



# OFFICE OF INSPECTOR GENERAL

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## AUDIT OF USAID'S PROCESS FOR SUSPENSION AND DEBARMENT

AUDIT REPORT NO. 9-000-10-001-P  
October 1, 2009

WASHINGTON, DC



*Office of Inspector General*

October 1, 2009

**MEMORANDUM**

**TO:** Director, Office of Acquisition and Assistance, Maureen Shauket

**FROM:** Director, Performance Audits Division, Steven H. Bernstein /s/

**SUBJECT:** Audit of USAID's Process for Suspension and Debarment  
(Report Number 9-000-10-001-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments on the draft report and included the comments in their entirety in appendix II.

The report contains 12 recommendations to assist USAID's Office of Acquisition and Assistance to strengthen USAID's suspension and debarment process. In consideration of information provided by management in response to the draft report, management decisions have been reached on recommendations 1–9. Management decisions are pending on recommendations 10–12 until final action has been taken on recommendation 9. A determination of final action on all 12 audit recommendations will be made by the Audit Performance and Compliance Division upon completion of the planned corrective actions.

I appreciate the cooperation and courtesy extended to my staff during the audit.

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# SUMMARY OF RESULTS

Suspension and debarment are discretionary actions that declare a contractor or participant in a Federal program ineligible to receive awards under specified conditions and for a set period of time. The serious nature of suspension and debarment requires that these exclusions be imposed only in the public interest, such as safeguarding public funds. By excluding ineligible suppliers and contractors from USAID-financed transactions, USAID's suspension and debarment process seeks to ensure the prudent use of the approximately \$4 billion in contracts and grants that the Agency awards annually. USAID's suspension and debarment process is executed by a variety of organizational elements, as depicted in appendix IV (see page 38).

USAID's suspension and debarment process has not adequately protected the public interest by responding to contractor impropriety in accordance with Federal guidance (see page 6). This conclusion is based on the following four areas of consideration:

1. USAID correctly refrained from engaging in business with parties listed in the Federal database of excluded parties.
2. USAID took seven debarment actions and two suspension actions, but these actions were too few, and several of them were poorly executed.
3. Two of USAID's processes for ensuring that it does not enter into agreements with nonresponsible parties are impaired by deficiencies.
4. USAID's decision-making process for suspension and debarment actions contains flaws and constraints that prevent it from operating effectively.

During fiscal years (FY) 2003–2007, USAID complied with Federal guidelines that proscribe conducting business with parties ineligible to receive a Federal award. Additionally, USAID took seven debarment actions and two suspension actions during that period. Accordingly, USAID responded to contractor impropriety in accordance with Federal guidance because it avoided doing business with excluded parties (see page 7).

However, the suspension and debarment actions USAID took were not responsive enough to protect the public interest. During FY 2003–2007, USAID took only nine suspension and debarment actions.<sup>1</sup> These actions accounted for only 1.9 percent of USAID's contract and grant awards.<sup>2</sup> Also, USAID did not 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. When USAID took debarment actions, five of six final notifications were sent months late or not at all. In six of nine cases in which USAID took suspension or debarment actions, information was entered into the Federal database late or not at all. USAID also did not document all of the suspension and debarment actions it took, and documentation was not consistent among organizational units supporting USAID's

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<sup>1</sup> Since USAID had only two procurement suspension and debarment actions during FY 2003–2007, the audit scope was expanded to include seven nonprocurement suspension and debarment actions.

<sup>2</sup> In 2003, one large case against two contractors in Egypt accounted for \$375 million in cited actions, compared with a total of \$378.5 million for the entire audit period of FY 2003–2007. When this case is excluded, the percentage of cited actions to contract and grant awards drops to 0.019 percent.

decision-making process. USAID should have considered more matters for suspension and debarment and handled more effectively those actions it did take (see pages 7–11).

Furthermore, USAID did not consistently ensure that its contractors had certified that they were sufficiently responsible to carry out a Federal contract, nor did USAID document its verification that the contractors were not listed in the Federal database as ineligible to receive a Federal award. In files for 15 of 54 contracts reviewed, USAID did not ensure that completed certifications were received or were available electronically. Generally, documentation could not be found that the Excluded Parties List System had been checked during the bidding process, and documentation of such checks during the award process was inconsistent. Files for 20 of 54 contracts reviewed (37 percent) omitted documentation that such a check had been made prior to awarding the contract (see pages 11–12).

USAID's decision-making process for suspension and debarment action is ineffective for several reasons. The suspension and debarment official and the Evaluation Division cannot devote enough attention to suspension and debarment because they are burdened with too many responsibilities. Additionally, USAID has depended exclusively on the Inspector General's Office of Investigations to identify matters to be considered for suspension and debarment action. These flaws and constraints minimize the protection the process should afford to the public interest, and they hinder its support for fundamental fairness to the Government and its contractors (see pages 12–14).

To correct the deficiencies discussed above, this report contains 12 audit recommendations (see pages 15–25). These recommendations encourage USAID to:

1. Review and take more suspension and debarment actions as a matter of policy.
2. Institute a process to alert responsible staff to provide timely notification to those it debars.
3. Develop a procedure for timely entries into the Federal database.
4. Implement procedures for maintaining case files to improve documentation of suspension and debarment.
5. Compile documentation of current suspension and debarment actions for which case files are incomplete.
6. Provide guidance to contracting officers to reinforce documentation requirements of contractor responsibility certifications.
7. Obtain contractor responsibility certifications for active contracts (identified in appendix III).
8. Provide guidance to contracting officers to improve consistency and documentation of database reviews during the bidding and awarding process.
9. Reconsider the delegation of suspension and debarment responsibilities.
10. Consider the formation of a dedicated division for suspension and debarment activities.
11. Consider adopting additional methods used by other Federal agencies to identify matters for suspension and debarment.
12. Petition the chair of the Interagency Suspension and Debarment Committee to create a subcommittee to enumerate and share Federal best practices.

The Office of Acquisition and Assistance agreed with recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12 and provided partial concurrence with recommendation 11. In consideration of an evaluation of management's response to the draft report, management decisions have been reached on recommendations 1–9. Upon issuance of this report, management decisions on recommendations 10, 11, and 12 are pending the results of consultation with higher management on recommendation 9; additional target dates are also needed for recommendation 11 (see pages 26–28).

Management comments are presented in their entirety in appendix II (see pages 32–36).

# BACKGROUND

Government-wide suspension and debarment are sanctions to be imposed only in the public interest for the U.S. Government's protection. The public interest is protected when the Government enters into contracts with responsible businesses and individuals—those that have the capability, resources, performance record, and ethics expected of a Federal contractor receiving taxpayer dollars. Suspension and debarment are discretionary actions that declare a contractor or participant in a Federal program ineligible to receive awards under specified conditions and for a set period of time.

According to the Federal Acquisition Regulation (FAR), contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action. While FAR 9.1 addresses contractor responsibility and eligibility for receipt of Federal funds, FAR 9.4 provides agencies with guidelines for taking suspension and debarment actions.

As stated in USAID's Automated Directives System 313.3.2, "the serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment." Therefore, USAID's suspension and debarment process seeks to ensure the prudent use of its expenditures by excluding ineligible suppliers and contractors.

The General Services Administration's Excluded Parties List System is a Government-wide database that lists the names of excluded (e.g., suspended and debarred) parties. By making such information available, the database encourages consistency among agencies concerning the exclusion of listed parties.

Additionally, the Interagency Suspension and Debarment Committee<sup>3</sup> monitors participation in the Government-wide suspension and debarment system while facilitating agency coordination. It also serves as a forum for agencies to consider and discuss current suspension and debarment related issues.

During a hearing in February 2009, the House Committee on Oversight and Government Reform expressed concerns regarding the effectiveness of the Government's suspension and debarment process. The committee highlighted the need to safeguard Federal funds. The hearing coincided with the release of the Government Accountability Office's audit report on suspended and debarred individuals improperly receiving Federal funds. As a result, the hearing's discussion centered on making the suspension and debarment system more effective in eliminating waste, fraud, and abuse.

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<sup>3</sup> The committee was created pursuant to Executive Order 12549 (February 18, 1986) and comprises representatives of U.S. Government agencies designated by the Office of Management and Budget.

## **AUDIT OBJECTIVE**

The Performance Audits Division conducted this audit as part of the Office of Inspector General's audit plan for fiscal year 2009 to answer the following question:

- Has USAID's suspension and debarment process protected the public interest by responding to contractor impropriety in accordance with Federal guidance?

Appendix I contains a discussion of the audit's scope and methodology.

# AUDIT FINDINGS

USAID's suspension and debarment process has not adequately protected the public interest by responding to contractor impropriety in accordance with Federal guidance. This overall conclusion stems from a consideration of the following four areas:

1. Whether USAID conducted business with excluded parties<sup>4</sup> in violation of Federal law.
2. Whether, in accordance with Federal guidelines, the suspension and debarment actions USAID took were timely, sufficient, and appropriate.<sup>5</sup>
3. Whether USAID was consistent in carrying out federally required procedures to determine whether contractors with which it would do business were sufficiently responsible.
4. Whether USAID has an effective suspension and debarment decision-making process.

Three of the four areas reviewed need improvement to better protect the public interest. USAID performed appropriately in the first area, in that it correctly refrained from engaging in business with parties listed in the Federal database of excluded parties. However, in the second area, although USAID took seven debarment actions and two suspension actions during fiscal years (FY) 2003–2007, these actions were too few, and several of them were poorly executed. Similarly, in the third area, deficiencies impede two of USAID's processes for ensuring that it does not enter into agreements with nonresponsible parties.<sup>6</sup> In the fourth area, USAID's decision-making process for suspension and debarment actions contains flaws and constraints that prevent it from operating effectively.

