

July 2005

FEDERAL PROCUREMENT

Additional Data Reporting Could Improve the Suspension and Debarment Process





Highlights of [GAO-05-479](#), a report to congressional committees

FEDERAL PROCUREMENT

Additional Data Reporting Could Improve the Suspension and Debarment Process

Why GAO Did This Study

Federal government purchases of contracted goods and services have grown to more than \$300 billion annually. To protect the government's interests, the Federal Acquisition Regulation (FAR) provides that agencies can suspend or debar contractors for causes affecting present responsibility—such as serious failure to perform to the terms of a contract. The FAR provides flexibility to agencies in developing a suspension or debarment process.

GAO was asked to (1) describe the general guidance on the suspension and debarment process and how selected agencies have implemented the process, and (2) identify any needed improvements in the suspension and debarment process. We examined the FAR and the regulations of 24 agencies that have FAR supplements governing suspension and debarment procedures. We selected 6 defense and civilian agencies representing about 67 percent of fiscal year 2003 federal contract spending for in-depth review.

What GAO Recommends

GAO makes two recommendations: that GSA make contractor identification numbers a required field in the EPLS database and that OMB require sharing of data on administrative agreements and compelling reason determinations. DOD, GSA, and OMB concurred with these recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-05-479.

To view the full product, including the scope and methodology, click on the link above. For more information, contact William T. Woods at (202) 512-4841 or woodsw@gao.gov.

What GAO Found

The FAR prescribes policies governing the circumstances under which contractors may be suspended or debarred, the standards of evidence that apply to exclusions, and the usual length of these exclusions. To implement these policies, 24 agencies developed FAR supplementation. In fiscal year 2004, the 6 agencies we reviewed in depth suspended a total of 262 parties and debarred a total of 590 parties. Five agencies entered into a total of 38 administrative agreements, which permit contractors that meet certain agency-imposed requirements to remain eligible for new contracts. Agency officials said that such agreements can help improve contractor responsibility, ensure compliance through monitoring, and maintain competition. In certain circumstances, agencies can continue to do business with excluded contractors, such as when there is a compelling need for an excluded contractor's service or product. In fiscal year 2004, two of the agencies we reviewed in depth—the Air Force and the Army—issued compelling reason waivers to continue doing business with excluded parties.

To help ensure excluded contractors do not unintentionally receive new contracts during the period of exclusion, the FAR requires contracting officers to consult the Excluded Parties List System (EPLS)—a governmentwide database on exclusions—and identify any competing contractors that have been suspended or debarred. However, the data in EPLS may be insufficient for this purpose. For example, as of November 2004, about 99 percent of records in EPLS for the 6 agencies we reviewed in depth did not have contractor identification numbers—a unique identifier that enables agencies to conclude confidently whether a contractor has been excluded. In the absence of these numbers, agencies use the company's name to search EPLS, which may not identify an excluded contractor if the contractor's name has changed. Further, information on administrative agreements and compelling reason determinations is not routinely shared among agencies. Such information could help agencies in their exclusion decisions and promote greater transparency and accountability.

Actions Taken by Six Selected Agencies in Fiscal Year 2004

Agency	Suspensions	Proposed debarments	Debarments	Administrative agreements
Air Force	94	246	233	2
Army	68	113	90	9
Navy	2	27	33	0
Defense Logistics Agency	12	147	133	1
GSA	70	53	33	4
EPA	16	65	68	22
Total	262	651	590	38

Source: Agency-reported data.

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Abbreviations

CAGE	Contractor and Government Entity
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DOD	Department of Defense
EPA	Environmental Protection Agency
EPLS	Excluded Parties List System
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System
GSA	General Services Administration
ISDC	Interagency Suspension and Debarment Committee
NCR	Nonprocurement Common Rule
OMB	Office of Management and Budget

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United States Government Accountability Office
Washington, DC 20548

July 29, 2005

The Honorable Susan M. Collins
Chairman
The Honorable Joseph I. Lieberman
Ranking Minority Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Tom Davis
Chairman
The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

Federal government purchases of contracted goods and services have grown to more than \$300 billion annually.¹ Federal agencies are required to award contracts only to “responsible sources”—those that are determined to be reliable, dependable, and capable of performing required work. To protect the government’s interests, the Federal Acquisition Regulation (FAR) provides that agencies can suspend or debar contractors from future contracts for various reasons, such as conviction of or indictment for certain offenses, or a serious failure to perform to the terms of a contract.² The FAR provides flexibility to agencies in developing a suspension and debarment process. While this flexibility enables agencies to meet their individual needs, it also highlights the importance of transparency into their processes to help determine whether suspension and debarment actions are protecting the government’s interests.

Given the significant amount of federal dollars spent by agencies to acquire goods and services, and the need to ensure that the government

¹The total dollar value of contracting actions reported in the Federal Procurement Data System (FPDS) exceeded \$300 billion in fiscal years 2003 and 2004.

²A suspension is a temporary exclusion of a contractor pending the completion of an investigation and any ensuing legal proceedings. A debarment is a fixed-term exclusion. Generally, the period of debarment shall not exceed 3 years. Suspensions and debarments are frequently referred to collectively as exclusions.

only does business with responsible contractors, you asked us to (1) describe the general guidance on the suspension and debarment process and how selected agencies have implemented the process, and (2) identify any needed improvements in the suspension and debarment process.

To conduct our work, we examined the FAR and the regulations of the 24 agencies that have issued supplements to the FAR governing suspension and debarment procedures. From these 24 agencies, we selected 6 defense and civilian agencies for in-depth review of policies and practices: the Air Force, Army, Navy, and Defense Logistics Agency (DLA) within the Department of Defense (DOD); the General Services Administration (GSA); and the Environmental Protection Agency (EPA). Together, these 6 agencies accounted for about 67 percent of fiscal year 2003 federal contract spending, as reported in the Federal Procurement Data System (FPDS).³ We also analyzed data from the Excluded Parties List System (EPLS)—a Web-based database on governmentwide exclusions maintained by GSA—and from the selected agencies' internal data management systems. We conducted our work from August 2004 through June 2005 in accordance with generally accepted government auditing standards. For more information on our scope and methodology, see appendix I.

Results in Brief

The FAR prescribes policies governing such matters as the circumstances under which contractors may be excluded from federal contracting, the standards of evidence that apply to suspensions and debarments, and the usual length of these exclusions. The FAR requires agencies to establish a process for determining exclusions, and allows agencies to supplement the FAR to implement the process. The supplements to the FAR or additional guidance developed by 24 agencies generally designate internal responsibilities for suspension and debarment procedures and intra-agency coordination. The 6 agencies we reviewed in depth suspended a total of 262 parties and debarred a total of 590 parties in fiscal year 2004. Five of the 6 agencies entered into a total of 38 administrative agreements—an alternative to suspension and debarment where contractors that meet certain requirements imposed by the agency may remain eligible for new contracts. Agency officials said that such agreements can serve the government's interest by improving contractor

³At the time we were planning our review, fiscal year 2003 was the latest year with complete available data.

responsibility, ensuring compliance through monitoring, and maintaining competition. In fiscal year 2004, the Army and EPA used these agreements the most. In certain circumstances, agencies can continue to do business with excluded contractors, such as when there is a compelling need for an excluded contractor's service or product. In fiscal year 2004, two of the agencies we reviewed, the Air Force and the Army, issued compelling reason determinations, known as waivers, to continue doing business with a total of five excluded parties.

