



# Department of Justice

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**STATEMENT**

**OF**

**BARRY M. SABIN  
ACTING CHIEF OF STAFF**

**AND**

**PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION  
DEPARTMENT OF JUSTICE**

**BEFORE THE  
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,  
ORGANIZATION, AND PROCUREMENT  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES**

**ENTITLED  
“NEW CONTRACTING AND PROPERTY BILLS”**

**PRESENTED ON  
APRIL 15, 2008**

**Statement of**  
**Barry M. Sabin**  
**Acting Chief of Staff**  
**and**  
**Principal Deputy Assistant Attorney General**  
**Criminal Division**  
**Department of Justice**

**Before the**  
**Subcommittee on Government Management,**  
**Organization and Procurement**  
**Committee on Oversight and Government Reform**  
**United States House of Representatives**

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**I. Introduction**

Thank you for the opportunity to be here today to discuss both the “Close the Contractor Fraud Loophole Act,” H.R. 5712, and the efforts of the Department of Justice to combat fraud in government contracting and specifically the requirement that government contractors report fraud and material overbilling.

As I have previously testified before both the Senate and the House, the Justice Department has a demonstrated and continued commitment to a strong and vigorous enforcement effort in the important area of procurement fraud. The Department of Justice has made the investigation and prosecution of procurement fraud a priority, including procurement fraud related to the wars, and rebuilding efforts, in Iraq and Afghanistan.

Moreover, the Department has developed a track record of success in the procurement fraud area by working with the International Contract Corruption Task Force (ICCTF), including the Army Criminal Investigation Division (Army CID), the Defense Criminal Investigative Service (“DCIS”), the Federal Bureau of Investigation (FBI), the Special Inspector General for Iraq Reconstruction (SIGIR), the U.S. Agency for International Development Office of Inspector General (USAID OIG), as well other Inspectors General (IGs), and traditional law enforcement partners, to investigate and prosecute such procurement fraud.

## **II. The National Procurement Fraud Task Force**

In October 2006, the Justice Department announced a new national procurement fraud initiative and the creation of the National Procurement Fraud Task Force (Task Force) led by the Justice Department's Deputy Attorney General's Office and Criminal Division to promote the early detection, prevention, and prosecution of procurement and grant fraud associated with increasing contracting activity for national security and other government programs. The Department formed the Task Force, among other reasons, to address allegations of fraud in contracting in Iraq, Afghanistan, and Kuwait.

The Justice Department formed the Task Force, in partnership with U.S. Attorney's Offices, the Justice Department's Civil, Antitrust, Environmental and Natural Resources, National Security and Tax Divisions, and other Federal law enforcement agencies, which Alice S. Fisher, Assistant Attorney General for the Criminal Division, chairs. The Executive Director of the Task Force is Steve Linick, a Deputy Chief in the Fraud Section, Criminal Division. More than 35 agencies are participating in the Task Force, including, but not limited, to the FBI, the SIGIR, and the Offices of Inspectors General (IGs) from Department of Defense (DOD), USAID, Central Intelligence Agency, General Services Administration, Department of Justice, Department of Homeland Security, Department of Energy, National Science Foundation, Small Business Administration, Social Security Administration, Veterans Administration, U.S. Postal Inspection Service, Interior, Housing and Urban Development, and Treasury. In addition, all defense-related investigative agencies, DCIS, Naval Criminal Investigative Service, Army-CID, and U.S. Air Force, Office of Special Investigations, are full participants.

The Task Force established a series of objectives relating to procurement fraud, including:

- increasing coordination and strengthened partnerships among all IGs, law enforcement, and the Justice Department to fight procurement fraud more effectively;
- assessing existing government-wide efforts to combat procurement fraud;
- identifying and removing barriers to preventing, detecting, and prosecuting procurement fraud;
- increasing and accelerating civil and criminal prosecutions and administrative actions to recover ill-gotten gains resulting from procurement fraud; and
- encouraging greater private sector participation in the prevention and detection of procurement fraud.

