

Mergers Make It Tougher to Punish Federal Contractors

As Industry Consolidations Thin Ranks of Service Providers, Washington Seeks to Fine-Tune Rules to Debar Lawbreakers

By ANNE MARIE SQUEO

FEDERAL INQUIRIES into whether Boeing Co. illegally won a multibillion-dollar military contract are sparking debate here about whether rules to ban companies that run afoul of the law from doing government work are ineffective in policing corporate behemoths.

The Justice Department and the Air Force are investigating whether Boeing wrongly possessed or used documents from rival Lockheed Martin Corp. to win a 1998 competition to build the military's next-generation rocket. Boeing officials say they are cooperating with federal officials. In an advertisement yesterday in national newspapers, Boeing Chairman Phil Condit defended its work on the rocket program but conceded the company "is not always perfect" and "there have been mistakes." Also coming under scrutiny is telecommunications company MCI, formerly known as WorldCom Inc., which has won a handful of major government contracts in recent months despite having committed one of the largest corporate frauds ever uncovered.

But penalizing either company is complicated by the fact that both are among the few major players in their respective industries, and critics fear that could result in lenient treatment. Legislators, special-interest groups and industry officials say the rules could be clarified so there is a concise set of criteria that determine whether a company should be suspended or barred from government work. Such decisions often are made by lower-level government employees on an

agency-by-agency basis. Also, an independent body could be set up that not only would share information but would actually review agency determinations to ensure unanimity in the process.

The government awards contracts worth hundreds of billions of dollars annually to thousands of companies providing everything from telephone service to toilet paper. Under the Federal Acquisition Regulation, officials are required, among other things, to grant contracts only to "responsible sources" with a "satisfactory record of integrity and business ethics." If a company fails to meet this standard, it is supposed to lose out to a rival bidder or be temporarily or permanently suspended from work on existing contracts.

A federal database on the Internet that lists those companies and individuals that have been banned—either permanently or temporarily—from government work shows hundreds of people and small firms are cut off each year. But major corporations, which get the most money from federal contracts, rarely meet a similar fate.

"From a government-credibility standpoint, public trust is always compromised when there are two sets of rules," says Steven Schooner, co-director of the Government Procurement Law Program at George Washington University Law School in Washington. "There is a regimen for enforcement, but it's not true because we only debar or suspend irritating little firms who aren't major players."

A May 2002 study by the Project on Government Oversight, a nonprofit watchdog group, found 43 of the government's top con-

In the Hot Seat

An investigation by the Project on Government Oversight cites these 10 federal contractors as having committed or allegedly committed the most violations since 1990:

CONTRACTOR	NUMBER OF VIOLATIONS/ALLEGED VIOLATIONS	TOTAL FINES, PENALTIES, RESTITUTION AND SETTLEMENTS, IN MILLIONS
General Electric	63	\$982.9
TRW	16	389.5
Boeing	36	358.0
Lockheed Martin	63	231.9
United Technologies	18	214.8
Unisys	12	182.2
Raytheon	24	128.7
Northrop Grumman	21	87.9
Fluor	19	70.0
AT&T	14	16.1

Source: Project on Government Oversight

tractors paid about \$3.4 billion in fines and settlements since 1990 for violating federal laws. But only one was banned from government work: General Electric Co., the worst offender, which had 63 alleged or actual violations and paid the government nearly \$983 million. And the ban—resulting from one infraction—affected only GE's aircraft-engine division for five days. The Bush administration did take the unprecedented step of debarbing Enron Corp. and accounting firm Arthur Andersen after they became embroiled in a fraud scandal, though the debarment didn't stem from work for the government.

A major reason for the dichotomy in de-

barring big and small companies has been the rash of mergers and acquisitions that swept across most industries—including defense, health care and telecommunications—in the 1990s. Where there used to be several options for obtaining a product or service, now there are perhaps just two, three at most. Government officials say cutting one of these companies off—even temporarily—hinders competition and innovation and provides the firm's rivals with increased pricing clout. Nor is the agency doing the debarment the only one affected: A company cut off from one federal agency is cut off from all the rest.

