



Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation

Office of Inspector General

Subject: INFORMATION: ARRA Advisory – DOT's
Suspension and Debarment Program
Department of Transportation
Advisory No. AA-2009-001

Date: May 18, 2009

From: Calvin L. Scovel III
Inspector General

Reply to
Attn. of: J-1

To: The Secretary
Deputy Secretary

Attached is an ARRA Advisory on the Department of Transportation's Suspension and Debarment Program. Consistent with ARRA and OMB guidance, Inspectors General are expected to promptly report potential management and funding risks that could impact the effective and efficient use of ARRA funds. We are not requesting a formal response to this advisory as the key issues and proposed actions included in it were briefed to cognizant Departmental officials and audit liaisons in advance of issuance. We plan to include the information in this advisory in a full audit report to be issued at a later date.

We will be posting the advisory on our Web site (www.oig.dot.gov/recovery) and Recovery.gov. If you have any questions, please call me at (202) 366-1959 or Mark Zabarsky, Assistant Inspector General for Acquisition and Procurement Audits, at (202) 366-5225.

Attachment

cc: Senior Procurement Executive
Federal Railroad Administrator
All Acting Modal Administrators
Martin Gertel, M-1

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U.S. DEPARTMENT OF TRANSPORTATION
Office of Inspector General

ARRA ADVISORY

American Recovery and Reinvestment Act

DOT's Suspension and Debarment Program

Key Issue

DOT's policy and process governing its Suspension and Debarment (S&D) Program needs to ensure timelier processing and reporting of S&D actions. Inattention to this vulnerability creates the risk that government funds, including ARRA program dollars, will be awarded to businesses and individuals that have committed fraud or are otherwise known to be irresponsible.

Proposed Actions for Change

The Office of the Secretary of Transportation (OST) should (1) revise the policy and process to prevent irresponsible businesses and individuals from conducting business with the Department, and (2) assign responsibility to a specific office to monitor and oversee Operating Administrations' implementation and compliance with the policy.

Background

The American Recovery and Reinvestment Act of 2009 (ARRA) allocated more than \$48 billion to DOT to invest in our nation's transportation infrastructure. When used properly, suspension or debarment (exclusion) of dishonest, unethical, or otherwise irresponsible businesses or individuals from conducting business with the government is a powerful tool to protect against the misuse of ARRA dollars. Federal agencies can suspend or debar businesses or individuals from receiving contracts, grants, cooperative agreements, or loans for reasons such as a conviction or indictment for a criminal offense or a willful failure to perform to the terms of a contract. One agency's suspension or debarment decision precludes all other agencies from doing business with an excluded party.

In its April 2009 memorandum, *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, the Office of Management and Budget (OMB) states that federal agencies should place special emphasis on awarding contracts to responsible sources—those that are determined to be reliable, dependable, and capable of performing required work. In addition, the President recently emphasized in a March 2009 memorandum that merit-based selection criteria should be used when making awards, including a “demonstrated or potential ability to deliver programmatic results.”

DOT has delegated responsibility for initiating S&D actions to the Operating Administrations (OA), which award DOT's contracts, grants, and cooperative agreements. Our ongoing audit work on DOT's S&D program identifies vulnerabilities that increase the risk that the Department's ARRA funds will not be spent effectively. The tight time frames and significant funds awarded under ARRA heighten this risk.

We are issuing these advisories to promptly report potential management and funding risks consistent with ARRA and OMB guidance.



DOT's Suspension and Debarment Program

What We Found

Despite June 2005 revisions, DOT's S&D policy and implementation remain insufficient to ensure more timely processing and reporting of S&D actions. These deficiencies leave the Department and other government agencies vulnerable to doing business with irresponsible businesses and individuals. Specifically, we found as of March 31, 2009:

- Of the 34 OIG referrals made to OAs for suspension or debarment decisions, 26 (76 percent) were not processed within 45 days, as required by DOT policy. For 20 of these, OAs took 135 to 1,046 days to render final decisions. Six referrals—debarments—still await decisions from debarring officials; such decisions have already taken 187 to 1,193 days. Major contributing factors include a lack of accountability, the part-time nature of S&D work, and unclear policy.
- For 63 of 132 completed S&D decisions, DOT officials did not adhere to federal and departmental regulations to report excluded parties to the government's web-based Excluded Parties Listing System (EPLS) within 5 work days of a suspension or debarment. Fourteen of these cases were more than 100 days late. According to the Department, incomplete data and poor recordkeeping caused the delays.
- For the 49 suspended or debarred businesses we reviewed in EPLS, 24 (49 percent) did not have Data Universal Numbering System (DUNS) numbers—unique nine-digit numbers assigned to businesses that enable agencies to conclude confidentially whether a business is an excluded business. Federal regulations require agencies to enter this information into EPLS.
- The Department did not provide sufficient oversight to ensure it had an effective S&D program and departmental policy did not assign monitoring of the program to a particular office.

Future OIG-related Activities

The information in this advisory will be included in a later audit report and will contain recommendations, along with any departmental actions taken in response to this advisory. We are not requesting a formal response to this advisory. The advisory will be posted on our Web site (www.oig.dot.gov) and Recovery.gov.

For information on this advisory, contact Mark Zabarsky, Assistant Inspector General for Acquisition and Procurement Audits, at (202) 366-5225.