

October 22, 1999

A. KEITH STRANGE
VICE PRESIDENT, PURCHASING AND MATERIALS

SUBJECT: United States Postal Service Suspension and Debarment Process
(Report Number FA-AR-00-001)

Attached is our report on the audit of the United States Postal Service (USPS) suspension and debarment process (Project Number 99RA003FA000). The overall objective of our review was to evaluate the effectiveness of Postal Service policies and procedures related to suspension and debarment actions.

We found that the Postal Service appropriately forwarded suspension and debarment notices to the General Services Administration for inclusion on their list of debarred, suspended or ineligible contractors. However, opportunities existed to clarify and improve Postal Service's suspension and debarment policies and procedures. We noted that the Postal Service suspended and debarred fewer contractors than other Federal agencies with similar or smaller purchasing programs. Management agreed with and has planned actions to address the issues raised in this report. Management's comments and our evaluation of these comments are included in the report.

We appreciate the cooperation and courtesies provided by your staff during the review. If you have questions or need additional information, please contact [REDACTED] Director, Facility, at [REDACTED] or me at (703) 248-2300.

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Attachment

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EXECUTIVE SUMMARY

Introduction

The United States Postal Service (USPS) awards over 50,000 contracts annually at a cost of over \$10 billion. USPS suspended or debarred 29 individuals/firms from calendar years 1995 through 1998, the four-year period included in our review.

Suspension means a disqualification from government contracting and subcontracting for a temporary period of time because a company or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct. Debarment means, in general, an exclusion from government contracting and subcontracting for a reasonable, specified period of time because a company or individual failed to perform under their contract or performance was inadequate.

We initiated this review to evaluate the effectiveness of USPS policies and procedures related to suspension and debarment actions.

Results in Brief

USPS appropriately forwarded suspension and debarment notices to the General Services Administration for inclusion on their list of debarred, suspended or ineligible contractors. However, opportunities exist to improve the Postal Service's suspension and debarment policies and procedures. Specifically, the USPS Purchasing Manual's suspension and debarment policy was vague and subject to misinterpretation in some areas. Also, the policy does not provide adequate guidance to ensure timely processing of suspension and debarment actions. Further, management did not maintain a centralized database of contractors with performance problems. In addition, we noted that USPS suspends or debars fewer individuals/firms than other agencies with similar or smaller contracting programs. Finally, we noted instances of inadequate contract administration.

Summary of Recommendations

We recommended that the Vice President, Purchasing and Materials, in conjunction with General Counsel and the Judicial Officer ensure that the Postal Service's and General Services Administration's list of debarred, suspended or ineligible contractors are available to and used by the contracting officers. In addition, we recommended USPS

require contracting officers to submit a written justification to Headquarters for approval if a contract award is recommended to a supplier on the General Services Administration list of debarred, suspended or ineligible contractors. We also recommended that the USPS consider establishing a task force to review Postal Service's suspension and debarment practices.

Summary of Management's Comments

Management agreed that this report raised some legitimate questions regarding their suspension and debarment policy and procedures. In addition, management stated that they plan to establish a team of Purchasing and Legal Counsel personnel to review the need for changes to Postal Service's suspension and debarment practices. We have included the full text of the comments in the appendix.

Overall Evaluation of Management's Comments

Management's planned actions are responsive and address the issues identified in this report.

INTRODUCTION

Background

As a result of the Postal Reorganization Act of 1970, the Postal Service is permitted to develop its own purchasing rules and regulations to take advantage of the best public and private purchasing practices. Whereas, federal agencies must exercise full and open competition as a result of the Competition in Contracting Act of 1984 (41 USC 253(a)(1)(A)), the Postal Service utilizes a policy of “adequate competition” and therefore may limit competition to selected or “pre-qualified” offerors.

Code of Federal Regulations, Part 39 Section 957, outlines the procedures for suspension and debarment from contracting. Suspension means a disqualification from government contracting and subcontracting for a temporary period of time because a company or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct. Suspension is to be used on an interim basis pending debarment proceedings. Debarment means, in general, an exclusion from government contracting and subcontracting for a reasonable, specified period of time because an individual/firm failed to perform or their performance was inadequate. Suspension and debarment are used to protect the USPS and the government against fraudulent and unethical contractors and are not meant to be punitive in nature. The USPS Purchasing Manual states that debarment, suspension, or ineligibility of a contractor does not, by itself, effect its rights under an existing contract.

The USPS Purchasing Manual, Chapter 3.7 and Appendix D, outlines policies and procedures for suspension and debarment action. Chapter 3.7 also provides the policies, definitions, and procedures for establishing and maintaining a USPS debarred, suspended, or ineligible list of contractors/subcontractors.