Each of these four areas is discussed more fully below. Additionally, the report presents 9 areas identified for improvement and 12 accompanying audit recommendations.

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<sup>4</sup> "Excluded parties" are entities debarred, suspended, proposed for debarment, or excluded or disqualified under the Nonprocurement Common Rule (NCR), or otherwise declared ineligible from receiving Federal contracts, subcontracts, and Federal assistance and benefits. The NCR sets forth, under Executive Order 12549, the procedures that Executive branch agencies must follow in taking suspension or debarment actions.

<sup>5</sup> Since USAID had only two procurement suspension and debarment actions during FY 2003–2007, the audit scope was expanded to include seven nonprocurement suspension and debarment actions.

<sup>6</sup> "Nonresponsible parties" are contractors who are not able to carry out the terms of a contract adequately because of illegal actions, deficiencies in ability or resources, etc.

## **Business with Excluded Parties**

During FY 2003–2007, USAID complied with Federal guidelines that proscribe conducting business with excluded parties. The audit compared USAID’s vendors with listings in the Federal database of excluded parties—the Excluded Parties List System—and found that USAID did not conduct business with parties excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of Executive Orders 12549 and 12689; title 48 of the Code of Federal Regulations, section 9.404; and USAID’s codification of the Common Rule for Nonprocurement Suspension and Debarment, 22 CFR 208.700 and 208.800. This conclusion suggests that USAID protected the public interest by responding to contractor impropriety in accordance with Federal guidance and that USAID has been successful in complying with Federal law that proscribes conducting business with excluded parties.

## **USAID’s Suspension and Debarment Actions**

The suspension and debarment actions USAID took did not adequately protect the public interest, however. Specifically, USAID fell short in the following three areas:

1. USAID took too few suspension and debarment actions.
2. USAID did not comply with Federal guidelines that require agencies to provide notice of final debarment decisions and enter suspension and debarment information into the Federal database of excluded parties.
3. USAID poorly documented the actions it took.

**Number of Suspension and Debarment Actions.** The Federal Acquisition Regulation (FAR) and the Code of Federal Regulations (CFR) provide guidelines to assist Federal agencies in making suspension and debarment decisions related to violations in procurement and nonprocurement, respectively. However, in all but one instance, USAID relied on the statutory threshold of an indictment or conviction in considering and taking suspension and debarment actions, thus providing only the minimal amount of protection of the public interest and resulting in an insufficient number of actions. USAID could have taken action using various thresholds, but, as a matter of course, USAID did not use the other thresholds in taking action on cases. These causes are summarized in table 1.

**Table 1. Thresholds for Decisions on Suspension and Debarment Actions**

Threshold	Debarment (Procurement)	Debarment (Nonprocurement)	Suspension (Procurement)	Suspension (Nonprocurement)
<b>Level 1</b>	Conviction or civil judgment for specified offenses	Conviction or civil judgment for specified offenses	Commission of specified types of fraud or criminal offenses	Indictment for or other adequate evidence of specified offenses
<b>Level 2</b>	Willful or unsatisfactory performance and other specified violations	Willful or unsatisfactory performance and other specified violations	Indictment for or other adequate evidence of specified offenses	Adequate evidence to suspect causes for debarment listed in threshold levels 2, 3, and 4
<b>Level 3</b>	N/A	Violation of a voluntary exclusion agreement or other specified violations	Causes affecting present responsibility <sup>7</sup>	N/A
<b>Level 4</b>	Causes affecting present responsibility	Causes affecting present responsibility	N/A	Action necessary to protect the public interest.

Of the eight documented suspension and debarment cases USAID considered and upon which it took action, six cited a conviction and one an indictment. These seven actions depended on threshold level 1 (identified in table 1 above).

The Agency's reluctance to take action can be seen in the disproportionate relationship between the estimated \$20 billion in Federal contracts and grants that USAID awarded from 2003 through 2007 and the combined amount of \$378.5 million cited in suspension and debarment actions over that same period. As a percentage, these eight actions accounted for only 1.9 percent of total contracts and grants awarded. In comparison, the Association of Certified Fraud Examiners estimates that Government agencies lose approximately 7 percent of their annual revenues to fraud.<sup>8</sup> By this estimate, with the Office of Acquisition and Assistance awarding \$4 billion in contracts and grants annually, approximately \$280 million could be lost every year to fraud.

Moreover, some companies settled allegations of defrauding USAID, but no suspension or debarment actions were taken. For example, GA Paper International and Ramtech Overseas, Inc., agreed to pay a total of \$1.31 million to settle a dispute that claimed they had knowingly submitted more than 100 false and inflated claims for reimbursement. In a second case, Development Alternatives, Inc., agreed to pay \$1.2 million to settle a claim that it had overcharged USAID for services it had provided on three contracts. Yet USAID did not pursue suspension or debarment actions in either case.

To encourage USAID's consideration of more matters for suspension and debarment action, we recommend that Agency policy be modified to clarify that the Agency's designated official is responsible for considering all of the types of causes included in

<sup>7</sup> "Present responsibility" can be defined as current suitability to receive a Federal award.

<sup>8</sup> This estimate from the ACFE is based on survey data compiled from occupational fraud cases that were investigated by Certified Fraud Examiners between January 2006 and February 2008.

regulatory guidance, not just those for a single threshold level. See page 15 for a detailed discussion of this recommendation.

**Timeliness of Notification and Data Entry in Excluded Parties List System.** Most of USAID’s notifications of final debarment actions were either not timely or not made at all. Also, USAID was often slow to enter its suspension and debarment actions into the Excluded Parties List System (the Federal database of excluded parties) and, in a few instances, failed to enter information on parties it had excluded. The FAR and CFR provide specific timeline requirements within the suspension and debarment process.

Only one final notice of a decision to debar met the required timeframe for USAID’s six documented debarment actions. For three debarment actions, final notices of debarment were not sent, and one final notice of debarment was sent months late. Details of USAID’s performance with respect to such notifications are provided in table 2, below.

**Table 2. USAID Performance in Providing Final Notice of a Decision to Debar**

	Debarred Contractor or Participant Name	Notice of Intent to Debar	Contractor Participant Response	Required Date of Final Notice	Actual Date of Final Notice	Difference
1	Dannix Corp.	3/2/04	None	4/2/04	None	N/A
2	Individual	No Date	None	N/A	None	N/A
3	C. Arnow	3/17/03	None	5/1/03	None	N/A
4	E. Tarpinian	3/29/03	None	5/13/03	8/30/03	3.5 mo. late
5	S. Neel	8/1/06	9/14/06	10/29/06	11/30/06	1 mo. late
6	LINKdotNET	5/11/05	6/10/05	7/25/05	7/22/05	OK

Additionally, the FAR and CFR require agencies to enter suspension and debarment information into the EPLS database within 5 workdays. Five of the eight documented actions (63 percent) took longer than 5 workdays, including one documented debarment action (concerning an individual<sup>9</sup>) that was not entered at all. Additionally, four affiliated names pertaining to the Dannix Corporation were not entered into EPLS, and another debarred party (Mr. Andrei Sheifer) was entered almost 2 years late.

<sup>9</sup> Since it was not publically disclosed on the EPLS database, the individual is not identified by name.

**Table 3. USAID Performance in Entering Information in the Excluded Parties List System (EPLS)**

	<b>Debarred Contractor or Participant Name</b>	<b>Effective Date of Exclusion</b>	<b>EPLS Entry Date</b>	<b>Difference in Workdays</b>
1	Dannix Corp.	3/2/04	3/5/04	3
2	Individual	Unknown	Not Entered	N/A
3	C. Arnow	3/17/03	4/9/03	10+
4	E. Tarpinian	3/29/03	4/9/03	8
5	S. Neel	8/1/06	8/11/06	8
6	LINKdotNET	5/11/05	5/12/05	1
7	Morcon Tech	1/25/03	2/10/03	10
8	Contract	7/29/03	8/4/03	4
9	A. Sheifer	8/3/05	6/20/07	10+

To address timeliness issues with final debarment notifications and the entry of information in the Excluded Parties List System database, we recommend that the Director of Acquisition and Assistance (1) institute a process to alert responsible staff to make notifications of final debarment decisions and (2) develop a standard operating procedure to reinforce making timely entries into the database. See pages 16–18 for a detailed discussion of these recommendations.

**Documentation.** USAID does not retain complete documentation to support all of its suspension and debarment actions. Documentation is missing or contains inconsistencies between the records retained by USAID organizational units involved in USAID’s suspension and debarment process and the Federal database of excluded parties.

The Office of Acquisition and Assistance’s Evaluation Division and the Office of General Counsel play key roles in USAID’s suspension and debarment process (see appendix IV, page 38). The Evaluation Division is responsible for administrative matters, such as preparing correspondence, retaining records, and entering actions into the Federal database of excluded parties.

For the audit period, the division had records for eight of nine of the Agency’s suspension and debarment actions. Additionally, the Office of General Counsel had correspondence concerning USAID’s debarment of two contractors resulting from their affiliation with an already debarred company, the Dannix Corporation. However, Evaluation Division staff was unaware of the matter and could not provide relevant documentation. Furthermore, the affiliated contractors were never entered into the database.

Finally, the Office of Investigations, in the Office of Inspector General, had information on two debarments and one suspension that the Evaluation Division took. However, the division had no documentation on the three actions, and they were not listed in the database.

