

REVIEW OF GSA'S SUSPENSION
AND DEBARMENT PROCESS
REPORT NUMBER A090221/O/A/F10005

September 30, 2010



U.S. GENERAL SERVICES ADMINISTRATION
Office of the Inspector General

Date: September 30, 2010

Reply to
Attn of: Audit Manager, Acquisition Programs Audit Office (JA-A)

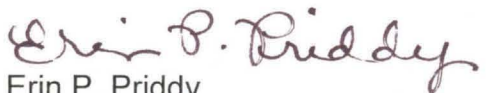
Subject: Review of GSA's Suspension and Debarment Process
Report Number A090221/O/A/F10005

To: Kathleen M. Turco
Associate Administrator for Governmentwide Policy (M)

This report presents the results of our review of GSA's suspension and debarment process. We found that staffing deficiencies continued to negatively impact the Center for Suspension and Debarment's (CSD's) ability to process case referrals throughout 2008 and into 2009 because management did not initially take sufficient steps to resolve the staffing deficiencies identified in our 2007 report. While the staffing situation has improved under the current Suspension and Debarment Official, concerns remain that GSA has not afforded this critical function adequate resources.

The CSD has a structured framework to evaluate case referrals that implements the Federal Acquisition Regulation. However, we believe establishing performance metrics for timeliness in processing referrals would improve the CSD's overall effectiveness. Further, while the CSD's new electronic case management system benefits the CSD's efficiency, we believe the CSD should also upload documentation of all EPLS actions into the case management system for verification. Additionally, the CSD could increase efficiency with direct access to information resources pertinent to documentation needs for processing cases. Lastly, an increase in the CSD's efforts to identify more potential cases would constitute a more proactive approach to its mission. We found that virtually all of the CSD's cases result from OIG referrals.

Included in Appendix C of this report are your written comments to the draft report. We also incorporated those comments into the final report as appropriate. I would like to thank your staff for their assistance during this review. If you have any questions regarding this report, please contact me at (816) 926-8610.


Erin P. Priddy
Audit Manager
Acquisition Programs Audit Office

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EXECUTIVE SUMMARY

Purpose

The Acquisition Programs Audit Office conducted a review of the General Services Administration's (GSA's) Center for Suspension and Debarment (CSD). This review is a follow-up to our review completed in 2007 entitled "Review of GSA's Suspension and Debarment Program," (see Report Number A070105/O/A/F08004, issued in December 2007). In that review, we found inadequate staffing in the CSD led to a backlog of suspension and debarment case referrals. According to management's action plan in response to our recommendations, the Office of the Chief Acquisition Officer had filled all staffing vacancies as of October 15, 2007. The objective of the current review was to determine the extent to which the CSD is effective in processing suspension and debarment case referrals and taking action in response to those referrals.

Background

At GSA, suspension and debarment is implemented through the CSD, which is part of the Acquisition Integrity Division, a branch of GSA's Office of Acquisition Policy. GSA Order ADM 5440.619, effective August 11, 2009, placed GSA's Office of Acquisition Policy under the Office of Governmentwide Policy. GSA's Director of Acquisition Integrity is also its Suspension and Debarment Official (SDO). The CSD staff, which is made up of case officers and administrative support personnel, reports directly to the SDO. The CSD receives virtually all suspension and debarment case referrals from the Office of Inspector General's (OIG's) Office of Investigations. If a case referral results in a suspension and debarment action, the CSD enters the pertinent information into the Excluded Parties Listing System (EPLS), a government-wide database used for tracking these actions. Contracting officials are required to check EPLS before making contract awards to ensure the Government contracts only with responsible contractors. Since suspension and debarment actions become a critical source of information to contracting officials, it is important that the suspension and debarment process is as timely as possible without compromising the quality of the decision-making process.

Results in Brief

GSA's CSD continues to face challenges related to staffing problems that have impacted its ability to effectively process case referrals. While the staffing situation has improved since our 2007 report, and the CSD has been productive at processing and taking action in response to the majority of its workload, concerns remain that GSA has not afforded this critical function adequate resources. As a result, there is an increased risk of the Government conducting business with irresponsible contractors.

We found that the CSD's processes implement FAR guidance for decision making on the part of the SDO. However, while the FAR does not specify required time frames for reaching an initial decision and taking action, we believe establishing performance metrics for timeliness in processing referrals would improve the CSD's overall effectiveness.

The CSD's new electronic system for managing case referrals should have a positive impact on its efficiency. This system accounts for EPLS updates and generates email reminders to case officers to enter or update actions in the EPLS. However, for verification purposes, we believe the CSD should upload documentation related to EPLS actions into the case management system.

Further, the CSD should have direct access to information resources pertinent to documentation needs for processing cases. Finally, to be more proactive in protecting the Government from irresponsible contractors, the CSD should have resources that enable it to identify more prospective cases, in addition to those referred by the OIG.

Recommendations

We recommend that the Associate Administrator for Governmentwide Policy ensure:

1. The maintenance of adequate staffing for the suspension and debarment function; specifically,
 - a. There should be sufficient dedicated staff to support the function;
 - b. All staff members should have the necessary skill sets and qualifications to effectively work on suspension and debarment cases; and
 - c. The administrative process to fill vacancies should be efficient given the critical function of suspension and debarment.
2. The SDO establishes a performance measure(s) for timeliness in processing case referrals.
3. The CSD uploads documentation for all EPLS actions into the case management system.
4. The CSD has direct access to resources that enable the division to efficiently obtain information required for documentation purposes and increases efforts to proactively obtain information for potential case referrals.

Management Comments

The Associate Administrator for Governmentwide Policy substantially agreed with our findings. Appendix C of this report contains the Associate Administrator's comments in their entirety.

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INTRODUCTION

Background

Suspension and debarment are discretionary actions that the Government takes to protect itself, and thereby the taxpayers, from conducting business with irresponsible contractors. The Federal Acquisition Regulation (FAR) Subpart 9.4, Debarment, Suspension, and Ineligibility, provides government-wide policies and procedures that govern suspension and debarment. The FAR states that agencies shall not solicit offers from, award contracts to, or consent to subcontracts with irresponsible contractors. Unless an agency head directs otherwise, the FAR permits the continuation of a current or existing contract at the time of suspension, proposed debarment or debarment; however, the FAR does not permit adding new work, exercising contract options, or extending an existing contract. Given the serious nature of suspension and debarment, the regulation cautions that these actions be imposed only to protect the public interest, not as punishment; which is within the purview of the criminal justice system. The FAR encourages agencies to establish their own methods and procedures to supplement FAR guidance. Agencies designate a suspension and debarment official to implement these procedures and to oversee suspension and debarment actions.