To help ensure that excluded contractors do not unintentionally receive new contracts during a period of exclusion, the FAR requires contracting officers to consult EPLS to identify any competing contractors that have been suspended or debarred. We found, however, that the data in EPLS may be insufficient for this purpose. Specifically, although the FAR requires that agencies enter contractors' unique identification numbers in EPLS, there is no required field in the EPLS database for these numbers. As a result, contractor identification numbers have not been routinely entered in EPLS. For the 6 agencies we reviewed in depth, about 99 percent of records in the EPLS database as of November 2004 did not have contractor identification numbers. In the absence of a unique identifier in EPLS, agencies use name matching to identify excluded contractors, a technique that may not always be reliable. Consequently, contracting officials cannot always be fully confident that a prospective contractor is not on the list of excluded parties. The Interagency Suspension and Debarment Committee (ISDC) provides a forum for sharing information among suspension and debarment officials. However, neither ISDC nor any other entity collects or reports data on administrative agreements or compelling reason waivers. Increased sharing of information on the terms and effectiveness of past and current administrative agreements would be helpful to officials in considering new agreements. Similarly, reporting information on compelling reason determinations would allow suspension and debarment officials to assess the use of these waivers and would promote greater transparency and accountability.

We are making two recommendations aimed at improving the quality and availability of data used in the suspension and debarment process: to make contractor identification numbers a required field in the EPLS database and to increase sharing of data on administrative agreements and compelling reason determinations. In comments on a draft of this report, DOD, GSA, and OMB generally agreed with these recommendations. EPA submitted technical comments on the draft, and we have incorporated these comments into the report as appropriate. Written comments from DOD are reproduced in their entirety in appendix V.

Background

Suspensions and debarments apply governmentwide—one agency’s suspension or debarment decision precludes all other agencies from doing business with an excluded party. Suspensions and debarments may be either statutory or administrative. Statutory debarments, also referred to as declarations of ineligibility, are based on violation of law, such as statutory requirements to pay minimum wages.⁴ Administrative debarments are based on the causes specified in the FAR, including commission of offenses such as fraud, theft, bribery, or tax evasion. In 1988, the Nonprocurement Common Rule (NCR) was implemented to provide a parallel process to the FAR for suspending and debarring parties from receiving federal grants, loans, and other nonprocurement transactions.⁵ The FAR and NCR provide for reciprocity with each other—that is, any exclusion under the FAR shall be recognized under NCR, and any exclusion under NCR shall be recognized under the FAR.⁶

Exclusions of companies or individuals from federal contracts (procurements) or other federal funding such as grants (nonprocurements), as well as declarations of ineligibility, are listed in EPLS, a Web-based system maintained by GSA.⁷ EPLS also includes an archive of expired exclusions. Agencies are required to report all excluded parties by entering data directly into the database within 5 working days after the exclusion becomes effective. The FAR includes a list of the information to be included in EPLS, such as the contractor’s name and

⁴Minimum wage statutes include, for example, the Davis-Bacon Act and the Service Contract Act. Other statutes that might be the basis for a statutory debarment include the Buy American Act and various environmental protection acts. Statutory debarments are further described in appendix II. Declarations of ineligibility also may be based on executive orders or non-FAR regulations.

⁵NCR was adopted under the rulemaking authority of the respective agencies after the Office of Management and Budget issued guidelines, as provided for in Executive Order No. 12549 (1986) and is described in FAR 9.403. The policies and procedures are common to executive branch agencies and federal agencies that elected to join the governmentwide NCR system, but an agency can modify the common rule for specific suspension and debarment issues unique to the agency. NCR was amended on November 26, 2003, in 68 Fed. Reg. 66535 to resolve technical differences between the procurement and nonprocurement systems.

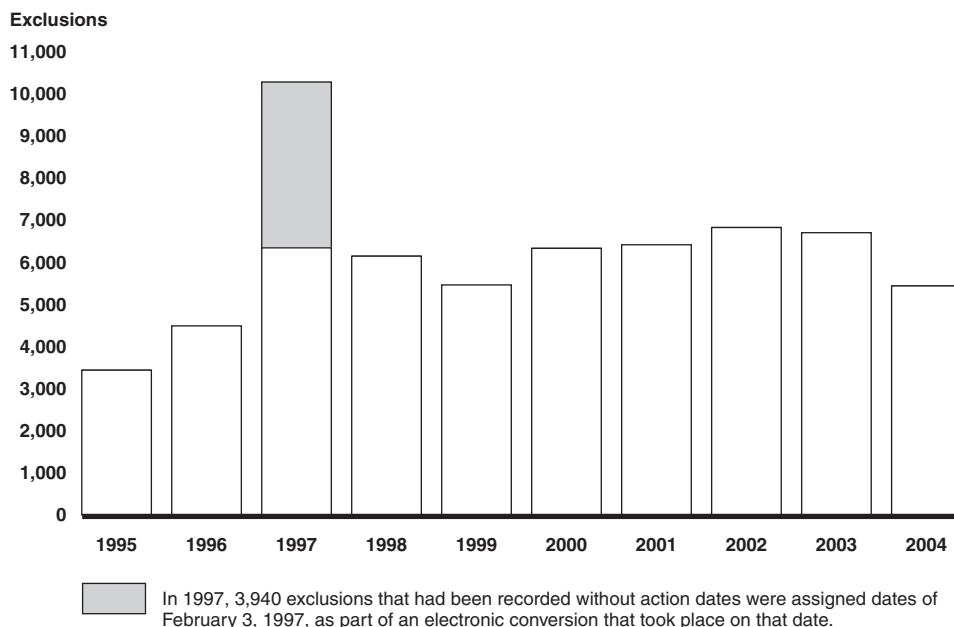
⁶While this report focuses mainly on the FAR suspension and debarment provisions, the same provisions are generally included in the NCR.

⁷EPLS is the single repository for suspensions, proposed and actual debarments, as well as other exclusions related to federal procurement and nonprocurement activities. The database can be accessed at www.epls.gov.

address, contractor identification number, the cause of the action, the period of the exclusion, and the name of the agency taking the action.⁸

From January 1995 to November 2004, the number of exclusion actions taken each year by all agencies governmentwide has ranged from about 3,400 in 1995 to almost 7,000 in 2002, with an average of 5,700 actions taken annually (see fig.1).

Figure 1: Exclusions in EPLS Governmentwide from 1995 to 2004

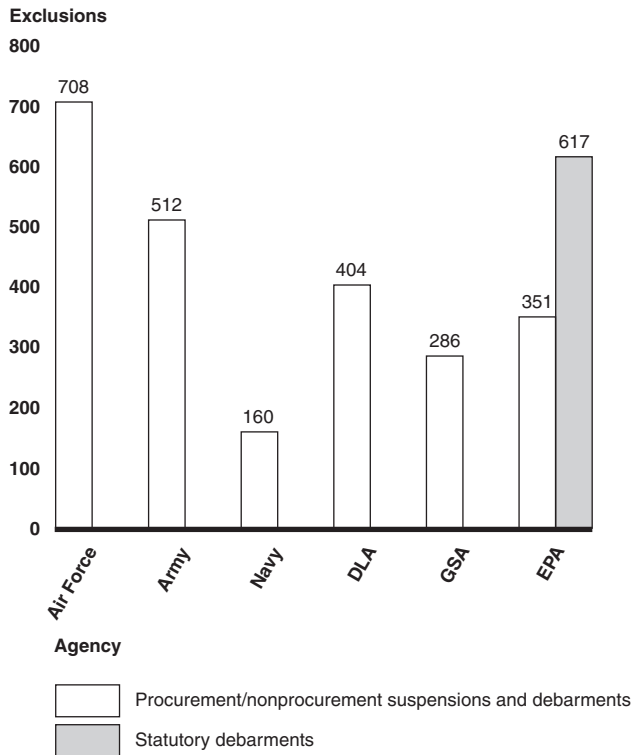


Source: GAO analysis of EPLS data as of November 2004.