To improve USAID’s suspension and debarment documentation, we recommend that the Director of Acquisition and Assistance (1) implement procedures for maintaining proper suspension and debarment case files and (2) compile supporting documentation for

current suspension and debarment actions with incomplete case files. See page 18 for a detailed discussion of these recommendations.

## **Contractor Responsibility and USAID Procedures**

Although some USAID procedures for screening contractors were conducted consistently, the screening process does not always fully protect the public interest and does not support USAID's suspension and debarment process. USAID (1) does not consider determinations of nonresponsibility for suspension or debarment; (2) does not always document contractor responsibility certifications; and (3) does not consistently conduct and document reviews of the Federal database of excluded parties.

**Responsibility Determinations.** USAID's responsibility determinations do not support the suspension and debarment process. FAR 9.1 and 9.4 provide required procedures for determining contractor responsibility and eligibility for receipt of Federal funds. Responsibility determinations are intended to ensure that the agency is contracting with responsible businesses and individuals—those that have the capability, resources, performance record, and ethics expected of a Federal contractor receiving taxpayer dollars. Such determinations distinguish contractors that are responsible from those that are not. However, in its contractor screening process, USAID does not refer determinations that contractors are nonresponsible for suspension or debarment consideration. USAID's lack of internal referrals is further addressed on page 24, in conjunction with best practices for suspension and debarment.

**Contracting Clause and Responsibility Certification.** Sections 9.409, 9.104-6, and 9.105-2(b) of 22 FAR require procedures to support contractor responsibility determinations. USAID met some of these requirements consistently. In compliance with the FAR, USAID contract documentation contained required notifications related to contractor and subcontractor responsibility. However, the documentation did not always contain contractor self-certifications of responsibility, as required by the FAR.

In 53 of 54 contracts reviewed, USAID met the FAR requirement of notifying contractors of the clause "Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment," thus holding contractors accountable for reporting to USAID whether their subcontractors are debarred, suspended, or proposed for debarment. Similarly, USAID included the provision "Certification Regarding Responsibility Matters" in its solicitations, thus prompting contractors to submit a completed self-certification with a proposal or bid.

However, in 15 of 54 contracts reviewed (28 percent), USAID did not ensure that completed certifications were received or made available electronically. The completed certification informs the contracting officer of the offeror's present responsibility status through self-certification. Without it, the Agency could not be sure that those 15 contractors were responsible, at the time of the award, to receive Federal funds.

To address the lack of documented certifications, we recommend that the Director of Acquisition and Assistance (1) provide guidance to contracting officers and (2) obtain certifications for the contracts identified in appendix III. See page 19 for a detailed discussion of these recommendations.

**Reviews and Documentation of the Excluded Parties List System.** Although USAID generally reviews the Federal database of excluded parties prior to awarding contracts, the Agency has not been consistent in making such checks to ensure that it does not award contracts to debarred, suspended, or otherwise excluded parties. According to Federal regulation, the database must be checked twice—during both the bidding and the awarding processes—to ensure that Federal agencies award contracts only to eligible companies and individuals.

In 52 of 54 contracts reviewed, USAID did not conduct database reviews during the bidding process. Also, USAID did not consistently conduct a review of the database upon awarding contracts—20 of 54 contracts reviewed (37 percent) did not contain evidence of such a review prior to awarding the contract.

To improve the consistency of Excluded Parties List System reviews and documentation, we recommend that the Director of Acquisition and Assistance provide more complete written guidance to its contracting officers on the required reviews of the database. See page 20 for a detailed discussion of this recommendation.

## **The Decision-Making Process**

To protect the public interest, USAID needs an effective decision-making process for suspension and debarment actions. The FAR provides broad flexibilities to agencies in developing their suspension and debarment processes. However, the FAR's stated policy emphasizes "the serious nature" of these sanctions and specifies that they be imposed only in the public interest for the Government's protection. Accordingly, it is an implicit requirement that an agency's suspension and debarment decision-making process be able to support the serious nature of these decisions.

USAID's decision-making process for suspension and debarment actions is not effective. The organizational entities have too many responsibilities to devote enough attention to suspension and debarment. Additionally, the process relies on a single source to identify matters for consideration. These flaws and constraints reduce the process's ability to protect the public interest and to support fundamental fairness to the Government and its contractors. Specifically, two primary areas need improvement: (1) the supporting organizational structure and (2) methods for identifying problems.

**Supporting Organizational Structure.** USAID's suspension and debarment process is executed by a structure of loosely connected organizational elements. Flaws and constraints prevent this structure from operating effectively. One major problem is the multitude of responsibilities beyond those related to suspension and debarment that are assigned to these organizational elements, such as the suspension and debarment official and the Evaluation Division. These other responsibilities undermine their ability to support the process effectively. The organizations and functions of USAID's suspension and debarment process are presented in appendix IV (see page 38).

The Director of the Office of Acquisition and Assistance, USAID's suspension and debarment official, is responsible for many matters beyond the suspension and debarment actions assigned by the Agency's Automated Directives System. The Director is also designated as the senior procurement executive and chief acquisition officer and is further delegated additional acquisition and assistance authorities.

Of the suspension and debarment officials at six Federal agencies that participate in the Interagency Suspension and Debarment Committee, none oversee their agency's procurement and grant-making activities.<sup>10</sup>

Assigning so many responsibilities to one individual inevitably results in less attention to some matters. For example, all but one of USAID's documented eight suspension and debarment decisions during FY 2003–2007 relied on a Federal indictment or conviction—a judge's conclusion, not the independent conclusion of USAID's suspension and debarment official.

To encourage upper management's consideration of the most effective delegation of USAID's suspension and debarment responsibilities, we recommend that the Director for Acquisition and Assistance consult with the Assistant Administrator for Management. See page 21 for a detailed discussion of this recommendation.

As is the case with the suspension and debarment official, the Evaluation Division is tasked with many responsibilities beyond those related to suspension and debarment. The Evaluation Division's primary function, designated through the Automated Directives System, is to conduct evaluations of procurement and assistance systems to support periodic certifications of USAID's procurement system. The Automated Directives System also assigns four principal responsibilities to the Evaluation Division, including the review of direct and host-country contracts, grants, and cooperative agreements and the formulation of policy on marine insurance matters. As a supplement to the Automated Directives System, the Evaluation Division's Web page lists an additional 14 responsibilities, including suspension and debarment.

Four Federal agencies participating in the Interagency Suspension and Debarment Committee reported that they have a dedicated organizational element—an office or a division—responsible for suspension and debarment activities. These dedicated organizational elements are composed of full-time staff and legal support that allows for a proactive approach, in which staff may develop referrals for suspensions and debarments and coordinate antifraud efforts with investigative and audit staff.

The many responsibilities assigned to the Evaluation Division strain available resources and result in a lack of focus, expertise, and timeliness in USAID's suspension and debarment actions.

To address the adverse effects on suspension and debarment activities stemming from the Evaluation Division's many responsibilities, we recommend that the Director of Acquisition and Assistance propose the creation of a suspension and debarment division containing legal expertise and dedicated staff. See page 23 for a detailed discussion of this recommendation.

**Methods for Problem Identification.** USAID has depended exclusively on OIG's Office of Investigations to identify matters to be considered for suspension and debarment action. The current organizational structure supporting suspension and debarment

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<sup>10</sup> A survey on suspension and debarment practices was sent to all ISDC members. Completed responses were received from six Federal agencies, primarily those that are highly active in suspension and debarment.

decision making limits the substance and quantity of matters considered for suspension and debarment to those referred by the Office of Investigations.

During FY 2003–2007, all of the matters that USAID considered for suspension and/or debarment stemmed from referrals from the Office of Investigations—regardless of whether the matter ultimately resulted in a decision to debar, suspend, engage in an administrative agreement, or take other types of remedial measures.

Six Federal agencies that participate in the Interagency Suspension and Debarment Committee use other methods, in addition to referrals made by their inspectors general, for identifying matters to be considered for suspension and debarment.

Furthermore, section 873 of the Defense Authorization Act for FY 2009 (Public Law 110–417) prompts agency participation in the Interagency Suspension and Debarment Committee and authorizes the chair of the committee to establish subcommittees as appropriate to best enable the committee to carry out its functions.

For USAID to find additional ways to identify matters to be considered for suspension and debarment, we recommend that the Director of Acquisition and Assistance (1) implement the identification methods of other Federal agencies and (2) petition the chair of the Interagency Suspension and Debarment Committee to create a subcommittee to enumerate and share Federal best practices. See page 24 for a detailed discussion of these recommendations.

# Audit Recommendations

The following section contains 9 problem areas and 12 audit recommendations to improve USAID's suspension and debarment process.

## **USAID Should Act on Various Thresholds for Suspension and Debarment Actions**

Summary: Federal regulations provide various thresholds of causes that officials may cite in suspension and debarment actions. USAID relied almost exclusively on a single threshold level for the actions it took, although it could have acted using other threshold levels. Traditionally, USAID officials have been reluctant to act independently using the other thresholds. USAID's few actions provided a minimal amount of protection of the public interest.

The Federal Acquisition Regulation (FAR) and the Code of Federal Regulations (CFR) stipulate that suspension and debarment actions are to be used to protect the public interest (FAR 9.402 and 22 CFR 208.110(e) and (c)). To carry out this purpose, the FAR and CFR provide causes that an official may cite for suspension and debarment actions. FAR 9.406-2 and 9.407-2 cite the causes used for suspending or debarring a contractor. Causes are listed in 22 CFR 208.800 and 208.700 for suspending or debarring a participant in a nonprocurement program. Both statutes seek to exclude parties that are determined not to be responsible enough at present to carry out Federal awards.

