



OFFICE OF INSPECTOR GENERAL



DEPARTMENT OF THE INTERIOR

# RECOVERY OVERSIGHT ADVISORY

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## RECOVERY OVERSIGHT OFFICE

Washington, DC 20240

April 3, 2009

To: Chris Henderson  
Department Recovery Act Coordinator

From: Robert A. Knox   
Assistant Inspector General, Recovery Oversight

Subject: Recovery Oversight Advisory – Department Manual on Allowing Federal Assistance Applications from Suspended and Debarred Applicants (ROO-ROA-MOA-1001-2009)

Congress provided us with funding to oversee and ensure accountability of the \$3 billion appropriated to the Department of the Interior (Department) in the American Recovery and Reinvestment Act (Recovery Act or Act). To help safeguard these taxpayer dollars, we will focus on: preventing fraud, waste, and abuse of recovery and reinvestment dollars; early detection to reduce the impact of such misuse when it does occur; and ensuring transparency in our oversight efforts. In a spirit of collaboration with the Department as it implements the massive programs envisioned under the Act, this advisory informs you of concerns we have regarding 505 Departmental Manual (DM) 2.16 as it relates to applications for federal assistance from suspended and debarred entities.

Suspension and debarment are powerful tools, when they work properly, to protect the government – and the American taxpayer – from doing business with dishonest, unethical, or otherwise irresponsible entities or individuals. The risks of fraud, waste, and abuse under the Recovery Act are heightened due to the expedited awarding timeframes, large dollar values, and extensive reporting requirements under the Act. The Department can help to protect itself from such misuse of Recovery Act dollars by using every tool it has at its disposal—including suspension and debarment.

The government may debar (i.e., exclude) an entity from doing business with the government when investigations reveal that the entity lacks “present responsibility.” Causes for such a characterization include serious failure to perform the terms of a contract and a range of other offenses. When grounds for debarment are suspected and an investigation is pending, an entity may be suspended from doing business with the government. Suspensions and debarments apply government wide—one agency’s suspension or debarment decision precludes all other agencies from doing business with an excluded party. Further, suspension and debarment applies to contracts, grants, loans, and other non-procurement transactions. Agencies generally do not impose suspension and debarment penalties lightly. A suspension may be imposed only when an agency determines that immediate action is necessary to protect the government’s interests. Adequate evidence is needed for both suspensions and debarments.

We believe the Department should take every precaution to avoid doing business with suspended and debarred entities, particularly in light of the scrutiny the Department’s Recovery Act programs and operations are under. Additionally, President Obama recently emphasized in a

memo issued March 20, 2009 that merit-based selection criteria should be used when making awards, including a “demonstrated or potential ability to deliver programmatic results.”

However, the Departmental Manual (505 DM 2.16) permits offices making federal assistance awards to consider applications from suspended and debarred entities. The manual specifically provides:

Submissions from debarred or suspended applicants may be considered and reviewed because the applicant’s debarred or suspended status may change between proposal submission and actual award. However, awards may not be made to applicants who remain debarred or suspended at the time the award would be made.

As currently constructed, 505 DM 2.16 seems to leave to the discretion of Bureaus and awarding offices whether to consider a suspended or debarred entity when making an award. We believe this policy unduly places the Department’s federal assistance programs at risk. The tight timeframes and significant funds awarded under the Recovery Act augment this risk. Further, we are concerned that these circumstances could send mixed messages to Department employees, Congress, and the public about the Department’s diligence with respect to financial assistance awards under the Recovery Act.

Based on our experience in the acquisition integrity arena and work conducted by other accountability organizations, we believe that consideration of suspended and debarred entities should be the rare exception – and require rigorous justification – rather than the rule. The Government Accountability Office (GAO) recently reported that federal agencies awarded contracts and other funds to entities guilty of egregious offenses, including national security violations and tax fraud (GAO-09-174). Such awards were often made because agency officials failed to search the Excluded Parties List System (EPLS) or because the offender was not listed in the system. In rare cases where there are extenuating circumstances, agencies may issue an exclusion or compelling reason waiver, which would allow an entity to do business with the government.

Procurement officials in the Department and Bureaus have raised this same concern regarding the risk placed on the government by the Departmental Manual requirement.

We recommend that the Department:

- 1) Immediately develop and issue guidance prohibiting bureaus and offices that make federal assistance awards under the Recovery Act from considering applications from suspended or debarred entities; and
- 2) Revise the Department Manual to exclude suspended and debarred entities from consideration for financial assistance awards, consistent with policies set forth in the Code of Federal Regulations.

Please provide, by May 1, 2009, a written response to this advisory detailing the corrective actions the Department plans to take to implement the recommendations, targeted completion dates, and title(s) of officials responsible for implementation.

We are available to assist the Department in undertaking the recommended initiatives. If you have any questions, or would like a more detailed briefing, please do not hesitate to contact me at (202) 531-6231 or [robert\\_knox@doioig.gov](mailto:robert_knox@doioig.gov).

cc:     Acting Assistant Secretary – Policy, Management and Budget  
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