Objective, Scope, and Methodology

The overall objective of our review was to evaluate the effectiveness of USPS policies and procedures related to suspension and debarment actions. Specifically, we determined whether:

- General Services Administration and USPS contracting officers were properly notified of suspensions and debarments,

- contracting officers disqualified, suspended or debarred contractors from USPS procurement awards, and
- suspension and debarment actions were timely processed.

In addition, we compared USPS suspension and debarment practices with other federal agencies.

To accomplish our objectives, we reviewed various federal and USPS policies and procedures relating to suspension and debarment, including, but not limited to, 39 CFR Part 957; the Federal Acquisition Regulation; USPS Purchasing Manual (January 31, 1997); and USPS Design and Construction Handbook (RE-14, October 1989). We reviewed the suspension and debarment files maintained in the Purchasing Policies and Programs office at USPS Headquarters for the period 1995 through 1998. We also reviewed hearing results on suspension and debarment cases that were appealed over the last 27 years.

We conducted interviews with officials from the main purchasing groups (transportation, purchasing and materials, and facilities). In addition, we interviewed several members of the Inspection Service who had been involved in investigations relating to debarment/suspension activities. We also compared a list of judgmentally selected USPS contractors to those on the General Services Administration's list of debarred, suspended or ineligible contractors. We obtained and analyzed suspension and debarment policies, actions and statistics from other government agencies, specifically General Services Administration, Defense Logistics Agency, Department of Transportation, and Department of Education.

We conducted this audit in accordance with generally accepted government auditing standards and included such tests of internal controls, as we deemed necessary under the circumstances. We accomplished the audit between December 1998 and August 1999 at USPS Headquarters, and offices located in Arlington, Virginia and Memphis, Tennessee.

AUDIT RESULTS

Suspension and Debarment Policy and Procedures

Opportunities exist to improve Postal Service's suspension and debarment policies and procedures. Specifically, the USPS Purchasing Manual's suspension and debarment policy was vague and subject to misinterpretation in some areas. Additionally, the policy did not provide adequate guidance to ensure timely processing of suspension and debarment actions. Also, management did not maintain a centralized database to identify contractors with performance problems.

Utilization of USPS and GSA Suspension and Debarment Listings

According to USPS policy (paragraph 3.7.1.a, of the USPS Purchasing Manual), purchasing offices may not solicit proposals from, award contracts to, or consent (when the contract provides for such consent) to subcontracts with debarred, suspended, or ineligible suppliers/contractors. The Postal Service maintains its own list of suspended and debarred contractors. The General Services Administration compiles and maintains another list, which is a consolidated list of all suppliers debarred, suspended, or declared ineligible by the executive agencies and the General Accounting Office.

The USPS Purchasing Manual did not specifically state that contracting officers must first consult the USPS or General Services Administration lists of debarred, suspended or ineligible contractors before awarding a contract.

Paragraph 3.7.1.c, of the USPS Purchasing Manual states in part: "Within the Postal Service, the General Services Administration list is for information only and does not replace or supplement the list maintained by the Postal Service." This statement could easily be misunderstood and raises the question as to whether a contracting officer has the authority to make awards to suppliers on the General Services Administration list or whether the list must be considered before awarding a contract.

Although our comparison of 150 current Postal Service contractors to the General Services Administration's list of debarred, suspended or ineligible contractors found no awards made to suspended or debarred individuals or firms, the example noted below illustrates that policy clarification is required.

A contracting officer at one field purchasing office stated that contracting officers primarily consult the USPS and General Services Administration's lists of debarred, suspended or ineligible contractors for high dollar value, critical, and sensitive item contracts. OIG found no point of reference for this interpretation of the guidance in the Purchasing Manual. The contracting officer also stated that often current copies of the General Services Administration's list are not available and he sometimes experiences difficulty accessing the list on the Internet.

Timeliness of
Suspension and
Debarment Actions

Postal officials often did not process suspension and debarment actions timely.

A review of ten files referred for suspension and/or debarment action between 1995 and 1998 revealed the process took between 6 and 18 months to accomplish. OIG benchmarked with the Defense Logistics Agency, which processes an average of 454 suspension and debarment actions annually. We found that it took between one to two weeks to process actions, once the field request reached Defense Logistics Agency Headquarters.

For example, a Facilities Service Office Manager submitted a request and relevant material to debar five contractors/individuals convicted of criminal offenses against the Postal Service. Unfortunately, the manager submitted the request a year after the conviction. Additionally, there was a seven-month interval between USPS Headquarters Law Department's request for additional information before Purchasing, Policies and Programs followed up with the requesting Facilities Service Office. After one year, the additional information still had not been received; therefore, no further action was taken on the request.

