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United States Government Accountability Office  
Washington, DC 20548

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January 12, 2007

The Honorable Carl Levin  
Chairman  
The Honorable Norm Coleman  
Ranking Minority Member  
Permanent Subcommittee on Investigations  
Committee on Homeland Security and Governmental Affairs  
United States Senate

*Subject: Selected Agencies Use of Criminal Background Checks for Determining Responsibility*

This letter and its enclosure respond to your request for information on selected executive agencies' policies and practices for making responsibility determinations before awarding contracts. You requested this information because of your continued concern for effective pre-contract screening to reduce fraudulent activities by contractors.

On the basis of discussions with your office, our objectives were to (1) identify agency policies and practices for making contractor responsibility assessments, and determine under what conditions agencies conduct criminal background checks, (2) determine how contracting officers use the Excluded Parties List System (EPLS) to make responsibility assessments and identify planned improvements to the system, if any, and (3) determine the number of fraud investigations in which the contractor or principals had a prior criminal background.

On August 31, 2006, we briefed your office on the information gathered during our preliminary work. This letter summarizes and updates the information presented at the briefing. The additional information you requested regarding suspensions, debarments, and proposed debarments for fiscal years 1996 through 2006 is included in the briefing at Enclosure I.

In developing the information for this report, you asked us to focus our work in the following agencies: Department of Defense (DOD), General Services Administration (GSA), Department of Justice (DOJ), and Department of Homeland Security (DHS). We reviewed appropriate sections of the Federal Acquisition Regulation (FAR); agency supplements for DOD, GSA, DOJ, and DHS; and discussed our objectives with agency officials from offices of policy and general counsel (debarment officials). We also obtained data on fraud investigations and discussed agency efforts to track whether the subjects of these investigations had prior criminal backgrounds with agency officials in

the Criminal Investigative Divisions within the offices of Inspectors General.<sup>1</sup> In addition, we reviewed relevant Comptroller General decisions discussing responsibility determinations and documentation for an Army base services contract. We obtained and analyzed fiscal year 1996-2006 data from GSA for EPLS, a system that contains governmentwide data on suspensions, debarments, and proposed debarments. We also obtained fiscal year 2003-2005 data on procurements from GSA's Federal Procurement Data System-Next Generation (FPDS-NG)<sup>2</sup> that contains governmentwide data on agency contract awards and obligated funds. We conducted our work between June 2006 and October 2006 in accordance with generally accepted government auditing standards.

## Background

The Federal Acquisition Regulation (FAR) generally governs most executive agencies' acquisitions. The FAR is issued and maintained jointly by the Secretary of Defense, the Administrator of GSA, and the Administrator of NASA.<sup>3</sup> However, agencies can supplement the FAR with agency-specific regulations. For example, Navy regulations include Navy/Marine Corps Acquisition Regulation Supplements, a supplement to the Defense Federal Acquisition Regulation, which is, in turn, a supplement to the FAR. A few agencies such as the Federal Aviation Administration and the Transportation Security Administration are not subject to the FAR, but have regulations that are similar in purpose to the FAR.

Under FAR, contracting officers are responsible for ensuring contracts are awarded only to those contractors who are capable, responsible, and ethical.<sup>4</sup> FAR, Part 9, prescribes policies, standards, and practices for determining contractor responsibility and requires that agency contracting officers make an affirmative determination of responsibility before contract award.

Responsibility determinations include an assessment of a number of specific areas including a contractor's technical capability, past performance, financial capability, and business ethics and integrity. The contracting officer may also use information from pre-award surveys conducted by an outside agency, such as the Defense Contract Management Agency.

There are a number of tools, such as the EPLS and the Central Contractor Registration System (CCR), to assist contracting officers in obtaining information and determining responsibility. The EPLS is a web-based listing of those entities that are suspended, debarred, or proposed for debarment<sup>5</sup> and is maintained by GSA.

