



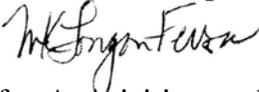
# Memorandum

**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **INFORMATION:** Management Advisory—  
Suspended or Debarred Firms Are Listed on State  
DBE Directories as Eligible for DBE Participation

Date: September 24, 2013

From: Mary Kay Langan-Feirson   
Assistant Inspector General for Acquisition and  
Procurement Audits

Reply to  
Attn. of: JA-60

To: Director, Departmental Office of Civil Rights  
Director, Office of Small and Disadvantaged Business Utilization  
Acting General Counsel, Office of the General Counsel

The Department of Transportation (DOT) Office of Inspector General (OIG) is providing this advisory to inform you of an issue related to our recent audit of the Department's Disadvantaged Business Enterprises (DBE) program<sup>1</sup> and our ongoing audit of the Suspension and Debarment (S&D) program<sup>2</sup> that warrants immediate attention. Specifically, our review of 26 State DBE directories identified 3 suspended or debarred firms that are listed in State DBE directories as eligible to participate in the DBE program. Federal regulations explicitly exclude suspended or debarred firms from receiving federally funded contracts.<sup>3</sup> Because DOT lacks sufficient DBE guidance to help State and local transportation agencies safeguard against federally funded awards to firms that are suspended or debarred, instances like those we found point to the possibility that other ineligible firms may be listed on State DBE directories. In addition, DBE certification and oversight weaknesses further increase the risk that DBE work may be awarded to suspended or debarred firms.

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<sup>1</sup> The DBE program was created to help socially and economically disadvantaged individuals who own and control small businesses to participate in contracting opportunities within DOT financial assistance programs.

<sup>2</sup> OIG Project No. 13Z3004Z000, announced March 13, 2013. Suspensions and debarments are actions taken to exclude firms or individuals from receiving Federal contracts or assistance, as a result of actual or alleged contractor misconduct such as poor performance, fraud, corruption, bribery, or Federal tax delinquency.

<sup>3</sup> 2 Code of Federal Regulations (CFR) § 180.

The observations in this advisory could serve to strengthen the Department's controls for preventing suspended or debarred firms from receiving federally funded DBE awards. Our detailed observations are included below.

### **THREE SUSPENDED OR DEBARRED FIRMS ARE LISTED IN STATE DIRECTORIES AS ELIGIBLE FOR DBE PARTICIPATION**

DBE program regulations require State and local transportation agencies to maintain DBE directories that list all firms eligible to participate in the DBE program. However, our review of 26 State DBE directories identified 3 suspended or debarred firms that should be excluded from receiving federally funded contracts. Specifically, we compared the firms in 26 State DBE directories<sup>4</sup> to those in the Governmentwide excluded parties list—called the System for Award Management (SAM)—with active exclusion actions as of July 2, 2013. Exclusion actions include suspension, suspension with proposed debarment, debarment, and voluntary exclusion. These actions are a result of actual or alleged contractor misconduct, such as poor performance, fraud, corruption, bribery, or Federal tax delinquency. Our review found that the following three firms with active exclusion actions were included in five State DBE directories:

- **FIRM A** is listed in three States' DBE directories—New York, New Jersey, and Maryland. However, the Federal Highways Administration suspended this firm with proposed debarment on February 3, 2012, as a result of a mail fraud indictment; the firm was officially debarred on June 12, 2013. The owner of Firm A, a DBE firm, made false statements claiming to have supplied structural steel on Federal contracts when in reality a non-DBE contractor had provided the steel. These false statements allowed the non-DBE contractor to claim as much as \$6 million toward its DBE goals.<sup>5</sup> The officials from the Port Authority of New York/New Jersey informed us that they are currently working on a letter intended to decertify Firm A. However, Maryland's DBE certifying agency was unaware of the firm's active debarment. The firm remains on the three States' DBE directories—20 months after the firm was first suspended—increasing the risk that the firm could be awarded federally funded DBE work.
- **FIRM B** is listed in New York's DBE directory. However, the General Services Administration suspended the firm on June 17, 2013, as a result of implication by affiliation with another firm that was accused of falsifying corporate and tax documentation with the intent to defraud. New York Department of Transportation (NYDOT) officials were unaware of the firm's suspension until we spoke with

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<sup>4</sup> We reviewed all State DBE directories that could be readily exported for comparison with the Governmentwide excluded parties list (SAM). See exhibit A for a list of these 26 States.

