
Office of Inspector General

Audit Report

DOT'S SUSPENSION AND DEBARMENT PROGRAM CONTINUES TO HAVE INSUFFICIENT CONTROLS

Department of Transportation

Report Number: ZA-2015-003

Date Issued: October 15, 2014





Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION**: DOT's Suspension and Debarment
Program Continues To Have Insufficient Controls
Department of Transportation
Report No. ZA-2015-003

Date: October 15, 2014

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

Reply to
Attn. of: JA-60

To: DOT Senior Procurement Executive
Federal Aviation Administrator

The Department of Transportation (DOT) is responsible for overseeing billions in contract and grant obligations each year. As a steward of taxpayer dollars, DOT must adhere to Federal suspension and debarment (S&D) regulations, which exclude parties¹ found to be unethical, dishonest, or otherwise irresponsible from receiving contracts and grants involving Federal funds. S&D actions are among the Government's strongest tools to deter unethical and unlawful use of Federal funds because one Federal agency's S&D action applies governmentwide. Consequently, it is important that DOT make timely S&D decisions and accurately and timely report its decisions to the governmentwide S&D System for Award Management (SAM), previously known as the Excluded Parties List System (EPLS).² Timely and accurate reporting ensures that agencies are not awarding contracts or grants to irresponsible parties.

In January 2010, we reported that DOT's S&D program lacked the controls needed to prevent awards of Federal contracts and grants to excluded parties.³

¹ In this report, we use the term "parties" to refer to businesses, individuals, nonprofits, State and local governments, and other entities subject to suspension and debarment. An excluded party is a party that has been suspended, debarred, voluntarily excluded, or otherwise prohibited from receiving Federal awards, certain subcontracts, or certain types of Federal assistance and benefits across the Government.

² We used "SAM" throughout this report to refer to both the current and prior governmentwide S&D systems—SAM and EPLS, respectively. Our audit analysis involved some S&D cases that occurred before the transition from EPLS to SAM. The transition began in July 2012, but EPLS was shut down in November 2012.

³ *DOT's Suspension and Debarment Program Does Not Safeguard Against Awards to Improper Parties* (OIG Report Number ZA-2010-34), Jan. 7, 2010. OIG reports are available on our Web site at: www.oig.dot.gov.

Specifically, we found significant delays in DOT's S&D decision making and reporting and that its S&D policies, procedures, and internal controls were inadequate to safeguard against Federal awards to excluded parties.⁴ In August 2011, the Government Accountability Office (GAO) reported similar deficiencies across the Federal agencies it reviewed, including a lack of dedicated S&D programs with full-time staff and insufficient S&D policies and procedures.⁵ To help strengthen Federal agencies' S&D programs, the Office of Management and Budget (OMB) issued a memorandum in 2011 directing agencies to enhance their S&D performance.⁶ GAO conducted a follow-up review and reported in May 2014 that the agencies who took action based on its 2011 report recommendations—such as adding positions and defining roles and responsibilities—had notable increases in suspensions and debarments.⁷

Given the deficiencies we previously identified in DOT's S&D policies and procedures and OMB's emphasis on improving agencies' S&D performance, we conducted a follow-up review of the DOT S&D program. Specifically, our objectives were to assess (1) the timeliness of DOT's decisions to suspend, debar, or take other S&D actions and (2) the timeliness and accuracy of DOT's reports to the governmentwide S&D system.

We conducted this review between March 2013 and September 2014 in accordance with generally accepted Government auditing standards. To conduct our audit, we reviewed Federal and DOT S&D policies, interviewed representatives from the Department's Office of the Senior Procurement Executive (OSPE) and Operating Administrations,⁸ and analyzed data from the DOT S&D system and SAM to determine if the Department complied with Federal and DOT S&D requirements. Our audit universe included all 218 S&D parties listed in the DOT S&D system as of June 20, 2013.⁹ Exhibit A provides additional details on our scope and methodology.

⁴ The Department has addressed all six of our recommendations from the 2010 audit report.

⁵ GAO, *Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved* (GAO 11-739), Aug. 2011. DOT was not included in this review.

⁶ OMB memorandum M-12-02, *Suspension and Debarment of Federal Contractors and Grantees*, Nov. 15, 2011.

⁷ GAO, *Agencies Have Taken Steps to Improve Suspension and Debarment Programs* (GAO-14-513), May 2014. DOT was not included in this review.

⁸ Our review included 11 Operating Administrations that participate in DOT's S&D program: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Pipeline and Hazardous Materials Safety Administration (PHMSA), Research and Innovative Technology Administration (RITA), St. Lawrence Seaway Development Corporation (SLSDC), and the Office of the Secretary (OST).

⁹ Of the 218 parties, 141 are associated with S&D cases assigned to FHWA. The remaining parties are broken down as follows: FTA (49), FAA (15), MARAD (8), NHTSA (3), and PHMSA (2).