At the General Services Administration (GSA), suspension and debarment is implemented through the Center for Suspension and Debarment (CSD), which is part of the Acquisition Integrity Division, a branch of GSA's Office of Acquisition Policy.¹ GSA Order ADM 5440.619, effective August 11, 2009, placed GSA's Office of Acquisition Policy under the Office of Governmentwide Policy. GSA's Director of Acquisition Integrity is also its Suspension and Debarment Official (SDO). In addition, at the time of our review, this individual also had a number of other responsibilities which included Agency Protest Official, Multiple Award Indefinite-Delivery Indefinite-Quantity Contract Ombudsman, and the Metrication Ombudsman.² While there is no provision to preclude the SDO from other responsibilities, management needs to be fully aware of generally competing interests prior to assigning multiple roles and responsibilities to the SDO.

The CSD staff, which is made up of case officers and administrative support personnel, reports directly to the SDO. The CSD receives virtually all suspension and debarment case referrals from the Office of Inspector General's (OIG's) Office of Investigations. If a case referral results in a suspension and debarment action, the CSD enters the pertinent information into the Excluded Parties Listing System (EPLS) a government-

¹ Refer to Appendix A for an organization chart of GSA's Office of Acquisition Policy.

² As of July 2010, the current SDO is also responsible for the role of Deputy Chief Acquisition Officer, GSA's Senior Procurement Executive, and Deputy Associate Administrator for Acquisition Policy.

wide database used for tracking these actions. Contracting officials are required to check EPLS before making contract awards to ensure the Government contracts only with responsible contractors. Since suspension and debarment actions become a critical source of information for contracting officials, it is important that the suspension and debarment process is as timely as possible without compromising the quality of the decision-making process.

In December 2007, we issued Report Number A070105/O/A/F08004, Review of GSA's Suspension and Debarment Program. At that time, the suspension and debarment function was under the Office of the Chief Acquisition Officer (OCAO). In that review, we found that inadequate staffing levels led to a backlog of suspension and debarment case referrals. We recommended that the OCAO ensure adequate staffing for the suspension and debarment function. We also found that GSA hired contractors to assist with the case backlog and recommended the OCAO avoid hiring contractors to work on suspension and debarment case referrals in the future. According to management's action plan in response to the recommendations, the OCAO had filled all staffing vacancies as of October 15, 2007. The current review was included in the fiscal year (FY) 2010 OIG Audit Plan and is a follow up to the 2007 review.

Objective, Scope, and Methodology

The objective of this review was to determine the extent to which the CSD is effective in processing suspension and debarment case referrals and taking action in response to those referrals. In order to answer the objective, we:

- Reviewed FAR Subpart 9.4 and other relevant guidance;
- Conducted meetings with the SDO and CSD staff members;
- Reviewed previous GSA OIG reports on suspension and debarment, as well as reports from other agencies' OIGs on suspension and debarment programs;
- Reviewed the CSD's internal policies and procedures;
- Reviewed the CSD's staffing history since the 2007 review;
- Reviewed staff position descriptions and performance measures;
- Observed the CSD's transition to electronic case processing and the new electronic case file system;
- Examined a sample of case files;
- Obtained and reviewed weekly case log inventories;
- Reviewed EPLS documentation; and
- Reviewed and analyzed the CSD's internal statistics of actions taken for FY 2009.

We conducted the review between October 2009 and April 2010 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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RESULTS OF REVIEW

GSA's CSD continues to face challenges related to staffing problems that have impacted its ability to effectively process case referrals. While the staffing situation has improved since our 2007 report and the CSD has been productive at processing and taking action in response to the majority of its workload, concerns remain that GSA has not afforded this critical function adequate resources. As a result, there is an increased risk of the Government conducting business with irresponsible contractors.

We found that the CSD's processes implement FAR guidance for decision making on the part of the SDO. However, while the FAR does not specify required time frames for reaching an initial decision and taking action, we believe establishing performance metrics for timeliness in processing referrals would improve the CSD's overall effectiveness.

The CSD's new electronic system for managing case referrals should have a positive impact on its efficiency. This system accounts for EPLS updates and generates email reminders to case officers to enter or update actions in EPLS. However, for verification purposes, we believe the CSD should upload documentation related to EPLS actions into the case management system.

Further, the CSD should have direct access to information resources pertinent to documentation needs for processing cases. Finally, to be more proactive in protecting the Government from irresponsible contractors, the CSD should have resources that enable it to identify more prospective cases, in addition to those referred by the OIG.

Management Has Yet to Fully Resolve Staffing Inadequacies

Lack of sufficient staff with the proper qualifications has continued to impact the CSD's ability to process suspension and debarment referrals in a timely manner. While the current SDO has made progress on this issue, staffing challenges remain because management has not placed a sufficiently high priority on staffing this critical function.

During our 2007 review, we found that inadequate staffing for suspension and debarment caused a backlog of case referrals. At that time, the CSD's staff consisted of the Acting SDO and two individuals who helped work on cases but who were not permanently assigned to the CSD. We also found that the OCAO hired six contractor staff to temporarily assist in clearing a backlog of case referrals that had built up over time because the CSD did not have enough staff to handle the case load. In our December 2007 report, we recommended that the OCAO ensure that the suspension and debarment division maintain adequate staffing to avert future case backlogs. The

OCAO's action plan in response to the audit recommendations stated that the OCAO had filled all vacancies as of October 15, 2007.

During our current review, we found that staffing related challenges and adjustments continued in the CSD. There was not a significant difference between the staffing level during the 2007 review and the staffing that resulted from the OCAO's implementation of the action plan. From May through July 2007, three new staff members started; however, one was not a full time case officer in suspension and debarment. In October 2007, a new SDO started. Staff turnover during 2008 prevented the development of a cadre of permanent, experienced individuals to process referrals. In January 2008, one of the two full time staff members left the CSD on military leave and did not return. In February 2008, one new staff member started.

