

SUSPEND Act: Far from suspended, it's moving right along

By

Companies that engage in Government Contracting should be paying close attention to the so-called Stop Unworthy Spending (SUSPEND) Act, H.R.3345, which passed the House Oversight and Government Reform Committee on October 29, 2013 and as of this writing was still awaiting a floor vote in the full U.S. House of Representatives.

The purpose of the bill is to consolidate contractor suspension and debarment processes for all executive agencies into a single managing authority. At present, the agencies maintain an inconsistent and disjointed jumble of different suspension and debarment procedures, with varying and sometimes insufficient levels of resources and personnel to administer them. The result is that some agencies do a much better job than others of identifying poorly performing contractors, handling suspension and debarment proceedings, and maintaining the lists that keep track of which contractors are ineligible for certain federal programs.

The bill, also known as the SUSPEND Act, was introduced by the committee's chairman, Darrell Issa (R-Calif.). It enjoys the support of a bipartisan list of co-sponsors, including Maryland's own Elijah Cummings (D), who says that it will "protect more than \$1 trillion in taxpayer dollars that flows to contractors and grant recipients each year."

The Act proposes the creation of a new centralized Board of Suspension and Debarment with authority to manage all executive agency suspension and debarment activities. The Board would be tasked with improving the system by offering more transparency, consistency, and fairness as it determines whether to debar or suspend a recipient of federal financial assistance. Those determinations would be conclusive on a government-wide basis, and the Board would maintain a single database of ineligible parties.

If the bill becomes law, it would represent a significant shift in the rules and procedures governing suspension and debarment that many government contractors have spent years learning how to manage. Such change would be accompanied by new business risks that can affect a company's compliance and other overhead costs, particularly if it is used to contracting with agencies that are known for lax implementation of suspension and debarment procedures. However, there may also be opportunities for businesses to reap the benefits of newfound efficiencies and consistency, if they intend to pursue contracts with more than one agency. A single set of rules to be applied across the board will make it easier for small businesses with more limited resources to handle suspension and debarment issues, simply because they won't have to learn new procedures every time they pursue a contract with a different agency.

We all know that anything can happen during the legislative process, and the bill has already been amended to allow for any civilian or military agency to seek a waiver from the new centralized Board's authority if that agency's existing suspension and debarment efforts meet certain criteria demonstrating a minimum level of sophistication. (Only the Department of Defense was originally exempt from the Board's centralized suspension and debarment authority.) The Director of the Office of Management and Budget (OMB) will have the final word on which agencies receive waivers (though certain criminal proceedings under SBA for lying about the status of a small business are automatically exempted).

The bill contains some additional provisions designed to foster better coordination among agencies via an Interagency Suspension and Debarment Committee. It also features requirements that the head and Inspector General of each agency work together on rules for investigations of fraud and corruption by contractors and grant recipients.

It remains to be seen whether the SUSPEND Act will pass, and with what amendments. What started as a well-intentioned effort to crack down on agencies that were not doing enough to suspend or debar poorly performing contractors could end up as a major restructuring of processes that have been in place for many years. Government contractors would be wise to keep a close eye on this bill and to consult with

knowledgeable legal counsel regarding its impact on their business.