RESULTS IN BRIEF

Despite the Department's actions to address the untimely S&D decisions and reporting identified in our 2010 audit, many of the Department's decisions to suspend, debar, or take other S&D actions continue to be untimely. DOT requires Operating Administrations to make these decisions within 45 days of notification of an S&D referral from the Office of Inspector General's Office of Investigations or other sources. However, our review determined that Operating Administrations' decisions for at least 87 of the 218 S&D parties (40 percent), entered into the DOT S&D system between April 2010 and April 2013, were made after the 45-day requirement—with delays averaging 205 days.¹⁰ In addition, significant data errors exist in the DOT S&D system. For example, FHWA officials stated that the system contained inaccurate data for 92 percent of its S&D parties in our universe, such as blank entries and incorrect dates in critical fields that the Department uses to assess the timeliness of Operating Administrations' S&D decisions. These data errors undermine the system's effectiveness as a management tool.

The Department continues to provide untimely and inaccurate reporting of its S&D actions to SAM. Federal regulations¹¹ require agencies to report exclusion actions, such as suspensions and debarments, into SAM within 3 days for procurement transactions (such as contract actions) and 5 days for non-procurement actions (such as grant-related actions).¹² Timely reporting to SAM helps ensure that Federal agencies do not award contracts and grants to suspended or debarred parties. DOT's S&D system reported exclusion actions for 144 of the 218 parties we reviewed; however, the Department did not report a significant number of the 144 excluded parties within the required timeframes. Additionally, the Department did not adequately reconcile and validate the data in the DOT S&D system with the data reported in SAM. Specifically, our review of all parties¹³ in the DOT S&D system identified seven parties that were listed as suspended or debarred in the DOT S&D system but were not included in SAM. By failing to report these data, the Department puts the Federal Government at risk of doing business with prohibited parties found to be unethical, dishonest, or irresponsible.

We are making a series of recommendations to strengthen DOT's S&D program.

¹⁰ Delays ranged from 2 to 1,373 days.

¹¹ Federal Acquisition Regulations (FAR) 9.404(c)(3) and 2 Code of Federal Regulations (CFR) § 180.520(c).

¹² Non-procurement transactions are transactions other than procurement contracts—such as grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, and subsidies.

¹³ For this analysis, we reviewed all 520 parties reported in the DOT S&D system as of June 20, 2013, including those with initial referral dates prior to April 1, 2010.

BACKGROUND

The purpose of the S&D program is to prevent the Government from doing business with parties found to be unethical, dishonest, or irresponsible. DOT Order 4200.5E, "Suspension and Debarment Procedures and Ineligibility," describes the Department's policies for implementing suspension, debarment, and ineligibility procedures and is intended to ensure DOT conducts a vigorous S&D program. Exhibit B summarizes key elements of Federal suspension and debarment policies.

DOT Operating Administrations are responsible for making timely decisions on S&D cases and reporting data into the DOT S&D system, which is used to track and monitor the Department's S&D activity. Within 45 calendar days of an S&D referral, Operating Administrations are required to evaluate case information and take one of the following actions:

- Initiate an exclusion action (a suspension, debarment, or suspension with proposed debarment), which excludes a party from receiving Federal contracts or grants;
- Accept a party's voluntary exclusion under settlement terms with the agency;
- Enter into a settlement agreement with the referred party, which outlines certain requirements the party must comply with in lieu of an exclusion; or
- Take no action.

OSPE reports new exclusion actions (along with updates to prior exclusion actions) to SAM, the governmentwide S&D data system managed by the General Services Administration. This reporting is intended to prevent excluded parties from receiving Federal awards, certain subcontracts, or certain types of Federal assistance and benefits across the Government.

In 2010, we reported that DOT's S&D decisions and reporting were significantly delayed due to inefficient processes and lack of resources dedicated to S&D workload. In addition, we found weaknesses in DOT's S&D policies, procedures, and internal controls, including unclear requirements for S&D decisions and insufficient oversight. In response to our 2010 report recommendations, the Department revised its S&D Order to delegate OSPE responsibility for program oversight, had Operating Administrations submit S&D implementation procedures, and clarified the 45-day requirement for making S&D decisions. In addition, the Department modified its DOT S&D system for use as a management tool and to meet reporting requirements. However, this follow-up review found additional weaknesses in program policy, controls, and implementation that continue to allow untimely decisions and reporting.

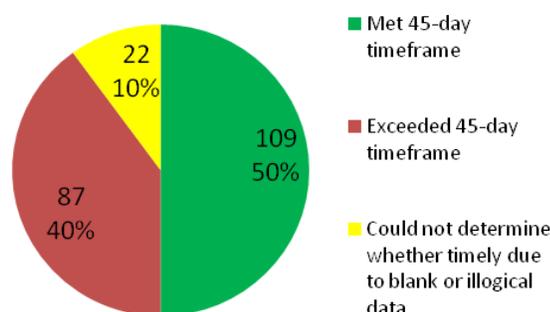
DOT DID NOT CONSISTENTLY MAKE TIMELY DECISIONS ON S&D ACTIONS

DOT requires the Operating Administrations to make an initial S&D decision within 45 days of notification of an S&D referral. However, Operating Administrations' decisions for at least 40 percent of the 218 S&D parties entered into the DOT S&D system between April 2010 and April 2013 were made after the 45-day requirement. OSPE relies on data in the DOT S&D system to monitor the timeliness of S&D decisions, but significant data errors undermine the system's effectiveness as a management tool.

