



*Office of Inspector General*

November 19, 2012

**MEMORANDUM**

**TO:** M/OAA, Chief Acquisition Officer and Director, Aman S. Djahanbani

**FROM:** IG/A/PA, Director, Steven Ramonas /s/

**SUBJECT:** Follow-Up Review of USAID's Process of Suspension and Debarment  
(Report No. 9-000-13-002-S)

This memorandum transmits our final report on the subject review. This report does not contain any recommendations. I appreciate the cooperation and courtesy extended to my staff during the review.

# SUMMARY

Suspensions and debarments are penalties imposed on unethical, dishonest, or otherwise irresponsible contractors to protect the Government’s financial interest and to reduce waste, fraud, and abuse in federal programs. They are discretionary actions that prevent contractors and recipients<sup>1</sup> from participating in government contracts, subcontracts, loans, grants, and other assistance<sup>2</sup> programs for a set time. A suspension is temporary, pending the completion of an investigation or legal proceeding, and a debarment is for a fixed time that depends on the seriousness of the cause, but generally does not exceed 3 years.

According to Congress, the magnitude of federal spending on contracts, coupled with instances of alleged contractor misconduct, prompted it to consider ways to make suspension and debarment more effective ways to prevent the Government from using irresponsible contractors. USAID’s acquisition and assistance obligations since fiscal year 2010 are in Table 1.

**Table 1. Acquisition and Assistance Obligations (Unaudited)  
(Billions \$)**

<b>Fiscal Year</b>	<b>Acquisition</b>	<b>Assistance</b>	<b>Total</b>
2010	5.58	8.94	14.52
2011	4.48	9.37	13.85
2012*	2.91	5.65	8.56
<b>Total</b>	<b>12.97</b>	<b>23.96</b>	

Source: Office of Acquisition and Assistance (OAA), September 4, 2012

\* Through June 30, 2012.

In the “Audit of USAID’s Process for Suspension and Debarment,”<sup>3</sup> USAID’s Office of Inspector General (OIG) found that the Agency’s suspension and debarment process hindered the Office of Acquisition and Assistance (OAA) from taking appropriate suspension and debarment actions. The audit also found that USAID did not issue enough suspensions and debarments. Moreover, OAA did not execute the actions properly, and the documentation for them frequently was incomplete.

As a result, OIG made 12 recommendations to OAA to help it strengthen the Agency’s suspension and debarment process. USAID agreed with all of them. In two separate memoranda dated September 30, 2010, and February 25, 2011, the Audit, Performance and Compliance Division (APC) determined that USAID had completed final actions for all 12 recommendations.

<sup>1</sup> A recipient carries out an assistance program on behalf of USAID according to the terms and conditions of the award and all applicable laws and regulations.

<sup>2</sup> USAID implements activities via acquisition (procurement contracts) or assistance instruments (grants or cooperative agreements) it awards directly to nongovernmental organizations, even if the activities are part of a bilateral assistance agreement with a cooperating country. Assistance is used when the principal purpose of the transaction is to accomplish a public purpose of support or stimulation, as authorized by the Foreign Assistance Act of 1961, as amended.

<sup>3</sup> Report No. 9-000-10-001-P, issued on October 1, 2009.

OIG conducted this review to determine whether USAID has corrected the problems and whether the actions taken were effective. In addition, the review determined whether OAA's Compliance and Oversight of Partner Performance (COPP) Division was performing its chief functions.

We determined that USAID corrected the problems and took effective actions. Table 1-III in Appendix III of this report contains all 12 recommendations with corresponding final actions. In addition, our review determined that COPP was performing its chief functions.

This report does not contain any recommendations.

Details on review results follow. Appendix I contains a discussion of the review's scope and methodology. Management comments are presented in Appendix II, and our evaluation of them is on page 6.

# REVIEW RESULTS

## Agency’s Suspension and Debarment Processes Improved

OIG’s previous audit determined that USAID’s decision-making processes for suspension and debarment actions were not effective. It stated that the entities in charge of suspension and debarment had too many other responsibilities that hindered them from taking such actions.

Therefore, the Agency established COPP on February 24, 2011, to improve the suspension and debarment processes. COPP leads USAID’s suspension and debarment program in Washington, D.C., and overseas. It is responsible for making recommendations to the suspending and debarring official regarding administrative actions.<sup>4</sup>

COPP’s responsibilities are to (1) recommend suspension and debarment actions of entities or individuals,<sup>5</sup> (2) monitor progress and facilitate actions toward meeting the Agency’s past performance goals, (3) manage assistance appeals, and (4) assist and determine the next step for receiving credible evidence of violations disclosed by partners.

