

4 Ways to Avoid Suspension or Debarment on Federal Contracts, *ConstructionDive*, ft. Erik Ortmann

August 8, 2017 - Erik Ortmann, partner in Kaufman Dolowich & Voluck's Long Island office, was quoted in Kim Slowey's article in *ConstructionDive*.

The U.S. government appropriated \$120 billion for federal construction spending in 2017, covering a range of projects from the construction of a new Federal Bureau of Investigation headquarters to building agricultural research facilities, according to the Associated General Contractors of America. President Donald Trump's 2018 budget proposal, even with its cuts to key federal spending programs and new funds for a U.S.–Mexico border wall, calls for roughly the same level of investment.

Because of the potential for a big payoff, some companies have elected to become experts in the federal contracting field, making it the focal point of their business plans. Other contractors, like international design, engineering and construction firm AECOM, have set up specialized business units to take advantage of government contracting opportunities.

Government contracting is also the path to prosperity for many construction companies owned by women, veterans, minorities and other economically disadvantaged entrepreneurs because most federally funded projects have participation requirements, and all states, plus Washington, DC, and Puerto Rico, have instituted some versions of these regulations as well.

Understanding suspension and debarment

One of the most common causes of debarment that Erik Ortmann, a Woodbury, NY-based partner at Kaufman Dolowich & Voluck, has seen is a violation of prevailing wage laws. Not paying the required minimum wage — or worse, falsifying certified payroll records to reflect the proper amounts — can lead to debarment or at least an investigation by the governing authority.

Companies aren't always trying to circumvent the prevailing wage requirement when they find that they've violated it. "There's just confusion on what they're supposed to pay," Ortmann said. However, he added, the cases that make it to a debarment proceeding or suspension are typically willful in nature.

Federal debarment today will also lead a contractor to state debarment in many jurisdictions because so many local and state agencies consider that to be a disqualifying event. "You're effectively on the sidelines during a debarment period," Ortmann said.