DOT's S&D Decisions Continue To Exceed the 45-Day Timeframe

Our prior audit determined that delays with the majority of S&D decisions were due, in part, to unclear requirements in the DOT S&D Order. While the Department revised the Order to clarify the 45-day requirement as we recommended,¹⁴ S&D decisions continue to be delayed. Of the 218 parties entered into the DOT S&D system between April 2010 and April 2013, 87 (40 percent) had decisions that exceeded the 45-day timeframe (see figure 1 and table 1)—with delays ranging from 2 to 1,373 days and averaging 205 days. The DOT S&D system also contained blank data fields for 22 decisions, which prevented us from assessing their timeliness.

Figure 1. Timeliness of DOT's S&D Decisions, as Reported in the DOT S&D System



Source: OIG review of 218 parties in the DOT S&D system

¹⁴ In 2010, the Department revised its S&D Order to specify how to initiate an S&D action. The Order states that a debarment action is initiated by mailing, emailing, or faxing written notification of a proposed debarment and a suspension action is initiated by emailing, faxing, or mailing a written suspension notice. The Department may also fulfill the Order's requirement by taking one of the following actions within 45 days: accepting a party's voluntary exclusion under settlement terms with the agency; entering into a settlement agreement with the referred party; or determining that no action should be taken.

Table 1. Delayed S&D Decisions

	Number of days to make S&D decision after initial referral					
	46–100 days	101–150 days	151–200 days	201–364 days	365–730 days	731 days or more
Number of parties	23	22	7	17	16	2

Source: OIG review of the 87 parties in the DOT S&D system with decisions that exceeded the 45-day timeframe

According to DOT system data, at least 119 of the 218 parties were referred based on prior indictments or convictions. Decisions on such referrals should be straightforward, as Federal regulations and the DOT S&D Order state that a conviction or indictment constitutes adequate evidence for purposes of suspension or debarment actions. However, 42 percent of the decisions for these 119 parties exceeded the 45-day requirement—with delays ranging from 3 to 679 days and averaging 175 days.

In response to our 2010 recommendations, the Department delegated S&D program oversight responsibility to OSPE. However, our review identified weaknesses in OSPE's process for monitoring the timeliness of Operating Administrations' decisions. For example:

- Instead of regularly monitoring DOT's S&D system data, OSPE relies on system-generated email notifications that cases are delinquent. However, we found that the system failed to generate email notifications for some delinquent cases.
- The email notifications are based on milestone dates in the DOT S&D system, a system that we determined to be unreliable. Additionally, the Operating Administrations can edit the milestone dates to extend the time allowed to make a decision but are not required to document the reasons for the change.¹⁵ Further, OSPE has no guidance specifying acceptable reasons for extending the milestone.
- Although OSPE's S&D staff stated that they follow up on delinquent email notifications, table 1 on the previous page shows that decisions for 64 parties were delayed by over 100 days—indicating that OSPE's efforts to address the delinquent decisions were insufficient.

These weaknesses stem from a lack of comprehensive procedures or guidance detailing how OSPE should carry out its oversight responsibilities, which GAO

¹⁵ In a November 2013 S&D newsletter, OSPE encouraged milestone resets to prevent cases from being identified as delinquent.

states is an important characteristic of an effective S&D program. Although the Department revised the S&D Order and issued a Standard Operating Procedure for OSPE's oversight and management of the S&D program, it lacks detailed guidance on how OSPE should ensure data reliability for the DOT S&D system. For example, there is no documented process for OSPE to validate the Operating Administrations' entries in the system. The reliability of the DOT S&D system is important for accurately monitoring the timeliness of Operating Administrations' decisions.

In addition, OSPE has not required Operating Administrations to develop internal S&D policies and procedures.¹⁶ Only 5 of 11 Operating Administrations have developed S&D procedures, and 4 of these 5 have procedures that predate the March 2010 DOT S&D Order and have not been updated to reflect the Order as revised. Consequently, the Department lacks assurance that each Operating Administration is adequately enforcing the requirements delegated to them in the DOT S&D Order—such as making timely S&D decisions and reporting up-to-date data on its S&D activity into the DOT S&D system.

S&D System Data Errors Undermine OSPE's Efforts To Monitor Decision Timeliness

As part of its oversight duties, OSPE is responsible for verifying the accuracy and completeness of DOT S&D system data. Accurate and complete system data are critical because OSPE relies on the data to monitor the timeliness of Operating Administrations' S&D decisions. However, our review of the DOT S&D system identified significant data errors and omissions that undermine the system's effectiveness as a management tool and compromise the accuracy of reports that OSPE is required to submit annually to the Deputy Secretary and other stakeholders.

For example, when verifying our analysis of the 141 FHWA parties in our audit universe, FHWA identified inconsistencies between DOT S&D system data and FHWA's case files for 129 parties (92 percent). Many of these errors related to the initial decision date, which is used to calculate compliance with the 45-day requirement. For one party, FHWA's initial decision date was almost 16 months earlier than the date in the DOT S&D system. As a result of these errors, 23 parties initially identified as exceeding the 45-day requirement (based on the dates in the DOT S&D system) actually met the requirement (based on FHWA's data), and 17 parties identified as meeting the requirement actually exceeded it.¹⁷ In 2011,

¹⁶ According to the DOT S&D Order, Operating Administrations and Secretarial Offices "shall submit all new and revised procedures, *if any*, which implement any of the requirements of FAR Subpart 9.4, 2 C.F.R. Parts 180 and 1200, and this Order to the OSPE for review."