<sup>5</sup> States sometimes establish individual DBE participation goals for individual contracts. Contractors are required to make a good faith effort to meet these goals.

them about our finding. About 2 months before Firm B's suspension became effective, it was awarded an \$8.1-million DBE subcontract as part of a \$146-million bridge rehabilitation contract.<sup>6</sup>

- **FIRM C** is listed in Texas's DBE directory. However, the Department of Labor debarred this firm on February 2, 2012, due to a violation of the Service Contract Act for failing to pay federally required wages on a service contract. Officials from South Central Texas Regional Certification Agency were unaware of the firm's active debarment.

We identified the 3 firms in a limited search of 26 State DBE directories; therefore, it is possible that more suspended or debarred firms may be listed in other States' DBE directories as eligible to participate in the DBE program. The methodology we used required exact matches in firms' names—for example, a search for "AB Construction" in SAM would not have included results for "A.B. Construction." Therefore, the total number of suspended or debarred firms currently listed in State DBE directories may be significantly higher than our initial review indicates.

## **THE DBE PROGRAM DOES NOT HAVE ADEQUATE POLICIES AND GUIDANCE TO PROTECT AGAINST FEDERALLY FUNDED AWARDS TO SUSPENDED OR DEBARRED FIRMS**

In our April 23, 2013, audit report on the Department's DBE program, we reported that the Department lacks comprehensive and standardized DBE program guidance for the State and local transportation agencies (known as recipients) that implement the DBE program.<sup>7</sup> Our recent work has shown that DOT also lacks sufficient DBE guidance and training to safeguard against federally funded awards to firms that are suspended or debarred.

DOT does not provide guidance to recipients regarding the suspension and debarment of DBE firms. For example, DBE regulations do not specify whether recipients should decertify suspended or debarred firms—that is, revoke the firms' eligibility to participate in the DBE program. As a result, NYDOT was unsure whether to decertify Firm B after learning that the firm had been suspended. On September 6, 2012, the Department issued a Notice of Proposed Rulemaking (NPRM) to seek comments on the relationship between decertification and suspension and debarment. However, the Department has not yet issued its final rule. In addition, the DBE regulation and DOT's online Q&A guidance do not reference the Federal regulations on Debarment,

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<sup>6</sup> Although a suspended or debarred firm can continue to work on contracts awarded before an exclusion action is effective, Federal regulations prohibit renewals or extensions to the original contract.

<sup>7</sup> *Weaknesses in the Department's Disadvantaged Business Enterprise Program Limit Achievement of Its Objectives* (OIG Report No. ZA-2013-072), Apr. 23, 2013. OIG reports are available on our Web site at <http://www.oig.dot.gov>.

Suspension, and Ineligibility,<sup>8</sup> and the DBE Program does not provide training on suspension and debarment.

Without adequate guidance or training, recipients may not know the appropriate actions to take when a DBE firm is suspended or debarred. For example, after we notified NYDOT of Firm B's suspension, the agency was uncertain how to proceed with a planned \$8.1-million DBE subcontract awarded to that firm. NYDOT's contracting staff had checked for Firm B in SAM before awarding the subcontract. However, Firm B's suspension was not in effect at the time, so the firm was not yet on the list. According to Federal regulations,<sup>9</sup> a suspended or debarred firm is allowed to continue to work on contracts that were awarded before an exclusion action; however, the regulations prohibit renewals or extensions to the original contract. Without guidance from DOT, the agency's contracting staff risked unknowingly violating Federal regulations by adding new work to the DBE subcontract.