The Task Force has been enthusiastically embraced by the entire law enforcement community, including the FBI, the IGs, and defense-related agencies. Overall, we now have more effective resource allocation in procurement fraud investigations, which has resulted in the

acceleration of investigations and prosecutions. This combined effort of Task Force members has resulted in significant accomplishments, for example:

- The Task Force has created working committees chaired by a high-level member of the IG community or the FBI. These working committees, which consist of representatives from multiple agencies, address common issues such as training, legislation, intelligence, information sharing, private sector outreach, grant fraud, and international procurement fraud.
- There has been significant increase in specialized training for OIG agents, auditors, and prosecutors on the investigation and prosecution of procurement fraud cases.
- The Task Force has established a public website, <http://www.usdoj.gov/criminal/npftf>, which has assisted suspension and debarment officials by listing in a single location, press releases related to recent procurement and grant fraud cases.
- Since the Task Force was created, more than 300 procurement fraud cases have resulted in criminal charges, convictions, civil actions, or settlements. These cases are summarized on the Task Force's website.
- The Task Force has formed numerous regional working groups, chaired by U.S. Attorneys, to implement the Task Force's goals regionally by working with their local Federal law enforcement counterparts to bring about timely and effective procurement fraud prosecutions.
- The Task Force has encouraged an unprecedented level of collaboration and coordination at all levels of government to combat procurement and grant fraud.

### **III. Recent Litigation Efforts**

Procurement fraud cases, especially those involving the wars in Iraq and Afghanistan, are usually very complex and resource intensive. The cases often involve extraterritorial conduct as well as domestic conduct, requiring coordination between appropriate law enforcement agencies. In order to improve coordination and information sharing, the ICCTF has established a Joint Operations Center (JOC) based in Washington, D.C. The JOC currently serves as the nerve center for the collection and sharing of intelligence regarding corruption and fraud relating to funding for the Global War on Terror (GWOT). The JOC coordinates intelligence-gathering and provides analytic and logistical support for the ICCTF agencies. As a result of this concentration of efforts, the Department has significantly increased the number of prosecutions relating to contract fraud associated with GWOT.

To date, the Department has charged 46 individuals and companies for contract fraud relating to the efforts in Afghanistan, Kuwait, and Iraq. Examples of recent cases are highlighted below:

- On April 9, 2008, Matthew Bittenbender pleaded guilty to conspiracy to defraud the United States, commit wire fraud and steal trade secrets. Previously, charges were filed against Bittenbender and two DOD contractors, Christopher Cartwright and Paul Wilkinson, and their affiliated companies, Czech Republic-based Far East Russia Aircraft Services Inc. (FERAS) and the Isle of Man-based Aerocontrol LTD, for similar conduct to which Bittenbender pleaded guilty. Cartwright, Wilkinson, FERAS, Aerocontrol and Bittenbender were charged with conspiring to steal information relating to fuel supply contracts for DOD aircraft worldwide, including to Bagram Air Force Base in Afghanistan. Bittenbender was a former senior contract fuel manager at Maryland-based Avcard, a company which provides fuel and fuel services to commercial and government aircraft. Bittenbender was charged with taking confidential bid data and other proprietary information related to DOD fuel supply contracts from Avcard, and selling that information to competitors Cartwright, Wilkinson, FERAS and Aerocontrol. In return, Bittenbender was alleged to have received cash payments and a percentage of the profit earned on the resulting DOD fuel supply contracts. Cartwright, Wilkinson, FERAS and Aerocontrol are alleged to have subsequently used that illegally obtained information to bid against Avcard at every location where the companies were bidding head-to-head, thereby subverting DOD's competitive bidding procedures for fuel supply contracts. The trial of this matter against Bittenbender's co-defendants is scheduled to begin in July 2008.
- On February 7, 2008, James Sellman, a fuel technician employed by KBR, pled guilty in the Eastern District of Virginia, to conspiracy to defraud and accept bribes in connection with a scheme to divert fuel intended for Bagram Airfield to the black market in Afghanistan. On January 25, 2008, Wallace Ward, another KBR fuel technician participating in the conspiracy, pled guilty to the same offense. As alleged in the indictment, the scheme involved the diversion in 2006 of over \$2 million in lost fuel. The investigation is continuing.
- On January 23, 2008, Elie Samir Chidiac ("Chidiac") and Raman International Inc. ("Raman") were indicted on conspiracy charges in connection with bribes paid between May 2006 and March 2007 to a contracting officer at Camp Victory in Iraq. Chidiac is the former Iraq site manager for Raman, a military contractor based near Houston, Texas. Raman and Chidiac allegedly paid bribes to induce a DOD contracting officer to steer contracts to Raman. Chidiac is also charged with participating in a second scheme whereby the same contracting officer altered contracting documents to allow him to fraudulently obtain payment -- which he split with the contracting officer -- for work that neither he nor Raman performed. Trial in the case is scheduled for June 9, 2008, in the Western District of Oklahoma.
- On November 20, 2007, Terry Hall, a civilian contractor from Georgia was indicted by a Federal grand jury in the District of Columbia for allegedly soliciting bribes while working at Camp Arifjan, an Army base in Kuwait. Hall operated companies

