

U.S. seeks to debar federal contractors

A RECORD NUMBER OF BANS SOUGHT

Targets are unqualified or ineligible vendors

BY KATHLEEN MILLER

The Obama administration, under pressure from Congress to weed out government suppliers for ethics violations or poor performance, has proposed to ban almost as many contractors this year as President George W. Bush did in his second term.

Federal agencies have proposed blocking 1,006 companies and individuals from contracting so far this year, as well as asking a judge to ban a unit of food-processing giant Cargill of Minneapolis, in a process known as debarment. That is 16 percent more than the 868 contractors that federal agencies proposed to block in all of 2010, and only 70 fewer than the 1,076 contractors that agencies sought to debar under Bush from 2005 to 2008, according to data provided by the General Services Administration.

Agencies are under pressure after a series of congressional hearings and reports from inspectors general and the Government Accountability Office faulted procurement officials for failing to keep unqualified or ineligible vendors out of the \$500 billion-a-year federal market.

"We are starting to see the pendulum swing to more contractor accountability, but government needs to do a lot more to ensure it only works with responsible contractors and thereby protects the public," said Scott Amey, general counsel for the Project on Government Oversight, a nonprofit watchdog group.

The proposed debarments appear to be the most since at least

1997, the earliest year comparable data were available, and may be a record, said Meredith Whitehead, a project manager with the GSA, which oversees the online database used to track contractors barred from winning government work.

Federal spending on contracts for goods and services has more than doubled since 2000, to \$534 billion in the fiscal year that ended Sept. 30, 2010, from \$213 billion in the fiscal year that ended Sept. 30, 2000.

Some contractor advocates say the government may be too aggressive in pursuing debarment in some cases, because even proposing a company for debarment means it won't be able to win contracts until the situation is resolved.

"The use of suspensions and debarments is getting increasingly hostile," said Stan Soloway, president of the Professional Services Council, a trade association of government contractors based in Arlington.

Moir Mack, a White House Office of Management and Budget spokeswoman, said the agency provides due process to all contractors facing suspension or debarment.

"For too long, the government failed to use suspension and debarment, even in the face of egregious conduct by contractors," Mack said in an e-mail. "That's why this administration has been pushing for tougher oversight of contractors, and we've seen results."

Reasons to block

Contractors can be proposed for debarment for poor performance as well as ethical issues, including overbilling or falsely claiming a company is owned by a disabled veteran to win special awards. In some cases, debarment is automatic, such as when a contractor is convicted of violating the Clean Air Act or Clean Water Act. Debarment typically lasts three years.

Last month, the Department of Labor said it will ask a judge to debar Cargill Meat Solutions, a Wichita, Kan.-based subsidiary of Cargill, after the company refused to agree to a settlement of allegations it discriminated against female job applicants seeking entry-level production jobs and favored Asians and Pacific Islanders over other applicants.

The government's allegations are unfounded, Mike Martin, a Cargill spokesman, said in an e-mail.

After a company has been proposed for debarment, it can take a year or more before a decision is made, said Robert Burton, a former acting administrator of the Office of Federal Procurement Policy during the Bush administration who is now a partner at the Venable law firm in the District.

"It can have a devastating impact on a company, especially a small business that may be out of business by the time the proceeding is completed," Burton said.

The Small Business Administration has expanded its efforts to ban contractors by looking across agencies for companies that misrepresent their size or ownership status to win work reserved for small vendors or companies owned by disadvantaged groups, said John Klein, the agency's acting director for government contracting and associate general counsel for procurement law.

Agency staff previously focused on suspending and debarring vendors that misrepresented their size or ownership status only on contracts with the SBA itself, said Klein.

"The mission is to make sure that legitimate small businesses benefit from our program," Klein said.

Including decisions made outside of federal agencies, debarments so far this year total 2,139, an 11 percent increase from 1,935 in 2010. That's short of the 6,098 com-

panies and individuals debarred in 2004, the most active year for debarments during Bush's administration.

Those figures include debarments stemming from court decisions and those triggered automatically by violations of certain laws, as well as those initiated by government agencies through proposals to ban vendors.

Suspensions Increase

The number of contractors suspended from winning work has also surged, to 1,044 so far this year, up 40 percent from last year's 747 and the most of any year since at least 2000, according to the GSA data. Suspensions are typically for short periods and can be initiated with less evidence than proposed debarments because they are designed to protect the government while investigations are occurring.

The financial impact of even short-term blacklisting from federal work can be hard on contractors.

A unit of Agility, the Kuwaiti storage and logistics provider, filed a lawsuit in federal court in Alabama this month saying a decision to suspend the company from winning contracts after its indictment was "capricious." A subsidiary, Agility Defense & Government Services, primarily operates in Madison, Ala., according to the lawsuit.

The Defense Logistics Agency, an arm of the Defense Department, suspended DGS 10 days after Agility was indicted in November 2009 for allegedly defrauding the government. Agility, formerly known in Kuwait as Public Warehousing, pleaded not guilty in August to the allegations in federal court in Atlanta.

DGS has denied wrongdoing and says that its business has "collapsed" since the indictment of Agility and that its workforce has shrunk to fewer than 50 employees from about 1,200.