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OFFICE OF MANAGEMENT AND BUDGET
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**STATEMENT OF
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OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

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Chairman Lieberman, Ranking Member Collins, and members of the Committee, I appreciate the opportunity to appear before you today to discuss the role of suspension and debarment in our federal acquisition system. As guardians of the taxpayers' dollars, our agencies have an ongoing responsibility to make every possible effort to do business with contractors who place a premium on performance and quality and not do business with firms who are proven bad actors. Having an effective suspension and debarment program is one of a number of tools that agencies must have at their disposal in order to maximize the return on every dollar spent and deliver a higher quality of service to the American people.

From the start of the Administration, it has been a priority to make sure agencies apply fiscally responsible acquisition practices that cut contracting costs and better protect taxpayers from cost overruns and poor performance. During the prior Administration, contract spending exploded but contract management and oversight capacity were not strengthened to keep up with that demand. As a result, agencies struggled to hold contractors accountable. The President's March 2009 mandate to improve federal procurement practices has instilled a new sense of accountability in agencies. While the work must continue, there has been a sharp turn toward increased accountability and there are clear signs of progress.

- **We have stopped uncontrolled contract spending.** In FY 2010, spending on federal contracting decreased for the first time in 13 years – by nearly \$15 billion when compared to the amount spent in the prior year and \$80 billion less than what would have been spent had contract spending continued to grow at the same rate it had under the prior Administration. As agencies complete the validation of their contract data covering the past fiscal year, we expect it will show that FY 2011 spending remained near the FY 2010 lower levels.
- **We are buying smarter.** As part of the White House Campaign to Cut Waste, we have reformed the way the government buys everyday commodities, such as office supplies and overnight delivery services, so that we are – finally – leveraging the federal government's purchasing power as the world's largest customer to deliver a better value for the American taxpayers. Increased use of government-wide contracts for these requirements saved nearly \$30 million for domestic delivery services and \$18 million for office supplies in FY 2011.

Our savings from strategic sourcing will grow larger as agencies across the government pool their resources for print management services, wireless plans, and software licenses.

- **We are buying more from small businesses.** In FY 2010, the federal government awarded nearly \$100 billion in government contracts to small businesses, which is equivalent to 22.7% of total eligible dollars. This marks the largest two-year increase in over a decade and the second consecutive year of increases after three years of decline. Even more opportunities will open up as we unveil new small business buying tools and modernize existing ones. These actions are enabling agencies to reap the benefits of the innovations and skill that small businesses bring to the federal marketplace. And when we do buy from small businesses, we are making sure that they get paid faster. Earlier this fall, the Office of Management and Budget (OMB) issued a memorandum directing agencies to begin accelerating payments to small business contractors. Agencies have already begun to implement this policy, cutting the time in which they pay small businesses by up to half in many cases. This is getting money back in the hands of small businesses faster, improving their cash flow and allowing them to reinvest funds in their business.
- **We are paying closer attention to our large and complex projects, particularly in the IT sphere.** Consistent with our “Myth-Busters” campaign to increase and improve communication with vendors, agencies are working to conduct more open communication with industry before a solicitation is issued to better understand how the marketplace can meet our needs. In addition, new guidance issued by the Office of Federal Procurement Policy (OFPP) has provided agencies with a roadmap to establish specialized acquisition cadres that can concentrate on information technology buys and the challenges unique to this critical class of acquisitions. OMB and the agencies have conducted “TechStats” to diagnose the causes of underperforming IT projects and get them back on track, and “AcqStats” to identify opportunities for systemic improvements in the acquisition process for IT and other investments.
- **We are stepping up accountability.** We have given our contracting officers a new tool – the Federal Awardee Performance and Integrity Information System (FAPIIS) – to provide them with broadened access to information about the integrity of contractors – including suspensions and debarments, contract terminations, and contractor disclosure of adverse criminal, civil and administrative actions – so that they can more easily determine whether a company is playing by the rules and has the requisite integrity to do business with the government. Additionally, we have continued to make concerted efforts to address the issue of contractors receiving federal contracts notwithstanding tax delinquencies, and have increased the amount collected from contractors owing tax debt – more than \$110 million in FY 2010. And, we are tracking spending at the subcontractor level on USASpending to ensure unprecedented transparency.