Various thresholds of causes can be cited in suspending or debarring a contractor or a participant in a nonprocurement program (see table 1, page 8). For example, threshold level 1 for procurement and nonprocurement debarments is a court conviction or, for suspension, an indictment. Threshold level 4 is any other cause so serious or compelling that it affects the present responsibility of the contractor or participant in a nonprocurement program.

However, in all but one instance, USAID relied on threshold level 1 in considering and taking suspension and debarment actions. Of the eight documented suspension and debarment actions taken by USAID from FY 2003 through FY 2007, seven (88 percent) were based on a conviction or indictment.

USAID could have taken action using other threshold levels in several other instances but did not. For example, GA Paper International and Ramtech Overseas, Inc., agreed to pay a total of \$1.31 million to settle a claim that they knowingly had submitted more than 100 false and inflated claims for reimbursement. In a second case, Development Alternatives, Inc., agreed to pay \$1.2 million to settle a claim that it had overcharged USAID for services it provided on three contracts. There is no documentary evidence that USAID pursued suspension or debarment actions in either case.

Additionally, USAID awarded approximately \$20 billion in contracts and grants from FY 2003 through FY 2007. During that period, the Evaluation Division took only eight documented suspension or debarment actions, citing about \$378.5 million. This amount represents only 1.9 percent of the total amount awarded in contracts and grants. Put in a broader perspective, the Association of Certified Fraud examiners—the world’s largest antifraud organization and premier provider of antifraud training and education—estimates that the organizations they monitor, including Government agencies such as USAID, lose 7 percent of their annual revenues to fraud.<sup>11</sup> USAID awards some \$4 billion annually in contracts and grants; assuming that actual fraud within the awards process approximates the estimated 7 percent, USAID could lose \$280 million to fraud annually. This scenario shows the importance of the level of effort that USAID should be making to prevent working with nonresponsible contractors, compared with the level it is achieving.

USAID’s reluctance to take action on matters at various thresholds stems from several factors. Historically the Agency has relied on court decisions and has not made such decisions independently. Current Agency policy does not prompt a different approach. Moreover, Agency policy contained in the Automated Directives System does not encourage independent decision making on the basis of all threshold levels.

By relying on a single threshold of causes in considering and taking suspension and debarment actions, USAID took an insufficient number of actions and, therefore, provided only minimal protection of the public interest. USAID is missing opportunities to protect the Agency and to ensure that it works only with responsible parties.

***Recommendation 1:** We recommend that USAID modify chapter 103.3.10.5 of the Agency’s Automated Directives System to state that the delegated responsibility under suspension and debarment regulations includes the responsibility to consider all causes for suspension and debarment actions.*

## **USAID Should Improve Its Procedures for Providing Timely Notice of Final Debarment Decisions**

Summary: Federal regulations provide timeframes within which the notification of a final decision to debar must be provided to the contractor. USAID’s notifications of final debarment actions were either not timely or not made at all, because USAID lacks an effective administrative process. Late or omitted notifications create confusion about Agency actions and could result in litigation.

The FAR and CFR provide timeframes within which those notified of a proposed debarment must respond, the agency must make its final debarment decision, and written notice of its final debarment decision must be provided (FAR 9.406-3(c)(4) and

<sup>11</sup> This estimate from the ACFE is based on survey data compiled from occupational fraud cases that were investigated by Certified Fraud Examiners between January 2006 and February 2008.

22 CFR 208.820(a) and 208.870). For procurement, the final notice of a decision to debar must be sent to the contractor at most 30 days from the date of the contractor's response to the agency's notice of intent. For nonprocurement, the agency's final notification of a decision to debar must be sent at most 45 days from the date of the participant's response, and notice must be made promptly. For both types of debarment actions, when no response is received within the prescribed period, final notice of a debarment must be sent sooner.

Of USAID's six documented debarment actions, only one final notice of debarment met required timeframes. For three debarment actions, final notices of debarment were not sent. One was sent months after the notice of proposed debarment, even though the participant had not disputed the initial notice. Additional details are provided in table 2 (see page 9).

USAID did not follow FAR and CFR requirements because USAID lacks an effective administrative process to alert responsible staff when notification of the Agency's final decision to debar must be provided.

USAID's late or omitted notification of the final decision to debar creates uncertainty about USAID actions. A contractor that did not receive such notification could contest its ineligibility to compete for and receive Federal awards, resulting in unnecessary and expensive litigation.

***Recommendation 2:*** *We recommend that the Director of USAID's Office of Acquisition and Assistance institute a process to alert responsible staff when notification of the Agency's final decision to debar must be provided to meet timeframes outlined in Federal regulations.*

## **USAID Should Improve Its Procedures for Updating the Excluded Parties List System**

Summary: Federal regulations require that agency exclusion actions be entered in the Federal database within 5 workdays of their effective date. USAID entered information on its suspension and debarment action in the Federal database late or not at all (see table 3, page 10), because assigned staff were unaware of applicable requirements. Such delays or omissions create a risk that Federal agencies might do business with ineligible parties.

The FAR and CFR state that agencies are required to enter information about exclusion actions into the Excluded Parties List System database within 5 workdays after the action becomes effective (FAR 9.404(c)(3) and 22 CFR 208.520(c)). The purpose of this entry is to disseminate, in a timely manner, information on parties that are excluded from Federal awards.

Five of eight documented cases (63 percent) took longer than 5 workdays, including one documented debarment concerning an individual that was not entered at all. In the undocumented ninth case, the party (Mr. Andrei Sheifer) is shown in the database as being debarred from August 3, 2005, through August 2, 2007. However, the database

also shows that this information was entered into the system on June 20, 2007—almost 2 years after the original debarment date and close to the end of the debarment timeframe. Finally, four affiliated names of one debarred contractor, the Dannix Corporation, were not entered into the database. Of nine cases, six (67 percent) were not entered within the 5-workday timeframe. An additional four affiliated names pertaining to the Dannix Corporation were not entered into the database.

Information was not entered in accordance with regulations because the assigned employee was unfamiliar with the applicable time requirements.

By not complying with FAR and CFR requirements concerning the timely entry of contractor names into the database, the Evaluation Division is not protecting the public interest adequately. Delayed or omitted entry of suspended or debarred parties in the database creates a risk that other Federal agencies might do business with ineligible parties.

***Recommendation 3:*** *We recommend that the Director of USAID's Office of Acquisition and Assistance develop a procedure to ensure that suspension and debarment actions are entered in the Excluded Parties List System within 5 workdays.*

## **USAID Should Improve Its Documentation of Suspension and Debarment Actions**

Summary: USAID policy and Federal regulations require that agencies maintain documentation supporting suspension and debarment actions. USAID's documentation is incomplete and inconsistent because the Evaluation Division had no standard procedures and management provided ineffective oversight. These documentation lapses could cause problems in defending against litigation and in sharing exclusion information with interested parties.

Automated Directives System 502.5.1b asserts that official records must be preserved because of the informational value of evidence of an agency's decisions. Furthermore, FAR 9.404(c)(6) requires each agency to maintain records relating to each debarment, suspension, or proposed debarment taken by the agency. Title 22 of the CFR implies a similar requirement in that agencies must be able to respond to inquiries about exclusions (22 CFR 208.525).

The Evaluation Division is responsible for administrative matters related to suspension and debarment, such as retaining documents. However, the division did not retain complete documentation to support all of the suspension and debarment actions USAID took. For the audit period, the division had records for eight of nine of the Agency's suspension and debarment actions. Mr. Andrei Sheifer was listed in the database as debarred by USAID, but the Evaluation Division did not have any information on this debarment action.

Furthermore, there are inconsistencies between the records retained by the division and those of other USAID organizational units. For example, the Office of General Counsel

had correspondence concerning USAID's debarment of two contractors (MDS, Inc., and an individual<sup>12</sup>) because of their affiliation with a USAID debarred company, the Dannix Corporation. The Evaluation Division did not have records on these two contractors. Finally, the Office of Investigations had information on two debarment matters and one suspension matter. Because the division had no records on these three actions, it could not determine whether these names were affiliated with documented actions USAID had taken or were separate undocumented actions.

Division staff did not retain these documents because the division had no standard documentation procedures and management exercised no effective oversight of record retention.

Incomplete and inconsistent documentation could prove problematic if a suspended or debarred party were to contest USAID's action through litigation. Moreover, USAID could be put in an awkward situation if another Federal agency or other interested party, such as a contractor seeking to subcontract a Government award, sought insight into the basis for USAID's action.

***Recommendation 4:*** We recommend that the Director of USAID's Office of Acquisition and Assistance implement procedures for maintaining proper suspension and debarment case files in accordance with Automated Directives System 502.

***Recommendation 5:*** We recommend that the Director of USAID's Office of Acquisition and Assistance conduct and document a review of current suspension and debarment actions and, if records are incomplete, compile support for those actions.

## **USAID Should Better Document Certifications of Responsibility**

Summary: FAR 9.1 and 4.1 require that the Certification Regarding Responsibility Matters be documented in contract files. However, because guidance to contracting officers on certification of responsibility was incomplete, USAID did not document nearly 30 percent of contractor certifications. Accordingly, USAID could not be certain that those contractors were sufficiently responsible to carry out Federal contracts.