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<sup>1</sup>We were asked to obtain data specifically on fraud investigations by contractors and the number of contractor principals who had previous criminal convictions. We were not asked to identify the nature of the previous criminal convictions to be reported, for example, such as those for nonpayment of taxes or product substitution. Only two agencies, DOJ and GSA, were able to provide us with data on the numbers of contractors with previous convictions.

<sup>2</sup>FPDS-NG is a computer-based system for collecting, developing, and disseminating procurement data to the Congress, the Executive Branch, and the private sector. The Federal Procurement Data Center, managed by GSA, oversees the system. Fiscal Year 2005 information was the latest available data at the time we completed our work.

<sup>3</sup>Federal Acquisition Regulation (FAR)1.103(b) (2006) .

<sup>4</sup>FAR 9.104-1.

<sup>5</sup>Suspensions temporarily disqualify a contractor from doing business with the government for a specified period of time—generally not to exceed 12 months. Debarments preclude a contractor from receiving further government contracts or assistance from any federal agency and generally may be for up to three years.

The contracting officer is required to check the contractor's name or other identifying information against EPLS data to determine if the contractor is eligible to receive a contract.<sup>6</sup>

The CCR is the primary contractor registration database for the U.S. federal government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions, including federal agency contract and assistance awards. The FAR requires prospective federal government contractors to register in CCR in order to be awarded contracts by the federal government.<sup>7</sup> In September 2006, these two tools were integrated through the release of EPLS Version 3. The new system pulls available data from CCR when the agency user enters a Data Universal Numbering System (DUNS) number.

## Summary of Findings

### Federal Acquisition Regulation Governs Responsibility Determinations

Agencies base their policies and practices for making responsibility determinations on the FAR and their own supplements to the FAR. The FAR specifies a number of factors to consider in making responsibility determinations, but it does not require any particular type of background check.<sup>8</sup> Criminal background checks are neither required by the FAR nor prohibited in making responsibility determinations.

Although procedures for making responsibility determinations do vary among agencies, contracting officers we spoke with generally said they:

- check the EPLS for debarments or suspensions,
- conduct pre-award surveys for larger contracts, and
- document other aspects of the contractor's ability to perform the contract, such as the contractors' technical, financial, and ethical capacity to perform the work required.

Agency officials and contracting officers stated that they rely on past performance of the contractor to determine the extent of documentation needed to determine responsibility.

However, according to agency officials, if contracting officers want a criminal background check completed, they would need to request it through their agency investigative components, such as in the office of Inspector General. Apart from determining responsibility, a criminal background check could be needed as a condition of the contract if the work under the contract required contractor personnel to have access to federally controlled facilities or federal information systems.<sup>9</sup> As another example, contractors or contractor personnel may be required to undergo a criminal background check, according to officials, if the work requires a National Security

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<sup>6</sup>FAR 9.405(d)(1) and (4).

<sup>7</sup>FAR 4.1102(a).

<sup>8</sup>FAR 9.104-1.

<sup>9</sup>Criminal background checks could be required to implement Homeland Security Presidential Directive 12. This Directive sets forth policy for a common identification standard for federal employees and contractors who need physical access to secure federal facilities, and logical access to federally controlled information systems. In order to enhance security, increase government efficiency, reduce identity fraud, and protect personal privacy, the directive establishes a mandatory, governmentwide standard for secure and reliable forms of identification issued by the federal government to its employees and contractors.

clearance. National Security clearances include checks of criminal databases as well as other background investigations. Agency officials we spoke with stated that neither of these background checks is normally a part of the contracting officer's determination of responsibility.

### Contracting Officers Use EPLS to Determine Eligibility

The FAR requires contracting officers to determine whether prospective contractors are eligible (not suspended, debarred, or proposed for debarment) to receive a contract as part of determining responsibility before awarding the contract.<sup>10</sup> Contracting officers stated they generally search the EPLS by using (1) an identifying number such as the Data Universal Numbering System (DUNS) or a Taxpayer Identification Number, and/or (2) the name of either the firm or an individual.

