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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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MAJORITY (202) 225-5051
FACSIMILE (202) 225-4784
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May 18, 2010

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Holder:

For several years, the Committee on Oversight and Government Reform has investigated waste and fraud in government contracts, and has been especially concerned with repeat offenders. The establishment of a National Procurement Fraud Task Force at the Department of Justice (DOJ) to focus on this issue was a positive development. However, recent press reports about DOJ enforcement actions against large government contractors raise concerns that the policy goals of eliminating waste and fraud are not being met. First, the Committee is concerned that settlements of civil and criminal cases by DOJ are being used as a shield to foreclose other appropriate remedies, such as suspension and debarment, that protect the government from continuing to do business with contractors who do not have satisfactory records of quality performance and business ethics. Second, the Committee is concerned that companies that have previously avoided prosecution through settlements with DOJ have again violated the law, without consequence for breaching previous settlement agreements.

Recent enforcement activity against Kellogg, Brown and Root (KBR) illustrates this problem. On April 1, 2010, DOJ filed a lawsuit against KBR alleging violations of the False Claims Act by improperly charging the United States for unauthorized security services in Iraq under the LOGCAP contract. However, this is not KBR's first violation. In February 2009, KBR pleaded guilty to conspiracy to violate the Foreign Corrupt Practices Act and paid a fine of \$402 million. Under the terms of the plea agreement, KBR agreed to retain an independent compliance monitor for a three-year period to review the design and implementation of KBR's compliance program and to make reports to KBR and the Department of Justice. KBR also agreed to cooperate with the Department in its ongoing investigations. This raises the question of whether the new suit indicates a lack of cooperation that renders KBR in violation of the previous agreement and subject to prosecution.

Moreover, KBR has a track record of poor performance on federal government contracts. KBR was responsible for providing a wide range of support services in Iraq, including the maintenance of electrical systems in facilities where several U.S. service members and contractors were fatally electrocuted. Faulty electrical systems maintained by KBR have caused serious injuries in Iraq and may have contributed to the numerous electrical fires that reportedly occurred at U.S. facilities in Iraq. In addition to this, there have been numerous allegations of waste, fraud, and abuse by KBR.

Remarkably, neither the criminal conviction, nor shoddy electrical work in Iraq that led to the electrocution deaths of service members, nor the new charges that led to DOJ filing the latest lawsuit for overbilling have precluded KBR from continuing to receive new government contracts. KBR was recently awarded a contract worth up to \$2.8 billion to provide logistics support to U.S. forces in Iraq.

KBR does not appear to be an isolated example of this inconsistent policy whereby DOJ pursues fines and criminal sanctions for illegal actions by government contractors, yet the negotiated resolution of these cases does not have any effect on the company's eligibility to continue to receive new contracts. In fact, an agreement by DOJ to intervene on the company's behalf in any collateral proceedings, such as suspension and debarment, is a staple of deferred prosecution agreements.

In one of the first deferred prosecution agreements in 2004, DOJ entered into an agreement with Computer Associates (CA) to settle charges of widespread securities fraud. The agreement provided that "if requested by CA or its attorneys, [DOJ] will bring to the attention of [other federal] agencies, including but not limited to any licensing authorities, the Agreement, the cooperation of CA and its compliance with its obligations under this Agreement, and any corporate reforms specified in this Agreement." In sum, DOJ agreed to intervene on CA's behalf to ensure that it would still be considered a responsible company for federal contracting purposes. Indeed, the admitted wrongdoing by CA seemed to have no effect on its ability to do business with the government. In 2007, CA boasted that it had contracted with more than 95 percent of all federal agencies that year.

This type of clause, in which DOJ agrees to take the company's side in suspension and debarment proceedings, has become standard and continues to this day. In a settlement just last month in which Daimler paid \$185 million to settle criminal and civil charges that it violated the Foreign Corrupt Practices Act, DOJ "agrees to cooperate with Daimler" "[w]ith respect to Daimler's present reliability and responsibility as a government contractor."

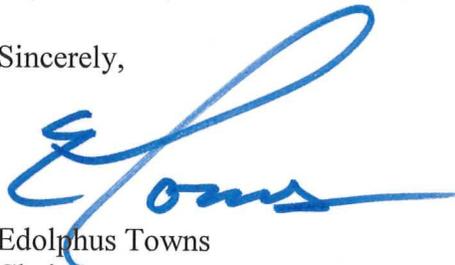
Suspension and debarment is not a penalty. According to the Federal Acquisition Regulations (FAR), suspension and debarment's purpose is to protect Federal agencies from the inept and the corrupt. Grounds for suspension and debarment include prior violation of Federal or state law; failure to perform contractual obligations; ongoing investigation or indictment; commission of fraud, theft, or embezzlement; and any other offense that indicates "a lack of business integrity or business dishonesty." In short, suspension and debarment is an important means of preventing waste, fraud, and abuse in government spending.

Please answer the following questions to assist the Committee as it reviews policy options for determining eligibility for contracts of companies with a poor record of business ethics evidenced by DOJ enforcement action:

1. Does DOJ consider resolution of charges to foreclose action by other government agencies to suspend or debar companies from contracting?
2. In view of the fact that suspension and debarment is not a penalty, but is an important means for government agencies to protect themselves from unscrupulous and poorly performing contractors, please provide a detailed explanation of whether the Justice Department believes it is in the government's best interest to continue to award contracts to those with a record of violations of law.
3. Does DOJ consult with federal government contracting authorities when entering into settlement agreements with companies that compete for government contracts?
4. Identify all instances in which DOJ officials intervened in a suspension and debarment proceeding on behalf of government contractors since 2005 and explain the basis for the DOJ intervention.

The Committee on Oversight and Government Reform is the principal oversight committee in the U.S. House of Representatives, with jurisdiction over "any matter." Please deliver the requested records to the Committee on Oversight and Government Reform, room 2157 Rayburn House Office Building no later than 4:00 p.m. on Friday, May 28, 2010. To facilitate delivery and review, we prefer that the records be delivered in electronic format.

Sincerely,



Edolphus Towns
Chairman

cc: The Honorable Darrell Issa
Ranking Minority Member
Committee on Oversight and Government Reform