Further, DOT has not established a process for alerting recipients of suspended or debarred firms, which would help prevent firms that are ineligible for Federal contracts from being listed in State DBE directories as eligible for DBE participation. DOT's Office of Civil Rights has recently implemented a nationwide DBE Ineligibility Determination Online Database, which all recipient certifying agencies can access. The certifying agencies enter the names of firms whose DBE certifications have been denied or revoked into this database. Each certifying agency is also required to check the database every month for firms that are applying for DBE certification, or are already certified, with the agency. DOT could consider entering the names of suspended and debarred firms into this existing database to help alert recipients of these firms.

## **EFFORTS TO STRENGTHEN DBE CERTIFICATION AND OVERSIGHT CONTROLS COULD REDUCE THE RISK OF INELIGIBLE FIRMS RECEIVING FEDERAL FUNDS**

In our April 2013 report, we reported weaknesses in recipient DBE certification and oversight practices—particularly regarding annual affidavits of no change and on-site certification reviews. The Department's ongoing efforts to strengthen these practices—in response to our recommendations—could help prevent ineligible firms from receiving federally funded DBE awards. .

We reported that recipients frequently do not enforce the requirement that firms submit annual affidavits of no change. These affidavits are forms disclosing whether there are material changes in the information that the firms provided in their

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<sup>8</sup> 2 CFR § 180 and 1200.

<sup>9</sup> 2 CFR § 180.315.

certification applications or any other changes in circumstances that affect their ability to meet DBE eligibility requirements. The DBE certification application specifically asks whether a firm or any of its owners have ever been suspended or debarred. Therefore, suspended or debarred DBE firms must disclose their excluded status on annual affidavits, or risk penalty or perjury under United States law. Our discussions with recipients determined that Firm A and Firm C did not submit their required annual affidavits; yet, the firms remain certified despite noncompliance with DBE regulations. If done correctly, annual affidavits could alert recipients of firms' suspensions and debarments. However, firms do not always honestly and accurately complete these forms. For example, Firm B submitted its annual affidavit 6 days after its suspension became effective but did not disclose that it had been suspended.

We also reported that recipients do not consistently perform required on-site certification reviews to verify statements in a firm's DBE certification application or annual affidavit. These on-site reviews can involve visits to the office of the firm, interviews with the principal officers, reviews of equipment and licenses, and visits to job sites. In a January 2011 final rule on DBE regulations, DOT stated that regular on-site certification reviews are an extremely important tool to help recipients prevent fraudulent firms or firms that no longer meet eligibility requirements from participating in the DBE program. However, the Department did not mandate how often recipients were to conduct these reviews. Our review determined that the most recent on-site certification reviews for Firms A, B, and C were performed in 2008—5 years ago.

Annual affidavits of no change and on-site reviews are additional control tools to help detect falsified information on firms' certification applications and annual affidavits. Thus, efforts to strengthen these practices could discourage firms from making dishonest statements about their excluded status and help prevent suspended and debarred firms from receiving federally funded DBE awards.

## **CONCLUSION**

Suspension and debarment actions are among the Government's strongest tools to deter unethical and unlawful use of Federal funds. Since DOT distributes several billion dollars annually through its DBE program, it is important that the Department strengthen its controls to ensure that suspended and debarred firms—such as those identified in our ongoing review—do not participate in the DBE program. The Department should consider the observations in this management advisory as it develops additional DBE guidance and training to address recommendations from our April 2013 audit report.

Thank you for your attention to these important issues. If you have any questions regarding this review, please contact me at (202) 366-5225 or Terry Letko, Program Director, at (202) 366-1478.

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cc: Deputy Secretary (S-2)  
DOT Audit Liaison (M-1)

**EXHIBIT A. 26 STATE DBE DIRECTORIES REVIEWED**

1. Alabama
2. Alaska
3. Arizona
4. California
5. Colorado
6. Delaware
7. Florida
8. Georgia
9. Idaho
10. Illinois
11. Indiana
12. Maine
13. Maryland
14. Massachusetts
15. Michigan
16. Minnesota
17. Missouri
18. Montana
19. New Jersey
20. New Mexico
21. New York
22. North Carolina
23. Rhode island
24. South Carolina
25. Vermont
26. Washington