In November 2004, the number of current exclusions governmentwide totaled about 32,500, about 3,500 of which were the result of statutory debarments. Of this governmentwide total, EPLS showed that the 6 agencies we reviewed had excluded about 2,400 parties, 617 of which were the result of statutory debarments by EPA, based on violations of the Clean Water and Clean Air Acts (see fig. 2). For exclusion actions taken each year by the six selected agencies from 1995 to 2004, see appendix III.

⁸FAR 9.404.

Figure 2: Current Exclusions in EPLS among Six Selected Agencies, as of November 2004



Source: GAO analysis of EPLS data.

Note: Procurement/nonprocurement actions include suspensions, and proposed and actual debarments, as well as other exclusions related to procurement and nonprocurement activities. Generally, statutory debarments are based on violations of law such as those requiring payment of minimum wages. Of the agencies we reviewed in depth, only EPA had administered statutory debarments as of November 2004.

In 1987, we reported that the suspension and debarment regulations and procedures generally provided an effective tool for protecting the government against doing business with fraudulent, unethical, or nonperforming contractors.⁹ We noted, however, that there was a need for timely access to a governmentwide list of excluded parties. We also identified areas for improvement in the process and recommended amendments to the FAR. The following recommendations have been

⁹GAO, *Procurement: Suspension and Debarment Procedures*, [GAO/NSIAD-87-37BR](#) (Washington, D.C.: Feb. 13, 1987).

implemented: (1) that governmentwide exclusions be extended to contractors proposed for debarment; (2) that the definition of affiliate, i.e., related firms or those under common control, include a description of indicators of control, such as common management or ownership; (3) that suspended and debarred contractors also be excluded from subcontracting under government contracts; and (4) that the extent to which orders placed under certain contractual arrangements—such as multiple awards schedules, basic ordering agreements, and indefinite quantity contracts—are covered by exclusions be clarified.

FAR Provides Governmentwide Policies, and Agencies Make Specific Exclusion Decisions

The FAR prescribes general policies governing the circumstances under which contractors may be excluded from federal contracting, requires agencies to establish a process for determining exclusions, and allows agencies the flexibility to supplement the FAR to implement the process. The supplements to the FAR and additional guidance developed by 24 agencies generally designate internal responsibilities for suspension and debarment procedures and intra-agency coordination. As an alternative to exclusion, agencies sometimes enter into administrative agreements with contractors with whom they believe there is a continuing need to do business. These agreements can encourage changes in business practices designed to promote contractor responsibility. In limited circumstances, an agency may continue to do business with excluded contractors.

The FAR requires federal agencies to conduct business only with responsible contractors and prescribes overall suspension and debarment policies. A suspension may be imposed only when an agency determines that immediate action is necessary to protect the government's interests. To initiate a suspension, an agency must have adequate evidence that the party has committed certain civil or criminal offenses or that there is another compelling cause affecting the contractor's present responsibility.¹⁰ Generally, legal proceedings must begin within 12 months or the suspension terminates. To initiate a debarment, an agency must have evidence of conviction or civil judgment for certain offenses, a preponderance of evidence that the party has committed certain offenses, such as serious failure to perform to the terms of a contract, or any other cause of so serious or compelling a nature that it affects the contractor's

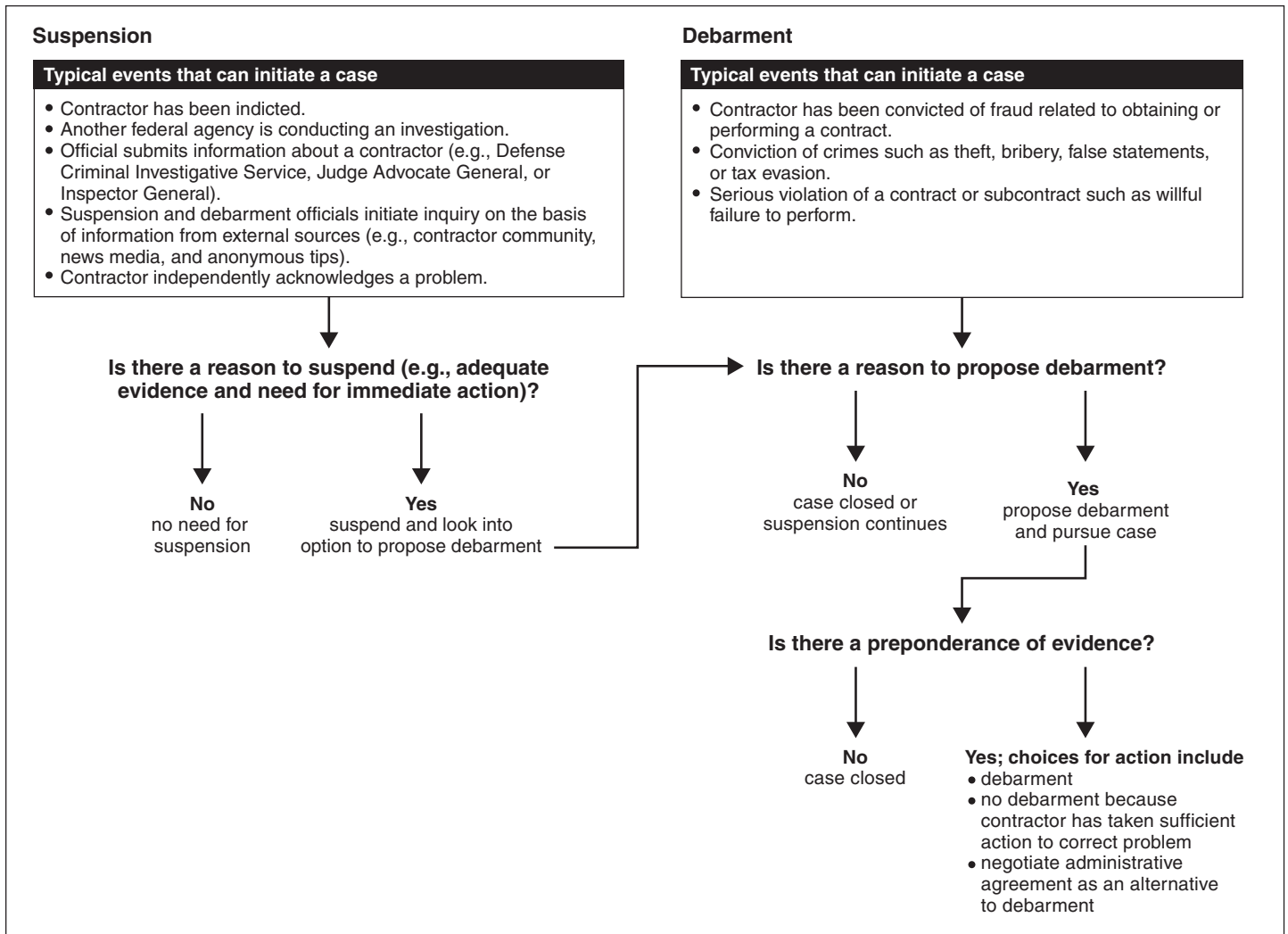
¹⁰Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred. Indictment constitutes adequate evidence for suspension. FAR 2.101; FAR 9.407-2.

present responsibility.¹¹ The agency debarment official is responsible for determining whether debarment is in the government's interest, and the FAR states that the seriousness of the contractor's actions and any remedial measures or mitigating factors should be considered. Generally, the period of debarment should not exceed 3 years.

Figure 3 provides a general overview of the suspension and debarment process.

¹¹A preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not. FAR 2.101.