A 2005 GAO report<sup>11</sup> identified several limitations with reporting data on suspensions, debarments and administrative agreements:

- an identifying number such as the DUNS was not a required field when officials added suspension and debarment data to the EPLS;
- there was no common forum for sharing information on administrative agreements and compelling reason waivers;<sup>12</sup> and
- searches using names might not identify an excluded contractor or person because of name changes.

GAO recommendations included making a contractor identification number a required data element in reporting suspensions and debarments and providing information about administrative agreements to contracting officers. As we noted above, and in response to the reported limitations, GSA released an updated version of EPLS in September 2006 that provides a required data field for the DUNS number and pulls in data from the CCR system. The Interagency Suspension and Debarment Committee is discussing how to make information on administrative agreements more readily available to agencies.

Enclosure I contains data you asked for on the number of suspensions, debarments, and proposed debarments from the four agencies. The data we reviewed from the 1996-2006 time period did not show any trends.

### Data on Instances of Previous Fraud by Contractor Principals Not Readily Available

According to officials, agencies receive allegations of irregularities from many sources including contracting officers, oversight organizations such as the Defense Contract Management Agency, agency or contractor employees, competitors, other federal agencies, whistleblower cases, and hotlines. Agencies assign investigations of fraud to

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<sup>10</sup>FAR 9.104-1 and 9.405(d)(1) and (4).

<sup>11</sup>*Federal Procurement: Additional Data Reporting Could Improve the Suspension and Debarment Process*, GAO-05-479 (Washington, D.C.: July 29, 2005).

<sup>12</sup>Administrative agreements are actions to be taken by a contractor in place of other remedies such as suspension or debarments. A contractor might agree to pay a fine or institute an ethics program, for example, in order to remain eligible to receive contracts. A compelling reason determination, which is an exception that allows the award of a contract to a debarred or suspended entity, may be sought from the head of an agency if there is an urgent need for supplies or services or if the debarred or suspended contractor is the only known source.

criminal investigative units within the within the agencies, such as the office of Inspector General. The investigative offices coordinate with offices of General Counsel to report indictments or evidence to initiate suspensions; they report convictions for debarment proceedings. According to agency officials, detailed information on whether investigations include employees or principals of the company or whether the parties had a prior criminal history may be contained in the case files if it is a part of the information collected in developing the investigation. For example, an official at DOJ told us that prior criminal history checks are a routine part of case development. However, the case files are narrative in nature and, therefore, obtaining the information requires a case-by-case analysis.

Two agencies, DOJ and GSA, did perform such a review and were able to tell us in addition to the number of investigations, the number of principals and the number of principals with prior convictions. Together the agencies reported six principals with prior criminal histories who had been investigated for fraud over the 3-year period. DHS and DOD officials said that they were unable to provide the number of principals who had previous criminal histories within the timeframe of this work.

Table 1 shows the number of cases of fraud by agency closed in fiscal years 2003 – 2006 from the Office of Inspector General investigative offices at DHS, GSA, DOJ, and DOD.

Table 1: Closed Investigations for Fiscal Years 2003-2006

Agency	Closed Investigations
DHS	41
GSA	33
DOJ	33
DOD <sup>a</sup>	
Defense Criminal Investigative Service	856
Air Force	536
Department of Navy	394
Army	168

<sup>a</sup>We do not total cases for DOD because joint cases are counted in each component, and we could not obtain an unduplicated total.

### Agency Comments and Our Evaluation

We provided a draft of this report to DOD, DHS, DOJ and GSA. DOD, DHS, and GSA provided technical comments which we incorporated as appropriate. DOJ stated that it did not have any comments.

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As we agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this report. At that time we will send copies to the Secretaries of the Departments of Defense, Justice, and Homeland Security; the Administrator of the General Services Administration; appropriate congressional committees; and other interested parties. We will also make this report available at no charge on GAO's Web site at <http://www.gao.gov>.