¹⁷ We revised our findings based on the dates provided by FHWA.

FHWA developed its own tracking log to record and manage its S&D activities and to compensate for errors in DOT's system.

Several control weaknesses underlie the deficiencies in the DOT S&D system:

- First, OPSE has been delegated responsibility to ensure the accuracy and completeness of the DOT S&D system data, but it lacks documented procedures to perform this review effectively. For example, although OSPE stated that it performs monthly reconciliations of system data, these reconciliations only request the Operating Administrations to verify total case counts reported in the system. Additionally, OSPE only reviews a limited number of data fields in system-generated reports and does not validate these data against supporting documentation. Therefore, OSPE's current methods are insufficient to ensure the accuracy and completeness of all system data.
- Second, OSPE has not adequately defined the type of data that each field is intended to capture, as there is no data dictionary to describe the fields. As a result, Operating Administrations are unsure what data to input into those fields—leading to significant discrepancies in the data. For example, OSPE officials could not tell us the difference between the “Action Date” and “S/D Start Date” fields, which both appear to capture the S&D action's effective date. In addition, FHWA S&D staff stated that the “Duration” field should capture a length of time (such as 5 months), but OSPE officials stated that it should be a date (such as January 1, 2014).
- Finally, OSPE is unclear about its role in managing, overseeing, and ensuring the accuracy of the DOT S&D system. A senior representative from OSPE's S&D office stated that the Chief Information Office (CIO) was the system owner and that OSPE staff had limited user rights. Therefore, OSPE staff could not explain the system's functions, or adjust incomplete or inaccurate data in the system. However, during subsequent discussions, the CIO officials told our office and OSPE S&D officials that OSPE was, in fact, the system owner and did have full user rights.

Data errors prevent OSPE from using the DOT S&D system as an effective management tool to help ensure that Operating Administrations comply with the 45-day timeframe for S&D decisions. Additionally, data errors compromise the accuracy of reports that OSPE is required to submit annually to the Deputy Secretary, other key Department executives, and the Interagency Suspension and Debarment Committee (ISDC),¹⁸ which reports to Congress on the status of Federal S&D activity. CIO officials stated that they plan to develop an alternative

¹⁸ The Interagency Suspension and Debarment Committee is comprised of executive branch organizations that work together to support S&D programs across the Government.

platform for the DOT S&D system—a process that they estimate will begin in fiscal year 2015.

OSPE DOES NOT ALWAYS REPORT TIMELY AND ACCURATE DATA ON DOT’S EXCLUSION ACTIONS INTO SAM

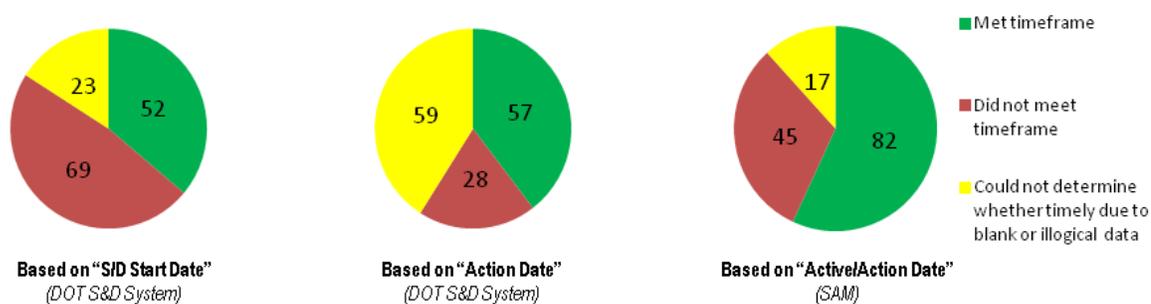
The Department continues to provide untimely and inaccurate reporting to SAM. Additionally, OSPE does not adequately reconcile and validate the DOT S&D system data with SAM entries to ensure the accuracy of the data it reports.

The Department’s Reporting to SAM Continues To Be Untimely

Federal regulations require agencies to report exclusion actions into SAM after the exclusions become effective—within 3 days for procurement transactions and 5 days for non-procurement actions. Although OSPE is responsible for this reporting requirement, it did not report a significant number of the 144 excluded parties that we reviewed within these required timeframes.

To assess the timeliness of OSPE’s reporting for these 144 parties, we planned to compare the dates the exclusion actions became effective with the dates the exclusions were entered into SAM. However, OSPE and the Operating Administrations could not tell us definitively which data field in the DOT S&D system contained the exclusion action effective dates. Accordingly, we conducted our assessment using three data sources that could potentially contain the exclusion action effective dates: the “S/D Start Date” and “Action Date” fields in the DOT S&D system and the “Active/Action Date” field in SAM. Regardless of which data fields we used, our results show that OSPE did not meet federally mandated timeframes for just over half of the Department’s exclusion actions (see figure 2).