Each of these steps is being reinforced by an overall strengthening of the acquisition workforce, the foundation of our acquisition system. For too long, federal agencies focused so much on the process of awarding contracts that they neglected what must come before and after

contract awards, good acquisition planning and effective contract management. Agency human capital plans for the acquisition workforce have been developed to give particular attention to acquisition planning and contract management skills and now, after years of inattention, we are restoring the capacity of contracting staff to plan effectively and negotiate aggressively, and building the capability of those responsible for contract management, including program and project managers and contracting officer's representatives (CORs), to ensure vendors meet their contractual promises.

We are now on a path for achieving real and sustained improvement – but there is more we must do to rebuild confidence in our acquisition system and achieve consistently good results for our taxpayers. In order to take accountability to the next level, we must focus on strengthening our suspension and debarment procedures so that taxpayer dollars are not put at risk in the hands of bad actors. We must ensure that agencies are properly positioned to give appropriate consideration to suspension and debarment as tools to fight waste and abuse. Suspending or debarring entities can help to protect taxpayers from the risk of awarding contracts to entities that are not presently responsible, whether because of having been convicted of fraud or other criminal or civil offenses indicating a lack of business honesty or integrity, or otherwise behaving unethically, or of having a track record of poor performance of government-funded work. The system works, however, only if we are willing and able to suspend or debar entities when we shouldn't be doing business with them, and if all agencies check to be sure they are not awarding a contract to an entity that has been suspended or debarred.

This morning, I would like to briefly review the policy framework for suspension and debarment. I will then discuss efforts by OMB to help agencies take more effective advantage of these tools.

Understanding the role of suspension and debarment in contracting

The Federal Acquisition Regulation (FAR) has, for many years, laid out policy and procedures for suspension and debarment. The FAR specifies numerous causes for suspension and debarment, including fraud, theft, bribery, tax evasion, or lack of business integrity. At the same time, the FAR makes clear that the existence of one or more of these causes does not require an agency to suspend or debar the contractor and cautions that suspension and debarment are to be used only to protect the public's interest in ensuring that taxpayers do business with contractors who are presently responsible (that is, contractors that have the integrity and business ethics to work for our taxpayers), and not to punish prior contractor misconduct. Accordingly, an agency must consider the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors, such as disciplinary action taken by the contractor or new or stronger internal control procedures that it has instituted. The FAR further cautions that agency actions must be consistent with principles of fundamental fairness, which includes providing notice and an opportunity to respond before a debarment is imposed.

These basic policies and procedures remain sound. The discretion that the FAR provides to agencies in deciding if suspension and debarment are necessary and appropriate enables the

agency's suspension and debarment official to consider mitigating circumstances and encourages contractors to change their business processes to prevent future misconduct. Ensuring administrative due process – that is, notice and an opportunity to respond – promotes fairness and has been a key reason why courts have shown deference to the decisions of agency suspension and debarment officials in response to legal challenges.

That said, for too long many agencies failed to maintain the most basic program capabilities required to suspend or debar non-responsible contractors and grantees, or fail to adequately utilize the suspension and debarment tools that are placed at their disposal. The FAR holds each agency responsible for prompt reporting, investigation, and referral to the suspension and debarment official of matters appropriate for that official's consideration, and the FAR anticipates each agency establishing procedures for these purposes that suit the specific agency's situation, including, for example, the extent of contracting that the agency conducts. Without appropriate action by each contracting agency, the suspension and debarment process cannot adequately protect taxpayer funds.

Under this Administration, we have brought long overdue improvements to the suspension and debarment function at agency after agency, as detailed below. This reflects our concern, as noted by GAO in the report it issued recently, that a good number of agencies still lack the characteristics common among active and effective suspension and debarment programs – namely, dedicated staff resources, well-developed internal guidance, and processes for referring cases to officials for action. Clearly, we cannot allow inaction and inattention put our taxpayers at unnecessary risk of waste, fraud, and abuse.

