

# Taking a bite out of fraud

Proposed legislation gives teeth to small business self-performance requirements

**O**n September 21, 2011, the U.S. Senate passed by unanimous consent the Small Business Contracting Fraud Prevention Act of 2011. While this bill has several hurdles to clear before it becomes law, this proposed legislation nonetheless is noteworthy because it – as currently written – contains several provisions that could have a significant impact on small and disadvantaged federal contractors.



**This proposed legislation gives the government a clear-cut way to penalize federal contractors and subcontractors that violate the self-performance requirements of the Small Business Administration's regulations – authority that did not previously exist.**

One noteworthy aspect of the proposed legislation receiving remarkably little attention is that it provides that each payment application submitted by a federal contractor or subcontractor to the government will be deemed a certification of compliance with applicable self-performance requirements on contracts managed by the Small Business Administration.

If implemented, this aspect of the proposed legislation would broaden the “deemed certification” provision in the Small Business Jobs Act of 2010, which provides, among other things, that submission of a bid or proposal for a federal contract is deemed to be “affirmative, willful and intentional certification of small business size and status.”

Under the September 21, 2011 version of the proposed legislation, federal contractors and subcontractors who violate applicable self-performance requirements could be subject to the following penalties and remedies:

- A fine up to \$500,000 or imprisonment of up to 10 years – or both
- Administrative remedies under the Program Fraud Civil Remedies Act of 1986
- Suspension and debarment per Federal Acquisition Regulation subpart 9.4
- Ineligibility for participation in various small business programs for a period not to exceed three years

More specifically, the proposed legislation provides that a person shall be subject to the foregoing penalties and remedies if the person:

- Uses the services of a business other than the business awarded the contract or subcontract to perform a greater percentage of work under a contract than is permitted by regulations issued by the Small Business Administration
- Willfully participates in a scheme to circumvent regulations issued by the Small Business Administration governing the percentage of work that a contractor is required to perform on a contract

This proposed legislation, co-sponsored by a bipartisan group of 13 U.S. Senators led by Sen. Olympia Snowe (R-Maine), gives the government a clear-cut way to penalize federal contractors and subcontractors that violate the self-performance requirements of the Small Business Administration's regulations – authority that did not previously exist. And, as noted, the penalties and remedies are very substantial.

We will continue to monitor this important piece of legislation. ■

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