and suspensions. The Committee provides support for individual agencies' efforts, and assists in developing unified Federal policy. They also help interpret regulations issued by the Office of Management and Budget, and determine which Department will be responsible for any actions taken against a federal contractor. We met with the Chairman of the Committee who informed us that DOL is not represented at the meetings. [DOL is 1 of 3 Departments (3/21 or 15%) who do not have an official representative.] Furthermore, he stated that DOL is a prominent figure on many labor issues, and that questions that pertain to DOL continue to be raised at the meetings.

#### **Recommendations:**

OASAM should:

5. Develop Departmental procedures to track and share information from DOL agencies on all proposed and final debarment and suspension actions.
6. Assign an official representative to attend the Interagency Committee on Debarment and Suspension. That representative should act as a liaison and provide pertinent information to appropriate DOL agencies.

#### **OASAM Response to Finding B, Recommendation 5**

*“Information Sharing. Beginning the first quarter of FY 2001, the DOL Procurement Executive will enhance its current information sharing mechanisms for distributing procurement information by including updates and reminders on best practice procedures in the debarments and suspensions area. This will be implemented through several mechanisms, including but not limited to, procurement management reviews, procurement conferences, seminars, and recommendations to contracting and grant offices for appropriate training (also, see our response to Finding B, Recommendation 6 below). To carry this out, the current staffing of OASAM's procurement policy office will be increased by hiring three procurement analysts (GS-1102-14). Advertisements for these positions have closed and it is anticipated that these personnel will be on board by mid October.”*

#### **OIG Conclusion**

We consider this recommendation unresolved. We agree with OASAM's plans to enhance information sharing mechanisms for distributing procurement information by including updates and reminders on best practice procedures in the debarment and suspension areas. In addition, as indicated in your response to Finding B, Recommendation 6 below, we agree with your plans to track and share information from/with other federal agencies, as a result of DOL's formal representation on the Interagency Committee on Debarment and Suspension. However, your

response does not adequately address our recommendation to develop Departmental procedures to track and share information received from DOL agencies on all proposed and final debarment and suspension actions.

**To resolve this recommendation, please provide this office with a specific corrective action plan by January 12, 2001.**

**OASAM Response to Finding B, 2**

*“DOL Debarment Activity. The report indicates that DOL debarments have dropped significantly from 54 in 1999 to 8 in the 2000 and that the decrease may be due to the time involved to debar a contractor (sometimes 3 years if DOL or the contractor files an appeal). We concur that there has been a decrease in the number of debarment/suspension actions. It should be noted that the criteria used by debarment and suspension officials in considering whether a contractor should be debarred did not change for the period cited and are being applied generally with the same uniformity as in previous years. Informal inquiries with the DOL debarment officials indicate that the decrease is due to an increase in cases being settled prior to reaching the debarment stage and a decrease in the number and kinds of actions which subject firms to the debarment process (i.e., contract and grant compliance). It should also be noted that prior to debaring or suspending a contractor or grantee, an organization and/or individual must be afforded their constitutionally-provided due process rights (notice, hearing, etc.). Affording them appellant rights are a part of that process and some delay may be attributable to these processes. Therefore, the decrease in debarment actions is not necessarily due to the time it takes to debar a contractor.*

*Through the conduct of procurement management reviews, the Procurement Executive will obtain more definitive reasons for the delays and take appropriate action to ensure: (a) a fair adjudication of the issues; (b) targeted contractors and grantees receive a fair hearing prior to debarment or suspension; and (e) compliance with statutory and regulatory provisions.”*

**OIG Conclusion**

There was no specific recommendation associated with this finding, however, we agree with OASAM’s plans to seek out more definitive reasons for the delays. **Please provide this office with the results of your review(s) regarding this issue by September 28, 2001.**

**OASAM Response to Finding B, Recommendation 6**

*“Interagency Committee on Debarment and Suspension. Attached you will find a copy of a memorandum designating an appropriate official within OASAM to the Interagency Committee on Debarment and Suspension, providing notice to the Committee of this designation, and requesting that the Committee provide our representative with notice of all prospective meetings and related correspondence. We will use this forum to track and share information from/with other federal agencies. Additionally, this information will be provided to DOL Agencies on a regular basis.”*

**OIG Conclusion**

We consider this recommendation to be resolved and closed as a result of the above action already taken by

OASAM.

**Contributors to this report:**

Lynne Johnson, Project Leader

Joan Wright

Dennis Raymond

Gregory D. Simmons, Director, Division of Evaluations and Inspections

**Exhibit 1**

**Selected Bibliography/Research Sources**

## Selected Bibliography/Research Sources

Department of Labor Acquisition Regulation System, 48 C.F.R. § 29, 10/1/98 edition.

