



U.S. Department of Justice

Criminal Division

Acting Assistant Attorney General

Washington, D.C. 20530

July 18, 2008

Ms. Diedra Wingate
Regulatory Secretariat (VPR)
General Services Administration
1800 F Street, N.W.
Room 4035
Washington, D.C. 20405

Re: Comments on FAR Case 2007-017, Service Contractor
Employee Personal Conflicts of Interest

Dear Ms. Wingate:

The National Procurement Fraud Task Force (NPFTF), now in its second year of operation, has committed itself to identifying significant policy and regulatory changes that would effectively reduce the exposure of federal contracts to fraud, waste, and abuse. The NPFTF includes among its members many Inspectors General and U.S. Attorneys, and the Deputy Administrator of the Office of Federal Procurement Policy. On their behalf, and on behalf of the Department of Justice, I would like to offer our views on the March 26, 2008, Advanced Notice of Proposed Rulemaking, FAR Case 2007-017, and respond to the FAR Councils' request for public comment on the need for regulation that would address personal conflicts of interest on the part of service contractor employees.

In the course of our investigations over the past ten years, we have observed a dramatic increase in service contractor employees performing a wide variety of federal government work. Unlike their federal counterparts, however, service contractor employees are not subject to most federal conflict of interest requirements, nor are they subject to any direct discipline by the government. See United States Government Accountability Report, GAO-08-169. Moreover, while the Federal Acquisition Regulation addresses organizational conflicts of interest, it is silent on conflicts of interest associated with contractor employees. As a result, the integrity of the government contracting process may be substantially compromised in situations where the government finds itself relying on contractor employees for conflict free advice and conduct. We defer to your acquisition expertise to tailor a rule that addresses this issue without expanding the application to all contractor employees. We also defer to your expertise regarding appropriate language in the FAR rule for remedial measures.

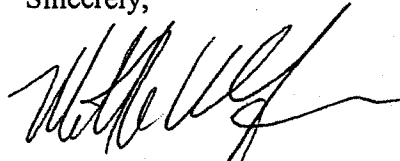
By way of example, in a recent investigation, we discovered that an employee of a service contractor under contract with a DOD agency had been hired by a second contractor who also had business with the DOD agency. The second contractor paid this employee for information to which the employee had access only because of his DOD agency work performed for the first contractor. Under the current regime, there is no requirement that either contractor disclose this financial conflict of interest on the part of the employee, even though his actions may compromise the government's interest. In our view, the government must put in place sufficient mechanisms to ensure that such close reliance on service contractor employees does not compromise the government's interests, including the integrity of its operations.

Accordingly, we urge the FAR Councils to publish a FAR rule that would, among other things, require service contractors to certify annually that they have: (1) trained their employees on the relevant responsibilities and restrictions to which their employees are subject while performing government work; and (2) collected from their employees the financial information necessary to identify and to screen out employees with personal conflicts of interest. We recommend that both the training and the financial conflicts review be completed before a contractor assigns employees to perform work for the government under a service contract.

We believe the Office of Government Ethics and the Government Accountability Office auditors responsible for the report referenced above share our interest in this important reform.

Thank you very much for the opportunity to comment. I have asked Brian Miller, the Vice-Chair of the NPFTF, and Steve Linick, the Director of the NPFTF, to work with you and your staff as this matter proceeds. Steve can be reached at (202) 353-1630, and Brian can be reached at (202) 501-0462.

Sincerely,



Matthew W. Friedrich
Acting Assistant Attorney General

cc: Robert I. Cusick, Director, Office of Government Ethics
Steve A. Linick, Director, NPFTF
NPFTF Members