Figure 2. Timeliness of OSPE’s Entry of Exclusion Actions in SAM



Source: OIG analysis of the 144 excluded parties in the DOT S&D system

In many cases, OSPE exceeded the federally mandated timeframes for entering exclusion actions—with average delays ranging from 61 to 156 days depending on the data field used (see table 2). In addition, blank or illogical¹⁹ entries in all three data fields prevented us from assessing the timeliness of OSPE’s reporting for some exclusion actions.

Table 2. Average Number of Days OSPE Exceeded 3/5 Day Mandated Reporting Timeframes

Data field	Data system	Average number of days OSPE exceeded timeframes
S/D Start Date	DOT S&D system	156
Action Date	DOT S&D system	78
Active/Action Date	SAM	61

Source: OIG analysis of the 144 excluded parties in the DOT S&D system

These delays are attributable in part to ambiguous reporting requirements in the DOT S&D Order. Although the Order outlines a process for S&D reporting, the language is vague and does not accurately reflect Federal timeframes or the transition to SAM. For example, the Order directs the Operating Administrations to “promptly” notify OPSE after making exclusion decisions. However, because the Order does not define what length of time would be considered “prompt,” it is not clear how many days Operating Administrations have to notify OSPE to ensure that the Department meets the 3- or 5-day reporting requirement. Furthermore, the Order directs OSPE to report *all* exclusion actions to SAM within 5 days of a decision, which does not reflect the current Federal timeframe of 3 days for procurement-related exclusions (effective April 2010).

Additionally, we reported in 2010 that the Operating Administrations delayed notification of exclusion decisions to OSPE. Our current review determined that these delays persist—contributing to untimely reporting to SAM. For example, MARAD debarred two parties for 3 years but did not notify OSPE to report them in SAM until approximately 5 months after the exclusions became effective.

OSPE’s Reviews Did Not Detect or Resolve Significant Data Discrepancies That Resulted in Inaccurate Reporting in SAM

In response to our 2010 report recommendation, the Department revised the DOT S&D Order to require OSPE to periodically reconcile and validate data from the DOT S&D system and SAM. This internal control is intended to ensure that data are accurately and completely reported. However, OSPE’s reviews did not detect

¹⁹ For some entries, the exclusion action effective dates came a year or more after the exclusions were entered in SAM.

or resolve significant data discrepancies—putting the Federal Government at risk of doing business with prohibited parties. Specifically:

- OSPE did not report seven excluded parties to SAM, even though they were listed as suspended or debarred in the DOT S&D system. Prior OSPE reconciliation reviews found that at least four of these parties were not reported in SAM. However, OSPE did not take corrective action, and the parties remained unreported until we identified them during our review. For example, one of the seven parties was suspended in November 2010 but was not reported in SAM until November 2013—3 years later. Once we notified the Department, OSPE entered the seven parties into SAM.
- DOT’s SAM entries contain numerous spelling errors and incorrect or incomplete data. For example, OSPE entered Shire Corporation, a suspended party, in SAM as “Shrine” and did not enter the company’s DUNS number.²⁰ Accurate DUNS numbers and exact spellings²¹ of parties’ names are particularly critical for effective searches in SAM, as these are two primary ways to search for excluded parties.
- DOT had four excluded parties with duplicate entries in SAM, as of April 2014. For example, one party was originally listed in SAM as having an indefinite suspension, but the party was subsequently debarred with a definitive end date. Instead of updating the party’s original suspension entry, OSPE created a second entry in SAM for the debarment. Once the party’s debarment ends, the indefinite suspension entry will remain active as it has no end date. As a result, the party will be incorrectly listed in SAM as being excluded. At least one party complained to DOT about being erroneously excluded in SAM, which interfered with its ability to receive Federal awards.

OSPE’s reconciliations of the two systems were not effective to detect or resolve these errors in part because the office has not developed procedures or guidance on how to perform these reviews. OSPE’s S&D staff stated that they compare data in the two systems using a manual process, which is less efficient and more prone to human error than an automated process.

The Government’s 2012 transition from EPLS to SAM also created problems. According to an OSPE representative, DOT modeled its S&D system after the former EPLS system, so its data fields do not allow for a one-to-one match to the data fields in SAM. Under EPLS, OSPE was also able to transfer data electronically from the DOT S&D system. However, the conversion to SAM

²⁰ A Dun and Bradstreet Data Universal Numbering System (DUNS) number is a unique nine-digit identification number for each physical location of a business. A business must have a DUNS number registered with the Federal Government to receive Federal contracts or grants.

²¹ For example, a search for “AB Construction” would not include results for “A.B. Construction.”

disabled the electronic transfer process, causing OSPE to use a manual process to report data, elevating the risk of human error. OSPE plans to reestablish the electronic data transfer capability when funding becomes available.

Moreover, OSPE's S&D staff does not resolve issues identified during the reconciliations, and the OSPE S&D manager stated that she does not review the reconciliation results. OSPE has also not corrected data discrepancies reported by the Operating Administrations. For example, an FTA S&D official told us that the Agency had notified OSPE in November 2012 of errors related to eight parties, and OSPE said it had corrected the errors. However, our review determined that the errors remain uncorrected.