The OCAO appointed the current SDO in July 2008. Due to the history of inadequate staffing, the current SDO found that a substantial number of older cases had to be processed, as well as cases with past actions that had expired and/or needed to be reevaluated prior to closure. Thus, the SDO made it a priority to process and/or finish the older cases. To accomplish this, the SDO placed a temporary freeze on incoming cases unless they were urgent. At the beginning of our review, we found that approximately 44 percent of the closed case inventory represented cases referred prior to FY 2008.³ A few of these cases remained in the CSD's active inventory, which also represented examples of the current staff's effort to terminate expired actions or update the inherited cases. In addition, we found a small backlog of newer cases yet to be assigned. The backlog increased from three to six referrals over several months during our review.

In addition to completing older cases, the current SDO has made efforts to obtain improved staffing in the CSD, including the use of law student interns for assistance on cases. The SDO developed a full time employee structure consisting of five full time case officers and one full time administrative support staff for suspension and debarment work. The SDO also determined that the current job series of CSD staff did not require the appropriate skill sets and experience to effectively work on suspension and debarment cases. Given the nature of suspension and debarment work, the SDO determined that it was critical that case officers have legal training, specifically law degrees. However, at the end of FY 2008, the CSD had only two staff members that were qualified, one of whom was not designated as full time for suspension and debarment work due to other priority work in the Acquisition Integrity Division. This lack of staff contributed to the CSD's inability to process its case load in a timely manner.

At the start of our review in October 2009, the SDO's staffing plan had been partially fulfilled. At that time, the SDO had four case officers,⁴ but only two were fully dedicated to suspension and debarment. In addition, one of the four did not have legal training. The SDO, who is also the Director of Acquisition Integrity, needed the other two staff to

³ Our opinion on the prior case files is limited to those included in our audit sample.

⁴ One case officer retired during our review.

support other functions of the division. Accordingly, at no time since our 2007 review until March 2010, were there more than two fully dedicated and qualified case officers for suspension and debarment. While we understand the demands of other functions within the Acquisition Integrity Division, it is imperative for the CSD staff to be fully dedicated to suspension and debarment to ensure that the SDO can process referrals as efficiently as possible to protect the Government from conducting business with irresponsible contractors.

Throughout our review, the SDO voiced concerns regarding delays associated with personnel processes related to fulfilling the staffing plan. For example, during our review, it took five months to post a vacancy for one of the case officer positions. Once the SDO made the selection for that position, another seven weeks passed before the candidate started on the job.⁵ As of April 2010, one case officer position remained vacant. This is an important issue given the increased risk of the Government conducting business with irresponsible contractors when there is a backlog of case referrals in suspension and debarment. Having the necessary resources to take timely action is critical to fulfilling the intent of suspension and debarment as a protective measure for government acquisition.

In addition to the staffing challenges associated with case officers in the CSD, we noted significant instability in staffing the SDO position. Figure 1 details the time periods in which a different individual served as GSA's SDO from FY 2004 to date of report and whether or not GSA hired for the position permanently. As illustrated below, four of the SDOs served 13 months or less between August 2005 and July 2008. We also noted a six month gap, between December 2005 and June 2006, in which we found that GSA did not assign an individual to the position. Inconsistent staffing of the SDO position hindered the organizational development of the CSD.

Figure 1: SDO Turnover at GSA from FY 2004 to Date of Report⁶

Status of the SDO Position
Permanent SDO* from October 2003 to August 2005
Acting SDO from August 2005 to December 2005
Vacant from December 2005 to June 2006
Acting SDO from June 2006 to July 2007
Permanent SDO from July 2007 to September 2007
Permanent SDO from October 2007 to July 2008
Permanent SDO* from July 2008 to date of report ⁷

*Same individual

⁵ Candidate replaced the retired case officer.

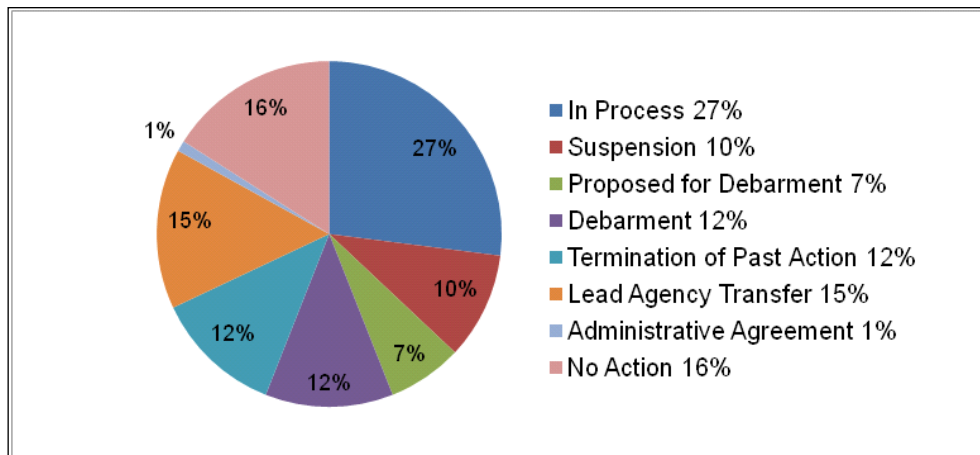
⁶ Data provided by the CSD.

⁷ The SDO position became a Senior Executive Service level position. Previously it was a General Schedule 15 position.

Despite Challenges, the CSD Processed the Majority of its FY 2009 Workload. The CSD was productive in processing referrals and taking action in response to the referred respondents⁸ throughout FY 2009; notwithstanding that (a) the CSD was not fully staffed, (b) part of the staff was not fully dedicated to suspension and debarment cases, and (c) a backlog of older cases existed in addition to incoming cases. Once the CSD is fully staffed, there should not be any unassigned cases, and the productivity level should increase.

We focused our productivity analysis on the CSD's actions taken during FY 2009. The CSD's FY 2009 workload consisted of 427 referred respondents. By the end of FY 2009, the CSD had taken action on 73 percent of these respondents, leaving 27 percent in process.⁹ We separated the 427 respondents into two groups: 1) respondents referred prior to FY 2009 and 2) respondents referred during FY 2009. Figure 2 illustrates the productivity on respondents referred prior to FY 2009. On the following page, Figure 3 illustrates the productivity on respondents referred during FY 2009.