**OAA Has Taken More Suspension and Debarment Actions.** Before COPP, OIG referred suspension and debarment actions to OAA. Now COPP independently considers causes for such actions as a part of its standard operating procedures. It collaborates with the Agency’s General Counsel’s Office of Litigation and Enforcement to develop actions.

These efforts have increased the number of actions COPP has taken. OAA took only 9 actions in fiscal years 2003 through 2007, whereas COPP has taken 145 actions from October 2010 through July 2012, as shown in Table 2.

**Table 2. COPP’s Suspension and Debarment Actions Through July 2012**

Action	Entity	Individual	Total
Suspension	1	11	12
Proposed debarment	6	73	79
Debarment	4	50	54
<b>Total</b>	<b>11</b>	<b>134</b>	<b>145</b>

Source: OAA

**Past Performance Reports Were Monitored.** Past performance reports provide source selection authorities<sup>6</sup> information on a contractor’s history of performance in many areas such

<sup>4</sup> Administrative actions are used to protect the U.S. Government’s interests, ensure that it only conducts business with responsible parties, and that it not to business with organizations or people who pose risks.

<sup>5</sup> Suspensions and debarment can be extended to include subsidiaries, parent companies, and other individuals.

<sup>6</sup> The source selection authority (SSA) is an official who has the authority and is responsible for selecting a contractor, as required by the Federal Acquisition Regulation (FAR) and Office of Management and Budget Circular A-76. The SSA and the contracting officer may be the same person, according to USAID Automated Directives System (ADS) 104, depending on the dollar amount of the award.

as technical quality, cost control, and business relations. The Contractor Performance Assessment Reporting System (CPARS) is an online system that contracting officers use to enter data on contractor performance. Completed reports are available to source selection authorities in the Past Performance Information Retrieval System (PPIRS) database. These reports help the Agency award contracts to contractors that provide good products and services on schedule and that conform to contractual requirements.

Since May 2011, COPP and OAA's Cost, Accounting, and Reporting Branch have been involved in OAA's initiative to increase the number and quality of reports entered into CPARS. OAA's staff collaborated with contracting officers, contracting officer's representatives, and mission directors, conducted training and information sessions on their individual roles and responsibilities, led the past performance working group, and increased the number of people entering information into CPARS from 1 to more than 50.

These reviews helped COPP provide examples and feedback for the CPARS training course and an all-day session on the system that was included in the Acquisition Bootcamp Course (which was held for the first time in FY 2012).

**Management of Assistance Appeals Improved.** According to USAID regulations governing grants and cooperative agreements, recipients can appeal an agreement officer's decisions. The decisions range from ordinary program management actions to whether to terminate an award.

COPP has made recommendations to the deciding official on all appeals that the Agency has received since July 2011. During that time, COPP completed 24 appeals, most of which involved disallowed costs. As a result, USAID has recovered approximately \$8 million through September 2012. Additionally, COPP conducted a desk audit of all the appeals to reduce the backlog.

**Support on Partner Disclosures Enhanced.** Self-disclosure by a partner is one way that COPP receives allegations of waste, fraud, and abuse. COPP analyzes disclosures to determine whether it needs to take any actions. Those actions include providing guidance to the contracting or agreement officer, coordinating with OIG regarding potential or ongoing investigations, meeting with the implementing partner to discuss its responsibilities, and developing best practices.

COPP implemented Federal Acquisition Regulation (FAR) Clause 52.203-13, "Contract Code of Business Ethics and Conduct," to better monitor contractor responsibility and resolve cases of wrongdoing or misrepresentation against the U.S. Government.

**Other OAA Actions.** OAA issued Procurement Executive Bulletin 2011-02<sup>7</sup> to confirm that organizations receiving contracts, grants, and cooperative agreements are eligible in accordance with federal statutes, policies and regulations, and Agency policy.

COPP launched an outreach initiative to educate USAID personnel and partners about its roles and responsibilities. It also established the red alert system to notify the acquisition and

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<sup>7</sup> OAA uses these bulletins to issue guidance, best practices, reminders, and answers.

assistance community via e-mail when it has taken a suspension or debarment action against an individual or entity.

COPP manages its records according to USAID's Automated Directives System (ADS) 502. It established Standard Operating Procedure 2010-01, "General Guidance for Suspension, Debarment Agency Administrative Compliance Agreement File Standardization," for all suspension and debarment case files. COPP also updated procedures for entering information into the Excluded Parties List System<sup>8</sup> to conform to ADS 502.

Finally, COPP reports suspension and debarment data monthly, quarterly, and annually to the Agency. Moreover, excluded individuals are posted on COPP's Web page. These reports help Agency officials respond to requests for information from a variety of sources such as Congress, contractors, recipients, and USAID staff.