Major contributors to this report included Michael J. Hesse, Letisha T. Jenkins, John A. Krump, Carol T. Mebane, and Carol Dawn Petersen. If you have any questions about the report, please contact me at (202) 512-4841.

A handwritten signature in black ink, appearing to read 'C. Chaplain', with a long horizontal stroke extending to the right.

Cristina T. Chaplain  
Acting Director,  
Acquisition and Sourcing Management



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**Briefing to the Permanent Subcommittee on  
Investigations, Committee on Homeland  
Security and Governmental Affairs  
U.S. Senate**

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**Making Responsibility  
Determinations**

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## Objectives

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To ensure that agencies award contracts to those who are technically, financially, and ethically responsible, you asked GAO to:

- Identify agency policies and practices for making contractor responsibility assessments and under what conditions criminal background checks are conducted.
  - Determine how the Excluded Parties List System (EPLS) is used in making responsibility assessments and identify planned improvements to the system.
  - Determine what is known about the number of fraud investigations in which the contractor or principals had a prior criminal background.
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## Scope and Methodology

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- You asked us to address these objectives in the following agencies:
    - Department of Defense (DOD)
    - General Services Administration (GSA)
    - Department of Justice (DOJ)
    - Department of Homeland Security (DHS)
  - We reviewed appropriate sections of
    - Federal Acquisition Regulation (FAR)
    - Agency supplements for DOD, GSA, DOJ, and DHS
  - We discussed our objectives with agency officials from offices of policy and general counsel (debarment officials).
  - We also obtained data on fraud investigations and discussed agency efforts to track whether the subjects of these investigations had prior criminal backgrounds with officials from offices of Inspectors General, Criminal Investigative Divisions.
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## Scope and Methodology

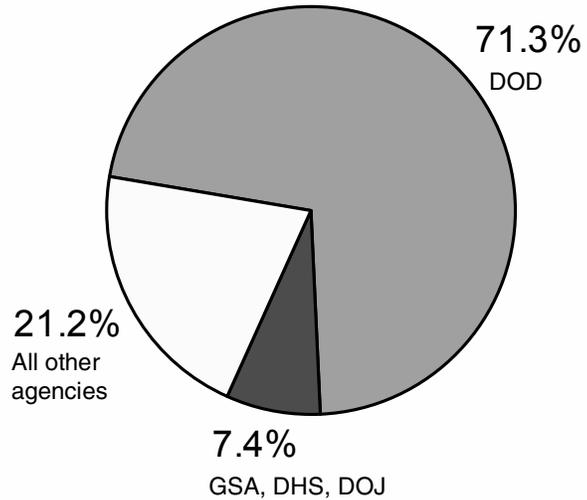
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In addition, we

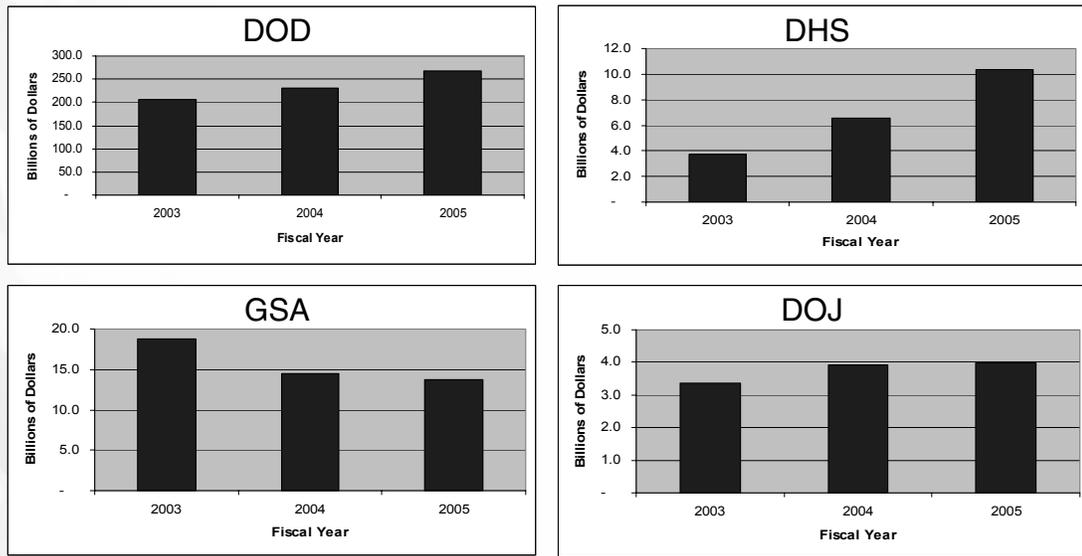
- Reviewed
    - Relevant Comptroller General decisions
    - Army documentation for base services contract for Redstone Arsenal
  - Obtained and analyzed data from GSA:
    - Federal Procurement Data System—Next Generation (FPDS-NG): containing governmentwide data on agency contract awards and obligated funds (2003-2005)
    - EPLS: containing governmentwide data on suspensions, debarments and proposed debarments (1996-2006)
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## Background: Contracting Dollars for Fiscal Year 2005

