

Congressional Investigations -- Are you prepared?

Situation: The government needs help responding to a significant natural disaster or undertaking urgent reconstruction in a far-flung country. You determine the government needs you. Your company makes products or provides services that address perfectly the government's needs. Perhaps your company can also help the government to better define what it requires from contractors. If your company can position itself as the best or only contractor for the job, it might receive a noncompetitive award. Because the government's need is urgent, your company may be able to earn significant revenue in the near term. Sound enticing?

Today's large-scale, fast-track government contracting environment clearly presents opportunities for your company. Inherent in these exigent circumstances are spotty oversight, rushed or non-routine contract issuance, and time pressures that present risks and pitfalls that may not be so obvious. These risks have been brought into sharp focus with the 110th Congress's plans to conduct investigations concerning the award and performance of contracts, particularly relating to Iraq and Hurricane Katrina. What should companies do if they are or believe they will become involved in an investigation by Congress? Are there ways to avoid the downsides?

The best way to deal with congressional investigations is to avoid them in the first place. Here are some tips on protecting your company or your client:

- Understand the laws and regulations that pertain to your interaction with the U.S. government. These rules are often highly complex and technical and include:
 - Procurement integrity and organizational conflict of interest rules governing interactions with the contracting agency and the contract bidding and award process
 - Laws that pertain to communication with current government employees and hiring and employment of former government employees
 - Bribery and gratuity laws that govern what gifts (including entertainment) are or are not appropriate
 - Rules that govern how contracts must be performed and how the government can be charged for that performance, which, if violated, can implicate the False Claims Act
- Make sure that your business units, employees, and consultants know the rules that apply to them. Make sure they

UPCOMING BRIEFING Congressional Oversight and Investigations -- What Corporate America Should Know

A complimentary briefing to explore the working components and practical aspects of Congressional investigations.

Date: February 8, 2007

Time: 8:00 am - 10:30 am

Location: McKenna Long & Aldridge LLP,
1900 K Street, NW
Washington DC, 20006

For more information or to register, please [click here](#).

CONTACTS

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know that the company demands and will act to ensure full compliance. Be alert to warning signs of non-compliance and pay attention to employee concerns.

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- Perform regular self-audits. At a minimum, audits should assess policies and procedures, compliance with rules, documentation of training and compliance activities, adequacy of oversight, and the effectiveness of internal reporting channels. Competent counsel can help you design and execute these audits. Outside counsel's perspective can mean a more effective audit.
- With assistance from counsel, establish an appropriate document retention plan. If you already have a document retention plan, make sure it is functioning as intended.

Sometimes, despite their best efforts, companies find themselves involved in a congressional investigation. If an investigation of your company occurs:

- Engage counsel experienced in such investigations to advise the company and take the lead on interfacing with the government.
- Understand not only the procedures and rules unique to congressional hearings and investigations but also the personalities, dynamics, and political motivations of the relevant committees, members, and staffers.
- Fully understand your company's potential exposures and risks from the events under investigation. Assess the possibility of a parallel criminal investigation by the Department of Justice, and understand the risks inherent in dealing with such parallel investigations.
- Once you understand your company's potential exposures, understand the risks in responding to the investigation itself. With increasing frequency, companies and individuals have been prosecuted for false statements, perjury, or obstruction of justice - even when they are ultimately exonerated in the underlying investigation.
- Establish a plan for dealing with the media. Determine whether and how your company can actually use to its advantage the inevitable publicity from congressional investigations. On a related note, public statements by or on behalf of your company need to be carefully controlled and vetted.
- Determine the status of employees involved in the investigation. Company counsel may be able to represent some of them; others may need separate representation. Your company may be required (by statute or company bylaws) to pay for that separate representation. Even if not required, in some circumstances your company may choose to pay for employees' separate counsel for strategic reasons.
- Communicate, via your counsel, with all investigating authorities. Cooperation may be the best strategy. However, your company must assess all its options, the level of protection needed, and ultimately, what is necessary to safeguard the company's interests.

There is potential for significant rewards in today's large-scale government contracting environment. Understanding and planning for the risks that go along with those rewards can make all the difference in avoiding a congressional investigation or, if an investigation occurs, getting through it and achieving the best possible outcome for your company.

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