

## MEMORANDUM

**Date:** June 21, 2021  
**To:** Inspector General  
**From:** Director, GPO  
**Subject:** Response to OIG Draft Report SP-20-04 – GPO’s Suspension and Debarment Program

---

Thank you for the opportunity to respond to the draft report on GPO’s processing of contractor suspensions and debarments. While I continue to believe that the Office of the Inspector General (OIG) can provide important and meaningful recommendations about improving the operation of GPO’s programs, I view the OIG’s unwillingness to entertain any questions from the agency regarding this draft report as a missed opportunity. While you have asked for our response to the factual findings in the report, we do not believe that we have sufficient visibility into the data underlying the report’s findings to fully respond, leaving lingering questions on our part regarding the conclusions of the draft report. When we inquired as to specific items that did not match our understanding, we were told to stop asking questions and limit our comments to only those items requested by the OIG. While I understand your view that this strictly conforms to your process, I believe that this is one of those cases where unwavering adherence to a rigid process will yield results that are not as good as they could be otherwise. I hope that in the future we can find a way forward where the OIG and GPO will actually engage in the “team approach” you have so often espoused.

### Recommendation 1

*As recommended by OMB Memorandum M-12-02, appoint a senior accountable official who shall be responsible for program management activities including:*

- a. assessing the agency’s suspension and debarment program and the adequacy of available resources, such as staffing;*
- b. ensuring that the agency maintains effective internal controls and tracking capabilities;*
- c. ensuring that the agency participates regularly on the ISDC, as appropriate; and*
- d. reviewing internal policies, procedures, and guidance to ensure that suspension and debarment are being considered and used effectively.*

GPO does not concur with this recommendation.

During the period covered by the draft report, the GPO received 18 referrals, or approximately four to five referrals per year. Given the draft report’s finding that the cause of what the OIG perceives as a delay in processing of suspension and debarments was a lack of resources and competing priorities of the Office of the General Counsel (OGC), it is unclear how adding an additional management layer in the form of a “senior official” would speed up the process or benefit the taxpayer. The OGC now has two attorneys on staff dedicated to handling procurement issues, including suspensions and debarments.

This additional OGC resource and the steps to be taken by GPO as outlined *infra*, should be sufficient to manage a “program” of four to five referrals per year.

It is unclear whether the intention is to require GPO to hire someone to solely fill this function or assign the functions to someone else who already has significant executive responsibilities, but in either case, GPO does not see the benefit in this approach. We will, however, ensure that the recommended items are regularly reviewed by existing senior personnel.

### Recommendation 2

*Implement a case management tool to process and monitor suspension and debarment referrals, including maintaining complete official records for each referral.*

GPO concurs in part with this recommendation.

While the agency is not agreeing *ab initio* to implement such a system, we will investigate the availability, cost, and efficacy of tools that will assist in processing and tracking referrals. As we conduct that market research, we will have a preference for solutions centered around applications already available to GPO (e.g. Microsoft SharePoint).

### Recommendation 3

*Adopt the FAR Subpart 9.4 – Debarment, Suspension, and Ineligibility as GPO’s suspension and debarment practice.*

GPO concurs in part with this recommendation.

GPO’s current debarment regulation, GPO Directive 110.11C, Contractor Suspension and Debarment Procedures, dated January 10, 2013, was based on FAR Subpart 9.4 as that subpart was structured in 2013. While GPO will not adopt FAR Subpart 9.4 merely by reference as that would delegate to an executive branch official the authority to set GPO policy, GPO will update its debarment regulation to include those minor revisions to FAR Subpart 9.4 that have occurred in the intervening eight years.

### Recommendation 4

*Update internal S&D directives, policies, procedures, guidance, and controls to include:*

- a. Timeframes for the various steps in processing suspension and debarment referrals, including, but not limited to, timeframes for the initial review and the final decision, and a requirement to document deviations from the established timeframes.*
- b. Quality control checks for the various steps in the suspension and debarment process, including, but not limited to, the complete official record, reconciliation of exclusion information, and duration of suspension and debarment periods.*
- c. Reviewing SAM (and the Exclusion List, if FAR Subpart 9.4 is not adopted) both after opening bids or proposals and immediately before awarding contracts.*

GPO concurs in part with this recommendation.

GPO will review its internal guidance to both Acquisitions Services and Customer Services, to ensure consistency of approach by all contracting personnel and to ensure that all contracting personnel know how and when to access both SAM and the GPO Exclusion List.<sup>1</sup> Further, GPO will ensure that an official administrative record is retained by the OGC for each S&D referral. As noted in its response to Recommendation 5, *infra*, the GPO will review the Exclusion List and SAM to confirm the validity of all listed contractors' status, and will recommend to the S&D official appropriate action to add or remove contractors as applicable.

