

GAO Agrees With ISDC: Many Agencies Have Enhanced Their Suspension and Debarment Programs and Increased the Use of Suspension and Debarment Remedies

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On April 15, 2014, my colleague Craig Smith and I wrote on the current status of suspension and debarment programs for Fiscal Years (FYs) 2012 and 2013 as reported by the Interagency Suspension and Debarment Committee (ISDC) in its March 2014 report to Congress. We noted that the ISDC reported positively on the many program enhancements various federal agencies had made to their suspension and debarment programs and the increased use of suspension and debarment remedies in the past few years. These actions were taken in part to respond to prior critical reports on the status of such programs at six federal agencies (the Departments of Commerce, Justice, State, Treasury, and Health and Human Services (HHS), and the Department of Homeland Security, Federal Emergency Management Agency (FEMA)) and the need for greater oversight by the Government Accountability Office (GAO). *See, e.g., GAO, Suspension and Debarment: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could be Improved, GAO-11-739 (Aug. 31, 2011).*

On May 21, 2014, GAO issued an updated report on the status of suspension and debarment programs among the six federal agencies it had examined in 2011 and, consistent with the ISDC's report, found that these agencies have taken measurable strides to improve their suspension and debarment programs. It further found that government oversight measures had improved as well. *See GAO, Federal Contracts and Grants: Agencies Have Taken Steps to Improve Suspension and Debarment Programs, GAO Report No.*

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14-513 (May 2014).

In particular, GAO found that the six agencies had all taken steps to incorporate the features that GAO had identified as the attributes of an active suspension and debarment program. These included, among other things, enhancing staffing of the suspension/debarment function by defining staff roles and responsibilities, adding positions, and consolidating suspension/debarment staff. These agencies also took steps to issue policies and procedures related to suspension and debarment and implemented practices to increase referrals, such as referral process and the development of case management tools that track referrals.

Moreover, although the number of suspension and debarment actions should not be the benchmark of an effective program, GAO nonetheless notes that all six agencies increased their suspension and debarment activity in recent years. Most notably, the Department of Commerce reported no suspension and debarment activities in 2009 and 2010, but 34 such actions in 2012 and eight in 2013. The Department of Justice reported a total of 13 suspension and debarment actions in 2009 and 2010; from 2011 through 2013, it took 151. The Department of State took 15 actions in 2009 and 2010, combined; in 2011 through 2013, it took 163. Combined, the six agencies took 19 suspension/debarment actions in 2009 and 271 in 2013. These increases, while not attributable to identical causes, generally resulted from process or awareness initiatives that increased referrals for suspension and debarment.

With respect to enhancing government-wide oversight of suspension and debarment, GAO noted that the Office of Management and Budget (OMB) and ISDC had taken a number of steps, including:

- The OMB issued Memorandum M-12-02, Suspension and Debarment of Federal Contractors and Grantees, on November 5, 2011, directing agencies to take action to shore up their programs, including appointing a senior accountable official for suspension and debarment and review their internal policies and procedures.
- The ISDC increased efforts to coordinate government-wide suspension and debarment by promoting best practices and coordinating mentoring and training activities.
- The ISDC maintains an online library of documents aimed at standardizing decision-making, provides training and instructors, and helped agencies develop their programs so as to promote administrative due process.
- The ISDC undertakes outreach and holds monthly meetings to discuss suspension and debarment matters and provide a forum for the exchange of ideas.

To further assess the efficacy of government-wide coordination efforts, GAO reviewed the suspension and debarment program for the Veterans Administration (VA), a program not reviewed in 2011. GAO found that the VA has the characteristics associated with an active suspension and debarment program, such as a Suspension and Debarment Committee to review referrals, conduct fact-finding, and make recommendations to the Suspension and Debarring Official. Like the other six agencies examined, the VA also took steps to improve its program by developing standard operating procedures. And, like the other agencies, its actions increased over the last several years, from 34 in FY 2011 to 73 in FY 2013.

What does GAO's report mean to contractors? First, GAO's report, and the March 2014 ISDC report, suggest that a contractor faced with a potential suspension or debarment matter should find the agency better prepared, through training and operating procedures, to process the matter and ensure that due process considerations are factored into the proceeding. Second, as a result of the emphasis on increasing referrals and the augmented referral processes at many agencies, contractors should expect that serious matters will ultimately make their way to the agency SDO office, further highlighting the benefits of getting ahead of problems by proactively briefing agency suspension and debarment offices on such matters. Third, even though numbers are not an accurate measure of the efficacy or "health" of the current system, they do signal that agency attention and activity in the suspension and debarment arena continues to be robust.

GAO's report and the March 2014 ISDC report to Congress demonstrate that agencies have heeded the call to enhance their programs' staffing, referral processes, and operating procedures. These developments raise a serious question about whether a legislative solution, such as the Stop Unworthy Spending Act, H.R. 3345, which would fundamentally restructure the suspension and debarment regime, is necessary.