To address these concerns, this Administration has taken a series of concrete steps, of which I would like to highlight two here: (1) OMB is requiring agencies to increase management attention on suspension and debarment and review internal policies and practices in this area and (2) we are strengthening the Interagency Suspension and Debarment Committee (ISDC). In both of these efforts, OFPP has been working closely with the Office of Federal Financial Management (OFFM), and the actions described below apply to both the procurement and non-procurement communities.

Requiring agencies to increase management attention on suspension and debarment

As a next step in our accountability efforts, OMB is asking agencies, in particular those subject to the Chief Financial Officers Act, to take a number of actions consistent with suspension and debarment policies in Subpart 9.4 of the Federal Acquisition Regulation (addressing procurement activities) and 2 CFR Subtitle A, Part 180 (addressing non-procurement activities) to establish and/or maintain active suspension and debarment programs. These actions include the following:

- Appointing a senior accountable official, if one has not already been designated, to be responsible for assessing the agency's suspension and debarment program, the adequacy of available resources (including, where appropriate, full-time staff) and training, and

maintaining effective internal controls and tracking capabilities, taking into consideration the agency's mission, organizational structure, and level of procurement and grant-making activities. The accountable official may be the agency's suspension and debarment official.

- Reviewing internal policies, procedures, and guidance as necessary to ensure that suspension and debarment are being considered and used effectively, whenever appropriate, to protect the Government's interests and taxpayer funds, and have been coordinated with other remedies available to the government that are designed to ensure potential recipients have the requisite business integrity to receive Federal funds before an award is made.
- Ensuring that relevant databases and other information sources are reviewed by the agency award official(s) prior to the award of any Federal grants, contracts, or benefits.
- Where the agency learns that a Federal contract or grant was improperly awarded to a suspended or debarred entity, taking prompt corrective action, including appropriate action regarding the specific award and establishment of systemic controls and procedures to prevent recurrence.

This direction adopts – and goes beyond – the recommendations in GAO's report. We should point out that what we are doing government-wide is consistent with steps that a number of agencies have already taken to strengthen their suspension and debarment functions. For example:

- The Department of the Interior (DOI) has implemented a debarment program with dedicated positions in its Office of Inspector General and a full-time debarment program manager in the Office of Acquisition and Property Management to assist the suspension and debarment official. The new program has developed and implemented enhanced program practices and procedures for case initiation and resolution and created an electronic case management tracking system for tracking suspension and debarment actions. From FY 2009 through FY 2011, DOI took 115 suspension and debarment actions, including the Department's first use of administrative agreements to resolve exclusions while providing the Department with effective oversight over a contractor's performance.
- The United States Agency for International Development (USAID) has ramped up its efforts to root out contractors who waste valuable agency resources needed to support our foreign assistance programs. The agency has established a new Compliance and Oversight for Partner Performance ("COPP") Division of dedicated staff who work in close coordination with the agency's Office of Inspector General and Office of General Counsel to track partner performance and ensure that appropriate and timely action is taken by both headquarters offices and field missions when non-compliance or ethical violations are identified. USAID has also created a Suspension and Debarment Task Team, led by the Deputy Administrator, to provide senior-level guidance on high-profile administrative actions. In FY 2011 alone, USAID has taken more than 60 suspension or debarment actions – more than double the number of actions taken in the prior seven years combined.

- In recent years, the National Aeronautics and Space Administration (NASA) has significantly increased its suspension and debarment actions, as a result of its Acquisition Integrity Program in the Office of the General Counsel, which addresses issues and potential remedies related to procurement and non-procurement fraud. Between 1996 and 2007, NASA debarred 18 contractors. Since 2008, NASA has proposed for debarment over 50 contractors and debarred, suspended, or voluntarily excluded 40 contractors during this time period. This past August, NASA updated its agency regulatory procedures regarding suspension and debarment in its FAR Supplement. This action was taken to ensure that suspension and debarment is being considered and used effectively to protect the Government's interests, to simplify the process for making a referral for possible suspension and debarment action to the NASA Suspending and Debarring Official, to ensure quality and consistency in the consideration of entities for suspension and debarment, to outline the roles and responsibilities of the Acquisition Integrity Program attorneys and the Office of Procurement personnel in the suspension and debarment process, and to address the review process for eligibility determinations when prospective contractors certify or represent the existence of indictments, convictions, or judgments.
- The Department of Transportation (DOT) put a new framework in place that requires the operating administrations to take action within 45 days of notification of an action that would warrant possible suspension or debarment, and implements a new data collection system that will help the senior management of the Department monitor the performance of suspension and debarment offices.
- The Small Business Administration (SBA) has ramped up efforts to remove bad actors from its small business programs and ensure that the benefits of small business contracting programs go to the intended communities. The agency has devoted greater staff resources and employee training to promote suspension and debarment actions, and, working in close coordination with the Office of Inspector General, has significantly increased suspension and debarment of dishonest contractors. Some of the results have been publicly reported, and we are confident that contractors have taken note. For example, pending full investigation by the Agency's Office of Inspector General, SBA suspended a major government contractor and two small businesses based on evidence that they had knowingly violated small business contracting laws.