- FPDS-NG reports \$377.1 billion in contracting for fiscal year 2005.
- DOD's share—over 70 percent—is about \$268.9 billion.
- Other agencies in this review, GSA, DHS, and DOJ comprise about \$28 billion.



## Background: Contracting Dollars for Four Federal Agencies for Fiscal Years 2003-2005





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## Background: Federal Acquisition Regulation

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- Federal Acquisition Regulation (FAR) generally governs most executive agencies' acquisitions.
    - Agencies can supplement the FAR with agency-specific regulations.
    - A few agencies are not subject to the FAR but have regulations that are similar in purpose to the FAR:
      - Federal Aviation Administration
      - Transportation Security Administration
  - FAR is issued and maintained jointly by Secretary of Defense, the Administrator of GSA, and the Administrator of NASA under the Office of Federal Procurement Policy Act (41 USC 405, 421).
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## Background: Federal Acquisition Regulation

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FAR Part 9 prescribes policies, standards, and practices for determining contractor responsibility and requires that agency contracting officers make an affirmative determination of responsibility before contract award.

- Responsibility determinations include an assessment of a number of specific areas including a contractor's
    - technical capability,
    - past performance,
    - financial capability, and
    - business ethics and integrity.
  - The contracting officer should check the EPLS to determine whether the contractor is prohibited (suspended, debarred, proposed for debarment, or otherwise ineligible) from receiving an award.
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## Background: Federal Acquisition Regulation

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FAR Part 9 also regulates debarments and suspensions.

- Agencies may suspend or debar contractors for a number of reasons including
    - fraudulent or criminal offenses associated with contracts such as embezzlement, theft, or bribery; or
    - any serious or compelling reason that affects contractor responsibility including failure to comply with the requirements of the Drug Free Workplace Act of 1988 or the Clean Air and Water Acts.
  - Suspensions are generally for a period not to exceed 12 months. Generally, debarments may be for up to 3 years.
  - A debarment or suspension precludes any government agency from awarding a contract to the debarred or suspended entity except for a compelling reason as determined by the agency head.
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## Background: Excluded Parties List System

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- The EPLS is a Web-based listing of debarred, suspended or otherwise excluded contractors and other entities. The list is maintained by GSA.
  - Each agency has a representative on the Interagency Suspension and Debarment Committee, a policy-making body in the Office of Management and Budget.
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## Agency Policies and Practices in Making Responsibility Determinations

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DOD, GSA, DOJ, and DHS officials all cited the FAR as providing the basis for responsibility determinations.

