

Affiliated Monitors, Inc.™

INTEGRITY THROUGH COMPLIANCE

COMPLIANCE THROUGH THE EYES OF AN INDEPENDENT MONITOR

Presenters:

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EXPANDED USE OF SUSPENSION AND DEBARMENT

Increased Government Scrutiny

- False Claims
- Procurement Integrity Act Violations
- FAR Violations
- Mandatory Disclosures
- Regulatory Violations
- Quality Control
- FCPA

US Agencies Want 1,000-plus Contractors Barred

By Kathleen Miller

Bloomberg News, December 28, 2011

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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 from Minneapolis, in a process known as debarment. That is 16 percent more than the 868 contractors that government agencies proposed to block in 2010, and only 70 fewer than the 1,076 contractors that US agencies sought to debar under the law.

Federal agencies are under pressure from the Accountability Office for failing to track federal money. "We are trying to ensure it works on Government's signature."

Federal agencies have proposed blocking 1,006 companies and individuals from contracting so far this year. . . That is 16% more than . . . in all of 2010.

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 Moira Mack, a White House spokeswoman, a project manager with the General Services Administration, which oversees the online database used to track contractors from winning government work. Federal spending on contracts for goods and services has more than doubled since 2000, to \$500 billion in the fiscal year ended Sept. 30, 2010, from \$213 billion in the fiscal year ended Sept. 30, 2000.

Some contractor groups say the government may be too aggressive in pursuing debarment in some cases, since even proposing a company for debarment means it will not be able to win new contracts until the situation is resolved. "The use of suspensions and debarments is getting out of hand," said Stan Soloway, president of the Professional Services Council, a trade association of government contractors.

Moira Mack, a White House spokeswoman, said the agency provides due process to all contractors facing suspension or debarment. "The government failed to use suspension and debarment, even in the face of egregious

Federal agencies are under pressure . . . for failing to keep unqualified or ineligible vendors out of the \$500 billion-a-year federal market.

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-mailed statement.

http://articles.sfgate.com/2011-12-28/news/30563964_1_contractors-debarment-federal-agencies

WHO'S WATCHING?

- Government Agency Customers
- Agency Inspectors General
- Defense Contract Audit Agency (DCAA)
- Federal Regulatory Agencies
- Department of Justice

WHEN IS AN INDEPENDENT MONITOR APPROPRIATE?

- Deferred Prosecution or Non-Prosecution Agreements
- Plea Agreement in Criminal Matters
- Debarment Proceedings
- Administrative and Regulatory Actions
- Settlement Agreements
- Probation or Corrective Actions
- Proactive and Preventive Situations

OTHER BENEFITS OF USING AN INDEPENDENT MONITOR

- Part of Comprehensive Remedial Program
- Improve Practices/Internal Controls
- Demonstrate Corrective Actions and Due Diligence
- Strengthen Ethics and Compliance Programs

WHAT IS AN INDEPENDENT MONITOR?

Principles of Independent Monitoring

- Objective
- Neutral
- Qualified
- Professional
- Custom-Tailored for Each Matter

PRINCIPLES FOR INDEPENDENT MONITORS

- DOJ “Morford” Memo
- Qualifications Based on Merit
- No Conflicts of Interest
 - No Personal or Business Relationship
- Not an Investigator/Not an Advocate
- Reports to the Government
- Agreement Directs the Monitor
- Clear, Written Program for Monitoring

WHAT DOES A MONITOR DO?

- Assessment of Ethical Culture
- Ethics and Compliance Program Reviews
- Audits and Record Reviews
- Interviews
- Inspections
- Employee Surveys
- Internal Control Assessments
- Improvement Recommendations

THE MONITOR AS MENTOR?

Some orders call for purely objective assessments.

Some agencies and businesses want the benefits of monitor's insight:

- On-site, with independent eyes and no “gotcha” mentality.
- Can make substantive recommendations relative to:
 - Ethics and compliance
 - Training
 - Quality controls
 - Internal controls
 - Due diligence
 - Risk assessments

FREQUENTLY ASKED QUESTIONS

- ? Frequency and duration of monitoring?
- ? Monitor's scope of authority?
- ? Announced or unannounced visits?
- ? Who gets the reports?
- ? Implementation of recommendations?

CLIENT CONCERNS

- Opening business to outsiders
- Monitor as arm of agency
- Something to hide
- Change
- Losing control
- Cost

WHAT THE MONITOR SEES

- Ethics program and application
- Books and records
- Business processes
 - Procurement
 - Financial management
 - Safety
 - Internal controls
- Third party due diligence
- Quality control
- Billing submissions/ Contract modifications

WHAT THE MONITOR REPORTS

Compliance with Terms of Settlement Agreement

- Good faith efforts to comply, or lack thereof
- Extent of cooperation with the monitor
- ID'd areas of government concern
- Improvements made by company
- Contract obligations fulfilled
- Areas where more efforts are needed
- Implementation and adherence to ethics and compliance programs
- Additional recommendations

ETHICS & COMPLIANCE PROGRAMS

What Makes an Effective Ethics Program?

