

E-ALERT | Government Contracts

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INNOVATIVE APPROACHES TO LEGAL RISK MANAGEMENT

Government contractors find themselves operating in an era of unprecedented accountability and enforcement risk. Although companies doing business with the government have long been forced to contend with potential liability under the civil False Claims Act and Foreign Corrupt Practices Act, legislative developments and shifting enforcement priorities have caused the risks posed by these statutes to spiral to unprecedented levels in recent years. This expanding liability may have particularly harsh consequences for Government contractors, as it coincides with a push in the political arena for more aggressive use of administrative suspension and debarment. Meanwhile, given the flurry of legislation sparked by corporate scandals of the past decade, the directors and c-suite executives of these contractors suddenly find themselves exposed to intense scrutiny – and potential liability – for failing to mitigate fraud and related risk.

The result of these trends is a “perfect storm” of potential accountability risks for Government contractors and their directors. At the very time that the threat of compliance violations and administrative debarment is highest, corporate directors are finding that their efforts to mitigate risks and stave off potential crises have never been more scrutinized. All of this raises an obvious question for the contracting community: how can boards of directors and c-suite executives effectively mitigate the varied and multiplying risks faced by their companies?

In a recently published [white paper](#), the attorneys of Covington’s Government Contracts group identify a core set of practical, innovative strategies for managing legal risk in such a challenging environment. The paper traces the major trends in interpretation and enforcement of the civil FCA, FCPA, and UK Bribery Act, and it analyzes the enormous impact these statutes can have on contractors who are unprepared for the new enforcement regimes. Having laid out these risks, the paper then discusses key – but often underutilized – steps that savvy contractors can and should take to manage their legal risk, including strategies for disclosing suspected violations, when and how to “front” potential issues with prosecutors and debarring officials, and the importance of complementing compliance programs with a meaningful commitment to values-based ethics.

But above all, the Covington white paper emphasizes that contractors must develop and maintain an integrated approach to managing the many facets of contractor responsibility. Not only does such coordination ensure that contractors implement compliance and ethics programs tailored to their specific risk profile, but it also leaves contractors better positioned to engage with Government officials to cooperatively resolve any compliance issues that may arise. The paper observes that the Government already has embraced a new era of coordination among the enforcement agencies, and contractors that fail to adopt such a holistic approach do themselves an enormous disservice, as they will find themselves behind the curve and forever playing catch-up with the Government.

Covington & Burling, in coordination with Thomson Reuters, will be hosting a webinar on **Friday, June 7 at 12 pm** to further explore the evolving issues in legal risk management discussed in the white paper. The authors of the paper, joined by Daniel I. Gordon, Associate Dean for Government Procurement Law Studies at the George Washington Law School, will share insights and strategies

for approaching contractor responsibility issues in today's challenging business environment, to be followed by an interactive Q&A session with attendees.

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