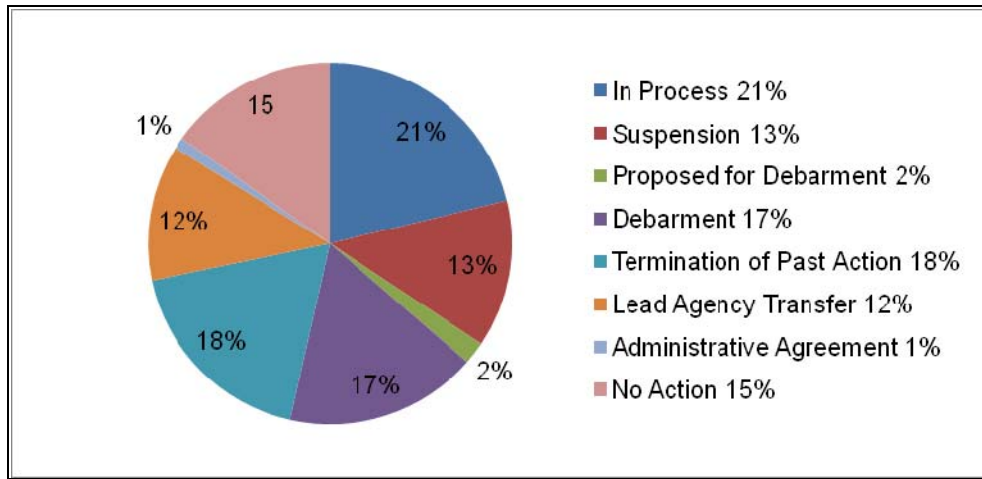
Figure 2: Status of the 273 Respondents Referred Prior to FY 2009 but Acted upon in FY 2009



⁸ Case referrals contain one or more individual respondents. A respondent is an individual, business, or entity, each with the potential of being suspended or debarred.

⁹ Refer to Appendix B for a breakdown of the status of the 427 respondents as of the end of FY 2009.

Figure 3: Status of the 154 Respondents Referred and Acted upon in FY 2009



Based on Figures 2 and 3, the respondents referred in cases prior to FY 2009 made up over half of the CSD's workload during FY 2009. We found that, out of the 273 respondents referred prior to FY 2009, about 40 percent were referred during FY 2008, and the other 60 percent originated prior to FY 2008. We primarily attributed the cases referred prior to FY 2009 to effects of the backlog and slower processing times caused by inadequate staffing.¹⁰ More urgent management attention to the maintenance of adequate staffing in the CSD after our 2007 review could have prevented delays in processing these referrals. In addition, the percentage of respondents that remained in process by the end of FY 2009 could have been lower.

Overall, we found that the OCAO did not adequately address the staffing deficiencies identified during our 2007 review. The staffing shortage continued during 2008, with older cases remaining to be processed and/or completed, which impacted the CSD's ability to respond timely to incoming cases. While the current SDO has made progress in terms of obtaining the right number of staff with the right qualifications, the amount of time it has taken management to reach a point of notable improvement negatively impacted the CSD's ability to effectively protect tax dollars. In FY 2009, over half the CSD's workload represented cases carried over from prior fiscal years. Greater productivity could have resulted if management had ensured staffing inadequacies were fully addressed. Continued attention to the maintenance of adequate staffing is needed, including expediting administrative processes related to filling open or vacated positions.

¹⁰ This includes the completion of older cases and terminating expired actions as previously mentioned on page 5 of this report.

Recommendation

We recommend that the Associate Administrator for Governmentwide Policy ensure:

1. The maintenance of adequate staffing for the suspension and debarment function; specifically:
 - a. There should be sufficient dedicated staff to support the function;
 - b. All staff members should have the necessary skill sets and qualifications to effectively work on suspension and debarment cases; and
 - c. The administrative process to fill vacancies should be efficient given the critical function of suspension and debarment.

Management Comments

In her September 28, 2010, response to the draft report, the Associate Administrator for Governmentwide Policy substantially agreed with the finding and recommendation and indicated that the CSD is currently fully staffed. In addition, the Associate Administrator questioned the purpose of including the details of the history of the staffing of the SDO position in the report. The response noted that this was not mentioned in our 2007 report, and at the time of this review, the current SDO was in place and has now been in place for over two years. Further, management believes that the elevation of the SDO position to Senior Executive Service level reflects that management considers the position critical. See Appendix C.

OIG Response

As noted in the report, we believe that the instability of SDO position contributed to the staffing deficiencies in the CSD and the ability of the CSD to effectively operate to complete case work in a timely manner over an extended time period. While we concur that the status and tenure of the current SDO reflects improved management attention to the suspension and debarment function, we believe it is important to include the historical instability of the SDO position for emphasis in supporting our recommendations.

The CSD's Process Provides a Framework for Suspension and Debarment Decisions

Given the significance of suspension and debarment actions, it is critical that the CSD's process for evaluating referrals provides for implementation of FAR requirements for making decisions in the interest of protecting the Government. While the regulations allow the SDO broad discretion in fulfilling the role, a structured framework for evaluating referrals helps ensure that SDO decisions are consistent and supported. We found that the policies and procedures currently in place within the CSD provides such a framework.

The SDO decides whether or not a contractor is presently responsible, and if found irresponsible, the SDO determines whether or not a suspension or debarment action is in the Government's best interest. The SDO makes these decisions based on the guidance and discretion afforded in the FAR. FAR Subpart 9.4 provides criteria that may be used as cause to suspend or debar and also advises that the SDO should consider a number of mitigating factors and remedial measures before reaching a decision. While the regulation provides specific guidance for the decision process, it also provides a noteworthy amount of discretion to the suspending or debarring official, some of which is detailed in FAR 9.406-1(a) and 9.407-1(b)(2). Specifically, the existence of a cause for suspension or debarment does not necessarily require that the suspending or debarring official take action against the contractor. The seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any suspension or debarment decision.

While FAR 9.4 provides examples of what *may* constitute a cause for suspension and debarment (e.g., conviction, indictment, and civil judgment), the regulation also provides that an SDO may suspend or debar based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor. Thus, it is important that an SDO consider the entire administrative record related to the respondent to assess not only present responsibility but also whether the respondent presently fits the definition of a contractor in the context of FAR 9.4. Essentially, the Government should only suspend or debar a contractor for something that is or has been significantly detrimental to the Government or that could result in a great loss to the Government if no action is taken.

To supplement this guidance, FAR 9.402 instructs agencies to establish appropriate procedures to implement the policies and procedures of the FAR. Relative to the decision process, FAR 9.406-3(b)(1) and 9.407-3(b)(1) state,

Agencies shall establish procedures governing the [suspension and debarment] decision making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the [suspension or proposed debarment].

