

## FRAUD & DEBARMENT

### INTRODUCTION

Fraud committed by a Government contractor can lead to Debarment of a contractor by the Federal Government. Examples of Fraudulent activity perpetuated by a Government contractor can include: attempting to convince the Government that an entity is a small business; mislabeling materials as “Made in America”; having criminal drug violations; or even violating Immigration and Nationality Act provisions. ([FAR 9.406-2](#)) If a Government contractor is found guilty of Fraud, it can be subject to a Debarment action.

If a contractor is debarred, Debarment prohibits a contractor from obtaining any Government contracts for a specified period of time, depending on the severity and extent of the grounds for Debarment.

### NEW LEGISLATION

Recent developments in legislation indicate that the Department of Defense (DOD) intends to “...allow DOD and NASA suspension and debarment offices to pursue administrative penalties and fines against contractors that make false claims for payment.” ([NDAA](#)) This legislation entitled the “2014 National Defense Authorization Act” addresses fraud claims of up to \$500,000 and doubles the amount of damages which can be proved by the Government. *Id.*

The purpose behind the 2014 NDAA is to reduce the rising number of cases involving contractors who purposely and knowingly attempt to portray their business entities as small disadvantaged businesses. The primary reason a contractor might attempt such fraud is to obtain contracts which are otherwise considered “set-aside” contracts strictly intended for businesses that are:

- 8(A), Business Development Certified (Socially and Economically disadvantaged),
- Minority-owned,
- Woman-owned, or
- Disadvantaged Business Enterprises (DBEs) (e.g. Service Disabled Veteran Owned Businesses)

In a March 18, 2013 case, the Executive Officers at two companies based in Arlington, VA pled guilty to “...fraudulently obtaining more than \$31 million in Government contract payments that should have gone to disadvantaged small businesses.” ([DOJ Fraud](#)) Other cases involving fraud allegations against a contractor by the Government include *United States v. Perino*; *United States v. Capello* ([Cases](#)).

### EXAMPLES OF FRAUD

- Embezzlement of funds, theft, forgery, criminal tax evasion, making false statements, bribery, falsification of records, or receiving stolen property;

- Intentionally labeling products as “Made in America” when the product was not made in the U.S.;
- Being in Violation of the Drug-Free Workplace Act of 1988;
- Unfair trade practices including violation of Section 337 of the Tariff Act of 1930;
- Violation of Federal criminal laws involving fraud, obvious conflict of interest, bribery or gratuity;
- Violation of the False Claims Act (31 U.S.C. 3729-3733);
- Knowingly requesting payment via false invoicing on a contract.

[\(FAR 9.406-2\)](#)

## CONCLUSION

Contractors must be aware that certain actions taken during bidding or after award of a Government contract may be considered fraudulent and can lead to Debarment. A period of Debarment can last anywhere from one year to five years, depending upon the severity of the fraud committed against the Federal Government.

A period of Debarment can be extended if Suspension or Debarment officials have reason to believe that the contractor has not taken the necessary steps to correct violations, or if the official considers a Debarment extension to be in the best interest of the Government.

In addition to the stated prime contractor responsibilities, the prime contractor has equal flow-down responsibility to and through its subcontractors and/or suppliers and can be held liable for **their** actions.

**As a Word of Caution:** Contractors need to be especially cautious in conducting business with other contractors and suppliers in addition to investigating their past performance records.

Retaining the assistance of a professional consultant should be seriously considered to protect a contractor’s interests properly and thoroughly. The experts at Excell Consulting International, Inc. stand ready to assist and evaluate your company’s position and provide valuable and cost-effective guidance for your business.

**In the end, you will be glad you made the call; by the way, it’s a FREE CALL.**

**EXCELL CONSULTING: “HERE TODAY FOR YOUR TOMORROW.”**

*Author’s note: The information contained in this article is for general informational purposes only. This information does not constitute legal advice, is not intended to constitute legal advice, nor should it be relied upon as legal advice for your specific factual pattern or situation. – John G. Balch, CEO CPCM*