*DLMS Administration, Chapter 800 - Departmental Directives System*  
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GAO, *Debarment and Reinstatement of Federal Contractors: In Interim Report*, House Report No 102-1061, November 2, 1992

GAO Report T-HEHS-98-212, Federal Contractors - Historical Perspective on Noncompliance with Labor and Worker Safety Laws, July 14, 1998.

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National Archives and Records Administration, Executive Order 12549, Debarment and Suspension, Feb 18, 1986.

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U.S. DOL, *DOL Contracting and Grant Program Overview*  
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**Exhibit 2**

**Causes and Treatment for  
Debarment/Suspension Action**

## Causes and Treatment for Debarment/Suspension Action<sup>12</sup>

Below are the descriptions for causes and treatments which apply to all agencies or to the Department of Labor, as it appears in the *List of Parties Excluded from Federal Procurement and NonProcurement Programs*. Causes and treatments unique to other agencies can be found in the Definitions of Terms and Cause and Treatment Codes Section. The *List* is separated into three sections: 1) Parties Excluded from Procurement and Nonprocurement Programs, 2) the Parties Excluded from Procurement Programs, and 3) Parties Excluded from Nonprocurement Programs. For the purposes of this evaluation, we have combined the causes and codes of the three section. We have added a column which reflects the section pertinent to each code.

- R= Reciprocal Cause and Treatment Codes:** Individuals, entities, and contractors that are excluded governmentwide, unless otherwise noted, from Federal procurement and sales programs, nonprocurement programs, and financial and nonfinancial benefits. An exclusion may be based on the Federal Acquisition Regulation (FAR) 9.4; Federal Property Management Regulation (FPMR) 101-45.6; Government Printing Office (GPO) Instruction 110.11A; or U.S. Postal Service (PS) Publication 41; the Nonprocurement Common Rule; or the authority of a statute, executive order, or regulation applying to procurement and nonprocurement programs.
- P= Procurement Cause and Treatment Codes:** Contractors that are excluded governmentwide, unless otherwise noted, from Federal procurement and/or sales programs. Such an exclusion may be based on the administrative debarment, suspension, or proposed debarment of a contractor by an agency in accordance with Federal Acquisition Regulation (FAR) 9.4; Federal Property Management Regulation (FPMR) 101-45.6; Government Printing Office (GPO) Instruction 110.11A; or U.S. Postal Service (PS) Publication 41. An exclusion may also be the result of actions by a Federal agency under the authority of a statute, executive order, or regulation applying to procurement programs.
- N= Nonprocurement Cause and Treatment Codes:** Persons (individuals or entities) excluded governmentwide, unless otherwise noted, from certain types of Federal financial and nonfinancial assistance and benefits. An exclusion may be based on an administrative debarment or suspension by any Federal Agency or the voluntary exclusion of a person under agency regulations implementing Executive Order 12549, or actions under the authority of a statute, another executive order, or a regulation applying to nonprocurement programs.

| Code | Sect.       | CAUSES AND TREATMENTS   |
|------|-------------|---|
| A    | R<br>P<br>F | <p><b>CAUSE:</b> Debarment by an agency pursuant to FAR 9.406-2, GPO Instructions 110.11A, or PS Publication 41, for one or more of the following causes (a) conviction of or civil fraud violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity; (b) violation of the terms of a Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform; or (c) any other cause of a serious and compelling nature. (See Code – Debarment pursuant to FAR 9.406 2(b)(2) Drug Free Workplace Act of 1988.)</p> <p><b>TREATMENT:</b> Contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts, to renew or otherwise extend the duration of contracts, or consent to subcontracts with these contractors, unless the acquiring agency's head or a designee determines that there is a compelling reason for such action. prime contractors, when required by the terms of their contract, shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Debarments are for a specified term as determined by the debarring agency and as indicated in the list.</p> |

<sup>12</sup>From the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs*.

