

## **Felon or not, Boeing's federal contracting fortune seems secure**

*The same government that threatened to haul the company into court over two mass-fatality plane crashes will probably continue to be a customer.*

By Oriana Pawlyk  
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Boeing's felony guilty plea won't necessarily keep it from continuing to get billions of dollars in federal contracts — but it will need to work harder.

Boeing, one of the United States' premier defense contractors, will face increased scrutiny from contracting agencies in light of its plea agreement on a charge of conspiracy to defraud the government, procurement experts said. It's also likely to face increased inspections, especially when it delivers a final product.

A federal judge has yet to sign off on the deal with the Justice Department, in which Boeing agreed to pay a \$243.6 million fine, invest heavily in its manufacturing and compliance programs and bring in a third-party monitor to oversee its business.

The plea stems from two plane crashes that killed a total 346 people in Indonesia and Ethiopia in 2018 and 2019, and comes six months after a door-plug blowout on a 737 MAX passenger jet over Oregon drew new attention to the company's manufacturing problems.

"I think the government's going to scrutinize their quality control sections of the offers to proposals much more closely," said John (Jerry) McGinn, a contracts expert and the executive director of the Center for Government Contracting at George Mason University.

Boeing declined to comment on its contracting and remediation plans.

Boeing's defense and space work netted the company \$7 billion in the first quarter of this year, according to the company — a 6 percent increase over the same time last year. Last year, 37 percent of the company's revenue was due to U.S. government contracts, including foreign military sales that are approved through the State Department in coordination with the Pentagon.

Boeing is a major contractor with the U.S. military, chief among them with the Air Force, for new jets and munitions as well as maintaining programs Boeing inherited from bygone manufacturers. Boeing's gains in the first quarter of this year were largely shouldered by ongoing Navy orders for F/A-18 Super Hornet jets, two refueling drones and sub-hunting aircraft for Canada and Germany, executives said in an earnings call in April.

Boeing is also the provider of the federal government's most iconic aircraft, the jets that serve as Air Force One when they carry the president.

But now, Boeing will have to update its certifications and contract bids with military services to indicate it has been convicted of a felony within the last three years, said David Drabkin, who leads the Procurement Roundtable, a group of former federal agency acquisition executives.

Drabkin, who served in several procurement and acquisition roles across the Defense Department and the General Services Administration, said the conviction does not bar the company from contract awards. But it does require a military service's contracting officer to request an exception from a higher authority for any new contracts.

Boeing is one of a select few contractors — and often the only one — that can make what the government wants to buy, Drabkin said. It would be tough, McGinn added, for military services to change their plans given Boeing's reach across their programs.

Military agencies evaluate factors including price, schedule and quality when selecting a contractor, McGinn said, and Boeing's status as felon doesn't necessarily mean it "gets a bad grade."

But a federal review of Boeing's conduct has already begun.

Responding to questions on Boeing's guilty plea, Pentagon spokesperson Maj. Gen. Patrick Ryder said the Defense Department "would assess any company's remediation plans, as well as the agreement with the Department of Justice."

"And we would make determinations as to what steps would be necessary to protect the interests of the federal government in accordance with relevant federal and defense acquisition regulations," Ryder added.

In a separate statement, a Defense Department spokesperson told POLITICO that the Justice Department has reached out and advised DoD, including the Air Force, about this matter.

Hurdles ahead

Under laws outlined by the GSA, an agency can propose debarment — which prohibits companies from doing business with the government for some amount of time — if it believes that a company is incapable of executing the work with integrity or honesty, has committed other past misconduct, or has problems of "otherwise so serious or compelling a nature that it affects a contractor's present responsibility."

A conviction doesn't automatically mean Boeing is slated for the Pentagon's debarment list, Drabkin said. But being on that list is "very significant," he said, because it jeopardizes how a company does business with both U.S. and foreign governments.

"Every contracting officer and the federal government is required to check the list before they make any purchases, and if the company appears on that list ... the contracting officer is generally prohibited from buying from the company," he said in an interview Friday.

That too has exceptions, added David Berteau, president of the Professional Services Council, who is also a former assistant secretary of Defense for logistics and materiel readiness.

That's because the interests of the federal government can be more important than what's happening inside a company, though Boeing remains in turmoil since new quality control problems have come to light following January's door-plug blowout.

The final decision ultimately falls within "determining what's in the best interest of the federal government," Berteau said.

“Either way, Boeing will have to come in and explain to the debarment authority why their behavior for which they have pled guilty and are now convicted of a felony should not result in a debarment — and may go through that process,” added Drabkin.

Federal agencies can choose a more drastic action — discontinuing a contract — in cases of default, when it has clear evidence a company hadn’t delivered on a promise. In that instance, the government sends a series of warning letters alerting the company that such a decision is coming, Berteau said.

The government can also terminate a contract for its own convenience. That action requires no rationale or justification, but the government must compensate the company for any cost it has incurred but not yet submitted — which sets off a very long, drawn-out process.

Drabkin said that if a military service decides to upend a program, it would need substantial evidence that fraud has occurred or that Boeing lied to get the contract.

“In this case, we're talking about performance once the contract has been awarded, and it's highly unlikely that this is going to result in any kind of termination of an existing program,” he said.