Figure 3: Typical Elements of Selected Agencies' Suspension and Debarment Process



Source: GAO analysis of data from Interagency Committee on Suspension and Debarment and selected agencies.

Note: There are some variations in the process among agencies, and this figure does not include every possible scenario for a case. For example, a case initiated as a possible suspension could result in a determination that there is no immediate need for suspension and could later result in a proposal for debarment.

The FAR allows agencies flexibility to supplement FAR provisions and develop guidance based on agency needs. The 24 agencies we reviewed had included suspension and debarment policies in FAR supplements; 21 had also adopted NCR; and 12 had developed additional guidance, such as directives and policy memos to implement their suspension and

debarment processes (see table 1). The additional guidance generally designates responsibilities for suspension and debarment procedures and addresses intra-agency coordination.

Table 1: Agencies That Developed Supplements to the FAR, Adopted NCR, or Developed Additional Guidance

Agency	Supplement	NCR	Guidance
Agency for International Development	●	●	
Department of Agriculture	●	●	
Broadcasting Board of Governors	●		●
Department of Commerce	●	●	
DOD Air Force	●	●	●
DOD Army	●	●	●
DOD DLA	●	●	●
DOD Navy	●	●	●
Department of Education	●	●	●
Department of Energy	●	●	
Environmental Protection Agency	●	●	●
General Services Administration	●	●	●
Federal Emergency Management Agency	●		
Department of Health and Human Services	●	●	
Department of Justice	●	●	●
Department of Labor	●	●	
National Aeronautics and Space Administration	●	●	
National Science Foundation	●	●	●
Nuclear Regulatory Commission	●		
Office of Personnel Management	●	●	
Department of State	●	●	
Department of Transportation	●	●	●
Department of Treasury	●	●	●
Department of Veterans Affairs	●	●	
Totals	24	21	12

Source: GAO analysis of supplements to FAR and guidance.

Each of the six agencies we reviewed in depth—the Air Force, Army, Navy, Defense Logistics Agency, EPA, and GSA—has included suspension and debarment policies in FAR supplements, adopted NCR, and developed guidance for implementing suspension and debarment procedures:

- The Defense Federal Acquisition Regulation Supplement (DFARS) designates suspension and debarment officials in the various DOD organizations—including the Air Force, Army, Navy, and Defense Logistics Agency—and a process for waiving contractor exclusions for compelling reasons. In addition, in September 1992, the Under Secretary of Defense for Acquisition issued guidance stating that (1) when appropriate, before action is taken on suspension, a contractor should be informed that DOD has extremely serious concerns with the contractor’s conduct, and the contractor should be allowed to provide information on its behalf, and (2) DOD debarment officials should coordinate fully within DOD, and in certain cases among civilian agencies, to determine the possible effects of the suspensions and debarments on other organizations as well as to receive additional information that may affect the exclusion decision.
- EPA’s Acquisition Regulation, a FAR supplement, designates the roles of various officials and clarifies EPA’s suspension and debarment procedures. An August 1993 memorandum of understanding provides specific responsibilities for EPA’s Office of Acquisition Management and Office of Grants and Debarment in the processing of suspension and debarment actions. In addition, EPA has established guidance on initiating a suspension or debarment action. EPA also included a specific section in NCR addressing EPA’s statutory disqualifications under the Clean Air and Clean Water Acts.
- GSA also supplemented the FAR with a regulation that designates the roles of various officials and clarifies suspension and debarment procedures. The GSA Acquisition Manual contains similar language to the FAR supplement. In addition, GSA’s Office of Inspector General Operations Manual outlines responsibilities for investigating cases, coordinating with law enforcement agencies, and making referrals to GSA’s suspension and debarment officials. In November 2002, GSA issued an internal order concerning the requirement for legal review of suspension and debarment decisions.

Each of the agencies we reviewed established an organizational structure that identifies the lead office, responsibilities, and staffing to manage their suspension and debarment activities. (See app. IV for a summary of each agency’s suspension and debarment organizational structure.) Table 2

shows specific actions reported by the six agencies we reviewed during fiscal year 2004.

Table 2: Actions Taken by Six Selected Agencies in Fiscal Year 2004

Agency	Suspensions	Proposed debarments	Debarments	Administrative agreements
Air Force	94	246	233	2
Army	68	113	90	9
Navy	2	27	33	0
DLA	12	147	133	1
GSA	70	53	33	4 ^a
EPA	16 ^b	65 ^b	68	22
Total	262	651	590	38

Source: Agency-reported data.

^aGSA has only recently begun to use administrative agreements and entered into four during fiscal year 2004.¹²

^bThese data include eight cases in which a suspension and proposed debarment were issued simultaneously under the NCR.

Administrative agreements, also referred to as compliance agreements, provide an alternative to exclusion when contractors that are being considered for suspension or debarment have addressed the cause of the problem through actions such as disciplining individuals, revising internal controls, and disclosing problems to the appropriate government agency in a timely manner.¹³ Under administrative agreements, contractors agree to meet certain requirements and may continue to enter into contracts with the government. Agency officials said that reaching administrative agreements with contractors can serve the government's interest by improving contractor responsibility, ensuring compliance through monitoring the requirements of the agreement, and maintaining competition among contractors. Administrative agreements can be

¹²One of these administrative agreements was reached with WorldCom. See GAO, *GSA Actions Leading to Proposed Debarment of WorldCom*, [GAO-04-741R](#) (Washington, D.C.: May 26, 2004) for more information on the proposed debarment of WorldCom, Inc.

¹³Voluntary exclusions are another form of alternative remedy provided for by the NCR. These exclusions are referred to as governmentwide exclusion agreements, which are based on the terms of settlement between an entity and one or more federal agencies.

negotiated at any point in the suspension and debarment process, such as when a contractor independently acknowledges a problem, but the agencies we reviewed in depth said these agreements are most commonly negotiated as an alternative to debarment. These agreements generally follow a consistent format, emphasize corporate ethics programs, and are in effect for a period of 3 years. Table 3 summarizes the key contractor requirements included in the agreements we reviewed.¹⁴

Table 3: Key Characteristics of Administrative Agreements

Key Characteristics	GSA	EPA	Air Force	Army	DLA	Navy
Written ethics policy or code	●	●	●	●	●	●
Employee ethics training	●	●	●	●	●	●
Compliance hotline	●	●	●	●	●	●
Ethics officer or advisor	●	●	●	●	●	●
Independent auditor or ombudsman to monitor compliance	●	●	●	●		
Scheduled reporting to agency	●	●	●	●	●	●
Contractor payment for portion of agency's administrative costs		●	●	●		●

Source: Agency reported data.

Note: GAO analysis of 8 administrative agreements.

While administrative agreements provide an alternative to exclusion, agencies can continue to do business with excluded contractors in limited circumstances through the use of waivers by making a determination that there is a compelling reason to award a contract to an excluded party.¹⁵ This determination requires a written explanation of the reason for doing business with an excluded contractor, such as an urgent need for the contractor's supplies or services, or that the contractor is the only known source.¹⁶ Of the six agencies we reviewed, only the Air Force and the Army reported that compelling reason waivers had been issued over the past 2 years. The Air Force reported that three waivers had been granted—in August and September 2003 and in August 2004—to continue contracting

¹⁴For DOD agencies, a number of these elements are required. See, for example, DFARS subpart 203.70.

¹⁵FAR 9.405; DFARS 209.405.

¹⁶Additionally, FAR precludes contractors from entering into subcontracts in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so, and so notifies the contracting officer before entering into such a subcontract. FAR 52.209-6.

with the Boeing Company for launch services for military space equipment based on national security concerns and to mitigate program schedule and cost risks. In fiscal year 2004, the Air Force issued one waiver for sole-source reasons, and the Army issued four waivers based on urgent need.