that had contracts with the U.S. military in Kuwait, including Freedom Consulting and Catering Co., U.S. Eagles Services Corp., and Total Government Allegiance. The indictment charges that Hall's companies received more than \$20 million worth of military contracts for providing, among other things, bottled water to the U.S. military in Kuwait.

- On August 22, 2007, U.S. Army Major John Cockerham, his wife Melissa Cockerham, and Cockerham's sister, Carolyn Blake, were indicted in Federal court in San Antonio, Texas, on charges of conspiracy to defraud the United States and to commit bribery, conspiracy to obstruct justice, and for a money laundering conspiracy. Major Cockerham was also charged with three counts of bribery. The scheme ran from late June 2004 through late December 2005, while Major Cockerham was deployed to Camp Arifjan, Kuwait, serving as a contracting officer responsible for soliciting and reviewing bids for DOD contracts in support of operations in the Middle East, including Operation Iraqi Freedom. The contracts were for various goods and services to DOD, including bottled water destined for soldiers serving in Kuwait and Iraq. All three defendants accepted millions of dollars in bribe payments on Major Cockerham's behalf, in return for his awarding contracts to corrupt contractors. Cash bribes paid to the defendants totaled approximately \$9.6 million. Trial in this matter is scheduled for October 2008.

#### **IV. The Task Force's Efforts To Increase Private Sector Participation In The Prevention And Detection Of Procurement Fraud**

##### **A. The Task Force's Proposal to Require Mandatory Disclosure by Contractors**

On May 23, 2007, in a letter to the Office of Federal Procurement Policy, the Justice Department proposed (on behalf of the Task Force), some modifications to the Federal Acquisition Regulation (FAR), which would require, among other things, that contractors notify the government whenever they become aware of a material overpayment or fraud relating to the award or performance of contract or subcontract, rather than wait for the contract overpayment or fraud to be discovered by the government.<sup>1</sup>

Shortly thereafter, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the "FAR Councils") began their review process, and on November 14, 2007, published a proposed rule substantially incorporating the Task Force's requested changes to the FAR. The Task Force proposal is modeled on existing requirements found in other areas

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<sup>1</sup>On May 23, 2007, the Justice Department also submitted comments to the General Services Administration, Regulatory Secretariat, to voice support for then pending FAR Case 2006-007, which would require Government contractors to have a "written code of business ethics and conduct" and an "ethics and compliance program" for its employees. A Final Rule adopting these requirements was published in the Federal Register on November 23, 2007. The effective date of the new FAR provision was on December 24, 2007.

of corporate compliance such as the Sarbanes Oxley Act of 2002, and it expands slightly on the Contractor Standards of Conduct set out by the Department of Defense at DFARS 203.7000. We were careful not to ask contractors to do anything that is not already expected of their counterparts in other industries, and we have avoided imposing any unnecessary burdens on small businesses or creating any expensive paper work requirements. We note also that the National Reconnaissance Office (NRO) through a contract clause recently has begun requiring its contractors to disclose contract fraud and other illegal activities. The NRO reports that this requirement has improved its relationships with its contractors and enhanced its ability to prevent and detect procurement fraud.