When a contract value is expected to exceed the simplified acquisition threshold, FAR 9.104-6 requires prospective contractors to complete and submit the Certification Regarding Responsibility Matters, stating whether they are sufficiently responsible to hold a Federal contract. FAR 9.105-2(b) requires that documents supporting a responsibility determination, such as the completed certification, be kept in the contract file. If the certification is made electronically, FAR 4.1201(c) requires that either a verification date or a paper copy of the certification be included in the file.

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<sup>12</sup> Since it was not publically disclosed on the EPLS database, the affiliated individual is not identified by name.

USAID did not consistently comply with FAR requirements governing the certification. Of 54 files reviewed for existing contracts, 15 (28 percent) did not contain the completed certification from the awarded contractor or a verification date of an electronically submitted certification. See appendix III for a list of identified contracts missing the certification.

USAID's inconsistency in complying with the FAR requirements was caused by omissions in Agency guidance, which contained no documentation requirements for completed certifications. USAID issued guidance to contracting officers on electronic certifications through Procurement Executive Bulletin No. 2005-12. However, the guidance left out the requirement of including a verification date or a paper copy of the electronically submitted certification in contract files.

Beyond being contrary to regulations, the lack of documented certifications implies that contracting officers may not have known whether the 15 identified contractors were responsible when the contracts were awarded.

***Recommendation 6:*** We recommend that the Director of USAID's Office of Acquisition and Assistance provide written guidance to contracting officers to reinforce the documentation requirements for the Certification Regarding Responsibility Matters outlined in Federal Acquisition Regulation 9.105-2(b) and 4.1201(c).

***Recommendation 7:*** We recommend that the Director of USAID's Office of Acquisition and Assistance obtain and document the Certification Regarding Responsibility Matters for the identified contracts missing the certification, in accordance with Federal Acquisition Regulation 9.104-5(b).

## **USAID Should Conduct and Document Reviews of the Excluded Parties List System**

Summary: FAR 9.1 and 9.4 require that the Excluded Parties List System database be reviewed and documented twice prior to the award of a contract. Instead, USAID usually reviews the database only once, and 26 percent of contracts did not contain any documentation of a database review. The inconsistency in conducting and documenting reviews was caused by omissions in USAID guidance. The lack of documentation suggests that contracting officers were unaware of the contractor's responsibility.

FAR 9.1 contains requirements for contractor responsibility determinations, and FAR 9.4 focuses on contractor suspension, debarment, and ineligibility. Specifically, FAR 9.405(d) requires that the Excluded Parties List System (EPLS) database be reviewed twice by the contracting officer—once during the bidding process, as bids and proposals are received, and again prior to the award of a contract—to make sure that no award is made to a contractor listed as excluded. Additionally, FAR 9.105-2(b) requires that documents supporting a responsibility determination, such as database reviews, be included in the contract file.

Only 2 of the 54 contracts examined met the database review and documentation requirements in FAR 9.405(d) and FAR 9.105-2(b).<sup>13</sup> Of the remaining 52 contracts, 32 partially met the requirements demonstrating evidence of a single database check on the primary contractor, prior to the award of the contract. Fourteen contracts (26 percent of contracts reviewed) did not meet the requirements; they contained no evidence of a database check on the primary contractor prior to award of the contract. The other six contracts contained evidence of a database check dated after the contract was awarded.

The noncompliance with required review and documentation procedures was caused by omissions in USAID guidance sent to contracting officers. Guidance issued through Procurement Executive Bulletin No. 2005-12 states that “the CO [Contracting Officer] must therefore review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs immediately prior to award of the prime contract to verify that neither the prime nor any proposed subcontractor is listed.”

USAID headquarters contracting officers did not comply with FAR review and documentation requirements because USAID guidance did not direct them to make a required review of the database during the bidding process, and it did not specify required documentation procedures to provide evidence that required reviews were performed.

If contracting officers do not conduct EPLS reviews during the bidding process, Agency resources may be wasted on reviewing and evaluating bids from excluded contractors. Also, the lack of documentation for reviews on prospective contractors, prior to issuing an award, implies that USAID’s contracting officers may not have known whether the contractors were excluded when the awards were made.

***Recommendation 8:*** *We recommend that the Director of USAID’s Office of Acquisition and Assistance provide written procedural guidance to contracting officers to reinforce the requirements to conduct Excluded Parties List System reviews during the bidding and awarding process and to document those reviews, in accordance with Federal Acquisition Regulation 9.405(d) and 9.105-2(b).*

## **USAID Should Reconsider Delegation of Responsibilities**

Summary: Responsibility for suspension and debarment is only one of many duties assigned to USAID’s Director of the Office of Acquisition and Assistance. At other agencies, suspension and debarment officials are not burdened with such additional responsibilities. The delegation of the many duties to the Director continues because alternate arrangements have not been considered. Assigning so many responsibilities to one individual results in insufficient attention to some matters.

<sup>13</sup> From a population of 141 unique and active contracts that were entered into during FY 2003–2007, 54 were randomly selected.

The Director of the Office of Acquisition and Assistance, USAID's suspension and debarment official, is responsible for many matters beyond the suspension and debarment actions assigned by Automated Directives System 103.3.10.1.c and 103.3.10.5. The Director is also designated as the senior procurement executive and chief acquisition officer and is further delegated the acquisition and assistance authorities of administering the host-country contracting system, administering the commodity and ocean-transportation management functions, and determining eligibility and responsibility under the Drug-Free Workplace Act of 1988<sup>14</sup> and similar statutes and regulations. Since the majority of USAID's development activities are implemented by contractors, grantees, and recipients of cooperative agreements, the Director of the Office of Acquisition and Assistance is involved in the oversight of nearly every USAID operation—an immense concentration of responsibility.

Of the suspension and debarment officials at six Federal agencies that participate in the Interagency Suspension and Debarment Committee, none oversee their agency's procurement and grant-making activities.<sup>15</sup> Moreover, none of their additional responsibilities are involved as directly in agency program operations as those of USAID's suspension and debarment official. For example, one agency's suspension and debarment official is also a deputy general counsel. Three of the agencies' suspension and debarment officials report directly to their general counsel.

Responsibilities under USAID's suspension and debarment regulations continue to be delegated to the Director of Acquisition and Assistance because the Director has not considered who might be better placed to carry them out.

Assigning so many responsibilities to one individual inevitably results in less attention to some matters—specifically, in fewer actions in suspension and debarment. For example, although USAID awards approximately \$4 billion dollars each fiscal year in Federal contracts and grants, in FY 2007 no actions were taken, and in FY 2006, USAID's actions addressed less than \$65,000. All but one of USAID's documented eight suspension and debarment decisions during FY 2003–2007 relied on a Federal indictment or conviction—a judge's conclusion, not the independent conclusion of USAID's suspension and debarment official.

***Recommendation 9:*** *We recommend that the Director of USAID's Office of Acquisition and Assistance consult with the Assistant Administrator for Management about the most effective delegation of the Agency's suspension and debarment responsibilities and document the results of the consultation.*

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<sup>14</sup> 41 U.S.C. 10.702.

<sup>15</sup> A survey on suspension and debarment practices was sent to all ISDC members. Completed responses were received from six Federal agencies.

## **USAID Should Consider a Dedicated Division for Suspension and Debarment**

Summary: USAID's Automated Directives System states the primary role and responsibilities of the Evaluation Division, but the division's Web page lists additional responsibilities, including suspension and debarment. Other Federal agencies have established divisions or offices with staff dedicated to handling suspension and debarment matters, but USAID has not adopted this best practice, because it was not considered. As a result, the division's ability to focus on and handle suspension and debarment matters is strained.

USAID's Automated Directives System 101.3.1.6.d.6 states that the role of the Evaluation Division is to "conduct evaluations of worldwide procurement and assistance operations as required to support the Procurement Executive's periodic certifications of the Agency's procurement system." Specifically, the Automated Directives System outlines the following four duties of the Evaluation Division:

1. Evaluating contracting requirements of USAID overseas organizations and recommend delegations of authority.
2. Reviewing direct and host-country contracts and grants and cooperative agreements.
3. Administering the Procurement Management Certification Program.
4. Formulating policy on contractor/grantee and marine insurance matters. Notably, suspension and debarment is not identified in the Automated Directives System as a key responsibility of the division.

The Evaluation Division's Web page lists an additional 14 tasks for which the division is responsible. Some of these tasks include implementation of the new FAC-C Acquisition Certification Program; implementation of a Web-based scorecard evaluation of USAID headquarters and mission procurement systems; procurement training program and curriculum; salary approvals under acquisition instruments; and unauthorized commitments and extraordinary contractual relief. The assignment of additional responsibilities, beyond those listed in the Automated Directives System, highlights the increasing number of tasks delegated to the division, including suspension and debarment.

Federal agencies have established divisions or offices dedicated to suspension and debarment activities and composed of full-time dedicated staff and legal support. Agencies have reported that a dedicated suspension and debarment division allows for a proactive approach, in which staff may develop referrals for suspensions and debarments and coordinate antifraud efforts with investigative and audit staff. Implementation of a division dedicated to suspension and debarment results in expert staff that can focus on conducting timely suspension and debarment actions.

USAID has not applied the organizational best practice of establishing a dedicated division for suspension and debarment because it was not considered.

The many responsibilities assigned to the Evaluation Division strain available resources

and result in a lack of attention, expertise, and timeliness in USAID's suspension and debarment actions. In fact, an Agency official stated that the biggest challenge to the Agency's suspension and debarment process is a lack of resources within the Evaluation Division, leading staff to fall behind with appeals and actions. Another official noted that the Evaluation Division's strain on resources is caused by the continuous workload of competing priorities, resulting in instances of late or omitted suspension and debarment actions. Further, the official noted that because of its many responsibilities, the Evaluation Division is much more reactive than proactive in suspension and debarment.