Suspension and debarment constitutes exclusion of all divisions or other organizational elements of the contractor, unless the exclusion decision is otherwise limited.¹⁷ Exclusions may extend to affiliates, if named in the suspension or debarment notice and decision.¹⁸ Organizational entities of excluded contractors that can demonstrate independence may be allowed to receive government contracts.

Additional Reporting and Sharing of Information Could Improve the Effectiveness of the Process

The information in EPLS may be insufficient to enable contracting officers to determine with confidence that a prospective contractor is not currently suspended, debarred, or proposed for debarment. Further, information on administrative agreements and compelling reason waivers is not routinely shared among agencies or captured centrally in a database such as EPLS. The Interagency Suspension and Debarment Committee (ISDC), which monitors the suspension and debarment system, provides a useful forum for sharing information among suspension and debarment officials.

Incomplete or Unreliable EPLS Data Make It Difficult to Identify Excluded Parties

The FAR requires agencies to enter various information on contractors into EPLS, including contractors' and grantees' Data Universal Numbering System (DUNS) number¹⁹—a unique nine-digit identification number assigned by Dun & Bradstreet, Inc. to identify unique business entities.²⁰ We found, however, that while the EPLS database has a field for entering contractors' DUNS numbers, it is not a required field in the database, and the data appear to be routinely omitted from the database. For the 6 agencies we reviewed in depth, about 99 percent of records in the EPLS

¹⁷FAR 9.407-1(c) and 9.406-1(b).

¹⁸Affiliates are business concerns, organizations, or individuals where, directly or indirectly, one controls the other or a third party controls both. FAR 9.403.

¹⁹FAR 9.404(c).

²⁰Unique identifiers also include an individual's Social Security number, Employer Identification Number, or other Taxpayer Identification Number.

database as of November 2004 did not have DUNS contractor identification numbers.

To ensure that excluded contractors do not unintentionally receive new contracts during the period of exclusion, the FAR and NCR require contracting officers and awarding officials to consult EPLS and identify any competing contractors that have been suspended or debarred.²¹ Because EPLS lacks unique identifiers for most of the cases for the six agencies we reviewed in depth, contracting officers use the competing contractor's name to search the system to determine whether a prospective contractor has been excluded from doing business with the federal government. However, a contractor's name as it appears in a bid or proposal may not be the same as in EPLS. For example, the XYZ Company may submit bids or proposals using "XYZ Company" but appear as "XYZ" in EPLS. Therefore, if the contracting officer searched for an exact match, EPLS would not identify the company.²² Searching for partial matches would fail to identify companies that have changed their names. According to agency suspension and debarment officials, contracting officers have overlooked excluded contractors when using EPLS, due in part to not being able to match contractor names. Though agency officials could not recall specific cases, they said that this difficulty in matching names is more likely to occur in cases in which contractors have changed their names.

We too had difficulty matching names using EPLS. For example, because of the various ways a contractor's name might be entered in the database and because contractor names sometimes change over time, we could not be assured that we identified all contractors that have been excluded more than once. We also attempted to match contractors' names in EPLS and FPDS—the database containing government contracting actions—to determine whether excluded contractors had received new contracts

²¹Contracting officers are required to consult EPLS (1) after opening bids or receipt of proposals, and (2) immediately prior to contract award. FAR 9.405(d)(1) and (4). Additionally, for acquisitions where the contract value is expected to exceed the simplified acquisition threshold, which is generally \$100,000, FAR requires offerors to certify that they are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency. FAR 52.209-5 and FAR 52.212-3(h).

²²EPLS allows either exact or partial name searches.

during a period of exclusion.²³ Although this effort did not produce any matches, we cannot conclude with confidence that excluded contractors are not receiving new contracts because of the lack of consistency regarding contractor names both between and within the databases. This problem has been longstanding. In our 1987 report, we noted similar difficulties in matching data from the list of excluded parties with FPDS data. Despite our findings, the problem continues, increasing the risk that suspended or debarred contractors will be awarded new contracts during a period of exclusion.

The overall reliability of reported data is also a concern. According to GSA officials, responsibility for ensuring data reliability rests with the agencies entering data into EPLS. GSA does not know, however, whether agencies have tested the reliability of their EPLS data. The absence of information on data reliability makes using the system for oversight or analysis problematic. For example, when we attempted to use EPLS to determine the average length of time of exclusions, we found many records with an indefinite termination date. In some cases, parties are listed as excluded for an indefinite period of time pending the outcome of a case. In nonprocurement cases, parties also may be excluded for an indefinite period of time.²⁴ However, when a record is entered in EPLS without a termination date, the system defaults to record the termination date as indefinite. In the absence of information on data reliability, there is no way to estimate the extent to which the entries with indefinite termination dates reflect parties that had been excluded for an indefinite period of time or parties for which no termination date had been entered.

²³To determine whether suspended or debarred contractors were receiving new contracts during a period of exclusion, we compared 44,634 records for excluded parties in EPLS with 1,006,919 contracting actions listed in FPDS for fiscal year 2003—the latest year for which complete data were available at the time of our review.

²⁴Most of these exclusions are for individual service providers, such as physicians, who have engaged in fraud and have been excluded from participation in federal health care programs.

ISDC Provides an Opportunity to Facilitate Sharing of Information on Administrative Agreements and Exclusion Waivers

The Interagency Suspension and Debarment Committee (ISDC) is responsible for coordinating policy, practices, and information sharing on various suspension and debarment issues.²⁵ The ISDC serves as an interagency forum and conducts monthly meetings for federal agencies' suspension and debarment officials. While ISDC is not a decision-making body, it develops recommendations for the Office of Management and Budget (OMB) on interagency issues, such as determining which agency should take the lead on a case when more than one agency does business with a particular contractor. The ISDC reports to OMB's Office of Federal Financial Management and has been chaired by EPA's suspension and debarment officer since 1988.

In its March 2002 report on interagency coordination, the ISDC emphasized the importance of identifying a lead agency to coordinate with other federal agencies that do business with a contractor before entering into an administrative agreement. In our discussions with several suspension and debarment officials they said that, in addition, sharing information on past and current administrative agreements within the broader community of suspension and debarment officials would also be useful. They said that when an agency official is considering taking action with respect to a particular contractor, it would be helpful to know whether another agency had ever used an administrative agreement with that contractor, what the terms of the agreement were, and whether the contractor had complied with the agreement. That information is not currently collected centrally nor routinely made available to all suspension and debarment officials. Of the agencies we reviewed, only the Army has taken initiative to share information on administrative agreements. In February 2005, the Army launched the "Army Fraud Fighter's Web Site," which includes a list of contractors with which they have entered into administrative agreements.²⁶

Similarly, greater sharing of information on compelling reason waivers also would be helpful. We found that information on compelling reason waivers was not readily available from most agencies we reviewed. To obtain information on compelling reason waivers, we had to reconcile the information we collected from the DOD agencies with information we collected from GSA for those agencies. The FAR supplement for DOD requires DOD to provide written notice of any compelling reason waiver

²⁵The ISDC was created by Executive Order 12549 in February 1986.

²⁶www.jagcnet.army.mil/ARMYFRAUD.

determination to GSA,²⁷ but we had to make repeated requests from DOD agencies and GSA in order to obtain complete information. In our view, accountability and transparency of the process would be enhanced were this information routinely collected and reported by all agencies. For example, more information on the use of waivers would allow suspension and debarment officials to evaluate patterns in the use of waivers to determine whether they were used more commonly in some industries than others. They could also assess the rationales cited by agencies in granting waivers to determine whether agencies are applying standards consistently or whether the governmentwide standards are in need of revision.