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<sup>8</sup> The Excluded Parties List System includes information regarding entities debarred, suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule or otherwise declared not eligible to receive federal contracts, certain subcontracts, and certain federal assistance and benefits. This information could include names, addresses, and taxpayer identification numbers (like Social Security), if available and deemed appropriate and permissible to publish by the agency taking the action. Although the General Services Administration operates the system, individual agencies are responsible for the timely reporting, maintenance, and accuracy of their data.

# EVALUATION OF MANAGEMENT COMMENTS

OAA agreed with OIG's findings and conclusions. OAA also confirmed that they have implemented additional improvements and expanded the suspension and debarment process.

# SCOPE AND METHODOLOGY

## Scope

OIG's Performance Audits Division conducted this review in accordance with government auditing standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions in accordance with our objectives. We believe that the evidence obtained provides that reasonable basis.

We designed the review to answer the following review objectives:

- Did USAID management implement planned actions in response to the recommendations in Report No. 9-000-10-001-P, and were the actions effective?
- Is COPP (1) overseeing suspension and debarment actions, (2) advising on past suspension and debarment performance trends, (3) overseeing contractors' statements and corrective actions, (4) receiving reports on suspicious activities, and (5) coordinating with its internal constituents?

We conducted the review at USAID in Washington, D.C., from July 31 through August 31, 2012.

## Methodology

In planning and performing the review, we obtained and reviewed the previous audit report; examined OAA's and APC's supporting documents to close the recommendations; and interviewed officials from OAA and APC.

We reviewed the actions OAA took to determine whether they corrected the problems. To do so, we reviewed COPP's suspension and debarment monthly and quarterly status reports. In addition, we compared USAID's systems and records with those of the Excluded Parties List System, and reviewed all documented procurement and nonprocurement suspension and debarment actions the Agency took.

For criteria, we used the relevant information from USAID's ADS and other federal policies. We relied on Report No. 9-000-10-001-P to identify and review the criteria that were used and to gain an understanding of the reported findings. These determinations were based on professional judgment.

# MANAGEMENT COMMENTS



November 15, 2012

To: IG/A/PA, Director Steven Ramonas

From: M/OAA, Director of Operations, Mark Walther *for* Chief Acquisition Officer, Director, and Suspending and Debarment Official Aman S. Djahanbani /s/

Subject: Office of Inspector General Draft Follow Up Review Report of USAID's Process of Suspension and Debarment (Report No. 2-000-13-00X-S)

This memorandum provides written comments to the subject draft review report.

**AUDIT RECOMMENDATIONS:** None

**COMMENT:** We concur with the Office of Inspector General's (OIG) conclusion not to make any recommendations as a result of its follow up review of the suspension and debarment process. The Office of Acquisition and Assistance, largely through its Compliance and Oversight of Partner Performance (COPP) Division, implemented the recommendations from the OIG FY2009 Audit of USAID's Process of Suspension and Debarment, Report No. 9-000-10-001-P. Moreover, additional improvements and expansion of the process have been implemented since the aforementioned report. The draft report includes several examples in this regard. We appreciated the opportunity to work with your office throughout the follow up review in a collaborative manner.

**Table 1-III. Prior Audit Recommendations and Corresponding Final Actions**

Recommendation Number	Final Action
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.	On April 12, 2010, General Counsel approved changing ADS to include the delegated responsibility under suspension and debarment to consider all cases for suspension and debarment actions.
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 time frames outlined in Federal regulations.	OAA established SOP-2010-01 in June 2009. It covers the time lines involved for the various actions, including notices of suspension and proposed debarments, issuing final debarment decisions, and entries to the Excluded Parties List System.
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.	OAA established SOP-2010-03 in March 2010.
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.	OAA established SOP-2010-01 in March 2010.
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.	OAA reviewed all suspension and debarment actions and issued a memorandum on September 23, 2010.
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).	Procurement Executive Bulletin 2011-01 implemented the management decisions for two recommendations. Instead of revising the Procurement Executive Bulletin 2005-12, OAA issued a new one, 2011-2, because of the many changes OAA Policy wanted to address in it.

Recommendation Number	Final Action
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).	OAA wrote on March 12, 2010, that all files with missing certifications now include the appropriate certifications.
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).	Procurement Executive Bulletin 2011-01 implemented the management decisions for this recommendation (as described in final action for Recommendation 6).
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.	On January 28, 2010, USAID's senior deputy assistant administrator for management approved the creation of an independent division that focused on suspensions, debarments, and assistance appeals.
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.	As noted in Request for Closure of Recommendation 9, USAID's senior deputy assistant administrator for management approved the creation of an independent division that focused on suspensions, debarments, and assistance appeals.
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.	OAA established COPP to oversee suspension and debarment activities, and it plans to employ all six methods used by other federal agencies.
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.	On December 30, 2010, OAA recommended that the Inter-Agency Suspension and Debarment Committee establish a subcommittee to enumerate and share best practices.