

TESTIMONY OF
THE HONORABLE DONALD A. GAMBATESA,
INSPECTOR GENERAL,
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES

USAID SUSPENSION AND DEBARMENT PROCESS

MARCH 18, 2010

Chairman Towns, Ranking Member Issa, Members of the Committee,
I am pleased to appear before you today to testify on behalf of the Office of
Inspector General (OIG) for the U.S. Agency for International Development
(USAID) and to be joined by my colleagues from other oversight

organizations and representatives of the agencies with whom we work to prevent fraud, waste, and abuse in agency programs and operations. Today, I would like to share our assessment of USAID's activities related to suspension and debarment.

USAID relies heavily on contractors and grant recipients to advance Agency goals and objectives and implement major development projects. From fiscal years (FY) 2003 to 2007, USAID awarded approximately \$4 billion in contracts and grants per annum. By acting in the public interest to suspend or debar underperforming firms and firms and individuals convicted of wrongdoing, USAID can help ensure the prudent use of taxpayer dollars by excluding these firms and individuals from Government-financed activities. It is therefore vital that the Agency maintain effective processes for (1) examining cases to determine whether to pursue suspension and debarment actions, (2) carrying out suspensions and debarments, and (3) using information about suspensions and debarments in contracting and grant-making processes. Shortcomings in the suspension and debarment process could result in missed opportunities for USAID to identify contractors and grantees that perform unacceptably and to prevent other agencies from experiencing decreased productivity, increased cost, or possible abuses caused by these contractors and grantees.

As you know, in October 2009, we concluded an audit of USAID's suspension and debarment practices for FY 2003 to 2007. Our audit found a number of problems with Agency practices and decision-making processes that constrain it from operating as effectively as it could.

USAID undertakes a range of actions to address poor performance and wrongdoing by contractors and grantees. These actions exist along a continuum that extends from denials of claims to contract terminations, and—in the most serious cases—from compliance agreements to suspensions and debarments. The serious nature of suspension and debarment requires that these exclusions be imposed only in support of the public interest and not solely as a response to past performance that could have been better. Our examination of USAID's suspension and debarment activities reveal no instances in which the Agency had pursued these sanctions with insufficient cause. Indeed, the subjects of eight of the Agency's nine suspension and debarment cases from FY 2003 to 2007 had been indicted or convicted in a civil or criminal proceeding.

Rather than applying these sanctions too broadly, USAID had not considered the use of suspension or debarment in all cases in which they might have been warranted. Over the period of our audit, USAID had limited consideration of suspension or debarment chiefly to entities subject

to indictments or convictions. Further, it had weighed these sanctions only in cases that had been investigated by our office. USAID did not take suspension or debarment actions in response to any other type of referral—such as those from our office in cases that had been declined for prosecution but nevertheless were candidates for suspension and debarment, or referrals from contracting officers or other Agency employees. In two cases, USAID did not take action to suspend or debar firms even when they had acknowledged making significant false and inflated claims for reimbursement. Nor did it seek suspension or debarment of any entities on the sole basis of a demonstrated pattern of serious and continuing unsatisfactory performance or unsuitability.

This limited approach to considering suspensions and debarments led USAID to apply these sanctions in relatively few cases. During the period covered by our audit, USAID documented or reported suspension actions in only two cases and debarment actions in only seven. These actions applied to \$378.5 million in grants and contracts out of an estimated total of \$20 billion during the period.

When USAID did pursue suspension and debarment actions, it did not always execute them properly. In particular, USAID did not routinely abide by Federal guidelines on providing notice of its final debarment

decisions, entering suspension and debarment information into the Federal database of excluded parties, or documenting the actions it took.

USAID is required to formally notify contractors of final debarment decisions within 30 days of procurement debarments and within 45 days of nonprocurement debarments. However, USAID met those time standards in only one of its six documented debarment cases. In three cases, the Agency never sent final notices of debarment to contractors. USAID's failure to do so could have created uncertainty about its actions and provided affected contractors with a basis to contest their ineligibility to compete for and receive Federal awards.

