

HENRY A. WAXMAN, CALIFORNIA,  
CHAIRMAN

TOM LANTOS, CALIFORNIA  
EDOLPHUS TOWNS, NEW YORK  
PAUL E. KANJORSKI, PENNSYLVANIA  
CAROLYN B. MALONEY, NEW YORK  
ELIJAH E. CUMMINGS, MARYLAND  
DENNIS J. KUCINICH, OHIO  
DANNY K. DAVIS, ILLINOIS  
JOHN F. TIERNEY, MASSACHUSETTS  
WM. LACY CLAY, MISSOURI  
DIANE E. WATSON, CALIFORNIA  
STEPHEN F. LYNCH, MASSACHUSETTS  
BRIAN HIGGINS, NEW YORK  
JOHN A. YARMUTH, KENTUCKY  
BRUCE L. BRALEY, IOWA  
ELEANOR HOLMES NORTON,  
DISTRICT OF COLUMBIA  
BETTY MCCOLLUM, MINNESOTA  
JIM COOPER, TENNESSEE  
CHRIS VAN HOLLEN, MARYLAND  
PAUL W. HODES, NEW HAMPSHIRE  
CHRISTOPHER S. MURPHY, CONNECTICUT  
JOHN P. SARBANES, MARYLAND  
PETER WELCH, VERMONT

ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
FACSIMILE (202) 225-4784  
MINORITY (202) 225-5074

[www.oversight.house.gov](http://www.oversight.house.gov)

TOM DAVIS, VIRGINIA,  
RANKING MINORITY MEMBER

DAN BURTON, INDIANA  
CHRISTOPHER SHAYS, CONNECTICUT  
JOHN M. McHUGH, NEW YORK  
JOHN L. MICA, FLORIDA  
MARK E. SOUDER, INDIANA  
TODD RUSSELL PLATTIS, PENNSYLVANIA  
CHRIS CANNON, UTAH  
JOHN J. DUNCAN, JR., TENNESSEE  
MICHAEL R. TURNER, OHIO  
DARRELL E. ISSA, CALIFORNIA  
KENNY MARCHANT, TEXAS  
LYNN A. WESTMORELAND, GEORGIA  
PATRICK T. McHENRY, NORTH CAROLINA  
VIRGINIA FOXX, NORTH CAROLINA  
BRIAN P. BILBRAY, CALIFORNIA  
BILL SALI, IDAHO  
JIM JORDAN, OHIO

March 20, 2008

The Honorable Michael Mukasey  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Dear Mr. Mukasey:

We are concerned about a proposed change to federal contracting rules that would exempt overseas contracts from a requirement that the contractor detect and prevent fraud and report it to the government. At a time when the United States is engaged in wars in Iraq and Afghanistan, conducting extensive redevelopment programs in both countries, and employing the services of an unprecedented number of private contractors, preventing fraud by contractors overseas should be a high priority. Instead, the exemption for contracts to be performed overseas appears to have been inserted in the rule late in the process and against the wishes of the Department of Justice, which raises serious questions as to why and how such a policy was developed.

On May 23, 2007, the Department of Justice (DOJ) requested that the Federal Acquisition Regulation be amended to “require contractors to establish and maintain internal controls to detect and prevent fraud in their contracts, and that they notify contracting officers without delay whenever they become aware of a contract overpayment or fraud, rather than wait for its discovery by the government.” DOJ believed such a rule was necessary because few government contractors voluntarily disclose suspected instances of fraud. DOJ proposed specific changes to the Federal Acquisition Regulation.<sup>1</sup>

In response, on November 14, 2007, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published a proposed rule on “Contractor Compliance Program and Integrity Reporting.”<sup>2</sup> This rule requires contractors to have a code of ethics and

---

<sup>1</sup> Letter from Assistant Attorney General Alice Fisher to Administrator for Federal Procurement Policy Paul Denett (May 23, 2007).

<sup>2</sup> 72 Fed. Reg. 64019, FAR Case 2007-006 (Nov. 14, 2007).

business conduct, to establish and maintain specific internal controls to detect and prevent improper conduct in connection with the award or performance of government contracts or subcontracts, and to notify contracting officers without delay whenever they become aware of violations of Federal criminal law with regard to such contracts or subcontracts. The proposed changes to the Federal Acquisition Regulation closely track the DOJ proposal, with two primary substantive changes: the exemption for contracts to be performed overseas and a second exemption for contracts for commercial items.

On January 14, 2008, DOJ filed a comment on the proposed rule stating that “we do not agree with” the exemption for overseas contracts. According to DOJ, “[a]lthough these contracts may be performed outside the United States, 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. Under these circumstances, the government still maintains jurisdiction to prosecute the perpetrators of the fraud. Moreover, 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.”<sup>3</sup>

The addition of the exemption for overseas contracts against the wishes of the Justice Department, as well as the exemption for commercial items, raises questions as to why and how these provisions were added to the new rule proposed by DOJ.

To assist the Committee in its review of this proposed rule and related legislation, we ask that you provide the following documents to the Committee no later than April 4, 2008. At this point, only documents created on or before November 14, 2007, need to be provided to the Committee:

1. Any documents received from or sent to persons outside the executive branch relating to the overseas exemption or the commercial item exemption;
2. Any documents describing the reasons or justification for the overseas exemption or the commercial item exemption or urging the inclusion of the overseas exemption or the commercial item exemption in the proposed rule; and
3. Any documents objecting to the overseas exemption or the commercial item exemption or urging the exclusion of the overseas exemption or the commercial item exemption from the proposed rule.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives, with broad investigative jurisdiction as set forth in

---

<sup>3</sup> Letter from Assistant Attorney General Alice Fisher to GSA Regulatory Secretariat (Jan. 14, 2008).

The Honorable Michael Mukasey  
March 20, 2008  
Page 3 of 3

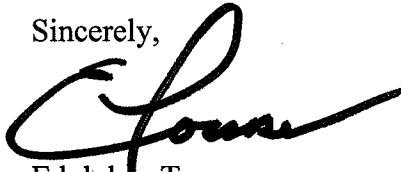
House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

If you have any questions, please contact Mike McCarthy at (202) 225-3741.

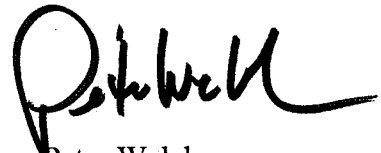
Sincerely,



Henry A. Waxman  
Chairman  
Committee on Oversight and  
Government Reform



Edolphus Towns  
Chairman  
Subcommittee on Government  
Management, Organization and  
Procurement



Peter Welch  
Member of Congress

Enclosure