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Testimony

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Representatives

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EXCLUDED PARTIES LIST SYSTEM

Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds

Statement of Gregory D. Kutz, Managing Director
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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss the results of our investigation of the Excluded Parties List System (EPLS), a Web-based system maintained by the General Services Administration (GSA).¹ To protect the government's interests, any agency can exclude, i.e., suspend or debar, businesses or individuals from receiving contracts or assistance² for various reasons, such as a conviction of or indictment for a criminal or civil offense or a serious failure to perform to the terms of a contract.³ Agencies must report all excluded parties to EPLS within 5 business days after a suspension or debarment becomes effective. Before awarding funds, contracting officers and other agency officials are required to check EPLS to ensure that a prospective vendor is not an excluded party.

In July 2005, GAO reported that the data in EPLS were insufficient to enable agencies to determine with confidence that a prospective vendor was not currently excluded.⁴ In response, GSA agreed to modify EPLS's data requirements to include a mandatory provision that agencies enter a Data Universal Numbering System (DUNS) number to facilitate the identification of excluded parties.⁵ Despite such modifications, recent allegations indicate that businesses or individuals that have been excluded for egregious offenses have been able to "resurface" under the same or a different business name or identity in order to continue to receive federal contracts and other funds. We described the results of our investigation confirming these allegations in our recently issued report.⁶ This testimony

¹ The database can be accessed at www.epls.gov.

² Parties can be excluded from receiving a wide range of federal funds including, but not limited to, Medicare and Medicaid provider payments, cooperative agreements, scholarships, fellowships, loan guarantees, subsidies, insurance, payments for specified uses, donation agreements, or contracts of assistance.

³ A suspension is a temporary exclusion of a party pending the completion of an investigation, while a debarment is a fixed-term exclusion. Generally, the period of debarment does not exceed 3 years, though some are indefinite.

⁴ GAO, *Federal Procurement: Additional Data Reporting Could Improve the Suspension and Debarment Process*, [GAO-05-479](#) (Washington, D.C.: July 29, 2005).

⁵ A DUNS number is a unique nine-digit identification number assigned to firms by Dun & Bradstreet, Inc.

⁶ GAO, *Excluded Parties List System: Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds*, [GAO-09-174](#) (Washington, D.C.: Feb. 25, 2009).

will summarize our overall findings and will also describe the key causes of the improper awards and other payments we detected.

To conduct our work we first compared DUNS numbers appearing in EPLS with those appearing in the Federal Procurement Data System-Next Generation (FPDS-NG) for fiscal years 2006 and 2007. The FPDS-NG is the central repository for capturing information on federal procurement actions. Because not all records within EPLS contained DUNS numbers, we also compared vendor addresses available in EPLS with those in FPDS-NG. From the matches we identified, we selected for further investigation parties that (1) were excluded governmentwide for egregious offenses such as fraud, false statements, theft, and violations of selected federal statutes and (2) received new awards in excess of \$1,000 during the period of suspension or debarment. We did not examine any federal award databases other than FPDS-NG, nor did we examine whether excluded parties continued to receive federal funds under subcontract arrangements or from grants, loans, or subsidies. GAO's objective was not to determine, and GAO did not have data to determine, the number of businesses and individuals in EPLS that received new federal awards during their exclusions.

We conducted our audit work and investigative work from December 2007 through November 2008. We conducted our audit work in accordance with U.S. 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 a reasonable basis for our findings and conclusions based on our objectives. We performed our investigative work in accordance with standards prescribed by the President's Council on Integrity and Efficiency.

Excluded Parties Continue to Do Business with the Government

We confirmed the allegations that businesses and individuals that were excluded for egregious offenses were continuing to receive federal contracts. Specifically, we developed case studies on businesses and individuals that were awarded funds despite being suspended or debarred for a variety of offenses, ranging from national security violations to illegal dumping of chemicals to tax fraud. These excluded parties received funding in part because agency officials failed to search EPLS or because their searches did not reveal the exclusions as a result of system deficiencies. We also identified additional cases involving businesses and individuals that were able to fraudulently circumvent the terms of their

exclusions by operating under different identities and one case where the Army chose to continue doing business with an excluded party despite its debarment. Examples of our cases include the following:

- In July 2005, the Department of the Army debarred a German company and its president after the president violated German law and attempted to ship dual use aluminum tubes, which can be used to develop nuclear weapons, to North Korea. In the debarment decision, the Army stated that because the president “sold potential nuclear bomb making materials to a well-known enemy of the United States,” there was a “compelling interest to discontinue any business with this morally bankrupt individual.” Despite this debarment, the Army chose to continue to award the company task orders and paid it over \$4 million during fiscal year 2006. Although the Army told us that it was legally obligated to continue the contract with the company, in fact several options were available for termination. It is not clear if the Army considered these options because the officials we spoke with were not sure of the exact circumstances surrounding the decision and there was no contemporaneous documentation related to the case.
- In April 2006, the Department of the Navy suspended a company after one of its employees sabotaged repairs on an aircraft carrier by using nonconforming parts to replace fasteners on steam pipes. If these pipes had ruptured as a result of faulty fasteners, those aboard the carrier could have suffered lethal burns. However, less than a month after the suspension, the Navy awarded the same company three new contracts because a contracting officer failed to check EPLS to verify the company’s eligibility.
- GSA suspended a construction company in September 2006 after its president opened fraudulent GSA surplus-property-auction accounts using fictitious social security numbers so that he could continue to do business with GSA while his original account was in default for nonpayment. The Department of the Interior attempted to check the contractor’s eligibility in EPLS prior to making several awards to the company, but the exclusion was not revealed because GSA did not enter the company into EPLS until October 2006, more than a month after the suspension began.
- The Department of Health and Human Services (HHS) debarred an individual in April 2003 for 5 years after he pleaded guilty to Medicare fraud. Because HHS did not debar the individual’s company, he transferred ownership of the company to his wife in an attempt to continue receiving Medicare reimbursements. After HHS objected to