The Task Force requested these changes to the FAR for several reasons. First, while we recognize that many government contractors are now required to establish corporate compliance programs, our experience suggests that few have actually responded to the invitation of DOD that they voluntarily disclose suspected instances of fraud. Indeed, the DOD IG reports that during the initial years of the program (FY 1988-1990) there were 147 voluntary disclosures. DOD IG reports that, by contrast, during the last three years (FY 2005-2007), there have been a total of only 20 disclosures, and between FY 2001 and 2007, there have only been a total of 48 disclosures.

Additionally, as you know, the 1980's witnessed significant innovations in the Federal procurement system. Many of those reforms, including corporate compliance programs and corporate self governance, were adopted with industry cooperation, and were later incorporated into evolving regulatory schemes in other business sectors and industries. In fact, the U.S. Sentencing Guidelines' treatment of corporations, adopted in 1991, borrowed heavily from reforms that were first instituted for government contractors in 1986. However, since that time, we are concerned that contractor reform may not have kept pace with reforms in self-governance in industries such as banking, securities, and healthcare.

## **B. The Exemptions for Overseas and Commercial Contracts**

The proposed rule as published by the Councils on November 14, 2007, added two exemptions – one for government contracts performed entirely overseas, and, the other for commercial contracts – that were not included in the original Task Force proposal submitted on May 23, 2007.

After the Councils published the proposed rule and sought public comment, the Task Force considered ways to improve the proposed rule. In response to what the Task Force believed were some legitimate concerns, we submitted comments on the proposed rule on January 14, 2008, addressing the standard for disclosure of overpayments and criminal violations, cooperation and attorney-client privilege, the obligation to disclose potential violations of the False Claims Act, the grounds for suspension and debarment, the time limit for disclosures, and internal investigations by contractors. Law enforcement agencies submitted numerous comments to the FAR Councils in support of the Task Force proposal.

In our January 14 comments, we also addressed the Councils' decision not to include overseas contracts. We asserted that the United States still is a party to these contracts and potentially a victim when overpayments are made or when fraud occurs in connection with the contracts. We noted that under these circumstances, the government still maintains jurisdiction to prosecute the perpetrators of fraud, and that these types of contracts, which in many cases support our efforts to fight the global war on terror, need greater contractor vigilance because they are performed overseas where U.S. government resources and remedies are more limited.

With respect to the commercial contracts exemption, in our initial proposal last May, anticipating an objection by commercial contractors who already are relieved of many FAR requirements, we stated that while there may be reasons for exempting commercial contracts from the compliance program requirements, there was "no reason to exclude those contractors from the reporting requirement."<sup>2</sup>

It is our understanding that the rulemaking process is not complete, and the exemptions for overseas and commercial contracts are being professionally and critically reviewed. We continue to voice our concerns about both exemptions as they are being considered by the Councils.

## **V. Legislation**

As the Justice Department has previously stated, the Department welcomes the enactment of new tools to combat fraud committed by contractors within the criminal jurisdiction of the United States, whether the conduct occurs territorially or extraterritorially. We have investigated and prosecuted, and will continue to thoughtfully and aggressively prosecute, procurement fraud violations. With respect to H.R. 5712, we believe that the rulemaking process should be able to address your concern adequately by appropriately incorporating the types of changes discussed in our January letter.

## **VI. Conclusion**

The Department of Justice and the Task Force have taken a proactive leadership role in proposing that new ethics rules and fraud and overpayment rules be incorporated into the Federal Acquisition Regulation. We will continue to be engaged in the final rulemaking process so that our views are appropriately considered. Moreover, the Justice Department will continue its efforts to detect, deter, investigate and prosecute procurement fraud by companies and individuals. Through these and other efforts, we will ensure that taxpayer monies are protected,

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<sup>2</sup>The Councils elected not to include the Task Force's observations about commercial contracts, and included both the commercial contracts and the overseas exemption in the proposed rule in their November 14, 2007 Federal Register notice (and later in the Final rule on compliance on November 23, 2007). In our January 14, 2008 letter, we chose to defer to the Councils and not to restate our initial concerns about the commercial contracts exemption.



our nation's security defended, and the investigation and prosecution of procurement fraud remains a Justice Department priority.