In addition to the FAR, GSA's CSD must follow GSA Order ADM 5450.140, Legal Review of Suspension and Debarment Decisions. Effective since 2002, the Order established that the Office of General Counsel (OGC) should review all proposed decisions related to suspension and debarment, including no action decisions, for legal sufficiency and compliance with regulation. OGC's legal review is required before the SDO implements any suspension or debarment decisions; however, the final decision still rests with the SDO.

The CSD's decision process is summarized as follows:

- 1 → Upon receipt of a case referral from the OIG Office of Investigations, the SDO screens the referral to make an initial determination on whether or not it is actionable. The SDO assigns the case to a case officer.
- 2 → The case officer reviews all necessary information and applies legal knowledge in order to recommend a course of action for each respondent in the referral. Case officers support their recommendations with a written analysis describing their reasoning based on the administrative record and FAR 9.4. Their written analysis and recommendation is called an Action Referral Memorandum (ARM).
- 3 → The SDO and OGC review the ARM; the SDO has final approval.
- 4 → The CSD presents the SDO's decision in a formal letter to the respondent via certified mail as required by the FAR.

The primary decisions that result from case referrals are suspension, proposed debarment, and debarment. The EPLS effect of listing a contractor under suspension, proposed debarment, or debarment is the same in the sense that the respondent is not allowed to contract with the Government; however, we note general differences among these actions. The justification for suspension differs somewhat from that of debarment. Suspension is a temporary action with an indefinite time period, as it is generally pending the completion of an investigation or subsequent legal proceedings; whereas debarment may result from a conviction. A proposed debarment is the first step to debarment and must be issued first in order for the SDO to take debarment action. While a proposed debarment is a temporary indefinite action, debarment is an action for a definite time period. Debarment can also follow a suspension already in place.

Other courses of action the SDO may take include Lead Agency Transfers, Administrative Agreements, or a No Action Referral Memorandum. However, Lead Agency Transfers do not require legal review.

Lead Agency Transfer - This results when the CSD finds that another agency has already taken action. A lead agency transfer also results when the SDO determines that the referral has more direct ties to another agency than to GSA; therefore, that agency should take the lead in processing the referral. The CSD has a policy in place to follow up with the lead agency's decision after the transfer is complete.

Administrative Agreement - An administrative agreement is a written, signed agreement between the SDO and the respondent(s) that may occur instead of

suspension or debarment. The agreement holds the respondent(s) accountable to the established terms in order to be found presently responsible.

No Action Referral Memorandum - When the SDO determines that no action should be taken against the referred respondent(s), the CSD writes an analysis similar to the ARM stating why no action is necessary.

Once the CSD takes an action, the CSD notifies the OIG Office of Investigations via email. The email contains a copy of the final letter(s) mailed to the respondent(s). In the case of a no action decision, the CSD provides a copy of the No Action Referral Memorandum.

In addition, the CSD sometimes uses other measures as needed prior to making one of the previously mentioned decisions. For example, the CSD may search for the most recent relevant litigation, settlements, or other legal actions that might have occurred since the OIG made the referral. Other measures include a Show Cause Letter (SCL) and a Request for Information (RFI). The CSD may issue a SCL to a respondent if it has concerns regarding the respondent's past responsibility but would like to elicit additional information regarding their present responsibility. The CSD also may issue an RFI to obtain other pertinent information. These methods assist the SDO in determining present responsibility.

We verified the CSD's use of these policies and procedures for its decision process in several ways during our review. We spoke with the SDO and staff about their processes and obtained documented internal policies and procedures. We also reviewed and assessed a sample of case files, which supported both adherence to and the need for the CSD's existing process. Additionally, we viewed case status information logs maintained by the CSD. Finally, we verified that the existing policies and procedures are mirrored in the CSD's new electronic case management system.¹¹

These policies and procedures, combined with the GSA Order for General Counsel's review and the CSD disposition reports, facilitate an environment for responsible decisions and accountability. Accordingly, we found the CSD's current policies and procedures to be effective in facilitating a sound decision process relative to suspension and debarment referrals.

Performance Measures for Timeliness Needed

The CSD's decision-making process could be enhanced with the implementation of certain timeliness performance measures. While FAR 9.4 mandates response times between the contractor and the SDO; it does not specify the time frames an SDO has to take initial action (e.g., suspension or proposed debarment).

¹¹ See page 16 of this report for more information on the CSD's newly established electronic case management system.

The FAR response times between the contractor and the SDO are as follows:

- When the SDO issues a notice of suspension or proposed debarment, the contractor has 30 days from receipt of notice to submit a response.
- In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the SDO should make a final decision on a proposed debarment that is not preceded by a suspension within 30 working days after receipt of any information or argument from the contractor. The SDO may extend the period if there is good cause.
- For a suspension, the SDO should send prompt written notice of the final decision after receiving a submission from the respondent and the conclusion of any proceedings disputing material facts.

Given these time frames, there is an allotted 30-plus days for the SDO to make the final decision after issuing a suspension. For a proposed debarment, there is an allotted 30 to 60-plus days for the SDO to decide whether or not the proposed debarment should become a debarment. The 30 to 60-plus days may or may not include a potential extension, a hearing, and/or fact finding over disputed facts. Therefore, the time from an initial action to a final resolution varies. In order to simplify the suspension and debarment process, we separated the process into two broad phases, which are summarized as follows:

Phase I The time from when the CSD receives the referral to the time when the CSD issues the first action, such as a notice for suspension or a notice for proposed debarment.¹²

Phase II The time from when the CSD issues the suspension or proposed debarment to when a final resolution occurs (e.g., debarment or terminated action), which accounts for the response time frames associated with due process required by FAR 9.4.

We found that the CSD adheres to the response time frames provided in FAR 9.4. In addition, the CSD documents key dates within its process and holds weekly staff meetings on the status of the case inventory. However, the CSD has not established performance measures that account for timeliness in Phase I.

We calculated several sets of time averages reflecting Phase I (the time it took the CSD to take action upon receiving a referral). From the CSD's FY 2009 actions data, we calculated the average time between the OIG referral date¹³ and the date the CSD

¹² A lead agency transfer or a decision for no action may also occur, but Phase II is not applicable.

¹³ The date of the referral from the OIG was not necessarily the same date that the CSD received the referral.

reported issuance of an initial action or decision on the referral. The average times by action type are shown in Figure 4.