Conclusions

Federal agencies faced with the challenge of ensuring that they only do business with responsible contractors may not be identifying excluded contractors when awarding new contracts. Improving the EPLS database by requiring agencies to enter contractor identification numbers into the system could provide the data needed to enhance agency confidence that excluded contractors can be readily identified. Sharing information among agencies on administrative agreements and compelling reason waivers could also improve the transparency and effectiveness of the suspension and debarment process and thereby help to ensure the government's interests are protected.

Recommendations

To improve the effectiveness of the suspension and debarment process, we are making two recommendations that

- the Administrator of General Services modify the EPLS database to require contractor identification numbers for all actions entered into the system and
- the Director of the Office of Management and Budget require agencies to collect and report data on administrative agreements and compelling reason determinations to the Interagency Suspension and Debarment Committee and ensure that these data are available to all suspension and debarment officials.

²⁷DFARS § 209.405.

Agency Comments and Our Evaluation

We provided a draft of this report to DOD, EPA, GSA, and OMB for review and comment. DOD provided written comments which are included in appendix V. EPA provided technical comments on the draft, and we have incorporated these comments into the report as appropriate. GSA and OMB provided oral comments.

DOD generally concurred with our recommendations. In addition to requiring the contractor identification numbers for all actions entered into the system, DOD believes that the EPLS database should include a field for the Contractor and Government Entity (CAGE) code, if available. DOD stated that given the automated procurement system used by many DOD offices, it is important to enable these offices to check for the CAGE code of a prospective contractor in the EPLS database. DOD also provided technical comments on the draft report, and we have revised the draft accordingly.

GSA concurred with our recommendation that GSA modify the EPLS database to require contractor identification numbers for all actions entered into the system. GSA stated that it is in the process of competing the EPLS application, and the identification number will be a required field when the updated system becomes operational in fiscal year 2006. In addition, the updated system will be required to interface with the Central Contractor Registration System, which should improve the quality of contractor data in EPLS. The new system also should have greater capability to allow agencies to report information such as the reasons why a party has been excluded.

OMB concurred with our recommendation that OMB require agencies to collect and report data on administrative agreements and compelling reason determinations to the Interagency Suspension and Debarment Committee and make this information available to all suspension and debarment officials.

As agreed with your offices, unless you release this report earlier, we will not distribute it until 30 days from the date of this letter. At that time, we will send copies of this report to the Secretary of Defense, the Administrator of General Services, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, and interested congressional committees. We will also make copies available to others upon request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions about this report, please contact me at (202) 512-4841 or woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Major contributors to this report were Amelia Shachoy, Assistant Director, Marie Ahearn, Ken Graffam, Mehrunisa Qayyum, Emma Quach, Jeffrey Rose, Karen Sloan, and Cordell Smith.

William T. Woods

William T. Woods, Director
Acquisition and Sourcing Management

Appendix I: Scope and Methodology

We conducted our work at six agencies—General Services Administration (GSA), Environmental Protection Agency (EPA), and four DOD agencies—Air Force, Army, Defense Logistics Agency (DLA), and Navy. The DOD agencies were selected on the basis of the dollar value of contracting actions reported in the Federal Procurement Data System (FPDS) for fiscal year 2003—the year for which the most recent and complete data were available at the time of our review. We selected GSA because of its central role in federal procurement and in maintaining the Excluded Parties List System (EPLS). We selected EPA because of its active role in suspension and debarment, including its role in chairing the Interagency Suspension and Debarment Committee (ISDC) and in implementing systematic procedures for tracking the status of suspension and debarment cases. Together, these agencies accounted for about 67 percent of fiscal year 2003 federal contract spending, as reported in the FPDS. We also reviewed literature and interviewed government and nongovernment officials, academics, and private sector organizations with relevant experience.

To describe the general guidance on the suspension and debarment process and how selected agencies have implemented the process, we examined the Federal Acquisition Regulation (FAR), Nonprocurement Common Rule (NCR), and the regulations and guidance of the 24 agencies that have issued supplements to the FAR governing suspension and debarment procedures. We analyzed documents and testimonial evidence at the 6 selected agencies to determine how each agency (a) used administrative agreements; (b) coordinated and shared suspension and debarment information; and (c) collected data to monitor the suspension and debarment process.

To identify any needed improvements in the suspension and debarment process, we analyzed data from GSA's EPLS as of November 18, 2004. This analysis included comparing the EPLS and FPDS databases to identify any suspended or debarred contractors that received a new contract during a period of suspension or debarment. We compared 44,634 records for excluded parties in EPLS with 1,006,919 contractors listed in FPDS at the end of fiscal year 2003, the latest year for which complete data were available at the time of our review. Because EPLS records do not require contractor identification numbers, we compared other identifiers, such as name and address, to determine whether a contract action in FPDS was for the issuance of a new contract during the period of exclusion. We also analyzed the data for the length of time parties are excluded and to determine the extent to which parties are excluded more than once. To assess the reliability of EPLS data we (1) performed electronic testing of

the required data elements for obvious errors in accuracy and completeness, (2) reviewed related documentation, and (3) interviewed knowledgeable agency officials. We found the data to be insufficiently reliable for determining whether excluded contractors receive new contracts, for determining the termination dates of exclusions, or for performing simple analyses such as the average length of exclusions or the percentage of parties excluded more than one time. We also reviewed other areas for improvements, such as agencies' internal data reporting and the role of the ISDC.

We conducted our work from August 2004 through June 2005 in accordance with generally accepted government auditing standards.

Appendix II: Statutory Debarments

Statutory debarments, or exclusions, are based on statutory, executive order, or regulatory authority other than the FAR. The grounds and procedures for statutory debarments may be set forth in regulations issued by agencies, such as the Department of Labor and EPA, which have enforcement responsibilities but may not be the procuring agencies. The authorities for these statutory debarments use various terminology for exclusion, such as “ineligible,” “prohibited,” or “listing;” however, the terms all encompass sanctions precluding contract awards or involvement in a contract for a specific period of time. Table 4 lists the authorities identified in GSA’s EPLS as reasons for debarring individuals and contractors from receiving federal contracts.

Table 4: Statutory Debarments

Statute	Description
Anti-Drug Abuse Act of 1988	Ineligible for federal benefits, including contracts, at discretion of sentencing judge following conviction(s) for a federal or state offense relating to the distribution or possession of controlled substances. (Permanently ineligible upon conviction of third offense for distribution.) 21 U.S.C. § 862.
Buy American Act	Debarred by an agency for violation of the Act concerning nonuse of American-produced materials. 41 U.S.C. § 10(b).
Clean Air Act and Clean Water Act	Prohibited from receiving federal contracts following conviction under either Act if intended performance is to be at facility which gave rise to the conviction and violating facility is owned, leased or supervised by convicted person at the time of award. 42 U.S.C. § 7606; 33 U.S.C. § 1368.
Davis-Bacon Act	Debarred by Comptroller General for violation of the minimum or prevailing wage rate requirements of the Act for construction or repair of public buildings and works. 40 U.S.C. § 276a-2(a).
Service Contract Act	Debarred by Secretary of Labor for violation of the minimum wage requirements of the Act, for service employees. 41 U.S.C. § 354.
Walsh-Healy Act	Debarred by the Secretary of Labor for violation of the minimum wages, 40-hour work week and non-use of child labor requirements of the Act. 41 U.S.C. §35.
Prohibition on Persons Convicted of Defense Contract Related Felonies	Prohibited from serving in management or supervisory capacity on DOD contracts or serving on board of directors or as a consultant to defense contractors awarded DOD contracts following conviction of fraud or any other felony, arising out of a contract with DOD, 10 U.S.C. 2408.
Reorganization Plan No. 14 of 1950, 5 USC Appendix	Declared ineligible to receive federal contracts by the Secretary of Labor under the Plan’s authority and based on violations of one or more labor standards in certain numerous federal statutes, such as the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327.
Prohibition on Entering into Contracts Against Interest of U.S.	Prohibited from receiving DOD contracts over \$110,000 based on a finding by the Secretary of State that a foreign government supporting international terrorism owns or controls a significant interest in the contracting firm. 10 USC § 2327(b); DFARS § 209.104-1(g).