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| A1 | R<br>P      | <b>CAUSE:</b> Proposed debarment by an agency pursuant to FAR 9.406 2 for one or more of the causes listed in FAR 9.406.2. (See Code N1- Proposed debarment pursuant to FAR 9.406-2(b)(2) Drug Free Workplace Act of 1988.)   |
|    |             | <b>TREATMENT:</b> Same as Code A, except that proposed debarments are temporary actions. Therefore the termination date will be listed as "Indefinite" (Indef.).  |
| AA | R<br>P      | <b>CAUSE:</b> Denial of all Federal contracts by a sentencing judge pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 on the basis of a conviction(s) for a Federal offense relating to the distribution or possession of controlled substances.  |
|    |             | <b>TREATMENT:</b> Listed persons shall not be issued any contract provided by an agency of the United States or by appropriated funds of the United States. Subcontracts awarded with appropriated Federal funds shall also be denied. The denial shall terminate on the date shown. Persons convicted for a third offense relating to distribution of controlled substances after the effective date of the Act shall be denied benefits permanently. Therefore, the termination date for such denials shall be listed as "Permanent" (Perm.)  |
| B  | R<br>P      | <b>CAUSE:</b> Suspension by an agency pending completion of investigation or legal proceedings pursuant to FAR 9.407-2, GPO Instructions 110.11A, or PS Publication 41, and an indictment for, or adequate evidence of, the commission of fraud, antitrust violations, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating business integrity; or (b) adequate evidence of any other cause of a serious and compelling nature. (See Code O-Suspension pursuant to FAR 9.407-2(a)(4) Drug Free Workplace Act of 1988.)   |
|    |             | <b>TREATMENT:</b> Same as Code A, except that suspensions are temporary actions. Therefore, the termination date will be listed as "Indefinite" (indef.). NOTE Debarment and suspension actions taken in accordance with policies and procedures set forth in the FAR 9.4 are effective throughout the Executive Branch. Debarment and suspension actions taken in accordance with GPO Instructions 110.11A and PS Publication 41, are listed with an asterisk (*) preceding the listed party's name, and are effective only within GPO or the PS. These actions are for information purposes only, but should be considered by contracting officials as reflecting acts or circumstances which may have a bearing on the contractor's responsibility. These actions may serve as a basis for governmentwide debarment or suspension of the contractor by another agency.   |
| BB | R<br>P      | <b>CAUSE:</b> Partial denial of Federal contracts by a sentencing judge pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 on the basis of a conviction(s) for a Federal offense relating to the distribution or possession of controlled substances.  |
|    |             | <b>TREATMENT:</b> Listed persons shall not be issued contracts or subcontracts as specified by the sentencing judge which are provided by an agency of the United States or appropriated funds of the United States. Contact the U.S. Department of Justice's Denial of Federal Benefits Project point of contact listed to determine the extent to which benefits have been denied. The denial shall terminate on the date included in the listing. Persons convicted for a third offense relating to distribution of controlled substances after the effective date of the Act shall be denied benefits permanently. Therefore, the termination date for such denials shall be listed as "Permanent" (Perm.). NOTE A denial of benefits under Section 5301 of the Anti-Drug Abuse Act of 1988 does not include benefits relating to long-term drug treatment programs for addiction for any person who declares himself an addict, provides a sufficient body of evidence to substantiate this declaration, and submits to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services. The denial of benefits may also be suspended on the basis of the person's participation or good faith effort to participate in a supervised rehabilitation program. Contact the U.S. Department of Justice's Denial of Federal Benefits Project point of contact listed to verify any assertions that the denial of benefits does not apply, or has been waived or suspended on this basis. |
| C  | R<br>P<br>N | <b>CAUSE:</b> Debarred by the Comptroller General for violation of the Davis-Bacon Act, 40 U.S.C. 276a-2(a).  |
|    |             | <b>TREATMENT:</b> The contractor, or any firm, corporation, partnership, or association in which the contractor has an interest is ineligible to receive any contract or subcontract awarded with appropriated United States or District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in 29 CFR 5.1 (see Code G). Debarment shall terminate on the date shown.  |