Figure 4: Average Time for the CSD to Take Action on Referrals Made in FY 2009 (Phase I)

Action Type	Average Time (months)
Suspension	4.7
Proposed Debarment	4.9
Lead Agency Transfer	3.8
No Action decision	6.1

While we drew the average times from 43 cases¹⁴ containing 96 respondents, it is important to recognize that the CSD's entire workload in FY 2009 was 427 respondents. Over half of the 427 carried over from prior years, which impacted the CSD's time frames to address cases new to FY 2009.

In addition to calculating average times for the CSD to take initial action on the FY 2009 referrals (Figure 4), we evaluated timeliness in the case referrals we sampled. In 6 out of 12 cases sampled,¹⁵ we found that an average of approximately three months passed from the time the CSD received a referral to when the CSD took initial action.

During our review, we found that several factors can impact the time it takes for the CSD to issue action(s) on a case referral. For example, one case referral contained 26 respondents. While respondents may have some commonalities, each respondent is unique as far as the need for the SDO to evaluate the case and take appropriate action. The suspension or debarment of one respondent may not necessarily apply to all respondents associated with a referral. Accordingly, because multiple actions can result from one referral, some case referrals may require more or less time than others. In addition, the number of staff on hand and the extent to which they work full time on suspension and debarment are contributing factors to timeliness.

Figure 5: CSD Staffing During FY 2009

Case Officers Present During All of FY 2009

Full or Part Time Employee	Approximate Percentage of Time Spent on Cases
1 Full Time	100%
1 Full Time	30%
1 Part Time	100%

¹⁴ We rounded the time for each case to the nearest whole or half month.

¹⁵ We excluded the other half of the sample because the case either had not yet developed to the point of the SDO issuing an action, or the case was older and worked on by previous staff and/or a previous SDO.

Case Officers Present for Part of FY 2009 (3 to 7 months)

Full or Part Time Employee	Approximate Percentage of Time Spent on Cases
1 Full Time	20%
2 Interns*	100%

*Interns alternated between a part time and full time schedule.

The use of performance metrics may help identify where delays most frequently occur, and the CSD could develop strategies to reduce delays. During our review, the SDO communicated that the diverse nature of referrals makes it very difficult to set a single standard for processing time, and that a deadline should not jeopardize the quality of the case evaluation and thereby an appropriate decision. While we concur with this assessment, we suggest that the CSD could implement measures to account for referral diversity. Due to the fact that case referrals often contain multiple respondents, the CSD could focus the overall timeliness measure toward each respondent referred as opposed to the entire case referral. Another potential approach might be to establish a goal to take action toward a case referral, depending on size, within a certain number of months. The CSD might also consider time standards for certain stages of the process leading up to initial action.

While there is no time frame required by the FAR for Phase I, we believe it would be beneficial for the CSD to develop reasonable performance measure(s). The longer it takes to determine whether or not a contractor should be suspended or debarred, the longer those who should be suspended or debarred may continue to receive government dollars.

Recommendation

We recommend that the Associate Administrator for Governmentwide Policy ensure:

2. The SDO establishes a performance measure(s) for timeliness in processing case referrals.

Management Comments

In her September 28, 2010, response to the draft report, the Associate Administrator for Governmentwide Policy substantially agreed with the finding and recommendation and indicated that in July of 2010, the CSD established performance metrics to process referrals. Appendix C of this report contains the Associate Administrator's comments in their entirety.

The CSD Should Upload EPLS Updates to Case Management System

The CSD's new electronic case management system streamlines the processing of case referrals and provides better organization and accountability for case file information. In addition, the system prompts the CSD to update EPLS; however, the CSD should upload documentation of these updates to ensure a complete record of such actions in the case management system.

The CSD acquired a business process management system called the Intranet Quorum (IQ), (commonly referred to as the IQ Tool) which it customized for the suspension and debarment process. As of August 2009, the CSD began to process all new case referrals through the IQ Tool. In addition, the CSD requested the OIG to make all referrals electronically. By receiving, processing, and acting upon case referrals electronically, the CSD saves time. The electronic case management system also provides better organization and accountability for case file information, particularly as some case files contain lengthy documentation. In addition, the system aids management oversight of case status and helps maintain a uniform set of process steps for the staff to follow. Moreover, the case management system generates an email reminder to case officers to update the EPLS upon issuance of suspension and debarment actions. However, it would be beneficial if case officers were to upload documentation of all EPLS actions and updates into the system to serve as verification of the actions within the electronic case file.

We reviewed the structure of the IQ Tool, obtained user manuals developed by the CSD, and viewed the first case the CSD entered into the system for processing. We found that the IQ Tool mirrored all aspects of the CSD's processes, as verbally described and according to actual practice, for evaluating and acting upon referrals. While we found that the IQ Tool did not account for referrals resulting in an administrative agreement, once we brought it to the attention of the CSD, the CSD added that step to the system.

Specific benefits that we identified include, but are not limited to, the following:

- One centralized location for the CSD's cases;
- Better organization of documents;
- Easier reporting on the status of cases;
- Reduced time in the approval process and in sending dispositions to investigations; and
- Easier management oversight.

In addition, each data field in the system serves as a reminder of the applicable steps to complete or check during the process. Once the CSD staff records the issuance or updating of an EPLS action in the IQ Tool, the system sends an email reminder to the case officer on the final day the FAR allows for EPLS updates. The centralized electronic data should make gathering and reporting performance related statistics easier. Also, the electronic workflow feature details what has been done, the date and time, and by whom. The detailed workflows, as well as the EPLS reminder, serve as

primary control points within the system. The only aspects of the process that remain outside the system are the acts of research and obtaining documentation, FAR-mandated certified mailing of action letters, and physically updating the EPLS. With regard to the EPLS, we noted that the CSD practice with the paper file method was to print documentation of EPLS actions and updates; however, we found that the CSD had not accounted for the inclusion of such documentation into the IQ Tool. We believe that uploading the EPLS documentation into the system is a key step for verification of EPLS actions.

The CSD's implementation of the IQ Tool is a significant improvement to the suspension and debarment process at GSA. The IQ Tool effectively streamlines the administrative processes, which is highly beneficial given the volume of case work and documentation involved. The CSD should incorporate the uploading of documentation of EPLS actions and updates to ensure that a complete record of such actions remains with the associated referral documentation.