In another case, Purchasing Policies and Programs closed a request for suspension and debarment of one contractor due to lack of adequate information and delays in the processing phase.

Management attributed most of the delays to incomplete information supporting suspension and debarment requests, from field offices. Management stated they frequently request additional information from field activities, but they

often do not receive the information promptly. Our review of Postal Service's current guidance found it does not specifically address the steps involved or information required for suspension and debarment actions. During the audit, OIG advised Purchasing and Materials personnel that Defense Logistics Agency had developed guidance outlining specific requirements for the submission of suspension and debarment reports. Management requested and OIG provided a copy of the guidance as well as a point of contact at Defense Logistics Agency.

Centralized Database

Our review also found that USPS field personnel often were not aware of actions taken against contractors. In cases where the contractor was not suspended or debarred, field personnel may not be made aware of performance problems. Although USPS officials stated that other USPS purchasing offices are notified through the Internet, via telephone or word of mouth regarding the performance of contractors, they could not provide documented evidence to substantiate that information. Currently, evaluations of contractor performance are maintained in files where the service occurred. Input of performance information into a database accessible throughout Postal Service could readily provide needed information.

During the audit, management advised OIG about a new contractor performance system currently being deployed. The system, which is used by another federal agency, documents contractor performance and assists contracting officers in assessing past performance and contractor capability. Once implemented, management stated contracting officers would have the capability to review contractor performance records postal-wide. Since the system is currently under deployment, we offer no additional recommendations at this time.

Recommendations

The Vice President, Purchasing and Materials, in coordination with General Counsel and the Judicial Officer should:

1. Require contracting officers to use the General Services Administration list to evaluate contractor capability.
2. Require contracting officers to submit a written justification for approval if an award is recommended to a supplier on the General Services Administration list.

3. Ensure the Postal Service's and the General Services Administration's lists of debarred, suspended or ineligible contractors are available to all contracting officers.
4. Establish specific guidance for submitting suspension and debarment recommendations/referrals to USPS Headquarters to effectuate timely action.

**Management's
Comments**

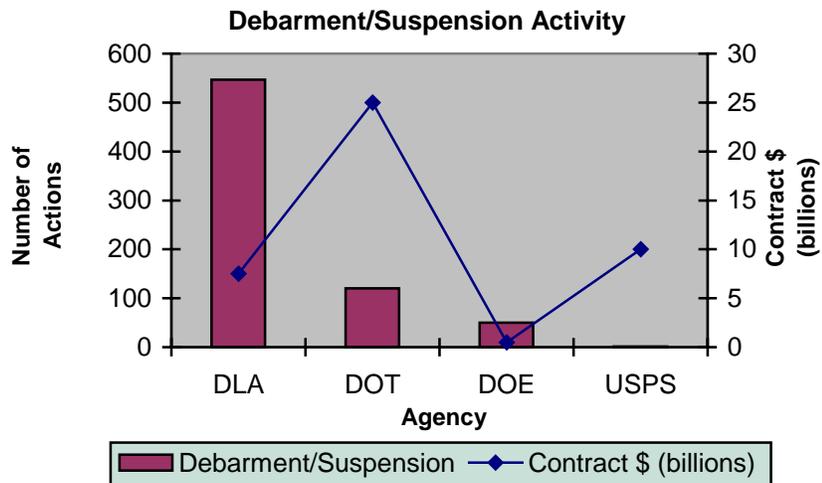
The Vice President, Purchasing and Materials agreed to establish a team of purchasing and legal counsel personnel to review the need for changes to Postal Service's suspension and debarment practices along with recommendations 1 through 4. Management also agreed to provide detailed responses to each of our recommendations by May 31, 2000.

**Evaluation of
Management's
Comments**

Management's comments are responsive to our recommendations.

Suspension and Debarment Actions

Although Postal Service awards 50,000 contracts annually at a cost of over \$10 billion, Postal Service has only suspended or debarred 29 individuals/firms during the past four years. This is a sharp contrast to other federal agencies with similar or smaller contracting programs. As depicted in the chart below, three other federal agencies we contacted had suspended or debarred between 50 and 500 contractors in 1998 alone. Defense Logistics Agency, which awards approximately \$7.5 billion in contracts annually, suspended or debarred 547 contractors in 1998.



Officials from Purchasing and Materials and the Law Department provided the following explanations regarding the limited number of suspensions and debarment actions.