We recognize that these instances of progress need to be replicated government-wide. That is why, as recommended by GAO, OMB will be issuing government-wide guidance to help agencies bolster their suspension and debarment practices as they review their current programs to ensure that taxpayer dollars are protected.

Strengthening the ISDC

The ISDC, which is overseen by OMB, serves as a forum for agencies with respect to policy and procedure regarding suspension and debarment actions taken in connection with

either procurement or non-procurement activities. It provides an important support structure to help agencies implement their debarment and suspension programs and facilitates sharing of best practices and lessons learned. In addition, the ISDC assists in coordinating suspension and debarment actions among agencies to facilitate their government-wide effect when two or more agencies have an interest in initiating suspension or debarment proceedings pertaining to the same contractor. This coordination process enhances the efficiency of the suspension and debarment process by helping agencies avoid needlessly expending funds for duplicative actions or working at cross-purposes.

As GAO noted, the ISDC's effectiveness as a support structure and coordinating body is tied to the willingness of agencies to support its activities. For this reason, we are directing each CFO Act agency to actively participate in the ISDC. The new Chairman of the ISDC, David Sims, also serves as the Suspension and Debarment Program Manager at DOI and, in this capacity, as noted above, he built an active debarment program at the Department that can serve as one possible blueprint for other agencies to follow.

In a special OMB-led session of the ISDC last month, OMB and agencies exchanged ideas for how the ISDC can better leverage its resources and talents, and a number of suggestions were raised at that meeting that have led to decisions about actions going forward. In addition to supporting OMB in the development of government-wide guidance, the ISDC will now take a more active role in ensuring effective training. A new standing subcommittee will focus on reviewing available training courses and creating new training as necessary. They will seek to ensure that training is delivered in a manner that meets the different needs of contracting agencies and the various stakeholders who have roles in the suspension and debarment process, including personnel in suspension and debarment offices, contracting offices, inspector general offices, and legal offices. A separate ISDC subcommittee will continue to address the tracking and reporting of information so the procurement and grants communities can better understand how suspension and debarment are being used and identify where refinement of current policies or practices might be beneficial. This past summer, the ISDC issued the first comprehensive government-wide report on suspension and debarment activities. The new Chairman has already begun working with ISDC members to improve the type of information collected from agencies for future reports, in order to create a better baseline against which to measure progress, with respect to the important issues of resources, internal agency controls, and training efforts.

Conclusion

As stewards of the taxpayers' dollars, we are responsible for ensuring that agencies are achieving the best results possible from their contractors. As my tenure as OFPP Administrator draws to a close, I look back with great pride on the achievements of the acquisition workforce over the past two years in eliminating waste and getting better value for our taxpayers – by buying less, buying smarter, reducing unnecessary risk from contracts, increasing opportunities for small business contractors, and strengthening the workforce's ability to negotiate better deals and hold contractors to their promise of delivering on time and on budget. I have great

confidence that my OFPP colleagues, along with our colleagues in OFFM, our agency acquisition professionals, and grants officers, will sustain and build on this progress, by strengthening their suspension and debarment programs to deal with non-responsible contractors and grantees.

I thank the Committee for its leadership and support during my tenure and look forward to seeing the continued improvements that will be made to our federal acquisition system through the collaborative efforts of this Committee, other members of Congress, OMB, and our procuring agencies.

This concludes my remarks. I am happy to answer any questions you may have.