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| C1 | R<br>P<br>N | <b>CAUSE:</b> Debarment under a settlement generally with DOL (consent) agreement in which the contractor agrees to be debarred to settle government charges that contractor Davis-Bacon Act.  |
|    |             | <b>TREATMENT:</b> The contractor and any firm, corporation, partnership, or association, in which the contractor has an interest is ineligible to receive any contract or subcontract United States or District of Columbia or any contractor subcontract subject to the labor standards provisions of the statutes listed in 29 CFR 5.1 (see Code G). Debarment is three-year period. Debarment will terminate on the date shown.   |
| CC | R<br>P      | <b>CAUSE:</b> Excluded by a Federal agency from acting as an individual surety pursuant to FAR 28.203-7 for one or more of the following causes: failure to fulfill the obligation bond; failure to disclose all bond obligations, misrepresentation of the value of available assets or outstanding liabilities; false or misleading statement, signature or representation or affidavit of individual suretyship, or any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.   |
|    |             | <b>TREATMENT:</b> Bonds shall not be accepted from listed party unless the acquiring agencies head or designee determines that there is a compelling reason to do so. The list precluded from acting as a contractor as defined at FAR 9.403. The exclusion will terminate on the date shown.  |
| D  | R<br>P      | <b>CAUSE:</b> Debarred by the Secretary of Labor for violation of the Service Contract Act, 41 U.S.C. 354.   |
|    |             | <b>TREATMENT:</b> Offers shall not be solicited from, nor contracts be awarded to, the listed contractor or any firm, corporation, partnership, or association in which the contractor has a substantial interest. Debarment is for a three-year period to terminate on the date shown.  |
| E  | R<br>P<br>N | <b>CAUSE:</b> Debarred by an agency for violation of the Buy American Act, 41 U.S.C. 10b(b).   |
|    |             | <b>TREATMENT:</b> Offers shall not be solicited from, nor contracts or subcontracts for the construction, alteration, or repair of public buildings or works, be awarded to, the listed contractor. The contractor may be solicited for offers and awarded contracts for other than construction, alteration, or repair of public buildings or works. Debarment will terminate on the date shown.  |
| F  | R<br>P<br>N | <b>CAUSE:</b> Declared ineligible by the Secretary of Labor or the Assistant Secretary of Labor for Employment Standards in accordance with Executive Order No.11246, as amended (12319, September 28, 1965; 32 FR 14303, October 13,1967; 43 FR 46501, October 5, 1978) Section 503 of the Rehabilitation Act of 1973, as amended 29 U.S.C. Sec. 793, and/or affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. Sec. 2012, and based on the contractor's or subcontractor's failure to satisfy its obligations under the Equal Opportunity Clause or Affirmative Action Clause of a Federal contract or federally assisted construction contract.  |
|    |             | <b>TREATMENT:</b> The contractor or subcontractor and its officers, agents, successors, divisions and subsidiaries are ineligible for the award of any contract or subcontract for or part, with funds from any agency, or for the extension or other modification of existing contracts or subcontracts. Debarment is for an indefinite period of time pending the contractor or subcontractor's compliance with Executive Order 11246, Section 503 of 109 the Rehabilitation Act of 1973, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and their respective implementing regulations. Therefore, the termination date will be listed as "Indefinite" (Indef.).  |
| G  | R<br>P<br>N | <b>CAUSE:</b> Declared ineligible by the Secretary of Labor under the authority granted in Reorganization Plan No. 14 of 1950 and based on a violation of one or more of the labor provisions of one or more of the following Federal statutes: Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, et seq.; Copeland Act, 40 U.S.C. 276c; Hospital and Medical Facilities Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964, 42 U.S.C. 291e(a)(5); United State Housing Act of 1937, as amended, 42 U.S.C.1415c; National Housing Act, 12 U.S.C. 1715c, as amended: Housing Act of 1949, 42 U.S.C. 1459 Housing Act of 1961, 42 U.S.C. 1500c-3; Housing and Urban Development Act of 1965, 42 U.S.C. 3107; Federal-Aid Highway Act, 23 U.S.C. 113; Federal Water Pollution Control Act, 33 U.S.C. 1372; Postal Reorganization Act, 39 U.S.C. 410(b)(4)(c); Public Works and Economic Development Act of 1965, 42 U.S.C. 3222; Housing and Community Development Act of 1974, 42 U.S.C. 5310; Health Professions Educational Assistance Act, 42 U.S.C. 293a(c)(7), Appalachian Regional Development Act of 1965, 40 U.S.C. App. 402; Urban Mass Transportation Act of 1964, 40 U.S.C. 1609; Housing Act of 1950, 12 U.S.C. 174a; Housing Act of 1959, 12 U.S.C. 1701q(c)(3) Commercial Fisheries Research and Development Act of 1964, 16 U.S.C. 779e; National Technical Institute for the Deaf Act, 20 U.S.C. 684(b)(5); National Foundation on the Arts and Humanities Act of 1965, 20 U.S.C. 954(j); Elementary and Secondary Education Act of 1965, as amended by Elementary and Secondary Education Act and other Educational Amendments of 1969, 20 U.S.C. 1232(b), Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e; Indian Health Care Improvement Act, 25 U.S.C. 1633(b); Rehabilitation Act of 1973 29 U.S.C. 776(b)(5), Job Training Act, 29 U.S.C. 1501 et seq.; Veterans Nursing Home Care Act of 1964, 38 U.S.C. 5035(a)(8); National Visitors Center Facilities Act of 1966, 4 |