Management stated that their efforts to pre-qualify contractors in advance of solicitations has dramatically reduced the need to suspend or debar contractors. Management also said that the pre-qualification process has given them the ability to “weed out” less responsible

contractors. The OIG previously audited the procurement pre-qualification process and reported the results¹ in September 1998. At the time of the audit, Postal Service had only awarded 22 contracts using the pre-qualification process.

USPS Headquarters Law Department staff stated that the Postal Service prefers to utilize the remedies available under the contract, such as termination for default, instead of suspension or debarment. Postal officials stated these remedies are more expedient, less costly and allow the contracting officer to execute an emergency contract to fulfill the remaining contractual obligations. Unless the contractor has been indicted, convicted, or is willing to enter into a consent or settlement agreement with Postal Service regarding debarment, little effort is made to pursue debarment. Remedies outside of suspension or debarment provide little protection for Postal Service or other federal agencies because the companies are not excluded from government contracting.

USPS reluctance to pursue debarment may in part be attributed to the fact that the Postal Service has imposed on itself a higher standard of proof of evidence, as it relates to debarments. While agencies regulated by the Federal Acquisition Regulation rely on a preponderance of evidence for debarments, USPS Purchasing Manual calls for “clear and convincing evidence.” This is a significantly higher standard of proof than other agencies’ standards.

Admittedly, suspensions and debarments are serious sanctions that should only be imposed in the public interest for the protection of the Postal Service and other federal agencies. However, in instances where a contracted entity has displayed a lack of business integrity or other irregularities, appropriate action should be taken.

¹ The audit revealed inconsistencies in the application of evaluation criteria used in the pre-qualification process, which focused on “financial capabilities” and the “proven record” of potential contractors. The review also disclosed poor performance in oversight of the process and specifically noted a weakness in identifying potential conflicts of interest, which questions the effectiveness of the process to prevent fraudulent activity.

Recommendation

The Vice President of Purchasing and Materials, in coordination with the General Counsel should:

5. In implementing recommendations 1 through 4, consider establishing a task force to review Postal Service's suspension and debarment practices, as compared to other federal agencies, and to recommend any additional changes deemed necessary.

**Management's
Comments**

The Vice President, Purchasing and Materials agreed with this recommendation to establish a task force to review their Suspension and Debarment program. Management stated that they would review the practices of leading private sector companies programs in addition to other federal agencies. Management further agreed to provide us with specific response to the recommendation by May 31, 2000.

**Evaluation of
Management's
Comments**

Management's comments are responsive to our recommendations.

**Contract
Administration**

Our review of the 10 contract files referred for suspension and debarment actions revealed that in 3 cases, inadequate contract administration contributed to USPS difficulty in pursuing suspension or debarment cases.

For example, in one potential debarment action, our review of the file showed the contractor stated that the Postal Service did not use due diligence in its oversight and administration of his contracts. According to the file, the contractor indicated that at no time were any of his billings called into question and that the Postal Service provided no guidance or supervision on the contracts. The Postal Service subsequently dismissed an administrative case against the contractor. The contractor, though admitting no wrongdoing, entered into a settlement agreement to be debarred for three years. However, insufficient contract administration hampered the USPS' ability to pursue an indictment or seek restitution from the contractor.

OIG is in the process of conducting a series of systemic reviews on various aspects of contract administration. Since the issues noted above were from a limited sample, OIG will not offer any recommendations at this time. Instead, the issues will be considered during the contract administration audits.

PURCHASING



September 30, 1999

SYLVIA L. OWENS

THRU: KEITH STRANGE

KS
10/1/99

SUBJECT: Interim Response to Transmittal of Draft Audit Report—
USPS Suspension Debarment Process (Report Number FA-AR-99-Draft)

This is an interim response to the Office of Inspector General's draft audit report on the USPS Suspension and Debarment Process. After an initial review by Purchasing and Materials and assigned counsel, we agree that your office has raised some legitimate questions regarding our debarment and suspension policy and procedures. Our approaches in this area have not been revisited for some time and clearly deserve review.

In accordance with recommendation 5, we plan to establish a team of purchasing and legal counsel personnel to review these practices along with recommendations 1 through 4. That team will examine what changes or revisions are necessary. We need to take a reasonable amount of time to do this review as we intend to not only review the practices of other government agencies but, in keeping with our general policy approach over the last ten years, we will also look at leading private sector companies. It's possible that we might conclude the Postal Service would be best served by an entirely different approach to dealing with suppliers who are unacceptable for ethical or performance reasons. We will provide you with a final response specifically addressing each of the report's recommendations on or before May 31, 2000.

We appreciate you pointing out this opportunity to improve our purchasing process.


Juanda J. Barclay
Manager,
Purchasing Policies and Programs

**Major Contributors to
this Report were:**

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