- Each agency has its own supplemental regulations that provide agency specific procedures.
  - Agencies or their components may also have standardized operating procedures they follow:
    - Some agency components such as the Army or Transportation Security Administration use checklists of required steps and documentation that outline FAR or agency regulations and operating procedures.
    - Some components reported that they conduct compliance reviews to assure that contract files are properly documented.
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## Agency Policies and Practices in Making Responsibility Determinations

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- Procedures vary among agencies, but contracting officers reported that in general, they
  - check EPLS for debarments or suspensions,
  - conduct pre-award surveys for larger contracts, and
  - document other aspects of the contractor's ability to perform the contract.
- Contracting officers also stated that they rely on the past performance of the contractor to determine the extent of documentation needed.

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## Background Checks in Responsibility Determinations

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- The FAR defines a number of factors to consider and address in making responsibility determinations but does not mandate any particular type of background check.
  - Neither the FAR nor agency supplemental regulations require criminal background checks for contractors or principals as a part of responsibility determinations.
  - Criminal background checks are not prohibited; however,
    - according to agency officials, if contracting officers want a criminal background check, they would need to request it through an office such as the Inspector General with authority to access the relevant databases.
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## Other Background Checks

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- Implementation of Homeland Security Presidential Directive 12 could require that contractor personnel who have access to federally controlled facilities or federal information systems undergo a criminal background check.
- The procedures and rules amend FAR Parts 2, 4, 7, and 52.
- The addition does not change responsibility determinations for contract award.

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## Other Background Checks

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Officials we talked to reported that agencies that award contracts to do work involving national security or intelligence may require additional background checks.

- Contractors may be required to obtain national security clearances for their principals, facilities, and personnel to respond to a solicitation.
- National security clearances require checks of criminal databases as well as other background investigation.

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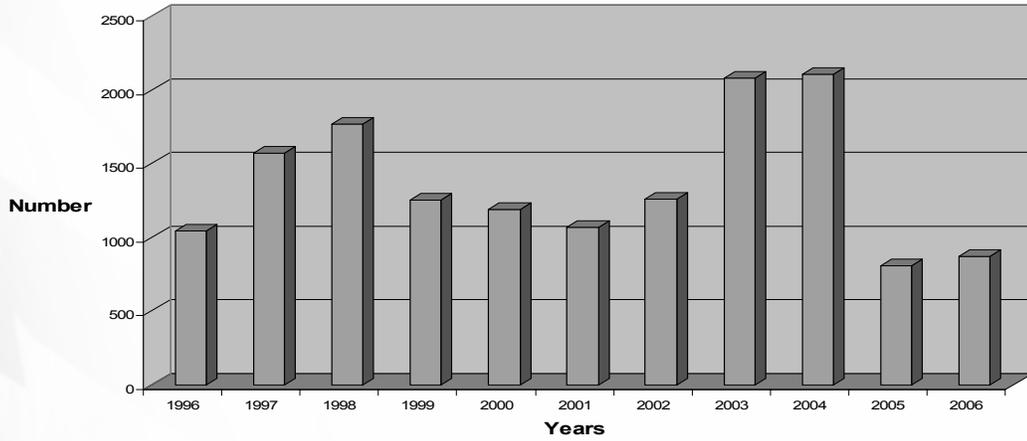
## Use of EPLS in Determining Responsibility

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- FAR requires contracting officers to determine whether prospective contractors are eligible to receive a contract as part of an initial determination of responsibility and again before awarding the contract.
  
