

DOJ Seeks To Shore Up Contractor Suspension Program

By Dietrich Knauth

Law360, New York (July 02, 2012, 9:05 PM ET) -- The U.S. Department of Justice's inspector general has reported that the DOJ has widespread problems with its handling of statutory suspensions and debarments, highlighting federal agencies' continued focus on preventing unethical contractors from receiving federal funds.

The DOJ is responsible for statutorily mandated debarment for criminal fraud convictions arising out of a contract with the Department of Defense, and for debarment of individuals convicted of trafficking in or possession of drugs. The DOJ IG's June 26 audit concludes that a number of shortcomings "create the possibility that federal funding may be inadvertently and inappropriately awarded to excluded individuals."

The inspector general's report is one of many that show an increased focus on suspension and debarment, and its findings put contractors on notice of a potential compliance risk, according to Richard W. Arnholt, counsel at Crowell & Moring LLP.

"It does highlight the need for contractors to ensure that their compliance programs are up to snuff," said Arnholt, who noted that intentionally violating the statute related to Pentagon contracting could bring criminal penalties of up to \$500,000 — in addition to the potentially dire economic consequences of a suspension.

"For a contractor, if you're getting 70 to 80 percent of your work from federal contracts, if you're suspended or debarred it can put you out of business," Arnholt said. "It's just not worth the risk of running afoul of this type of provision."

The criminal penalties kick in if a contractor knowingly employs a person debarred under the statute or allowing such a person to serve on the board of directors, so contractors should use the report as a reminder to ensure that hiring policies weed out potential employees that have been suspended or debarred from receiving federal funds, he added.

The statutory exclusions "are not completely and accurately reported, aggregated and shared with the relevant federal agencies to inform their award decisions," the Department of Justice inspector general wrote. "These shortcomings create the possibility that federal funding may be inadvertently and inappropriately awarded to excluded individuals."

The DOJ maintains potential suspensions related to drugs or contracting fraud in two clearinghouse databases and eventually migrates that information into the federal Excluded Parties List System, a government-wide system that agencies use to check whether a potential contractor is ineligible to receive government funds.

But not all qualifying cases are submitted to the clearinghouses, not all cases submitted to the clearinghouses are entered into the clearinghouse databases and clearinghouse data doesn't always make it into the EPLS, according to the audit. Data in both systems are often inaccurate or incomplete and not always entered in a timely manner, the inspector general wrote.

The Criminal Division's public integrity section, the Antitrust Division and four of the five U.S. attorney's offices that were audited "were unaware of the reporting requirements for statutory debarment" under the contracting fraud law. Those divisions and U.S. attorneys' offices did not have policies and procedures in place to identify and report qualifying statutory debarments, the audit found.

The one U.S. attorney's office that did have policies and procedures in place did not always report cases to EPLS — during the audit eight out of 19 qualifying cases were not reported to the EPLS by any agency, the audit said.

Besides the missing information, the DOD inspector general also found instances in which cases that did not qualify for exclusion were entered into the EPLS, creating the potential for these individuals to be improperly denied federal benefits, according to the audit.

The Antitrust Division, Criminal Division, U.S. attorneys' offices and Office of Justice Programs were responsive to recommendations made during the audit and had made progress in improving policies and procedures to identify and track qualifying DOD cases, the report stated.

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