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|    |        | <b>TREATMENT:</b> The contractor, or any firm, corporation, partnership, or association in which the contractor has a substantial interest is ineligible to receive any contract or for work subject to the labor standards provisions of any of the listed statutes. Debarment is for a period determined by the Secretary of Labor, not to exceed three years, to the date shown.   |
| J  | R<br>P | <b>CAUSE:</b> Debarment by an agency pursuant to Federal Property Management Regulations (FPMR) 101-45.6 for one or more of the following causes: (a) conviction of or civil for fraud, violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity, (b) violation of terms of Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform; or (c) any other cause of a serious and compelling nature and responsibility.<br><br><b>TREATMENT:</b> Contractors are excluded from receiving contracts to purchase Federal personal property, and agencies shall not solicit offers from, award contracts to, renew or otherwise extend the duration of current contracts, or consent to subcontracts with these contractors, unless the acquiring agency's head or a designee determines that there is no other reason for such action. Debarments are for a specified term as determined by the debarring agency and as indicated in the listing (see Note following Code K).   |
| J1 | R<br>P | <b>CAUSE:</b> Proposed debarment by an agency pursuant to FPMR 101-45.6 and FAR 9.405(a) for one or more of the causes listed in FAR 9.406-2.<br><br><b>TREATMENT:</b> Same as Code J, except that proposed debarments are temporary actions. Therefore, the termination date is shown as "Indefinite" (Indef.) (see Note following Code J).  |
| K  | R<br>P | <b>CAUSE:</b> Suspension by an agency pending completion of investigation or legal proceedings pursuant to Federal Property Management Regulations (FPMR) 101-45.6, and an indictment for, or adequate evidence of, the commission of fraud, antitrust violations, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity; or (b) adequate evidence of any other cause of a serious and compelling nature.<br><br><b>TREATMENT:</b> Same as for Code J. Suspensions are temporary actions and the period of suspension is indefinite. Therefore, the termination date will be listed as "Indefinite" (Indef.) (see the following Note). NOTE Debarment and suspension actions pursuant to FPMR 101-45.6 are effective only with respect to contracts for the sale of Federal personal property. Information as to the basis underlying such debarment or suspension action may be obtained from the agency point of contact. Contracting officials may consider this information in making award decisions reflecting acts or circumstances which may have a bearing on the contractors' responsibility and which may serve as a basis for debarment or suspension from acquisition of contracts by another agency. |
| L  | R<br>P | <b>CAUSE:</b> Debarred by the Secretary of Labor for violation of the Walsh-Healey Public Contracts Act, 40 U.S.C. 37.<br><br><b>TREATMENT:</b> Offers shall not be solicited from, nor contracts be awarded to, the listed contractor or any firm, corporation, partnership or association in which the contractor has a controlling interest. Debarment is for a three-year period to terminate on the date shown.  |

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| M  | R<br>P | <p><b>CAUSE:</b> Sanctioned by the President or (designee) pursuant to Section 2443 of the Multilateral Export Control Enhancement Amendments Act of 1988, and Executive Order</p> <p><b>TREATMENT:</b> Departments, agencies, and instrumentalities of the U.S. Government are prohibited from contracting with, and procuring products and services from or for the listed party. For detailed guidance concerning the scope of, and exception to, this sanction, see FAR 25.10. Debarment is for a three-year period to terminate on the date</p>  |
| N  | R<br>P | <p><b>CAUSE:</b> Debarment by an agency pursuant to FAR 9.406-2(b)(2) for violations of the Drug-Free Workplace Act of 1988, Pub. L. 100-690.</p> <p><b>TREATMENT:</b> Contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, renew or otherwise extend the duration of covered contracts, or consent to subcontracts with these contractors, unless the acquiring agency's head or a designee determines that there is a compelling reason for such action. prime contractors, when required by the terms of their contract, shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Debarments are for a specified term as determined by the debarring agency and as indicated in the listing.</p>   |
| N1 | R<br>P | <p><b>CAUSE:</b> Proposed debarment by an agency pursuant to FAR 9.406-2(b)(2) for violations of the Drug-Free Workplace Act of 1988, Pub. L. 100-690.</p> <p><b>TREATMENT:</b> Same as Code N, except that proposed debarments are temporary actions. Therefore, the termination date will be listed as "Indefinite" (Indef.).</p>   |
| O  | R<br>P | <p><b>CAUSE:</b> Suspension by an agency pursuant to FAR 9.407-2(a)(4) for violations of the Drug-Free Workplace Act of 1988, Pub. L. 100-690.</p> <p><b>TREATMENT:</b> Same as Code N, except that suspensions are temporary actions. Therefore, the termination date will be listed as "Indefinite" (Indef.).</p>   |
| P  | R<br>N | <p><b>CAUSE:</b> Debarment by any Federal agency pursuant to Executive Order 12549 for violations of the Drug-Free Workplace Act of 1988, Pub. L. 100-690.</p> <p><b>TREATMENT:</b> Listed persons are excluded as participants or principals in all primary and lower tier covered transactions of all agencies. Further, agencies and participants shall not award, renew or otherwise extend the duration of covered transactions or consent to lower tier covered transactions with such persons. Exceptions to this treatment require a written determination by the head of the Federal agency or designee stating the reasons for entering into the transaction. Debarments are for a specified term as determined by the agency and as indicated by the listing.</p>  |
| PP | N      | <p><b>CAUSE:</b> Denial of all Federal benefits by a sentencing judge pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 on the basis of a conviction(s) for a Federal offense relating to the distribution or possession of controlled substances.</p> <p><b>TREATMENT:</b> Listed persons shall not be issued any grant, contract, loan, professional license, commercial license, provided by an agency of the United States or by appropriated funds of the United States. The denial does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or benefit for which payments or services are required for eligibility. Veterans benefits include all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Services of the United States. The denial shall terminate on the date shown. Persons convicted for a third offense relating to distribution of controlled substances after the effective date of the Act shall be denied benefits permanently. Therefore, the termination date for such denials shall be listed as Permanent (Perm.)</p> |
| Q  | R<br>N | <p><b>CAUSE:</b> Suspension by any Federal agency pursuant to Executive Order 12549 for violations of the Drug-Free Workplace Act of 1988, Pub. L. 100-690.</p> <p><b>TREATMENT:</b> Same as Code P, except that suspensions are temporary actions. Therefore the termination date will be listed as "Indefinite" (Indef.).</p>   |