We disagree, however, with the recommendation to adopt rigid, difficult to move timelines for consideration of these matters. As the draft report notes, GPO's debarment regulation does not contain mandatory timeframes or goals<sup>2</sup> for the various steps in processing suspension and debarment referrals and instead uses what the draft report describes as "vague terminology" such as "in a timely manner" and "promptly" when addressing timeframes. GPO's current debarment regulation, GPO Directive 110.11C, was based on FAR Subpart 9.4. The "vague terminology" referenced in the draft report is from FAR Subpart 9.4.<sup>3</sup>

The establishment of mandatory timelines as recommended in the draft report for processing actions is ill-advised for several reasons. First, each matter referred for S&D is unique<sup>4</sup> and, depending on the facts of the case and the contractor's response, processing

---

<sup>1</sup> GPO is pleased to note that the draft report identified no instances of GPO making contract awards to ineligible contractors.

<sup>2</sup> The draft report references OGC's purported goal to "complete S&D actions within 60 days of the referral." draft report at 17. There appears to have been a miscommunication during the OIG's discussions with OGC as no such goal exists.

<sup>3</sup> *Compare* GPO Directive 110.11C ¶8a(2) ("Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner;") *with* FAR § 9.406-1(a)(2) ("Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner."); *compare* GPO Directive 110.11C ¶10f(2) ("If debarment is not imposed, the Debarring Official shall promptly notify the contractor and any affiliates involved.") *with* FAR § 9.406-3 ("If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.").

<sup>4</sup> Just as every S&D referral is different, so is every investigation that led to the referral. Of the 5 referrals examined in the draft report where the beginning date of the investigation can be ascertained, the length of time taken to produce an investigative report has ranged from 326 days to 1,319 days with an average of 664 days. GPO recognizes that it would not be appropriate to establish mandatory investigatory deadlines, given the uncertainty of where the evidence in each case may lead, the availability of OIG investigatory resources, and the competing priorities of the OIG.

may take more time. Indeed, in the small sample studied in the draft report two of the referrals were subject to challenge in Federal court, another referral was stayed at the request of the Department of Justice and subsequently by the automatic stay provisions of 11 U.S.C. 362. Several other referrals resulted in administrative agreements that were negotiated by the parties. The debarment process is intended to be one that is “as informal as is practicable” while affording the contractor fundamental fairness and an opportunity to oppose the proposed action.<sup>5</sup> Setting mandatory time limits would be inconsistent with the informal nature of the process and provide no particular benefit to either the GPO or the contractors involved.

As noted in the draft report, the primary factor in the timeliness of processing referrals was the fact that only one OGC attorney was available to work on the referrals and that his time was often taken up with competing priorities. As with any organization of limited resources, the OGC must prioritize tasks and at times this means that matters of less priority must be deferred. However, with the recent hiring of another attorney versed in procurement matters, we anticipate that such referrals will be handled with less delay in the future.

The draft report’s finding at page 18 that GPO’s current administration of the S&D regulation means the potential for “higher prices and lower quality in procurements” is difficult to understand. In support of this conclusion, the draft report notes that eight vendors the IG referred for debarment and were in fact proposed for debarment were ineligible to compete for GPO contracts while a decision on debarment was pending. The purpose of making a contractor ineligible to compete following a proposed debarment is to protect the interests of the Government while the matter is being adjudicated. The draft report describes the pool of printing contractors as “already small” and speculates that reducing the pool during the S&D adjudicatory process would allow the remaining contractors to “exert extraordinary influence on prices.” (draft report at page 19.) The GPO has approximately 10,000 registered printing contractors. It is unclear how the temporary suspension of eight of them, even for an extended period of time, would exert extraordinary influence on the pricing or quality offered by the remaining 99.9 percent of the vendor pool.

#### Recommendation 5

*Review the Exclusion List and SAM records to confirm the validity of all listed contractors’ status, and take appropriate action to add or remove contractors as applicable.*

GPO concurs with this recommendation.

The OGC will review the GPO Exclusion List and SAM to confirm the validity of all listed contractors’ status and will recommend the S&D official take appropriate action to add or

---

<sup>5</sup> See, FAR §§ 9.406-5(b), 9.407-5(b)(1); GPO Directive 110.11C ¶¶ 10.b, 15(b)(1).

**MEMORANDUM**

Page 5

remove contractors as applicable. GPO will also reexamine the rationale for maintaining its own Exclusion List instead of relying exclusively on SAM.

If you have further questions about this matter, please contact Mr. Ric Davis, Acting Chief of Staff, at [rdavis@gpo.gov](mailto:rdavis@gpo.gov), if there are any questions regarding this information.

HUGH NATHANIAL HALPERN  
Director, U.S. Government Publishing Office

**cc:**  
**Deputy Director**  
**Acting Chief of Staff**