

Bond Case Briefs

Municipal Finance Law Since 1971

A Cost-Effective Way to Bust (and Prevent) Contractor Fraud.

Governments that lack the resources for effective oversight should consider turning to independent monitors.

Fraud by government contractors and vendors is all too common, and attempts, particularly by local governments, to spot or prevent it often fall short due to limited funds and staff with too much work and not enough time.

Governments seeking an alternative to a too-often-underfunded inspector general's office, an overburdened contract-compliance unit or an audit staff focused only on internal operations may want to consider an independent monitor. A monitor can keep a watchful eye on contractors and slam the door on potentially unscrupulous vendors before they have an opportunity to engage in fraud.

In the past, independent monitors have been reserved for corporate deferred-prosecution agreements, allowing a business to avoid prosecution after law enforcement has exposed fraud or serious compliance violations. But why wait for the fraud to occur? For governments, it's far better to take a proactive approach and avoid reputation-damaging news about wasted tax revenue.

In considering the independent-monitor approach, it's important for governments to analyze their history. What problems have occurred in the past? Do staff members feel ill-equipped to effectively and efficiently respond to complaints? Would an audit by a funding source reveal agency wrongdoing? If so, a monitor may be the answer to these concerns.

But how can a government with limited funds and a host of programs to service afford to fund an independent-monitor program? The answer is that they can pass the cost on to the contractors themselves. They can build a provision into their requests for proposals and inform potential vendors that they will bear the cost of the monitoring, and vendors can then build the cost into their bids.

So instead of increasing long-term budget allocations to properly fund oversight offices, expenditures will increase incrementally and only on matters that warrant further inspection. Once in place, the monitor reports to appropriate staff inside the government agency who can review any significant findings, report to management if necessary and determine the proper course of action.

To start, though, governments should follow a couple of straightforward guidelines for developing a successful independent-monitoring program:

- When issuing requests for qualifications for independent monitors, governments should evaluate respondents based on their neutrality, objectivity and professionalism. Then evaluators can create a pool of qualified service providers — preferably numerous vendors in each service area. A few red flags to watch out for include respondents that would likely have conflicts with the engagements needing monitoring, inexperienced respondents and vendors that have other business with the governmental agency.

- Governments also should provide the contractor with a list of approved and available professional service firms and let them select one, subject to the government's approval. After a conflicts check to ensure that there are no hidden relationships, the monitor can begin the engagement with a scope of work written by the government.

So what's the return on investment for governments? An effective independent monitoring program can investigate bribery and kickback allegations, ethics policy violations, compliance with minority and women-owned business participation requirements, overbilling, false claims and a myriad of other potential schemes. For example, an independent monitor could require a contractor in an industry known for wining and dining public officials to allow the monitor to review all relevant employee expense reports. This drastically decreases the potential for fraud in this area.

As governments increasingly face tighter budgets and increasing pressure to protect taxpayer dollars, it's crucial that they identify ways to put fraud checks in place across all levels of their organizations. Employing independent monitors is a cost-effective way to help ensure that governments focus on their primary mission: better serving their constituents.

GOVERNING.COM

Jim Sullivan | Contributor

jsullivan@sikich.com | @sikichllp

FEBRUARY 19, 2015

Copyright © 2024 Bond Case Briefs | bondcasebriefs.com