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| QQ | R<br>N | <p><b>CAUSE:</b> Partial denial of Federal benefits by a sentencing judge pursuant to Section 5301 of the Anti-Drug, Abuse Act of 1988 on the basis of a conviction(s) for a Federal offense relating to the distribution or possession of controlled substances.</p> <p><b>TREATMENT:</b> Listed persons shall not be issued grants, contracts, loans, and/or professional or commercial licenses as specified by the sentencing judge which are provided by the agency of the United States or by appropriated funds of the United States. Contact the U.S. Department of Justice's Denial of Federal Benefits Project point of contact listed does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments are required for eligibility. Veterans benefits include all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Services of the United States. The denial shall terminate on the date shown. Persons convicted for a third offense relating to distribution of controlled substances after the effective date of the Act shall be denied benefits permanently. Therefore the termination date for such denials shall be listed as "Permanent (Perm ). NOTE A denial of benefits under Section 5301 of the Anti-Drug Abuse Act of 1988 does not include benefits relating to long-term drug treatment programs for addiction for any person who declares himself an addict, provides a reasonable body of evidence to substantiate this declaration, and submits to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Labor and the Department of Human Services. The denial of benefits may also be suspended on the basis of the person's participation or good faith effort to participate in a supervised rehabilitation program. Contact the U.S. Department of Justice's Denial of Federal Benefits Project point of contact listed to verify any assertions that the denial of benefits does not apply, or has been waived or suspended on this basis.</p> |
| R  | R<br>N | <p><b>CAUSE:</b> Debarment by any Federal agency pursuant to Executive Order 12549 and the agency implementing regulations for one or more 153 of the following causes: (a) conviction by a court of civil judgment for fraud, violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, false claims, or other offense indicating a lack of business integrity; (b) violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program; or (c) other causes specified in the agency implementing regulations, or such other cause of a serious or compelling nature affecting responsibility.</p> <p><b>TREATMENT:</b> Listed persons are excluded as participants or principals in all primary and lower tier covered transactions of all agencies. Further, agencies and participants shall not renew or otherwise extend the duration of covered transactions or consent to lower tier covered transactions with such persons. Exceptions to this treatment require a written determination by the head of the Federal agency or designee stating the reasons for entering the transaction. Debarments are for a specified term as determined by the debarment authority as indicated in the listing.</p>   |
| S  | R<br>N | <p><b>CAUSE:</b> Suspension by any Federal agency pursuant to Executive Order 12549 and the agency implementing regulations based on an indictment or other adequate evidence of the commission of an offense that is a cause for debarment or (b) that other causes for debarment under the agency regulations may exist.</p> <p><b>TREATMENT:</b> Same as Code R, except that suspensions are temporary actions and the period of suspension is indefinite. Therefore, the termination date will be listed as "Indefinite (Indef.). NOTE Debarments and suspensions taken in accordance with agency regulations issued pursuant to Executive Order 12549, which become effective on October 1, 1988, shall be effective throughout the Executive Branch.</p>  |
| T  | R<br>N | <p><b>CAUSE:</b> Acceptance of a voluntary exclusion in accordance with the terms of an agreement with a Federal agency.</p> <p><b>TREATMENT:</b> In accordance with Executive Order 12549 and the agency implementing regulations, these persons are excluded in accordance with the terms of their settlement. Agencies must contact the agency taking the action to ascertain the extent of the exclusion or the limit on the person's participation, in covered transactions.</p>   |
| U  | R<br>N | <p><b>CAUSE:</b> Declared ineligible by the Secretary of Labor in accordance with Executive Order No. 11246, as amended (30 FR 12319, September 28, 1965; 32 FR 14303, October 13, 1967; 43 FR 46501, October 5, 1978), and based on the contractor's or subcontractor's failure to satisfy its obligations under the Equal Opportunity Clause of a federally assisted construction contract.</p> <p><b>TREATMENT:</b> The contractor or subcontractor and its officers, agents, successors, divisions and subsidiaries are ineligible for the award of any federally assisted construction contract or subcontract, or for the extension or modification of existing federally assisted construction contracts or subcontracts. Debarment is for an indefinite period of time pending the contractor's or subcontractor's compliance with Executive Order 11246 and its implementing regulations. Therefore, termination date will be listed as "Indefinite (Indef.).</p>  |
| X  | R<br>N | <p><b>CAUSE:</b> Debarment, suspension, or equivalent exclusion by an agency prior to the October 1, 1988, effective date for the agency's rule implementing Executive Order 12549. Such actions will generally be effective only in the Nonprocurement programs of the agency taking the action.</p>   |