OSPE attributes the weaknesses in S&D program oversight to its lack of staffing resources and expertise. GAO reported that a dedicated program with full-time staff is a key characteristic of the most active and effective S&D programs.²² The senior OSPE official charged with overseeing the DOT S&D program stated that the office focuses on overseeing grant management, so oversight of the S&D program is a collateral duty. Consequently, OSPE has not fully carried out its S&D oversight responsibilities as outlined in the DOT S&D Order. For example:

- OSPE had not chaired required internal S&D meetings with DOT stakeholders to discuss issues, address concerns, and promote standard practices for S&D decisions and reporting. According to the DOT S&D Order, OSPE is required to regularly chair and document these meetings. In response to our current audit findings, OSPE held its first internal S&D meeting in March 2014. OSPE stated that it would hold these meetings quarterly.
- The DOT S&D Order requires Operating Administrations to require recipients to include a requirement, in all non-procurement agreements, that recipients report to the Operating Administration if they suspend or debar a party. Only PHMSA and FTA²³ include the requirement in their non-procurement agreements that recipients report suspensions and debarments they impose. OSPE does not provide adequate oversight to ensure that the Operating Administrations comply with the Order's requirements—increasing the risk that Federal funds could be awarded to suspended or debarred firms.
- In response to our 2010 audit, the Department revised its S&D Order, requiring Operating Administrations to direct recipients of non-procurement agreements to review the list of excluded parties in SAM before awarding any third-party assistance agreements or contracts. Previously, DOT's S&D Order stated that

²² GAO, *Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved* (GAO-11-739), Aug. 31, 2011. DOT was not included in this review.

²³ PHMSA had the requirement in place before we conducted our review. However, FTA updated its Master Agreement to include this requirement during our review.

Operating Administrations were to “encourage” recipients to utilize the list of excluded parties. OMB’s S&D guidance, which the Department implements through its S&D regulations, allows three methods for recipients to verify whether awardees are excluded. Checking SAM’s excluded parties list is one of those three.²⁴ Certain DOT Operating Administrations, such as FTA, have included language in their grant guidance to strongly recommend that their recipients check SAM to prevent awards to excluded parties. This best practice helps ensure that DOT funds are not awarded to excluded parties.

CONCLUSION

The S&D program is intended to provide immediate protection to the Government and taxpayers from those who engage in dishonest or illegal conduct or are lacking in business integrity. Although DOT has taken actions to strengthen its S&D program since our 2010 report—such as delegating program oversight to OPSE—problems with delayed S&D decisions and untimely and inaccurate reporting persist. Sustained management attention is needed to ensure that the Department complies with Federal S&D requirements and its own S&D program. By improving its S&D oversight procedures, DOT will be better positioned to protect the Government from doing business with prohibited parties, and prevent the unethical and unlawful use of Federal funds.

RECOMMENDATIONS

We recommend that the Senior Procurement Executive take the following actions:

1. Implement a detailed process for OSPE staff to regularly evaluate Operating Administrations’ compliance with departmental and Federal timeframes for (a) initiating an S&D action (within the DOT S&D Order 45-day requirement) and (b) reporting to SAM (3 days for procurement actions; 5 days for non-procurement actions). This process should include follow-up actions to correct instances of noncompliance.
2. Require all Operating Administrations to establish or update their S&D procedures to implement Federal S&D requirements and the DOT S&D Order, including:
 - a. requiring recipients to report exclusions and

²⁴ The three methods for ensuring a potential recipient is not excluded or disqualified are: (1) checking SAM, (2) collecting a certification from that person, or (3) adding a clause or condition to the covered transaction with that person.

- b. strongly recommending that recipients of non-procurement agreements check SAM before awarding third-party assistance agreements or contracts.
3. Implement detailed procedures for regularly verifying the accuracy and completeness of the data reported to the DOT S&D system—including, at a minimum, the key data fields needed for OSPE to assess the timeliness of decisions and reporting.
4. Develop a data dictionary for the DOT S&D system that defines each data field and identifies which fields to populate. Make this data dictionary available to all relevant stakeholders and include it in DOT S&D system training.
5. Revise the DOT S&D Order to reflect the transition to SAM—including revised Federal timeframes for entering data into SAM.
6. Implement a detailed process for OSPE staff to regularly reconcile data in the DOT S&D system and SAM—including steps for identifying and correcting data discrepancies. Using this new process, complete a comprehensive reconciliation of data in the DOT S&D system and SAM, and correct any discrepancies.
7. Conduct and document quarterly internal S&D meetings with all Operating Administrations and S&D stakeholders, as established in the DOT S&D Order.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided OSPE with our draft report on July 24, 2014, and received its response on September 25, 2014. OSPE's complete response is included as an appendix to this report. OSPE concurred with six of seven recommendations and partially concurred with one.