- The program is comprehensive and more than a “trophy.”
- There is an Ethics/ Compliance Officer.
- The ethical culture meshes with the company’s Code of Ethics.
- The program addresses risks.
- Effective training occurs regularly.
- The company’s ethical fiber runs top-to-bottom.

ETHICS & COMPLIANCE PROGRAMS IN ACTION

- Ethics/ Compliance Officer
 - ✓ Has good communication and training skills
 - ✓ Respected by staff
 - ✓ Is knowledgeable
 - ✓ Has adequate tools for the job
 - ✓ Understands and respects obligations
- Key to position: independence, authority, and placement within the company

ETHICS & COMPLIANCE PROGRAMS IN ACTION

- Leadership Commitment/ Tone at the Top
 - ✓ Visible
 - ✓ Constant
 - ✓ Participatory
- Code of Conduct
 - ✓ Useable, not “shelf ware”
 - ✓ States company and employee responsibilities
 - ✓ Employees acknowledge duty to report
 - ✓ Focused on unique vulnerabilities

ETHICS & COMPLIANCE PROGRAMS IN ACTION

- Training
 - ✓ Both values-based and compliance-focused
 - ✓ Encompasses new hires
 - ✓ Live and CBT, scenario-based
 - ✓ Cascading
 - ✓ Includes tests of comprehension
- Anonymous Reporting
 - ✓ Hotline: Phone and e-mail
 - ✓ Trend analysis/feedback

ETHICS & COMPLIANCE PROGRAMS IN ACTION

- Subcontractor flow down
 - ✓ Due diligence
 - ✓ Terms of reference
 - ✓ Validation
 - ✓ Extension of Resources
- Mandatory Disclosure
 - ✓ Policies
 - ✓ Practices
 - ✓ Communication

ETHICS & COMPLIANCE PROGRAMS IN ACTION

Carrot or Stick?

- ✓ Is there a progressive discipline program?
- ✓ Are there incentives?
- ✓ Have employees been disciplined or terminated?
- ✓ Is the company trying to implement changes?
- ✓ Recommendations for improvement?

CASE STUDIES – DOD MONITORING

COMPANY: Federal construction contractor

GOVERNMENT AGENCY: DOD

ISSUE: Possible debarment for violating the
Buy American Act

RESOLUTION: Ethics evaluation and monitoring

APPROACH: In-depth study of company's ethics program; review of risk areas; improve programs; monitoring.

CASE STUDIES – PHARMACEUTICAL

COMPANY: Pharmaceutical manufacturer

GOVERNMENT AGENCY: State Licensing Board

ISSUES: Fraud, guilty plea by owner, licensing issues

RESOLUTION: Compliance program, monitoring, hotline, random drug analysis, debarment of owner

APPROACH: Set up compliance program; trained internal Compliance Officer; excellent test results; demonstrated owner's compliance/ removal from operations.

CASE STUDIES – FEDERAL HIGHWAY

COMPANY: Multi-state construction company

GOVERNMENT AGENCY: Federal Highway, IG

ISSUES: Requisition/time and materials fraud, false claims

RESOLUTION: Compliance program and independent monitor in lieu of debarment

APPROACH/ RESULTS: Improved internal controls; conducted risk assessments; mentored Compliance Officer; company continued work on government contracts.

CASE STUDIES – HEALTHCARE FRAUD

COMPANY: Pain management specialist clinic

GOVERNMENT AGENCY: US Department of Health & Human Services

ISSUE: Medicare fraud

RESOLUTION: Fine, compliance program, periodic audits, reporting hot line

APPROACH/ RESULTS: Implementation of Compliance Program; improved coding and billing practices; prompt response to hotline complaints.

CASE STUDIES – PATRIOT ACT

COMPANY: International precious metals refiner

GOVERNMENT AGENCY: US Bureau of Immigration and Customs Enforcement

ISSUE: Money laundering

RESOLUTION: Fine, Anti-Money Laundering Program, independent monitoring

APPROACH/ RESULTS: Implementation of AML Program; independent monitoring of due diligence with third parties and banking transactions; internal controls.

SPEAKERS

Vincent L. DiCianni, Esq., President. An attorney by profession, Vin launched Affiliated Monitors, Inc. in 2003 and is the company's President and CEO. Vin has served as the lead monitor in matters involving federal, state and municipal agencies across the country. He has been a featured speaker for conferences, workshops and associations on the expanded use of monitoring agreements in regulatory oversight. vdicianni@affiliatedmonitors.com

Eric Feldman, CFE, CIG, Director of Corporate Compliance. Eric recently retired from the CIA after 32 years of executive experience in Inspector General oversight/ federal auditing. Career highlights include developing a DOJ-lauded procurement fraud prevention and detection program, and conducting innovative assessments of corporate ethics and compliance activities of major government contractors. Eric joined AMI in May 2011. efeldman@affiliatedmonitors.com

**Diligence is the mother
of good luck.**

- Benjamin Franklin

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