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|---|--------|---|
|   |        | <p><b>TREATMENT:</b> Applicable to all Nonprocurement programs of the agency taking the action. When used by other agencies, such listings are for informational purposes only and should not be considered by program officials as reflecting acts, or circumstances, which may have a bearing on the person's responsibility, and which may serve as a basis for debarment or suspension of the person by the agency. For further information, contact the liaison of the agency taking the action.</p>   |
| Y | R<br>N | <p><b>CAUSE:</b> Debarment, suspension, or equivalent exclusion by an agency prior to the October 1, 1988, effective date for the agency's rule implementing Executive Order 12549 for the actions generally limit the effects of the action to a specific Nonprocurement program within the agency. These actions will generally be effective in only specific Nonprocurement programs of the agency taking the action.</p> <p><b>TREATMENT:</b> Applicable only to specified Nonprocurement programs of the agency taking the action. When used by other agencies, such listings are for informational purposes only but should be considered by program officials as reflecting acts, or circumstances, which may have a bearing on the person's responsibility, and which may serve as a basis for debarment or suspension of the person by the agency. For specific information on the nature of the action and scope of the exclusion, contact the liaison of the agency taking the action.</p> |



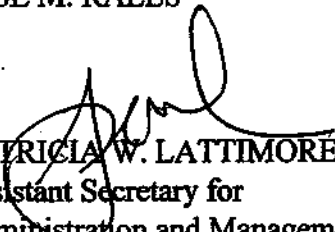
**APPENDIX**  
**Agency Response**



SEP 22 2000

MEMORANDUM TO JOSE M. RALLS

FROM:

  
PATRICIA W. LATTIMORE  
Assistant Secretary for  
Administration and Management

SUBJECT:

Evaluation of the Department of Labor's Policies and  
Procedures to Debar or Suspend Federal Contractors  
Report No. 2E-07-740-0001

This is in response to your findings and recommendations contained in the draft report on the Department's Debarment and Suspension Policies and Procedures for Federal contractors, dated August 29, 2000. We have reviewed the draft and are proceeding to implement your recommendations as appropriate.

**Finding A - DOL Needs To provide Additional Guidance and Monitoring of Its Procurement, Debarment and Suspension Program**

**1. Contracting Officer Responsibilities.** Page 6, paragraph 1 of the report states that many DOL contracting officers are not following the procedures for debarment and suspension outlined in the Federal Acquisition Regulation (FAR) due to their practice of reviewing the GSA debarment listing one instead of twice as required by the FAR. In order to ensure that contracting officers are aware of their responsibilities regarding the procedures for reviewing of the debarment listing prior to contract award, the Procurement Executive will issue a policy memorandum to all DOL contracting and grant officers outlining the appropriate procedures to be followed. We will also include these criteria as part of our management reviews of procurement offices to ensure the Department's contracting and grant community are compliant.

**2. Debarment and Suspension Procedures.** Page 6, item 2, of the report states that "...some DOL agency staff who are involved in the contracting or grant process are not familiar with the debarment and suspension process..." and that "less than twenty percent of the employees interviewed were familiar with some of the procedures." As noted in our response to Finding A1 above (last two sentences), the debarment and suspension procedures are implemented by the Department's Debarment and Suspension Officials, not contracting or grant staff and not contracting officers. Contracting officers are required to follow the procedures in the FAR that

are applicable to their role in the procurement process. Pursuant to FAR, Sections 9.405(d)(1) and (4) The role of contracting officers is to ensure debarred contractors are not awarded contracts. Debarment and suspension officials are required to be knowledgeable of the debarment and suspension process to perform their responsibilities. It is noted that the report does not show a distinction between the duties performed by contracting officers, other contract staff members, debarment and suspension officials, and program office employees. Although they work as part of the acquisition team, each group has a distinct role to play in the procurement preaward, administration, and postaward process. **Therefore, the fact that some DOL agency staff who are involved in the contracting or grant process are not fully knowledgeable of the debarment and suspension procedures is not sufficiently precise to support a conclusion that contracting officers and debarment/suspension officials are not in compliance with required regulatory provisions.**

**3. Technical Discrepancies in DOL Documentation.** The DOL Procurement Executive is implementing a plan to update all procurement-related regulations and Department of Labor Series Manuals which should be completed by the end of second quarter Fiscal Year 2001. We anticipate implementing this comprehensive review and revision process by a combination of senior procurement analysts that will be hired by mid-October and contractor support where appropriate. Coordination with the DOL procurement community will be a critical part of this process and a special workgroup comprised of the four primary contracting entities within DOL (OASAM, ETA, ETA's Office of Job Corps, and MSHA), with support from SOL, will be used to effect that interface.