this arrangement, he then sold the company to a neighbor. Two years later, citing financial difficulties, the neighbor sold the business back to the original owner's wife. The wife admitted to our investigators that she then legally changed her last name to her maiden name to avoid "difficulties" in using her husband's name. Using this scheme, the couple received Medicare payments for the remaining 3 years of the husband's debarment.

Ineffective EPLS Management or Agency Control Weaknesses Lead to Improper Awards and Other Payments

Most of the improper contracts and payments we identified can be attributed to ineffective management of the EPLS database or to control weaknesses at both excluding and procuring agencies. Our cases and analyses of EPLS data demonstrate that no single agency is proactively monitoring the content or function of the database and that agencies are not consistently inputting timely or accurate data related to the parties they exclude. Specifically, our work shows that EPLS entries may contain incomplete information, the database has insufficient search capabilities, and the listed points of contact for further information about exclusions are incorrect. With regard to agency control weaknesses, our investigation shows that (1) excluding agencies ignored the DUNS number requirement, (2) agencies did not enter exclusions within the required time frame, (3) contracting officers failed to check EPLS prior to making awards or adding new work or extensions to existing contracts, (4) agencies used automated purchasing systems that do not interface with EPLS, and (5) agencies made purchases from excluded parties that are listed on GSA's Federal Supply Schedule. Although agencies are still required to check EPLS prior to purchasing items through this program, the fact that excluded parties are listed on the GSA Schedule can result in agencies' purchasing from unscrupulous companies that continue to pursue business with the government notwithstanding their exclusions. To verify that no warnings exist to alert agencies that they are making purchases from excluded parties, we used our own GAO purchase card to buy body armor worth over \$3,000 through the supply schedule from a company that had been debarred by the Department of the Air Force in September 2007 for falsifying tests related to the safety of its products.

Recommendations for Executive Action

At the close of our investigation, we referred all the cases we identified to the appropriate agency officials for further action. We also made recommendations to GSA to improve the effectiveness of the suspension and debarment process. Specifically, we recommended that the Administrator of General Services take the following five actions:

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- issue guidance to procurement officials on the requirement to check EPLS prior to awarding contracts and to suspension and debarment officials on the 5-day entry and contractor identification number requirements;
 - ensure that the EPLS database requires contractor identification numbers for all actions entered into the system;
 - strengthen EPLS search capabilities to include common search operators, such as AND, NOT, and OR;
 - take steps to ensure that the EPLS points of contact list is updated; and
 - place a warning on the Federal Supply Schedule Web site indicating that prospective purchasers need to check EPLS to determine whether vendors are excluded and explore the feasibility of removing or identifying excluded entities that are listed on the GSA Schedule.

In written comments on a draft of this report, GSA agreed with all five of our recommendations. As part of its response, GSA outlined actions it plans to take or has taken that are designed to address our recommendations. However, most of the actions described do not achieve the intent of these recommendations. In several instances, GSA simply restated its current policies and procedures instead of agreeing to take steps to oversee the completeness of EPLS and ensure that exclusions are properly enforced. For example, in response to our recommendation to issue guidance to procurement officials on the requirement to check EPLS prior to awarding contracts and to suspension and debarment officials on the 5-day entry and contractor identification number requirements, GSA did not plan to take any new actions and instead pointed to Federal Acquisition Regulation requirements and GSA policies that were already in place before we conducted our investigation. Similarly, GSA did not plan to take any new actions to ensure that the EPLS database requires contractor identification numbers for all actions entered into the system, nor did it plan to take additional steps to update the EPLS agency contact list. Based on our investigation, if GSA is not more proactive in its management of EPLS system, suspended and debarred companies will continue to improperly receive millions of taxpayer dollars. More detailed information on GSA's comments and our response can be found in our report.

Mr. Chairman and Members of the Committee, this concludes my statement. I would be pleased to answer any questions that you or other members of the committee may have at this time.

Contacts and Acknowledgments

For further information about this testimony, please contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. In addition to the individual named above, the individuals who made major contributions to this testimony were Gary Bianchi, Cindy Brown Barnes, Shafee Carnegie, Bruce Causseaux, Jennifer Costello, Craig Fischer, Georgeann Higgins, Betsy Isom, Leslie Kirsch, Robert Lowthian, Andrew McIntosh, and Kim Perteet.

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