Appendix II: Statutory Debarments

Statute	Description
Military Recruiting on Campus	Institutions of higher education declared ineligible to receive contracts based on DOD finding that the institution denied military recruitment on campus. Pub. L. 103-337, as amended by Pub. L. 104-324. This provision was repealed by Pub. L. 106-65, Oct. 5, 1999. Currently, 10 USC 983 and DFARS 209.470-2 prohibit DOD from contracting with an institution of higher education if DOD determines that the institution prevents military recruitment or Senior Reserve Officer Training Corps (ROTC) on campus.
Drug-Free Workplace Act of 1988	Suspension or debarment from receiving federal contracts for violations of the Drug-Free Workplace Act of 1988, 41 U.S.C. 701.
Executive Order 11246, as amended	Declared ineligible for award of federal contracts by Secretary of Labor based on failure to satisfy obligations under equal opportunity or affirmative action clauses of a federal contract.

Source: GAO analysis of EPLS codes indicating the reason for statutory debarment.

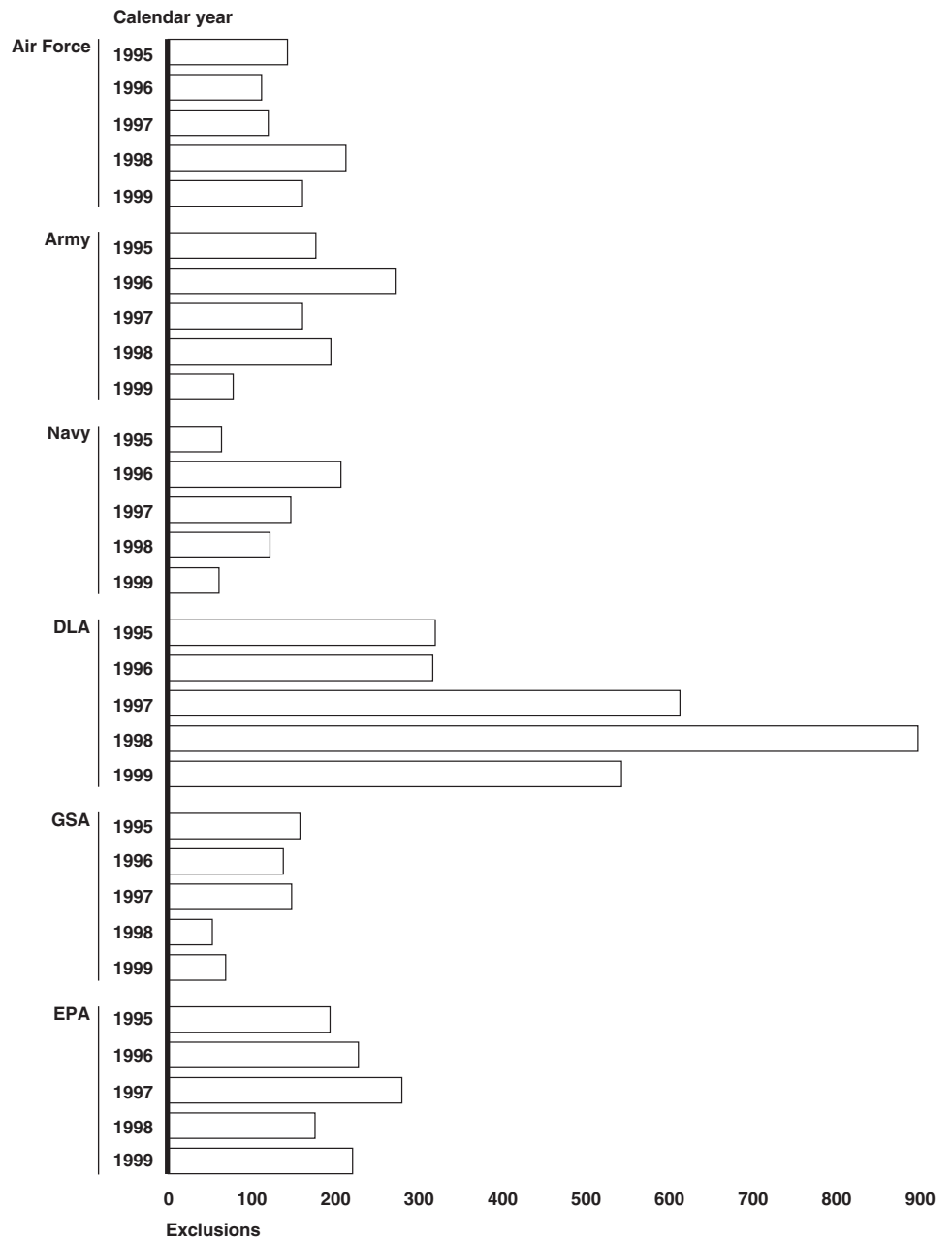
Note: There is no statutory requirement to suspend or debar contractors who have unpaid federal tax debt.¹

¹GAO has recently reported on contractors who have unpaid federal tax debt. See GAO, *Financial Management: Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence*, [GAO-05-637](#), (Washington, D.C.: June 16, 2005).