Pursuant to Office of Federal Procurement Policy (OFPP) Letter 92-1 (*Inherently Governmental Functions*) and OFPP Policy Letter 93-1 (*Management Oversight of Service Contracting*), we will ensure that appropriate management controls are in place for any contractors to avoid potential conflicts of interest in this effort.

### **Finding B - OASAM Needs To Increase Its Emphasis of the Debarment and Suspension Program Throughout DOL**

**1. Information Sharing.** Beginning the first quarter of FY 2001, the DOL Procurement Executive will enhance its current information sharing mechanisms for distributing procurement information by including updates and reminders on best practice procedures in the debarments and suspensions area. This will be implemented through several mechanisms, including but not limited to, procurement management reviews, procurement conferences, seminars, and recommendations to contracting and grant offices for appropriate training (also, see our response to Finding B, paragraph 3 below). To carry this out, the current staffing of OASAM's procurement policy office will be increased by hiring three procurement analysts (GS-1102-14). Advertisements for these positions have closed and it is anticipated that these personnel will be on board by mid October.

**2. DOL Debarment Activity.** The report indicates that DOL debarments have dropped significantly from 54 in 1999 to 8 in the 2000 and that the decrease may be due to the time involved to debar a contractor (sometimes 3 years if DOL or the contractor files an appeal). We concur that there has been a decrease in the number of debarment/suspension actions. It should be noted that the criteria used by debarment and suspension officials in considering whether a contractor should be debarred did not change for the period cited and are being applied generally with the same uniformity as in previous years. Informal inquiries with the DOL debarment officials indicate that the decrease is due to an increase in cases being settled prior to reaching the debarment stage and a decrease in the number and kinds of actions which subject firms to the debarment process (i.e., contract and grant compliance). It should also be noted that prior to debarring or suspending a contractor or grantee, an organization and/or individual must be afforded their constitutionally-provided due process rights (notice, hearing, etc.). Affording them appellant rights are a part of that process and some delay may be attributable to these processes. Therefore, the decrease in debarment actions is not necessarily due to the time it takes to debar a contractor.

Through the conduct of procurement management reviews, the Procurement Executive will obtain more definitive reasons for the delays and take appropriate action to ensure: (a) a fair adjudication of the issues; (b) targeted contractors and grantees receive a fair hearing prior to debarment or suspension; and (c) compliance with statutory and regulatory provisions.

**3. Interagency Committee on Debarment and Suspension.** Attached you will find a copy of a memorandum designating an appropriate official within OASAM to the Interagency Committee on Debarment and Suspension, providing notice to the Committee of this designation, and requesting that the Committee provide our representative with notice of all prospective meetings and related correspondence. We will use this forum to track and share information from/with other federal agencies. Additionally, this information will be provided to DOL Agencies on a regular basis.

We believe that our proposals for implementing the recommendations cited above is responsive to the findings. It is requested that we be provided another opportunity to review a final draft of your report prior to issuance. If you have any questions, please contact Al Stewart on (202) 693-4028.

Attachments



SEP 14 2000

Mr. Robert Meunier  
Chairman, Interagency Committee on  
Debarment and Suspension  
Environmental Protection Agency  
Ronald Reagan Building  
1301 Pennsylvania Avenue, N.W.  
Washington, DC

Dear Mr. Meunier:

Pursuant to a discussion with Mr. Ladd Hakes, who is a point of contact for the Committee, I would like to designate Ms. Phyllis R. McMeekin of the Division of Departmental Procurement Policy to represent DOL on this group. Please also forward any necessary materials to her concerning meeting schedules or other items needed for her to participate in this organization.

Ms. McMeekin can be reached on (202) 219-9174, or by email at [mcmeekin-phyllis@dol.gov](mailto:mcmeekin-phyllis@dol.gov) and her mailing address is US Department of Labor, 200 Constitution Avenue, N.W., Room N-5425, Washington, DC 20210. Thank you for the opportunity to be included on this committee.

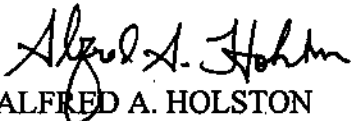
Sincerely,

  
ALFRED A. HOLSTON  
Procurement Executive



SEP 14 2000

MEMORANDUM FOR DOL DEBARMENT AND SUSPENSION OFFICIALS

FROM:   
ALFRED A. HOLSTON  
Procurement Executive

SUBJECT: Designation of Representative to the Interagency Committee on  
Debarment and Suspension

Effective immediately, Phyllis McMeekin, of OASAM's Business Operations Center is hereby designated to represent the Department of Labor on the Interagency Committee on Debarment and Suspension. Ms. McMeekin shall perform all duties in accordance with the Committee's charter, policies, procedures and/or other appropriate guidance. Information regarding the activities of this Committee will be disseminated to you on a regular basis to facilitate the integration of best practices into your debarment and suspension program activities.

Attachment

cc: Contracting and Grant Officers  
Agency Administrative Officers