

Oversight Committee requests administration documents

Washington, DC - The investigation of a potential multibillion-dollar loophole slipped into proposed contract fraud rules expanded today after Oversight and Government Reform Chairman Henry Waxman, subcommittee Chairman Edolphus Towns, and Rep. Peter Welch (VT-AL) issued document requests to top administration officials.

"I want to know who advocated for this loophole and on what grounds. Who snuck this in at the eleventh hour and why? No contractor should be given a free ride to defraud taxpayers, at home or abroad. We will get to the bottom of this," said Welch.

In November 2007, the Justice Department drafted a rule seeking to crack down on waste, fraud, and abuse in government contracts. The rule requires contractors to report internal fraud or overpayment on government-funded projects if the abuse exceeds \$5 million. However, just before publication, the rule was inexplicably modified to exempt "contracts to be performed outside the United States."

"This exemption sends an unambiguous message to government contractors that if you're going to commit fraud, make sure to do it abroad. This potential multibillion-dollar special interest loophole gives overseas contractors the green light to defraud our government and waste taxpayer dollars," added Welch, who [asked Waxman and Towns to consider an investigation](#) on March 7.

Letters were sent today to Secretary of Defense Gates, Attorney General Mukasey, National Aeronautics and Space (NASA) Administrator Griffin, Office of Management and Budget (OMB) Director Nussle, and General Services Administration (GSA) Administrator Doan today. The Oversight Committee's request includes documents with communications between persons outside the executive branch and documents describing the justification for the inclusion of the overseas exemption in the proposed rule.

Over the last five years, the United States government spent more than \$100 billion in taxpayer money to rebuild Iraq and Afghanistan alone.

In his letter to Waxman and Towns urging this committee investigation, Welch called for answers to the rationale for the loophole, how the loophole was slipped into the proposed rule and by whom, and whether any outside contactors lobbied for this favorable treatment.

The text of the letters follows or can now be found at the [Oversight and Government Reform website](#) :

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.

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." This rule requires contractors to have a code of ethics and 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."

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

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