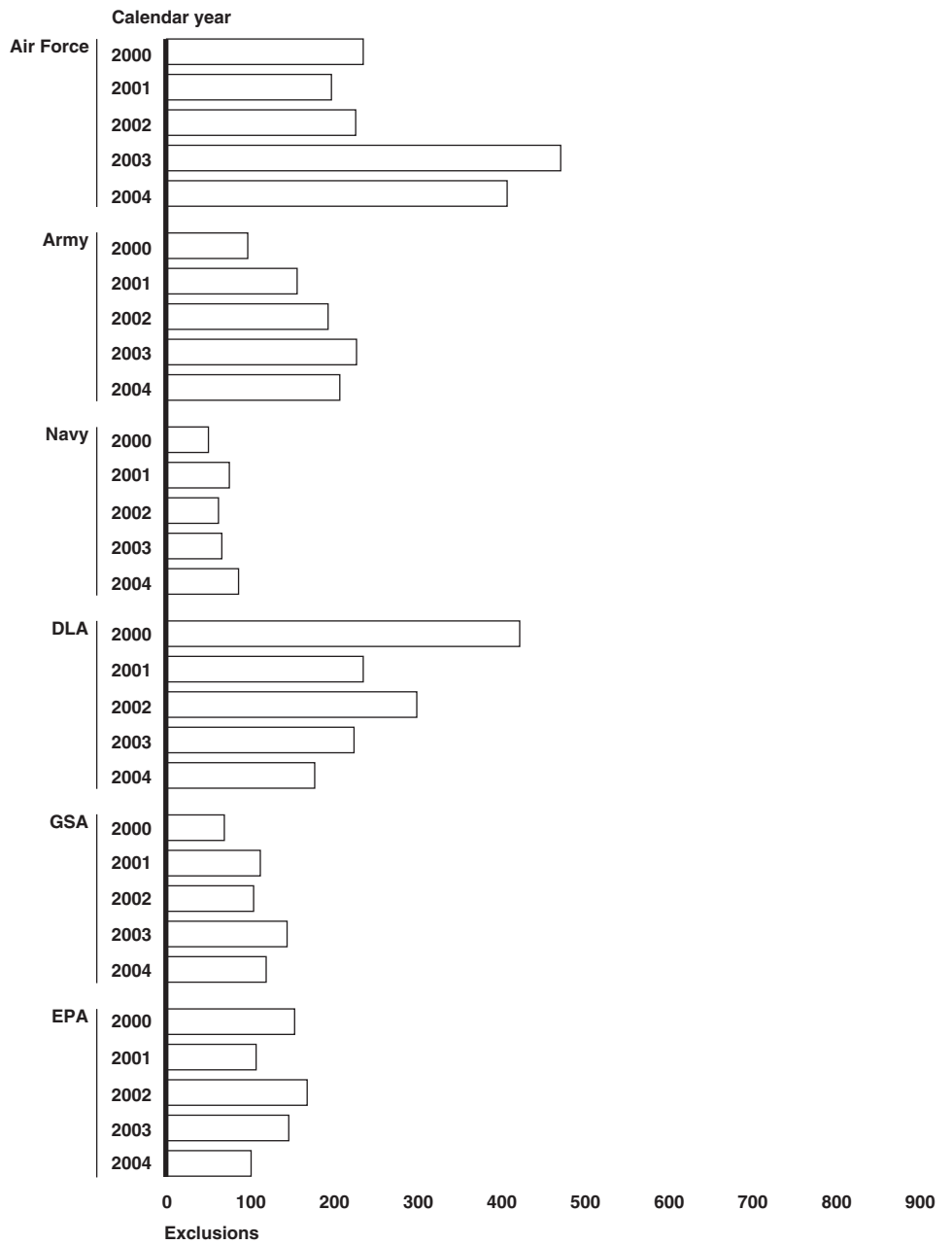
Appendix II: Statutory Debarments

Appendix III: Trends in Exclusions in EPLS for Selected Agencies

Figure 4: Trends in Exclusions in EPLS for Selected Agencies from 1995 to 2004



Source: GAO analysis of EPLS data as of November 2004.



Appendix IV: Selected Agencies' Suspension and Debarment Organizations

The FAR and NCR require agencies to establish a process for suspension and debarment. The organizational structure established to manage the process at the six agencies we reviewed is summarized in table 5.

Table 5: Agencies' Suspension and Debarment Organizations

Agency	Lead office	Responsibilities	Staffing
EPA	Office of Grants and Debarment	Division dedicated to investigations and case development refers cases to suspension and debarment official.	1 Suspension and Debarment Officer 12 Professional Staff
GSA	Office of Chief Acquisition Officer, Office of Acquisition Integrity	Office of Inspector General handles suspension and debarment as one aspect of its investigative work and refers cases to the Office of Acquisition Integrity. Suspension and debarment is one aspect of the acquisition integrity function.	1 Suspension and Debarment Officer 2 Professional Staff 1 Support Staff
DLA	Office of General Counsel, Contracting Integrity Office	Defense Criminal Investigative Service performs law enforcement function and makes referrals to DLA. DLA also receives referrals from other military services' Defense Criminal Investigative Organizations.	1 Suspension and Debarment Officer 1 Professional Staff
Air Force	Office of Deputy General Counsel, Contractor Responsibility Division	Division within General Counsel's office dedicated to suspension and debarment actions. Defense Criminal Investigative Organizations also refer cases. This Division is also responsible for the procurement fraud program.	1 Suspension and Debarment Officer 3 Professional Staff Co-op students provide support
Army	Office of Judge Advocate General, Contract Appeals Division, Procurement Fraud Branch	Suspension and debarment is one aspect of the procurement fraud function. Additional support from the Contract Appeals Division is available. Defense Criminal Investigative Organizations also refer cases.	3 Suspension and Debarment Officers (US, Europe, Korea) 6 Professional Staff 1 Support Staff
Navy	Office of General Counsel, Procurement Integrity Office	Suspension and debarment is one aspect of the Procurement Integrity function. Defense Criminal Investigative Organizations also refer cases.	1 Suspension and Debarment Officer 3 Professional Staff 1 Support Staff

Source: GAO analysis of agency-reported data.

Appendix V: Comments from the Department of Defense



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUL 22 2005

Mr. William T. Woods
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Woods,

This is the Department of Defense (DoD) response to the GAO draft report GAO-05-479, FEDERAL PROCUREMENT: Additional Data Reporting Could Improve the Suspension and Debarment Process, dated July 8, 2005, (GAO Code 120363).

As explained in the enclosure, the DoD concurs with comments regarding the two recommendations made by the referenced report. Please direct any questions or comments to my principal action officer, Mr. Gary Blasser, by calling 703-695-7197 or via e-mail at Gary.Blasser@osd.mil.

Sincerely,

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Enclosure:
As stated



**GAO DRAFT REPORT – DATED JULY 8, 2005
GAO CODE 120363/GAO-05-479**

**“FEDERAL PROCUREMENT: Additional Data Reporting Could Improve the
Suspension and Debarment Process”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE RECOMMENDATIONS**

RECOMMENDATION 1: To improve the effectiveness of the suspension and debarment system, we recommend that the Administrator of General Services modify the EPLS database to require contractor identification numbers for all actions entered into the system.

RESPONSE: Concur with comments. This recommendation is consistent with the prescription at Federal Acquisition Regulation (FAR) section 9.404(b). Presently, FAR summarizes these identification numbers as: the Data Universal Numbering System (DUNS) Number, Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available. In addition, the EPLS database should include a field for entry, and use, of either a Contractor and Government Entity (CAGE) Code or a NATO Contractor and Government Entity (NCAGE) Code, if available. Maximizing use of these identification numbers should enable acquisition personnel to more easily and accurately identify entities that have been suspended, proposed for debarment, or debarred.

DoD Military Departments and defense agencies account for more than 99% of all suspension and debarment actions taken against entities. Whenever DoD offices suspend; propose debarment; or debar an entity, they provide the entity’s name and CAGE Code or NCAGE Code to the Defense Logistics Information Service (DLIS - <http://www.dlis.dla.mil/>.) DLIS lists such entities as ineligible for contract awards. Given the automated procurement system used by many DoD offices, it is important to enable these offices to check for the CAGE Code or NCAGE Code of a prospective awardee in the EPLS database.

The report indicates that GAO found the EPLS database has a field for entering an entity’s DUNS Number, but it noted this is not a required field. As a result, this data is often omitted from the EPLS database. The DAR Council is considering an April 2005 recommendation by its Debarment Suspension Business Ethics Subcommittee to address this issue by making it mandatory to include the DUNS Number and CAGE/NCAGE Code of an entity as part of any suspension or debarment recommendation sent to a DoD Suspension and Debarment Official.

RECOMMENDATION 2: To improve the suspension and debarment process, we recommend that the Director of the Office of Management and Budget require agencies to collect and report on administrative agreements and compelling reason determinations to the Interagency Suspension and Debarment Committee and ensure that these data are available to all suspension and debarment offices.

RESPONSE: Concur with comments. As required by 10 U.S.C. 2393(b) as implemented by DFARS 209.405, DoD must provide written notice of a Compelling Reason Determination to the General Services Administration (GSA), Office of Acquisition Policy. DoD suggests it may be better if GSA were to make a copy of each determination available, only under that portion of the EPLS website that has access reserved for Government employees, rather than to involve the Interagency Suspension and Debarment Committee as referenced in the recommendation. Notification that an agency has executed an administrative agreement could be handled similarly, again – in a location available only to Government employees. If so, this may require a modification of existing regulations to establish and help maintain such a practice. Meanwhile, DoD agencies informally share information about their Administrative Agreements, and this has proven to be sufficient.

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