***Recommendation 10:*** *We recommend that the Director of USAID's Office of Acquisition and Assistance submit an action memorandum to higher management for the creation of a division containing legal expertise and dedicated staff for the development, evaluation, and recommendation of suspension and debarment actions for the suspension and debarment official.*

## **USAID Should Explore Other Methods to Identify Suspension and Debarment Matters**

Summary: All of the matters USAID considered for suspension and/or debarment stemmed from referrals made by the Office of Inspector General (OIG). Other Federal agencies use various methods to identify possible suspension and debarment matters, in addition to referrals made by their inspectors general. USAID's exclusive reliance on OIG for referrals, resulting from both tradition and a lack of initiative, limits the number of actions USAID takes to protect the Government interest.

During FY 2003–2007, all of the matters USAID considered for suspension and/or debarment stemmed from just one source—referrals from the Office of Inspector General (OIG). USAID relied on the OIG referrals regardless of whether the matter led to a decision to debar, suspend, engage in an administrative agreement, or take other types of remedial measures.

Six Federal agencies that participate in the Interagency Suspension and Debarment Committee use various methods to identify matters to consider for suspension and debarment, in addition to referrals made by their inspectors general. These methods include the following:

- Reviewing cases the Office of Investigations chose not to pursue.
- Revising the agency's FAR supplement to require contracting officers—and to encourage anyone—to refer all matters appropriate for consideration to the debarring and suspending official.
- Considering preliminary assessments of contractor responsibility.
- Learning about convictions beyond those prompted by the Office of Inspector General and researching other sources.

- Empowering contracting officers with legal support in the field, and other internal sources, such as attorneys or the Office of Acquisition Management, to forward referrals.
- Encouraging contractors to make self-disclosure of issues affecting their ability to fulfill their responsibilities under Federal contracts.

Furthermore, section 873 of the Defense Authorization Act for FY 2009 (Public Law 110–417) demonstrates the intention of Congress to encourage active agency participation in the Interagency Suspension and Debarment Committee and authorizes the chair of the committee to establish subcommittees as appropriate to enable the committee to carry out its functions. The section directs the committee to improve the Government-wide suspension and debarment system by working cooperatively to make operations more efficient. Therefore, this legislative direction encourages soliciting and sharing information on suspension and debarment best practices among Federal agencies.

USAID's exclusive reliance on OIG to make referrals for suspension and debarment stems from a history of having only OIG to perform the function and from a lack of initiative to identify and implement other methods. Nevertheless, information about methods that other Federal agencies use to identify such matters is readily available from other Federal agency representatives to the Interagency Suspension and Debarment Committee. Although USAID is a member of the committee, USAID officials have not solicited or acted on such information.

By limiting the origin of referrals to one source, as a matter of practice, USAID ultimately limits the actions it takes to protect the Government's interest. This effect goes beyond the simple exclusion of parties that the suspension and debarment official has determined to be not responsible but also includes any and all other remedial measures prompted by a referral.

***Recommendation 11:*** *We recommend that the Director of USAID's Office of Acquisition and Assistance implement all of the six methods that other Federal agencies use to identify matters to consider for suspension and debarment and, if any are not implemented, document why the method would not benefit the Agency.*

***Recommendation 12:*** *We recommend that the Director of USAID's Office of Acquisition and Assistance petition, in writing, the chair of the Interagency Suspension and Debarment Committee to establish a subcommittee to enumerate and share Federal best practices for identifying matters to be referred for suspension and debarment consideration.*

# EVALUATION OF MANAGEMENT COMMENTS

Upon evaluation of management's response to the draft report, this audit determined that management decisions have been reached on recommendations 1–9. Management decisions on recommendations 10, 11, and 12 are pending the results of consultation with higher management on recommendation 9. Additional target dates are also needed for recommendation 11.

**Recommendation 1.** Management stated its concurrence with the recommendation to review and take more suspension and debarment actions as a matter of policy. The Office of Acquisition and Assistance (OAA) plans to initiate corrective action by modifying chapter 103 of the Automated Directives System (ADS); the target date for completion of this action is November 30, 2009. Management decision has been reached on this recommendation.

**Recommendation 2.** Management stated its concurrence with the recommendation to institute a process to alert responsible staff to provide timely notification to those it debars. OAA's Evaluation Division (OAA/E) plans to establish a Standard Operating Procedure to ensure timelines outlined in Federal regulations are met; the target date for completion of this action is October 30, 2009. Management decision has been reached on this recommendation.

**Recommendation 3.** Management stated its concurrence with the recommendation to develop a procedure for timely entries into the Excluded Parties List System. OAA/E plans to develop a standard operating procedure to ensure that suspension and debarment actions are entered into the Federal database within 5 workdays; the target date for completion of this action is November 30, 2009. Management decision has been reached on this recommendation.

**Recommendation 4.** Management concurs with the recommendation to implement procedures for maintaining case files to improve documentation of suspension and debarment in accordance with ADS 502. OAA/E met with the Information and Records Division for technical assistance on August 6, 2009, and has begun to implement the first phase of its corrective plan. The target date for completion is October 30, 2009. Management decision has been reached on this recommendation.

**Recommendation 5.** Management stated its concurrence with the recommendation to compile documentation of current suspension and debarment actions for which case files are incomplete. OAA/E plans to conduct and document a review of its current suspension and debarment actions with a target date for completion of October 30, 2009. Management decision has been reached on this recommendation.

**Recommendation 6.** Management stated its concurrence with the recommendation to provide written guidance to contracting officers to reinforce documentation requirements of contractor responsibility certifications, as outlined in sections 9.105-2(b) and 4.1201(c) of the Federal Acquisition Regulation (FAR). OAA/E plans to amend

Procurement Bulletin No. 2005-12 with a target date for completion of October 30, 2009. Management decision has been reached on this recommendation.

**Recommendation 7.** Management stated its concurrence with the recommendation to obtain contractor responsibility certifications for active contracts in accordance with the FAR. OAA plans to conduct a review of the contracts identified in appendix III and obtain missing certifications with a target date for completion of October 30, 2009. Management decision has been reached on this recommendation.

**Recommendation 8.** Management stated its concurrence with the recommendation to provide written guidance to contracting officers to reinforce consistency and documentation of database reviews during the bidding and awarding process. To this end, OAA/E plans to amend Procurement Executive Bulletin No. 2005-12 with a target date for completion of October 30, 2009. Additionally, OAA plans to work with the Global Acquisition and Assistance System team to ensure that database checks are incorporated into system-generated milestone plans to serve as reminder to conduct this mandatory review. Management decision has been reached on this recommendation.

**Recommendation 9.** Management stated its concurrence with the recommendation to reconsider the delegation of suspension and debarment responsibilities. Initial consultation with the Assistant Administrator for Management (AA/M) was held on July 28, 2009. Management stated that the consultation is ongoing as the AA/M requested additional information before making a determination on the delegation of responsibilities. The target date for completion of this effort is December 31, 2009. Management decision has been reached on this recommendation.

**Recommendation 10.** Management stated that OAA action on this recommendation to consider the formation of a dedicated division for suspension and debarment is contingent upon the results of the consultation described in recommendation 9. The target date for action completion is December 31, 2009. Management decision is pending the results of the consultation.

**Recommendation 11.** Management stated its partial concurrence with the recommendation to consider adopting six methods used by other Federal agencies to identify matters for suspension and debarment. OAA plans to implement two of the six recommended methods. To encourage referrals, OAA plans to revise USAID Acquisition Regulation by January 29, 2010. Also, OAA has drafted a procedure outlining steps for processing disclosures made pursuant to FAR 52.203-13, targeted for completion by October 30, 2009. Management stated that actions on the remaining four methods are contingent upon the results of the consultation described in recommendation 9. Management decision is pending the results of the consultation and the provision of target dates for the remaining four methods to identify matters for suspension and debarment.

**Recommendation 12.** Management stated its concurrence with the recommendation to petition the chair of the Interagency Suspension and Debarment Committee (ISDC) to create a subcommittee to enumerate and share Federal best practices. Management stated that action on this recommendation is contingent upon the results of the consultation described in recommendation 9 and is targeted for completion by December 30, 2009. OAA also plans to take an active role in the ISDC and will

designate a representative to attend ISDC meetings on behalf of USAID. Management decision is pending the results of the consultation described in recommendation 9.

Management comments are presented in their entirety in appendix II of this report.

# SCOPE AND METHODOLOGY

## Scope

The Office of Inspector General (OIG) conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objective. We believe that the evidence obtained provides that reasonable basis. The purpose of the audit was to determine whether USAID has protected the public interest by responding to contractor impropriety in accordance with Federal guidance.

The audit fieldwork was performed from December 2008 to April 2009 in Washington, DC, at USAID's Office of Acquisition and Assistance. The audit period spanned fiscal years (FY) 2003–2007. During the course of fieldwork, we consulted with the Office of General Counsel and the Office of Investigations. Criteria used to assess USAID's suspension and debarment process included the Federal Acquisition Regulation (FAR), the Code of Federal Regulations, USAID's Automated Directives System, Government Accountability Office reports, and the International Organization for Standardization's Quality Management Principles. We took a four-phased audit approach to support and determine whether USAID's suspension and debarment process has or has not protected the public interest.