That is a big deal when an industry is highly consolidated. In Boeing's case, for example, the company is one of the Pentagon's biggest suppliers and works for a number of different agencies. It makes fighter jets for the U.S. Navy, builds spy satellites for the National Reconnaissance Office and is the lead contractor on a national missile-defense system that the Bush administration has said will initially be in place by late 2004, among other things. If the Air Force were to cut the company off from work as a result of its investigation into the rocket competition, all these government initiatives would be hindered.

"You don't want these companies screwing up," says Edward "Pete" Aldridge, who recently stepped down as the Pentagon acquisitions chief. "But we have to take into account the national-security interest."

Industry officials contend that debarbing or suspending a contractor isn't necessarily fair either, given that pockets of bad behavior are inevitable in multibillion-dollar businesses that employ tens of thousands. "Every once in a while there is a bad apple out there," says Richard Bednar, senior counsel at law firm Crowell & Moring in Washington and the chairman of the Defense Industry Initiative on Business Ethics and Conduct. "No large company is blemish-free, but we deal with it by owning up to the problem, addressing it and taking appropriate disciplinary action."

The Clinton administration attempted to clarify the business-ethics standard in its waning days by adding specific criteria for agencies to follow in deciding whether to take action against companies or individuals. But business leaders complained and the Bush administration scrapped the revised rule. The issue has resurfaced in recent months because of the Boeing and MCI situations.

The investigation of Boeing, based in Chicago, remains unresolved. In the case of MCI, the company last month agreed to pay a \$1.5 billion fine to settle charges of widespread fraud—none of it related to federal work. Nevertheless, MCI has won numerous federal contracts, including an extension to an existing \$750 million contract with the General Services Administration for long-distance services and a 10-year, \$360 million contract for communications services for the State Department.

"There is a fundamental question about whether or not the federal government should be doing business with a large corporation that has been found to commit a serious wrong," says Sen. Susan Collins, a Maine Republican who heads the Senate Committee on Governmental Affairs. Her panel expects to hold hearings on the matter in the next few months. "The current system is flawed," she says, noting that scrutinizing the MCI situation may lead to ways to fix the process.

An MCI spokesman said, "Our performance over the past year, and the steps we've taken to address the misdeeds of former executives, proves the government's faith in us was not misplaced."

While there is an Interagency Committee on Debarment and Suspension that reports to the Office of Management and Budget, this group tends to meet once a month to share information and discuss rule changes, not to review decisions by individual agencies. Also, while it may be unlikely that a major contractor will be banned from all government work at this point, rivals competing for a particular contract could be given extra points, so to speak, for having a cleaner legal record, government and industry officials contend.

President Prods House to Pass Child Tax Credit

By GREG HITT

WASHINGTON—The White House is prodding balking House Republicans to move quickly on legislation to extend availability of the new \$1,000-per-child tax credit to low-income working families.

The economic package signed recently by President Bush expanded the child tax credit to \$1,000 from \$600, but left out provisions that would have allowed low-income working families to qualify for the more generous preference.

Last week, the Senate—under pressure from Democrats and advocacy groups—voted overwhelmingly to address the problem. The bill it approved would expand eligibility to families with incomes between \$10,500 and \$27,000. Under current law, many families in that income range pay too little in taxes to qualify for the new benefit.

House Republican leaders have said they don't intend to put the measure on a fast track. But White House press secretary Ari Fleischer said the White House wants any roadblocks to passage of the legislation removed.

"His advice to the House Republicans is to pass it, to send it to him so he can sign it," Mr. Fleischer said. "He wants to make certain that this doesn't get slowed down, bogged down."

Though many working families in those lower-income ranges pay little or no tax, the Senate bill would effectively qualify them for a cash refund this year. House Republican leaders have opposed that idea, contending only families that actually pay taxes should benefit from the most recent tax-relief legislation.

