



Talking Points on Key Provisions of H.R. 3033 – Contractors and Federal Spending Accountability Act of 2007

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Overview

PSC supports the objectives of transparency and accountability in federal contracting and recognizes the importance of the government having access to all relevant information pertaining to contractor responsibility and the source selection decision.

However, PSC does not support this bill because it:

- **Undercuts the fundamental principles of due process**
- **Fails to establish fair and objective criteria for information to be collected or ensure such information is used properly**
- **Presumes, without supporting evidence, that current suspension and debarment rules are inadequate or not fully used**
- **Demands, unrealistically, that government contracting officers make judgments on highly complex legal issues**

Until each of these flaws are fully and appropriately addressed, the legislation will neither improve the federal procurement process nor enable contracting officers to make reasoned, fair, and accountable contractor responsibility determination judgments—which are at the very foundation of the federal procurement system.

Specifically:

Section 3 – Database for Contracting Officers and Suspension and Debarment Officials

Section 3 requires the Administrator of General Services to establish and maintain a database regarding the integrity and performance of federal contractors for use by contracting officers, officials having authority to suspend or debar contractors and officials having authority over grant assistance. The database must include information regarding civil, criminal and administrative proceedings initiated or concluded by the federal government and by state governments against contractors or assistance recipients. Specifically, for every person awarded a federal contract or assistance the database must include the following covering the past five years: 1) information regarding all proceedings against that person; 2) each proceeding recorded must include a brief description of the proceeding, including any amount the person paid to the federal or state governments; 3) all federal contracts and assistance awarded to the person that were terminated; 4) all federal suspensions and debarments; 5) all federal suspension and debarment show cause orders; and 6) all administrative agreements signed.

- **PSC does not conceptually oppose a government-wide database that includes objective information based on factual, government-provided, input that includes sufficient descriptors to fully explain the nature of the reported data, the nature of remedial action taken by the subject company, and the relative severity of the infractions cited. Unfortunately, the legislation does not address any of these elements.**

- **To the extent that the database includes the fines paid by a company, fundamental due process mandates that it only include those judicial or administrative actions that resulted in a finding or admission of guilt.**

Section 4 – Suspension and Debarment Presumption for Repeat Violators and Poor Performers

Section 4 requires that the Federal Acquisition Regulation (FAR) suspension and debarment regulations be amended six months after enactment to provide that a person be presumed ineligible for the award of a federal contract or for assistance if the person has received a judgment or conviction for the same offense twice within any three-year period, provided each offense independently constitutes a cause for debarment. The presumption may be rebutted only if the person demonstrates present responsibility and has corrected the conditions that gave rise to the violations. Finally, the section gives an agency suspension and debarment official the power to deem evidence of repeat violations as sufficient reason to find that immediate action is necessary to suspend the person under the regulations until the person can show present responsibility and has corrected the conditions that gave rise to the violations.

- **PSC opposes this provision. The current suspension and debarment process works when used appropriately. Numerous companies have been suspended or debarred when their corporate behavior warranted it. Moreover, the legislation presumes that the correct method of “punishing” a contractor is suspension or debarment, a major change to the regulatory standards which currently apply only to federal contracting. In so doing, it may impose a punishment that often far exceeds the nature of the offense.**
- **Further, this provision improperly presumes that two occurrences equal a “pattern of abuse” that warrants suspension, without offering any context or perspective relative to the nature or severity of those occurrences or the remedial action the company may have taken.**

Section 5 – Disclosure in Applications

Section 5 requires the FAR to be amended six months after enactment to require that any bid for federal contracts or request for assistance include the offeror’s disclosure in writing, covering the five years preceding the bid or request, of: 1) all federal or state suspensions or debarments; 2) all suspension and debarment show cause orders; 3) all civil, criminal and administrative proceedings; 4) all administrative, civil and criminal settlements, agreements, consent decrees, enforcement actions, corrective actions, compelling reason waivers and other similar judgments, orders, decisions and final dispositions with respect to federal contracts or assistance that the person is implementing; and 5) all federal contracts and assistance awarded to the person that were terminated due to default.

- **PSC opposes this provision because it is overly broad and unfairly links any proceeding against a company to an implication of bad behavior rather than solely for those where a judgment against, or admission of guilt, resulted. The mere existence of an action against a company does not equate to substantial wrongdoing by the company. For example, a “show cause” order is not the same as a decision to debar or suspend; settlements with no finding of guilt do not, under our system of laws, equate to guilt.**
- **In addition, the five year period is too long; it should be limited to three years and focus only on the performance history that is relevant to the immediate request for proposal, as is the case with the current regulations relating to the use of past performance information.**



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