During the first phase of fieldwork, a sample population of 54 active contracts, totaling nearly \$21 million, was tested to determine whether USAID had instituted procedures required by the FAR in its suspension and debarment process. These contracts were issued from USAID headquarters during the audit period.

The second phase of fieldwork assessed whether USAID had followed Federal guidelines that proscribe conducting business with debarred companies or individuals. We compared 69,064 records in USAID's information management systems with 92,392 records obtained from the Excluded Parties List System.

The third phase of the audit fieldwork examined whether USAID's suspension and debarment decisions were timely, reasonable, and in accordance with Federal guidance. We reviewed and analyzed eight documented procurement and nonprocurement suspension and debarment actions taken during FY 2003–2007, totaling \$378,460,515.<sup>16</sup>

The fourth phase of audit fieldwork considered aspects of USAID's suspension and debarment process in light of practices used by other Federal agencies. We surveyed Federal agencies participating in the Interagency Suspension and Debarment Committee and contacted other offices of inspectors general to obtain information on best practices. We also collected that information from Government Accountability Office (GAO) reports and the International Organization for Standardization, and we assessed

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<sup>16</sup> Since USAID had only two procurement suspension and debarment actions during FY 2003–2007, the audit scope was expanded to include seven nonprocurement suspension and debarment actions. One procurement debarment action was not documented.

the applicability of these best practices to USAID's operations.

Our audit findings and associated recommendations for improving USAID's suspension and debarment process resulted from the evaluation of criteria (including best practices), USAID policies and procedures, and active USAID contracts.

## **Methodology**

To answer the audit objective, we took a four-phased audit approach for fieldwork: (1) testing USAID's contracts, (2) comparing USAID's systems and records with those of the Excluded Parties List System, (3) reviewing all documented procurement and nonprocurement suspension and debarment actions taken by USAID, and (4) surveying, obtaining, and assessing best practices for applicability to USAID's suspension and debarment process.

During the first phase of fieldwork, we tested a random sample of 54 contract files to determine whether USAID had complied with required procedures in FAR 9.1 and 9.4. Staff from USAID's Office of Acquisition and Assistance provided information on 1,445 procurement contracts issued from USAID/Washington during FY 2003–2007 that were active during audit fieldwork. We also consulted with the OIG statistician to determine the size of the sample from a filtered population of 141 unique contracts (with a 95 percent confidence level) to test for compliance with procedures required by FAR to document contractor certifications and Excluded Parties List System reviews.

In the second phase of fieldwork, we compared records in USAID's information management systems (Phoenix and Global Acquisition and Assistance System) with records obtained from the Excluded Parties List System. The testing drew data from the Excluded Parties List System and USAID's Phoenix systems in mid-December 2008 and compared 69,064 records from the Excluded Parties List System with 92,392 records from USAID information management systems. Comparisons considered Data Universal Numbering System numbers, vendor names, address information, and taxpayer identification or social security numbers. Matches of unique data elements, such as both name and address, were considered high-confidence matches. We performed further review on the high-confidence matches by evaluating Excluded Parties List System entry dates and the various applicable cause and treatment codes to determine whether any USAID transactions with excluded parties were contrary to Federal Law.

In the third phase of fieldwork, we collected referral information and documented suspension and debarment cases from OIG's Office of Investigations, the Office of Acquisition and Assistance's Evaluation Division, and the Office of General Counsel. We reviewed and analyzed eight documented procurement and nonprocurement suspension and debarment actions, totaling \$378,460,515. The Excluded Parties List System was also consulted to determine whether USAID had listed additional contractors with undocumented suspension and debarment cases. The total dollar amount of actions taken during FY 2003–2007 was then compared to the total amount that USAID awards annually on contracts and grants.

In the fourth phase of fieldwork, we surveyed Federal agencies of the Interagency Suspension and Debarment Committee to obtain Federal best practices. We received

six completed responses, primarily from agencies highly active in suspension and debarment. In addition, we obtained “best practices” from GAO reports and the International Organization for Standardization and through discussions with other offices of inspectors general. Best practices were evaluated categorically in the areas of organizational structure and process, problem identification, threshold, and timeliness of actions. We then compared best practices with USAID’s practices in these areas and recommended best practices to address the weaknesses.

# MANAGEMENT COMMENTS



## MEMORANDUM

TO: Director, Performance Audits Division, Steven H. Bernstein

FROM: Director, Office of Acquisition and Assistance, Maureen A. Shauket /s/

SUBJECT: Office of Inspector General Draft Audit Report of July 14, 2009 on USAID's Process for Suspension and Debarment

This memorandum provides written comments to the 12 recommendations in the draft audit report to strengthen USAID's suspension and debarment process.

### **AUDIT RECOMMENDATIONS:**

#### **1. Review and take more suspension and debarment actions as a matter of policy.**

USAID modify chapter 103.3.10.5 of the ADS to state that the delegated responsibility under suspension and debarment regulations includes the responsibility to consider all causes for suspension and debarment actions.

**COMMENT:** We concur with the recommendation. OAA will initiate corrective action by commencing the process for changing ADS 103. The target date for completion is November 30, 2009.

#### **2. Institute a process to alert responsible staff to provide timely notification to those it debars.**

The Director of USAID's Office of Acquisition and Assistance institute a process to alert responsible staff when notification of the Agency's final decision to debar must be provided to meet timeframes outlined in Federal Regulations.

**COMMENT:** We concur with the recommendation. M/OAA/E will establish a Standard Operating Procedure (SOP) to ensure that Agency Final Decisions on proposed debarments meet Federal regulatory timeframes. The target date for completion is October 30, 2009.

#### **3. Develop a procedure for timely entries into the Federal database.**

The Director of USAID's Office of Acquisition and Assistance develop a procedure to ensure that suspension and debarment actions are entered in the Excluded Parties list System within 5 workdays.

**COMMENT:** We concur with the recommendation. M/OAA/E will develop a Standard Operating Procedure (SOP) for the M/OAA/E Division so that the individual with GSA access to the Excluded Parties List System will input the relevant data within 5 workdays. The target date for completion is November 30, 2009.

**4. Implement procedures for maintaining case files to improve documentation of suspension and debarment.**

The Director of USAID's Office of Acquisition and Assistance implement procedures for maintaining proper suspension and debarment case files in accordance with Automated Directives System 502.

**COMMENT:** We concur with the recommendation. Corrective plan of action is to engage the Information and Records Division at USAID to assist with implementing procedures for maintaining proper files. M/OAA/E met with [REDACTED] of the Information and Records Division, M/AS/IRD, on August 06, 2009. A memorandum of the same date was sent from M/AS/IRD to M/OAA/E documenting the meeting. The corrective plan of action's first phase of technical assistance from M/AS/IRD started August 10, 2009 beginning with the Suspension and Debarment case files to implement procedures for maintaining proper files in accordance with ADS 502. The target date for completion is October 30, 2009.

**5. Compile documentation of current suspension and debarment actions for which case files are incomplete.**

The Director of USAID's Office of Acquisition and Assistance conduct and document a review of current suspension and debarment actions and, if records are incomplete, compile support for those actions.

**COMMENT:** We concur with the recommendation. M/OAA/E will conduct and document a review of current suspension and debarment actions. The target date for completion is October 30, 2009.

**6. Provide guidance to contracting officers to reinforce documentation requirements of contractor responsibility certifications.**

The Director of USAID's Office of Acquisition and Assistance provide written guidance to contracting officers to reinforce the documentation requirements for the Certification Regarding Responsibility Matters outlined in Federal Acquisition Regulation 9.105-2(b) and 4.1201(c).

**COMMENT:** We concur with the recommendation. M/OAA/E will amend Procurement Executive Bulletin (PEB) No. 2005-12 to reinforce documentation requirements for certification of responsibility matters. The target date for completion is October 30, 2009.

**7. Obtain contractor responsibility certifications for active contracts (identified in appendix III).**

The Director of USAID's Office of Acquisition and Assistance obtain and document the Certification Regarding Responsibility Matters for the identified contracts missing the certification, in accordance with Federal Acquisition Regulation 9.104-5(b).

**COMMENT:** We concur with the recommendation. OAA Operations will review and document active contracts listed in Appendix III and missing Certifications Regarding Responsibility Matters outlined in FAR 9.105-2(b) and 4.1201(c) will be obtained. The target date of completion for this action is October 30, 2009.

#### **8. Provide guidance to contracting officers to improve consistency and documentation of database reviews during the bidding and awarding process.**

The Director of USAID's Office of Acquisition and Assistance provide written procedural guidance to contracting officers to reinforce the requirements to conduct Excluded Parties List System reviews during the bidding and awarding process and to document those reviews, in accordance with Federal Acquisition Regulation 9.405(d) and 9.105-2(b).

**COMMENT:** We concur with the recommendation. M/OAA/E will amend Procurement Executive Bulletin (PEB) No. 2005-12 to reinforce the requirements to conduct Excluded Parties List System reviews during the bidding and awarding process and to reinforce the documentation of those reviews. The target date for completion of this action is October 30, 2009.

Further, upon inquiry into GLAAS (Global Acquisition and Assistance System), the Agency's new world-wide web-based Acquisition & Assistance system, it became known that the acquisition milestone plan generated from the system does not have a separate milestone for checking the Excluded Parties List System at time of receipt of proposals. The GLAAS team is analyzing/defining the requirement for future inclusion in the award milestone plan.

#### **9. Reconsider the delegation of suspension and debarment responsibilities.**

The Director of USAID's Office of Acquisition and Assistance consult with the Assistant Administrator for Management about the most effective delegation of the Agency's suspension and debarment responsibilities and document the results of the consultation.

