

H.R. 3033 "Contractors and Federal Spending Accountability Act of 2007"

Do Poor Performers Keep Winning?

On July 18, 2007, the House Subcommittee on Government Management, Organization, and Procurement held a hearing on federal contracting asking the question: "Do poor performers keep winning?" The hearing included witnesses from the Department of Homeland Security, the Department of Energy, and the Project on Government Oversight, and was well-attended by members of the government and press. Focusing more on specific accusations lodged against certain federal contractors than on general problems in the government contracts process, the hearing consisted of intense questioning by the subcommittee as to why more scrutiny has not been given to the accusations made against certain contractors. Most attention was given to alleged breaches of security and the alleged submission of false claims.

The one system-wide contracting issue addressed by the subcommittee was the alleged lack of a comprehensive, accessible inter-agency database on federal contractor integrity and performance. The subcommittee expressed surprise when procurement personnel from the Department of Homeland Security testified they were unaware of contractor databases in other agencies. Agency representatives also testified that there is little, if any, communication between federal procurement personnel and their counterparts in state agencies as to the integrity and performance records of government contractors.

The Best of Times, The Worst of Times

In the eyes of many in Congress, the federal contracting landscape needs to be significantly changed. According to those holding this view, the large contractors who receive a high percentage of federal contracts are sitting far too comfortably in their positions of government favor. As recently stated at a Congressional hearing by Chairman Towns (D-NY), Chairman for the Subcommittee on Government Management, Organization, and Procurement: "We could really shake up federal contracting if we could cut out the middleman and give some new people a shot." By "middleman", Chairman Towns was referring to the top-fifty or so federal contractors.

In response to the perception of poor performance by federal contractors, Rep. Carolyn Maloney (D-NY), also a member of the Subcommittee on Government Management, Organization, and Procurement, reintroduced H.R. 3033, the "Contractors and Federal Spending Accountability Act of 2007." This bill would create a centralized and comprehensive federal contracting database containing all information on the integrity and performance of federal contractors. H.R. 3033 is likely to move through the legislative process when Congress returns from its August recess.

The Contractors and Federal Spending Accountability Act of 2007: A Tinker's Dam or Genuine Sea Change?

As noted above, the "Contractors and Federal Spending Accountability Act of 2007" would, in the words of Rep. Maloney, "create a comprehensive, centralized database to more efficiently monitor the federal procurement system and help protect U.S. taxpayer dollars." How exactly would the proposed bill create this database?

- The Administrator of General Services would establish and maintain the database which would

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- be available to the public on the General Services Administration's website.
- The database would contain all contractor information regarding civil, criminal, and administrative proceedings initiated or concluded by the Federal and State Governments, including:
 - terminations for default;
 - federal suspensions and debarments;
 - suspension and debarment show cause orders; and
 - administrative agreements.
 - Federal suspension and debarment regulations would be modified to provide that a contractor shall be presumed nonresponsible with respect to federal contract award if the contractor has two or more judgments or convictions rendered against it within any three-year period.
 - This presumption could be rebutted only if the contractor demonstrates through clear and convincing evidence that it is presently responsible and has corrected the conditions that gave rise to the violations.
 - An agency suspension and debarment official could deem repeat violations as sufficient evidence for immediate suspension of a contractor until it rebuts the presumption of nonresponsibility.
 - All federal regulations would be amended to require contractors to disclose all suspensions and debarments, suspension and debarment show cause orders, civil, criminal, and administrative proceedings and/or settlements, and terminations for default, in the five-year period preceding the date of award submission.
 - The Interagency Committee on Debarment and Suspension would resolve issues between agencies, assist the agencies in coordinating their suspension and debarment proceedings, and submit to Congress an annual report on the suspension and debarment system.

It is uncertain how much the bill's provision for more coordination among Agency Debarring Officials would affect the actual functioning of the federal suspension and debarment system. The Interagency Committee on Debarment and Suspension already monitors the implementation of the federal suspension and debarment system, and reports to the Office of Management and Budget on the implementation of this system. Moreover, when looking at the bill as a whole, it is also uncertain how much it would change the real-world operation of the federal procurement system. The General Services Administration, for instance, already maintains the Excluded Parties List System, which disseminates information on parties that are excluded from receiving federal contracts.

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