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Column: Increased suspensions and debarments bring challenges for small business contractors

by Alex Levine, attorney, PilieroMazza PLLC

Newly released Department of Defense statistics show that the number of suspension and debarment actions initiated by defense agencies continue to rise, in some cases significantly.

For instance, in fiscal year 2015, the Army issued 456 debarments – a one-year increase of 63% over the prior year numbers.

A growing trend

These numbers are indicative of a larger and continuing trend amongst federal agencies. Such agencies have increased their scrutiny on government contractors, resulting in greater suspension and debarment actions.

Commentators have noted that the impetus for this trend stems directly from increased pressure from Congress on federal agencies to step up their efforts to protect taxpayer dollars by getting tough on “bad contractors.”

That pressure has taken the form of public hearings as well as proposed legislation.

One such bill, for instance, was the 2013 Stop Unworthy Spending Act (SUSPEND) Act, which promised to strengthen the suspension and debarment system by limiting agencies’ discretion through making suspension and debarment mandatory in certain circumstances.

Monitoring and referrals rising

At the same time, the monitoring of government contractors has also gone up.

And, it is not just agency suspension and debarment officials that are on the lookout for contractor violations.

Increasingly, referrals to suspension and debarment officials are coming from a wide variety of sources, such as contracting officers, agency inspector generals, contractor disclosures, the Small Business Administration, the Department of Labor or even as a result

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of investigations begun due to competitor complaints.

Contractors that lose out on contracts due to size protests or have their contracts terminated for default, for instance, can find the matter referred to suspension and debarment officials for further action.

Impact on small contractors

The pressure to increase an agency’s suspension and debarment numbers can have a disproportionate impact on small business contractors.

While small businesses count in an agency’s reported numbers to the same extent as large business contractors, they often do not have the same resources to successfully navigate and fight the suspension and debarment process.

Thus, going after small businesses can be a tool used by agencies to boost their reported numbers to Congress.

In addition, limited resources make it harder for small businesses to create and maintain large internal compliance programs or hire and train personnel that can be solely dedicated to monitoring, compliance, and reporting.

Such programs are regularly used by larger companies to avoid problems and are viewed as a miti-

gating factor by suspension and debarment officials.

Boosting internal controls

Small businesses are not without hope, however. There is much that they can do to put into place an effective system of internal controls before something goes wrong.

Such controls need not be overly burdensome and instead can be tailored to suit the company’s size and likely areas of risk.

For example, small businesses can develop a monitoring system that focuses on potential problem areas, such as size and status representations or invoicing and business capture efforts.

Project managers and proposal writers can be regularly kept up to speed on current legal requirements, including the company’s ethics and conflict of interest policies.

Employees can be trained in the company’s code of business ethics and conduct, and directed to report violations promptly to those in the company that can act quickly to address the violation.

Such measures will not only help small business contractors avoid committing violations, they will also be viewed favorably by reviewing bodies considering what action, if any, to take in response to an uncovered violation. In today’s climate of increased scrutiny, it is important that small businesses focus on these issues early, since the best time to put an effective compliance system in place is before there is a problem.

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