  - Contracting officers stated they generally search the EPLS in either of two ways:
    - by an identifying number if it was provided to the database
      - Data Universal Numbering System (DUNS)
      - Taxpayer Identification Number
    - by name of either the firm or an individual.
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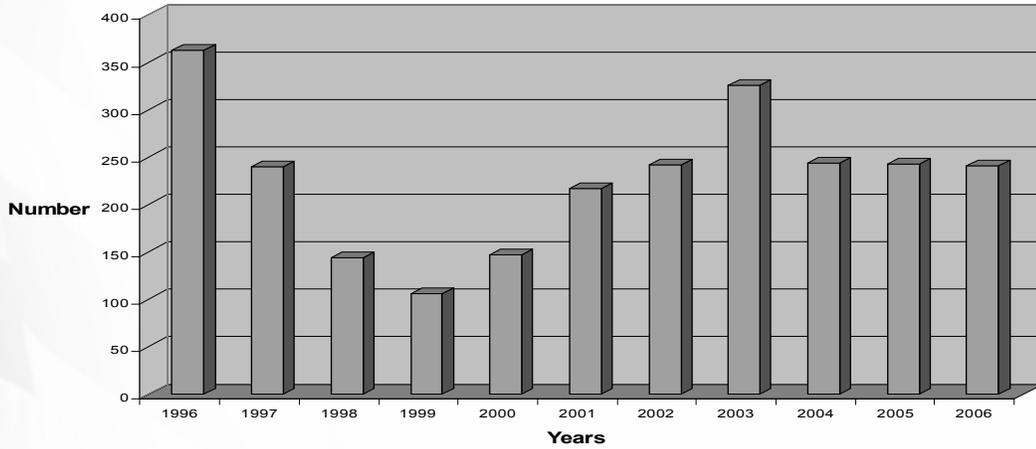
## Excluded Parties List System Data for Selected Agencies

**FY 1996-2006 Suspensions, Debarments and Proposed Debarments for DOD**



## Excluded Parties List System Data for Selected Agencies

**FY 1996-2006 Suspensions, Debarments and Proposed Debarments for GSA**





## Suspensions, Debarments, and Proposed Debarments by Agency from 1996 to 2006

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>DOD</b>	1,045	1,569	1,769	1,254	1,192	1,069	1,262	2,081	2,104	810	871
<b>DOJ</b>	0	0	2	1	4	0	4	0	0	2	2
<b>GSA</b>	363	240	144	101	147	217	242	326	244	243	241
<b>DHS*</b>	0	0	2	13	9	5	10	13	0	0	0

\*Although DHS was not created until 2003, data include information from the legacy agencies that now comprise DHS.



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## Planned Modifications to EPLS to Address Identified Limitations

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A 2005 GAO report (GAO-05-479) identified several limitations with reporting data on suspensions and debarments and administrative agreements:

- an identifying number such as the DUNS was not a required field when officials added suspension and debarment data to EPLS;
  - there was no common forum for sharing information on administrative agreements or compelling reason waivers; and
  - searches using names might not identify an excluded contractor or person because of name changes.
- GAO recommendations included making a contractor identification number a required data element in reporting debarments.
  - GSA released EPLS version 3 in September 2006. Version 3 requires inclusion of the DUNS number and pulls information from the CCR.
  - The Interagency Suspension and Debarment Committee is discussing how to make information on administrative agreements and compelling reason determinations more readily available.
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## Investigating Fraud Allegations

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- According to officials, agencies receive allegations of irregularities from many sources including
    - contracting officers,
    - oversight organizations such as Defense Contract Management Agency,
    - agency or contractor employees,
    - competitors,
    - other federal agencies, and
    - hotlines.
  - Agencies assign investigations of fraud to offices with investigative units such as offices of Inspectors General.
  - The offices of the Inspectors General coordinate with offices of General Counsel to report indictments or evidence to initiate suspensions; they report convictions for debarment proceedings.
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## Contractor Principals with Prior Criminal Backgrounds

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- Agencies we reviewed do not uniformly keep data on prior criminal backgrounds, if any, of contractor principals investigated for fraud or make a distinction in their investigations about whether the allegation involves a principal or an employee.
- Fiscal year 2003 – 2006 to date:
  - DOD: information on principals not readily available\*
    - DCIS: 856 investigations
    - OSI: 536 investigations
    - NCIS: 394 investigations
    - CID: 168 investigations
  - DHS – 41 investigations; information on principals not readily available
  - GSA – 33 investigations; 5 principals with prior criminal histories
  - DOJ – 33 investigations; 1 principal with prior criminal history

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\*Each DOD component includes joint investigations in totals.

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