For recommendation 1, OSPE concurred and agreed to implement the recommendation "as written." However, additional language in the response creates ambiguity regarding OSPE's intended implementation. OSPE states that it will update its S&D policies to require Operating Administrations to "initiate appropriate actions that may lead to S&D decisions" within 45 days and that "actual suspension and/or debarment would be informed by additional information and/or evidence." We are concerned that this policy revision does not align with the current S&D decision timelines in the DOT S&D Order. For example, under the current Order, the Operating Administrations are to initiate S&D actions

within the 45-day timeframe—which can involve emailing, mailing, or faxing a suspension notice or proposed debarment notice. Since a suspension becomes effective when the notice is signed, it is inconsistent to suggest that the “actual suspension” would be “informed by additional information and/or evidence.” As we reported in 2010 and in this report, vague S&D policy language—such as the revision that OSPE is proposing—has contributed to untimely S&D decisions and reporting. Moreover, this approach will not provide OSPE with defined measures for monitoring the Operating Administrations’ compliance with the 45-day requirement. We request that OSPE provide clarification on these matters. Until we receive this information, we consider recommendation 1 open and unresolved.

For recommendation 2, OSPE partially concurred and agreed to address only part of our recommendation. Specifically, OSPE stated that it will strongly encourage recipients to review SAM prior to entering into covered transactions. However, OSPE stated that it cannot require recipients to report exclusions that *are not* related to the grant award without regulatory guidance but did not identify the basis for this conclusion. Additionally, OSPE did not specify whether it would require recipients to report exclusions that *are* related to the grant award. We request that OSPE provide clarification on these matters. Until we receive this information, we consider recommendation 2 open and unresolved.

For recommendations 3, 5, and 6, OSPE concurred and agreed to implement the recommendations “as written” within an acceptable timeframe. We consider all three of these recommendations resolved but open pending completion of the planned actions.

For recommendation 4, OSPE concurred and requested that we close the recommendation based on actions completed in July 2014. However, OSPE did not provide us documentation supporting this action until October 8, 2014. We consider recommendation 4 resolved but open pending our review of the documentation and a determination that this action fully meets the intent of our recommendation.

For recommendation 7, OSPE concurred and requested that we close this recommendation based on quarterly S&D meetings that began in March 2014. However, DOT’s S&D Order and OSPE’s S&D Standard Operating Procedures call for OSPE to document, as well as conduct, these meetings. The information OSPE provided only included agendas and sign-in sheets as meeting documentation. We had previously informed Departmental representatives that agendas and sign-in sheets would not meet the intent of our recommendation because they do not document the substance of the meetings. Therefore, we request that OSPE clarify how it will document the substance of these meetings. Until then, we consider recommendation 7 open and unresolved.

ACTIONS REQUIRED

We consider recommendations 3, 4, 5, and 6 resolved and open pending completion. We consider recommendations 1, 2, and 7 open and unresolved. In accordance with DOT Order 8000.1C, we request that OSPE provide additional information for recommendations 1, 2, and 7, as described above, within 30 days of this report.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5225 or Kenneth Prather, Program Director, at (202) 366-1820.

#

cc: DOT Audit Liaison, M-1
FAA Audit Liaison, AAE-100

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted our work from March 2013 to through September 2014 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides reasonable basis for our findings and conclusions based on our audit objectives.

We assessed whether the DOT S&D program is effective to support timely decisions and accurate and prompt reporting of S&D activities. To conduct our work, we reviewed Federal and departmental S&D policies. Based on these policies, we developed a standardized questionnaire that we provided to OSPE and DOT's Operating Administrations to determine what controls were in place to support compliance with S&D decisions and reporting requirements. We also interviewed OSPE and the Operating Administration's S&D staff to follow up on the questionnaire and learn more about the Department's S&D practices.

To determine if DOT complied with required timeframes for S&D decisions and reporting to SAM, we analyzed data reported in the DOT S&D system as of June 20, 2013. Our universe included all cases and parties with initial referral dates between April 1, 2010, and April 1, 2013. We selected April 1, 2010, because DOT's revised S&D Order 4200.5E became effective on March 15, 2010. The universe included 218 individual parties representing 87 S&D cases belonging to 6 Operating Administrations: FAA, FHWA, FTA, MARAD, NHTSA, and PHMSA. The system showed exclusions for 144 of the 218 parties. We used this universe of 144 parties—representing 59 unique cases and 5 Operating Administrations (FAA, FHWA, FTA, MARAD, and NHTSA)—to analyze the timeliness of DOT's reporting to SAM. We asked the Operating Administrations to validate our analysis against their records.

To assess the accuracy and reliability of DOT's reporting of S&D activity, we performed a reconciliation of data between the DOT S&D system and SAM. We extracted a universe of all 520 parties reported in the DOT S&D system as of June 20, 2013. For parties with active exclusion actions, we compared the party's data elements—such as name, address, DUNS number, and exclusion action start and end date—to those reported in SAM (as of June 20, 2013) and EPLS (as of November 5, 2012). We asked the Operating Administrations to validate our analysis against their records.

Although we found weaknesses in the DOT S&D system data, we deemed the data sufficiently reliable for the purpose of our audit because (1) the system was the only available source of DOT's S&D data and (2) we only used the system data to identify parties and cases. We validated the data for accuracy and completeness using SAM and feedback from the Operating Administrations. Our report findings are based on this corrected data.