Recommendation

We recommend that the Associate Administrator for Governmentwide Policy ensure:

3. The CSD uploads documentation for all EPLS actions into the case management system.

Management Comments

In her September 28, 2010, response to the draft report, the Associate Administrator for Governmentwide Policy substantially agreed with the finding and recommendation. Appendix C of this report contains the Associate Administrator's comments in their entirety.

Use of Additional Information Resources Would Facilitate Efficiency and a More Proactive Focus

The CSD could function more efficiently and effectively if it had expedient access to information required to support case referral actions. In addition, the CSD could be more proactive in protecting taxpayer dollars if the CSD increased efforts to identify potential referrals.

The CSD would be more efficient if its staff had direct access to key information resources, such as the Public Access to Court Electronic Records (PACER) system. PACER contains records of court actions. When the CSD has a referred respondent with a court action, the CSD requires documentation of the action(s) to process the referral. Virtually all of the CSD's case referrals originate with the OIG's Office of Investigations, which has access to PACER. Rather than relying upon the OIG for PACER information, it would add efficiency to the process if CSD staff had direct access

to PACER. The SDO stated that he had requested access to PACER on behalf of his staff and indicated that management denied the request due to costs.¹⁶

We also believe that the CSD would be more effective if the SDO was able to identify more potential referrals. While the SDO engages in some activities such as outreach to contracting officials and review of media publications, at the time of our review, there were no referrals that did not originate with the OIG. The SDO can also identify potential referrals through various information sources such as review of individual state debarment listings for GSA or other federal government contractors. Currently, state listings do not coincide with the EPLS; therefore, checking the state listings could potentially result in identifying more cases for consideration of suspension and debarment action at the federal level.

Since the CSD performs a critical role to ensure acquisition integrity for GSA and the Government at large, the division should have expedient access to information required to support case referral actions.

Recommendation

We recommend that the Associate Administrator for Governmentwide Policy ensure:

4. The CSD has direct access to resources that enable the division to efficiently obtain information required for documentation purposes and increases efforts to proactively obtain information for potential case referrals.

Management Comments

In her September 28, 2010, response to the draft report, the Associate Administrator for Governmentwide Policy substantially agreed with the finding and recommendation. Appendix C of this report contains the Associate Administrator's comments in their entirety.

Conclusion

Overall, we found that the OCAO did not adequately address the staffing deficiencies identified during our 2007 review. The staffing shortage continued during 2008, with older cases remaining to be processed and/or completed, which impacted the CSD's ability to respond in a timely manner to incoming cases. While the current SDO has made progress in terms of obtaining the appropriate number of staff, with proper qualifications, management has not placed a sufficiently high priority on staffing this critical function. Nevertheless, the CSD took action on the majority of its workload in FY 2009. However, the CSD could have achieved greater productivity if management had

¹⁶ According to the PACER website, the cost is currently eight cents per page for viewing and obtaining documents.

ensured adequate staffing. Continued attention is needed to ensure expedited administrative processes related to filling open or vacated positions.

Aside from persistent staffing challenges, we found that the CSD's process for decision making on the part of the SDO is in accordance with the FAR and other relevant criteria. However, we found the CSD has not established performance goals related to timeliness in issuing initial protective action in suspension and debarment. While the FAR does not specify a required time frame for taking initial action, we believe the establishment of performance metrics for timeliness would improve CSD's effectiveness in protecting the Government.

Further, the CSD's new electronic case management system should substantially benefit the suspension and debarment process. The system streamlines the process and provides for better management oversight. The system also generates an email reminder to ensure case officers enter suspension and debarment actions into EPLS in a timely manner. We believe the CSD should also upload documentation of all EPLS actions into the system for verification.

Finally, the CSD could increase efficiency with direct access to information resources pertinent to documentation needs. An increase in the CSD's efforts to identify more potential referrals would be a more proactive approach to increase the CSD's effectiveness in protecting taxpayer dollars.

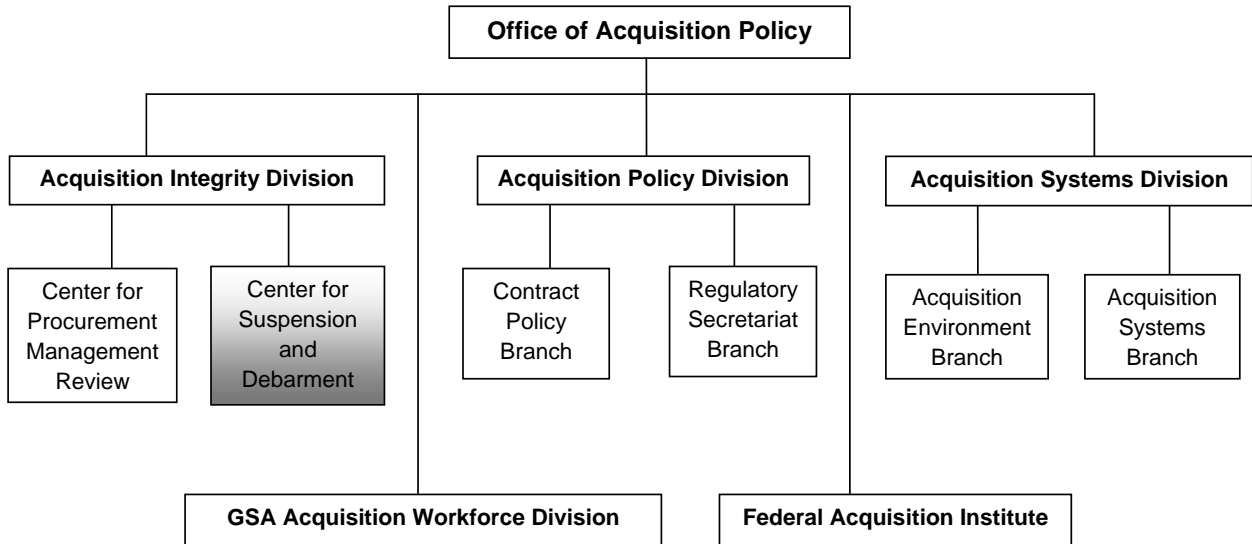
Internal Controls

We limited our assessment of internal controls to those related to the CSD's processing of suspension and debarment referrals. We reviewed the CSD's policies and procedures, utilized substantive testing to assess the effectiveness of the controls, and made recommendations to strengthen and improve the controls as discussed in the Results of Review and Recommendations sections of this report.