The White House has voiced similar arguments in the past, but is refraining from doing so now, underscoring the political sensitivity of the issue for Mr. Bush as he pursues re-election next year. While the president has been at pains to show his concern for the flagging U.S. economy, he also has repeatedly voiced concerns about the financial squeeze facing working families, and in recent days Democrats have had success in portraying the White House and its Republican allies on the child-credit issue as out of touch with worker concerns.



By ALAN MURRAY

Tax-Cut Bill Bares Republican Schism In House, Senate

THE BIG POLITICAL divide in Washington these days isn't between Republicans and Democrats; it's between House Republicans and Senate Republicans. House leaders hate their Senate counterparts so much they can't see straight. Which may explain why they keep walking into obvious pitfalls.

Last week's hubbub centered on whether low-wage workers, who pay no income tax, should get the full benefit of the income-tax credit for children. The Senate initially said yes. But House leaders were caught up in their blind fury against the upper house, which they see as full of puffed-up prima donnas. So they insisted on eliminating everything the Senate had added. The result was a front-page article in the New York Times painting Republicans as heartless wretches, not exactly the face of "compassionate conservatives."

An even greater outrage, in my view, was the House's insistence on dropping Sen. Charles Grassley's (R., Iowa) provisions to crack down on corporate tax shelters. You can argue with the straight face—or at least a not-too-crooked one—that welfare checks to the working poor shouldn't be part of an income-tax cut. But you can't argue that closing tax shelters shouldn't be part of a bill to make the corporate tax fairer. President Bush embraced the dividend-tax cut because, he said, corporate income should be taxed only once. But unless the burgeoning shelter business is shut down, much corporate income won't be taxed at all.

Many tax issues in Washington present a conflict between social policy and economic policy. Replacing the corporate income tax with a sales tax, for instance, might help the economy, but would raise questions about fairness.

An attack on tax shelters presents no such conflict. It's a terrible waste to have so many of this nation's best and brightest spending their days devising devious new financial products that serve no purpose other than to evade taxes. Shutting down shelters would free up all those well-educated lawyers and financiers to go out and do something useful. It's solid supply-side economics.

The accounting industry, not surprisingly, disagrees with me on this. Last year's national scandals haven't made the industry any less brazen, and their lobbyists came out in force to combat the Senate tax-shelter provisions. Their argument: The provisions would result in a crackdown on legitimate businesses.

IF YOU LOOK at the specifics of the Senate proposal, however, you can see it wasn't radical tax reform. The provisions make some changes that, frankly, are so sensible it's surprising they don't already exist in law. They include:

- **Disclosure:** If a company engages in a transaction that has a big effect on its taxes, it has to disclose that transaction to the Internal Revenue Service. The idea is to end the cat-and-mouse game that tax-shelter promoters and users play with the IRS, coming up with ever-more-complicated means of hiding transactions from the tax man. If a company failed to disclose such a transaction, it would face a fine of up to \$200,000.

- **Economic substance:** This is an attempt to inject common sense into tax-shelter law. It says that if a transaction serves no economic purpose other than to reduce a company's tax bill, it won't be allowed. In other words, if it looks like a duck, walks like a duck and quacks like a duck—it's a duck.

- **Accountability:** Under this provision, the chief executive of a corporation would have to sign the corporate income-tax return. This is a no-brainer. The person at the top ought to have to sign the company's income-tax return, saying he or she believes it is accurate. But amazingly, companies have been fighting this idea for fear it will lead to more CEO legal hassles.

Chairman Thomas is a volatile man whose anger has many targets (believe me, I know firsthand). But no target is more frequent than the U.S. Senate. He held the knife that cut out all three provisions above, as well as dozens more favored by the Senate. His staff says some of the provisions—particularly the disclosure requirement—may resurface in other legislation later this year.

But there's no reason to wait. President Bush could have and should have sided with Sen. Grassley on this one. His failure to do so makes his call for corporate-tax fairness seem nothing but empty rhetoric.

Alan Murray is Washington bureau chief for CNBC and cohost of "Capital Report," which airs Tuesday-Friday at 9 p.m.



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