EXHIBIT B. SUMMARY OF KEY ELEMENTS OF FEDERAL SUSPENSION AND DEBARMENT POLICIES

SUSPENSION	DEBARMENT
Overview	
<ul style="list-style-type: none"> An action that temporarily prevents a party from participating in most Government-funded procurement and non-procurement transactions, pending completion of an investigation or legal proceedings 	<ul style="list-style-type: none"> A final determination that a party is not presently responsible and thus ineligible to participate in federally funded contracts or grants
Standards of Evidence/Causes	
<ul style="list-style-type: none"> Adequate evidence that there may be a cause for debarment; an indictment constitutes adequate evidence Immediate need for action to protect Federal business interests 	<ul style="list-style-type: none"> Preponderance of evidence that the party warrants debarment; a conviction or a civil judgment constitutes a preponderance of evidence Agency may consider remedial measures and mitigating factors when determining party's present responsibility
Prior Notice Required	
<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> Yes
Timeframe for Operating Administrations To Take Action Under DOT Order	
<ul style="list-style-type: none"> Within 45 days of notification of an indictment or other referral 	<ul style="list-style-type: none"> Within 45 days of notification of a conviction or other referral
Period of Ineligibility	
<ul style="list-style-type: none"> Usually not to exceed 1 year 	<ul style="list-style-type: none"> Usually not to exceed 3 years
Entitlement To Contest	
<ul style="list-style-type: none"> After notice from the agency's suspension official, but a suspension is effective immediately 	<ul style="list-style-type: none"> If a party contests the debarment during the notice period, the debarment is not effective until the suspension and debarment official issues a written decision

Source: DOT Order 4200.5E, Suspension and Debarment Procedures and Ineligibility; 2 CFR § 180; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement); and FAR 9.4

EXHIBIT C. MAJOR CONTRIBUTORS TO THIS REPORT

Name	Title
Kenneth Prather	Program Director
Ann Wright	Project Manager
Jill Cottonaro	Senior Analyst
Marguerite Nealon	Senior Auditor
Teri Vogliardo	Analyst
Christina Lee	Writer-Editor
Nick Coates	Legal Counsel
William Savage	Information Technology Specialist

APPENDIX. AGENCY COMMENTS



U.S. Department of
Transportation
Office of the Secretary of
Transportation

Memorandum

Date:

SEP 25 2014

Subject: INFORMATION: Management Comments to
Office of the Inspector General (OIG) Draft
Report on Suspension and Debarment

From: Brodi Fontenot 
Assistant Secretary for Administration

Prepared by: Willie Smith
Senior Procurement Executive (SPE)

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

The Office of the Senior Procurement Executive (OSPE) continues to provide active oversight of the Suspension and Debarment (S&D) Program by monitoring and tracking S&D cases. The Department achieves this by collaborating with Federal-wide partners to ensure entities that have wasted, defrauded and/or abused federal funds do not receive future federal awards. Consistent with OIG audit findings and recommendations in 2010, and as a result of internal observations, OSPE developed an S&D tracking and reporting system; updated the previous S&D DOT Order 4200.5D (which designated oversight responsibility to the SPE); and developed Standard Operating Procedures to provide continued oversight for the S&D program. The OSPE is committed to implementing further actions that might improve oversight and management. To meet these improvements:

- The OSPE has updated an initial draft of Standard Operating Procedures (SOP), and has initiated several enhancements to the S&D tracking system. These updates and enhancements will be in line with both the FAR 9.4 for procurement and 2 CFR 180 for non-procurement cases. The OSPE has requested Operating Administrations (OA) provide updated policies and procedures that reflect FAR 9.4 for procurement requirements and 2 CFR 180 for non-procurement.
- The OSPE developed and posted a data dictionary within the S&D Tracking and Reporting System.
- The OSPE is currently updating S&D DOT Order 4200.5E. The updated S&D DOT Order will follow the FAR 9.4 for procurement and 2 CFR 180 for non-procurement.
- The OSPE will update S&D policies and procedures stating that within 45 days, OAs are required to initiate appropriate actions that may lead to a suspension and/or debarment decision. Any actual suspension and/or debarment would be informed by additional information and/or evidence. Specific action and reporting requirements will be noted in the revised DOT Order, to be completed by December 31, 2014.

Based upon our review of this draft report, we agree to implement OIG recommendations 1 and 3-7, as written. Implementation for recommendations 1, 3, 5, and 6 will be completed by December 31,

Appendix. Agency Comments

2014. Recommendation 4 was completed in July 2014. S&D meetings began in March 2014, which satisfies recommendation 7. Upon issuance of the report, we request these recommendations be closed as implemented.

We concur in part to recommendation 2. The OSPE will strongly encourage recipients to report exclusions not related to the grant award to the agency and to review SAM prior to entering into a covered transaction, but cannot require this without regulatory guidance. To address recommendation 2, our revised DOT Order, to be completed by December 31, 2014, will state that recipients "should" report exclusions unrelated to the grant award and "should" check SAM, prior to making an award.

We appreciate this opportunity to offer additional perspective on the OIG draft report. Please contact Ellen Shields, OSPE Associate Director for Financial Assistance Policy and Oversight, at (202) 366-4268 with any questions or if the OIG would like to obtain additional detail about the comments.