

Boeing's Federal Contracts At Risk After Guilty Plea



By [Daniel Wilson](#) · [Listen to article](#)

Law360 (July 8, 2024, 9:32 PM EDT) -- Boeing's guilty plea for fraud related to the safety of its 737 Max 8 commercial aircraft will trigger additional scrutiny for a possible suspension or debarment from federal contracting, potentially putting lucrative future contracts at risk for the company.

Although stemming from commercial sales and not its federal work, [The Boeing Co.'s agreement](#) to plead guilty to conspiring to defraud safety regulators about issues with an automated maneuvering feature in its 737 Max 8 jet, implicated in a pair of deadly crashes, will also trigger a federal suspension and debarment official to look into Boeing's fitness as a federal contractor.

Under the [Federal Acquisition Regulation](#), federal agencies **must consider** whether a suspension or debarment is necessary to protect the government's interests before entering into a contract with any company convicted on a federal felony charge within the past two years.

Boeing is perennially one of the [U.S. Department of Defense's](#) top few contractors by dollar value, and a significant [NASA](#) contractor, but the government has previously shown that it is willing to use its suspension and debarment authority even for large contractors that it frequently uses, said [Bass Berry & Sims PLC](#) member Richard Arnholt.

"There are some who would say that ... large contractors don't get debarred in the same sort of numbers as smaller companies do, because the government needs them," said Arnholt, who regularly represents contractors in suspension and debarment proceedings. "Large contractors do get debarred or suspended from time to time, though."

A [Booz Allen Hamilton](#) office, for example, was **suspended** from contracting in 2012 for a failure to timely report nonpublic contractual information it received from an employee, and Boeing's own former launch services unit — later consolidated with [Lockheed Martin Corp.](#)'s own similar unit to form the [United Launch Alliance](#) joint venture — was given a nearly two-year-long **suspension** beginning in mid-2003 after it was found in possession of proprietary documents from Lockheed, costing Boeing a shot at several [U.S. Air Force](#) space launches over that period.

Losing access to federal contracts, even temporarily, could cost Boeing millions or even billions of dollars. According to the company's annual report for 2023, released in January this year, 37% of its nearly \$77.8 billion in overall revenue that year came from U.S. government contracts.

The government isn't limited to considering only the fraud claims resolved by the plea agreement when making a suspension or debarment determination, but can also use any other potentially relevant information such as the in-flight door **blowout** on a 737 Max 9 model earlier this year, or Boeing's **performance** on other federal contracts.

However, suspensions and debarment are only meant to protect the government's interests, not to be punitive, and a suspension and debarment official will also consider whether any of those issues are reasonably related and have the potential to affect Boeing's future performance in federal contracts, as well as mitigating factors such as changes in leadership at the company in the meantime and whether Boeing has taken action to address the root causes of its problems.

Federal rules also require that any suspension happens at the "lowest corporate entity possible," in this instance likely Boeing's commercial division or a subunit of that division, which could also limit how much effect any contracting bar has on the defense, space and security unit that does most of Boeing's federal work, according to Rod Grandon, managing director of monitoring services for [Affiliated Monitors Inc.](#)

Large federal prime contractors also tend to achieve better outcomes in the suspension and debarment process than smaller companies, because they are usually more sophisticated and have the resources to hire experienced outside counsel and dedicated staff for implementing ethics, compliance and quality management programs that small businesses often can't afford, said Grandon, a former suspending and debarring official for the Air Force.

"They are very sensitive to their external federal stakeholders' expectations of them being responsible, and their staff are very quick to do exactly what those expectations would demand, and that is — get to the bottom of the problem," Grandon said.

Large contractors also usually have regular briefings with the relevant suspension and debarment official, located at the federal agency that awards the highest value of contracts to that company — in Boeing's case likely the Air Force — giving them the opportunity to proactively sell their case for avoiding suspension.

With a deferred prosecution agreement **in place for several years** prior to Boeing's guilty plea — an agreement the [U.S. Department of Justice](#) said the company breached — the company has likely already had a number of conversations with the government about reasons why it shouldn't be suspended from contracting, such as the more than \$455 million it agreed to pay to strengthen its compliance and safety programs as part of its plea deal, Arnholt said.

"The last thing you want as a government contractor is for [a suspension and debarment official] to pick up the newspaper and read about a felony conviction or a False Claims Act investigation," he said. "You want to be sure you're the one to tell them, not only so they're not surprised by seeing it in the press, but also so you can tell both the negative and the positive story, you can explain ... what you've done to remedy the problem and hopefully hold those accountable in your organization who committed those errors in judgment — or in this case, crimes."

Representatives for Boeing and the U.S. Air Force did not immediately respond to requests for comment on Monday.

--Additional reporting by Linda Chiem. Editing by Alex Hubbard.

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