As you know, a key step in the process of effectively suspending or debarring an organization from Government contracts and awards is listing the entity in the Excluded Parties List System (EPLS)—the system for tracking entities that have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded or disqualified. By entering information into EPLS, USAID can help ensure that its personnel and those of other agencies do not award funds to suspended and debarred entities. Federal agencies are required to enter information about their exclusion actions in EPLS within 5 workdays. Despite this requirement, we found that the Agency had taken longer to list excluded entities in EPLS in

six of nine cases. In one case, it did not enter complete information, and omitted four debarred entities from EPLS.

In another case, we had difficulty discerning what steps, if any, the Agency had taken to implement a debarment decision because the division responsible for maintaining debarment records had no documentation of the matter. This instance of poor recordkeeping appeared to be part of a troubling pattern arising from a lack of standard documentation procedures and inattention to proper record-retention practices.

Finally, we found that USAID had not consistently used available information on excluded firms to inform its contracting processes. Federal agencies must perform EPLS checks at two points before awarding funds: during the bidding process and during the award process. To determine whether USAID had consulted EPLS as required, we reviewed a random sample of Agency contracts. We found that USAID generally lacked documentation that it had checked EPLS during the bidding process, and documentation of such checks during the award process was inconsistent. USAID could not establish that it had performed required EPLS checks at any point for 20 of the 54 contracts we examined.

Given the Agency's limited consultation of EPLS during the contracting process, we were concerned that it may have awarded funds to

entities precluded from receiving them. Fortunately, our analysis of USAID acquisition and assistance records found no instances in which the Agency had engaged in business with excluded parties listed in the system.

USAID relies on primary contractors to certify that their personnel and subcontractors are eligible to receive Federal funds. Primary contractors must certify that they are sufficiently responsible to carry out a Federal contract and not restricted from so doing. However, USAID did not always ensure that its contractors provided such self-certifications, as 15 of the 54 contracts we reviewed did not have completed certifications.

Taken together, our findings present significant opportunities for USAID to improve the effectiveness of the suspension and debarment process. We believe that the organizational approach to suspension and debarment that the Agency has taken has reduced its ability to effectively use these exclusions. At the time of the audit, USAID had concentrated responsibility for the review, approval, and implementation of these exclusion actions in the hands of offices and individuals with many varied responsibilities, which may take their attention away from suspension and debarment responsibilities. At the working level, suspension and debarment activities were managed by a division with 17 other significant responsibilities. At the time of our review, this division had no full-time

staff dedicated exclusively to suspension and debarment matters. USAID's suspension and debarment official was also its senior procurement executive and the Director of the Office of Acquisition and Assistance.

We surveyed six other Federal agencies with active suspension and debarment programs and learned that four of them had established divisions or offices specifically dedicated to debarment activities. These units had full-time, dedicated personnel and legal support. We recommended that USAID consider adopting a similar organizational approach.

Overall, our report made 12 recommendations for improvements to the policies, procedures, and approach that the Agency has taken with respect to exclusion actions. USAID managers agreed with nine of our recommendations and planned steps to address them. The Agency is still considering recommendations on enhancing its focus on suspension and debarment procedures and adopting best practices. As of March 15, 2010, USAID has not taken final action to close any of the audit's recommendations.

Suspension and debarment are not the only tools available to USAID for addressing concerns about contractor and grantee performance, and we recognize that these sanctions should be applied judiciously. The scope and scale of many performance issues may call for less severe measures.

However, we believe that the Agency should consider suspension and debarment actions in more cases and develop more effective procedures and approaches for pursuing them. Current limitations in USAID's approach constrain the Agency's contributions to a system that supports the public interest and adds to the fundamental fairness of Government contracting and grant making.

USAID has many skilled and capable employees who demonstrate their commitment to the Agency's mission every day. The Agency partners with a host of corporations, nonprofits, and private voluntary organizations that demonstrate a similar dedication to their work and provide high-quality services and support. By excluding ineligible suppliers and contractors from USAID-financed activities, USAID's suspension and debarment process reinforces the credibility and effectiveness of the Agency's efforts and those of its implementing partners. The Agency's suspension and debarment process also helps other Federal agencies avoid doing business with firms that have serious performance and ethical issues. We look forward to continuing to work with USAID to strengthen its suspension and debarment efforts in support of these ends.

I thank you for this opportunity to address the committee and appreciate your interest in our work. I would be happy to answer any questions you may have at this time.