APPENDIXES

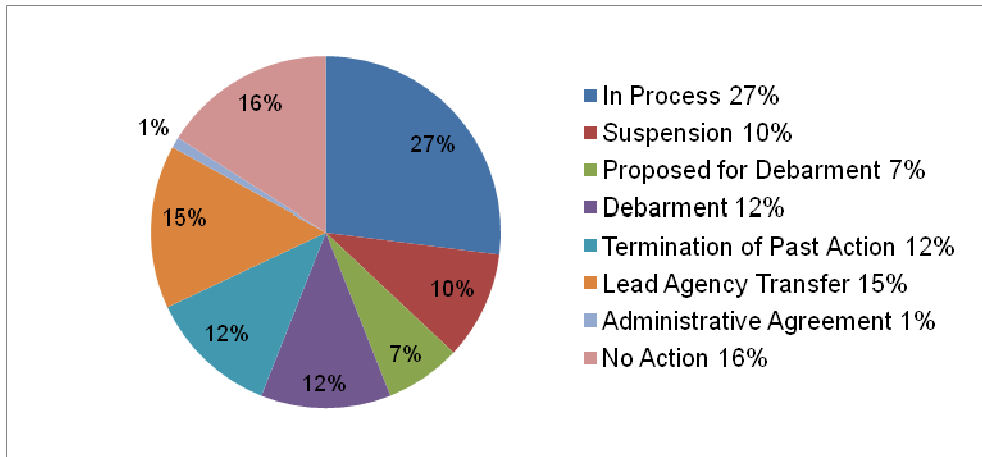
REVIEW OF GSA'S SUSPENSION AND DEBARMENT PROCESS
REPORT NUMBER A090221/O/A/F10005

APPENDIX A
GSA Office of Acquisition Policy
Organization Chart



REVIEW OF GSA'S SUSPENSION AND DEBARMENT PROCESS
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APPENDIX B
Status of 427 Respondents at the end of FY 2009



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APPENDIX C
Management Comments



GSA Acquisition Integrity Division

SEP 28 2010

MEMORANDUM FOR OFFICE OF AUDITS, OFFICE OF INSPECTOR GENERAL

THRU: KATHLEEN M. TURCO *Kathleen M. Turco*
ASSOCIATE ADMINISTRATOR
OFFICE OF GOVERNMENTWIDE POLICY (M)

FROM: JOSEPH A. NEURAUTER *Joseph A. Neurauder*
SUSPENSION AND DEBARMENT OFFICIAL
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: REVIEW OF GSA'S SUSPENSION AND DEBARMENT PROCESS
REPORT NUMBER A090221

The General Services Administration's (GSA) Center for Suspension and Debarment (CSD) thanks the Office of Audits, Office of Inspector General (OIG) for taking the time to review GSA's Suspension and Debarment process. The CSD appreciates the thoroughness with which the review was conducted. The CSD has reviewed the OIG's Draft Report Number A090221 and agrees with substantially all of the findings and recommendations, but has the following comments:

1. OIG Comments

GSA continues to face challenges related to the staffing problems that have impacted its ability to effectively process case referrals since our 2007 report. While the staffing situation has improved, and the CSD has been productive at processing and taking action in response to the majority of its workload, concerns remain that GSA has not afforded this critical function adequate resources. As a result, there is increased risk of the Government conducting business with irresponsible contractors. (pg. i)

CSD's Response

While the above statement correctly reflects the situation as it was at the time the review was conducted between October 2009 and April 2010, that is no longer the case. The CSD is now fully staffed as follows:

1 Director - GS 15
1 Senior Staff Member - GS 14

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20435-0002
www.gsa.gov

4 Career Ladder Staff – GS 9-13 (1 GS 9 staff member will start in October (2010)
 2 Part-time Law Interns – GS 9

With the exception of the law interns, all other staff members have Juris Doctor (JD) degrees. The Director, the Senior Staff Member and one of the Career Ladder Staff Members are all experienced attorneys with backgrounds in government contracts law. These employees have the right skill sets and qualifications and reflect the fact that management considers the Suspension and Debarment function critical, and as such, has afforded it adequate resources. As a result of the proper staffing of the CSD, the risk of the Government conducting business with irresponsible contractors has been significantly decreased.

2. OIG Comments

[W]e believe establishing performance metrics for timeliness in processing referrals would improve the CSD's overall effectiveness. (pg. ii)

CSD Response

The CSD agrees with the OIG and in July of 2010, the CSD established performance metrics to process referrals. They are as follows:

Timeline and Metrics	
Action	Within X Number of Days
Case Officer acquires case once it is queued to him/her in IQ	3 days
Case Officer speaks with Suspension and Debarment Official (SDO) regarding the case	10 days after date of acquisition
Case Officer generates Action Referral Memorandum (ARM)	45 days after date of acquisition
Case Officer sends action letter after it is determined to be legally sufficient	3 days after receipt of legally sufficient notification
Case Officer enters action into Excluded Party List System (EPLS)	5 days after signature of SDO
Case Officer sends Disposition Report	5 days after signature of SDO

3. OIG Comments

The SDO had 4 case officers with legal training, but only 2 were fully dedicated to suspension and debarment. (pg. 5)

CSD Response

Correction. The SDO had 4 case officers at the start of the review but only 3 had legal training. The case officer without legal training retired in March 2010 and the position was backfilled with an experienced attorney.

4. OIG Comments

In addition to the staffing challenges associated with case officers in the CSD, we noted significant instability in staffing the SDO position. The inconsistent staffing of the SDO position hindered the organizational development of the CSD. (pg. 6)

CSD Response

The CSD questions the purpose of including these details regarding the history of the SDO position at this time, when: 1) this was not included in the 2007 audit, when this was an issue; and more importantly, 2) at the time of the audit review, the current SDO was in place and to date, has been in place for over 2 years. There is also a succession plan in place should the position be vacated by the current SDO. It is also important to note management does consider this position as critical and this is reflected by the fact that the SDO position is now a Senior Executive Service level position instead of the GS 15 it was previously. The CSD requests that this section, including Figure 1, be excluded from the final Report.

5. OIG Comments

Other courses of action the SDO may take, which also require OGC review, include Lead Agency Transfers, Administrative Agreements, or a No Action Referral Memorandum (pg. 11)

CSD Response

Correction. Lead Agency Transfers do not require OGC review.

REVIEW OF GSA'S SUSPENSION AND DEBARMENT PROCESS
REPORT NUMBER A090221/O/A/F10005

APPENDIX D
Report Distribution

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