**COMMENT:** We concur with the recommendation. A meeting took place with the Assistant Administrator for Management on July 28, 2009 regarding delegation of the Agency's suspension and debarment responsibilities. The consultation is ongoing as the AA/M requested further information before making any decision on the delegation. This requires extensive research of best practices within the Government to include how Agencies manage the suspension and debarment program, the cost and number of staff needed, as well as the roles and responsibilities of each. Once this information is gathered, the AA/M will review and determine how to proceed. The target date for completion of this effort is December 31, 2009.

**10. Consider the formation of a dedicated division for suspension and debarment activities.**

The Director of USAID's Office of Acquisition and Assistance submit an action memorandum to higher management for the creation of a division containing legal expertise and dedicated staff for the development, evaluation, and recommendation of suspension and debarment actions for the suspension and debarment official.

**COMMENT:** Action on this recommendation is contingent upon the results of the consultation with the AA/M described in Recommendation 9. A decision must be reached to determine where in the agency the suspension and debarment division should reside. The target date for completion of this action is December 31, 2009.

**11. Consider adopting additional methods used by other Federal agencies to identify matters for suspension and debarment.**

The Director of USAID's Office of Acquisition and Assistance implement all of the six methods that other Federal agencies use to identify matters to consider for suspension and debarment and, if any are not implemented, document why the method would not benefit the Agency.

**COMMENT:**

We concur with implementing two of the six recommendations that are used by other Federal agencies to identify matters to consider for suspension and debarment:

- Revising the agency's Federal Acquisition Regulations supplement to require contracting officers—and to encourage anyone—to refer all matters appropriate for consideration to the debarring and suspending official; and
- Encouraging contractors to make self-disclosure of issues affecting their ability to fulfill their responsibilities under Federal contracts.

The "Agency supplement to the FAR," called AIDAR, will be revised to encourage anyone to refer all matters appropriate for consideration to the debarring and suspending official. The target date for completion of this action is January 29, 2010.

Per FAR 52.203-13 Contractor Code of Business Ethics and Conduct (DEC 2008), a procedure has been drafted outlining steps that M/OAA will take in processing and reviewing disclosures made pursuant to the clause. The target date for completion of this action is October 30, 2009.

The other four recommendations, however, are contingent upon the results of the consultation discussed above in recommendation 9:

- reviewing cases the Office of Investigations chose not to pursue;
- considering preliminary assessments of contractor responsibility;
- learning about convictions beyond those prompted by the Office of Inspector General and researching other sources; and

- empowering contracting officers with legal support in the field, and other internal sources, such as attorneys or the Office of Acquisition and Assistance, to forward referrals

**12. Petition the chair of the Interagency Suspension and Debarment Committee to create a subcommittee to enumerate and share Federal best practices.**

The Director of USAID's Office of Acquisition and Assistance petition, in writing, the chair of the Interagency Suspension and Debarment Committee to establish a subcommittee to enumerate and share Federal best practices for identifying matters to be referred for suspension and debarment consideration.

**COMMENT:** We concur with the recommendation. Petitioning the Chair of the Interagency Suspension and Debarment Committee to establish a subcommittee will depend upon the results of the consultation discussed in Recommendation 9. The Office of Acquisition and Assistance will continue to take an active role in the ISDC and designate a representative who will attend the ISDC meetings on behalf of USAID. The target date for completion is December 30, 2009.

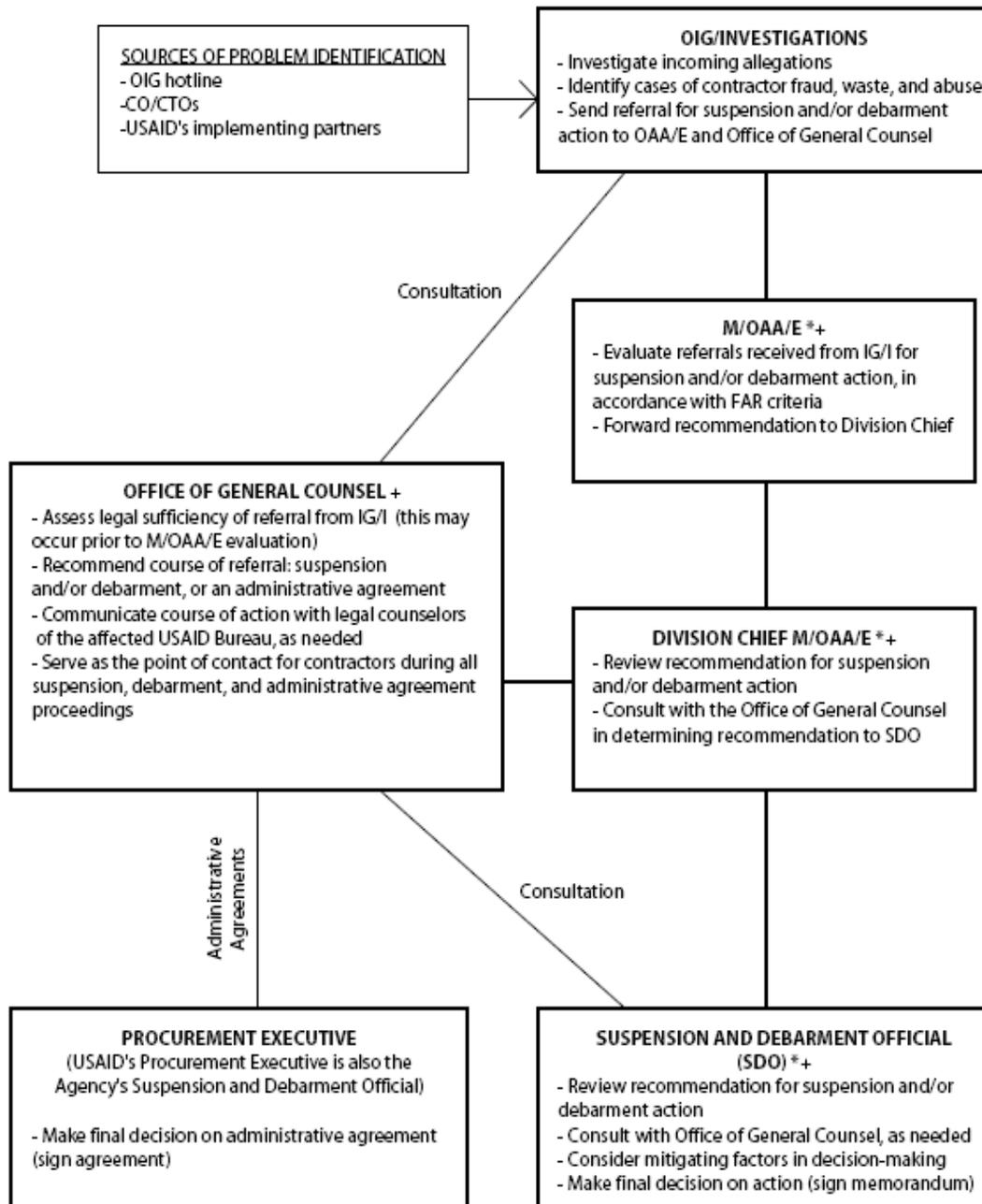
# CONTRACT CERTIFICATION

In support of the audit finding “USAID Should Better Document Certifications of Responsibility,” the following table identifies contracts issued by USAID’s Office of Acquisition and Assistance during fiscal years 2003–2007. Specifically, the table identifies 15 of 54 contracts (28 percent of the contracts audited) for which documentation demonstrates deficiency in receipt of the contractor certification at FAR 52.209-5, “Certification Regarding Responsibility Matters.”

NAME OF CONTRACTOR	CONTRACT NUMBER
1. EAST-WEST MANAGEMENT INSTITUTE, INC.	AFP-I-00-04-00003-00
2. CAMP DRESSER AND MCKEE INTERNATIONAL, INC.	GHA-I-00-04-00006-00
3. PFIZER GLOBAL PHARMACEUTICALS	GPO-C-00-04-00025-00
4. FINTRACT, INC.	EDH-I-00-05-00007-00
5. MENDEZ ENGLAND AND ASSOCIATES	EPP-I-00-04-00030-00
6. PARTNERSHIP FOR CHILD HEALTH AND CARE, INC.	GHA-I-00-04-00002-00
7. WORLD LEARNING, INC.	RAN-I-00-05-00026-00
8. POPULATION SERVICES INTERNATIONAL	GHH-I-00-07-00062-00
9. JOHNS HOPKINS UNIVERSITY	GHH-I-00-07-00032-00
10. INTERNATIONAL BUSINESS INITIATIVES	GEG-I-00-04-00007-00
11. PLANNING AND DEVELOPMENT COLLABORATIVE INTERNATIONAL, INC.	EPP-I-00-04-00026-00
12. GWSAE ASSOCIATION LEADERSHIP FOUNDATION	RAN-I-00-04-00031-00
13. INSTITUTIONAL REFORM AND THE INFORMAL SECTOR	AFP-I-00-04-00004-00
14. ASSOCIATES IN RURAL DEVELOPMENT, INC.	AFP-I-00-04-00001-00
15. SCHERING, OY	POP-C-00-06-00002-01

# USAID'S SUSPENSION AND DEBARMENT PROCESS

This figure, produced by the audit team, depicts USAID's suspension and debarment decision-making process.



\* Affected USAID Bureaus or Offices may be consulted for 'business considerations' during the suspension and debarment process.  
+ OIG/Investigations may be consulted during the suspension and debarment process for additional case-related information.

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