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Contact: Oversight and Government Reform Press Office, (202) 225-5051

Chairman Towns Questions Effectiveness of DOJ's Contractor Settlements
Probes why plea deals don't disqualify bad contractors from new contracts

WASHINGTON – House Committee on Oversight and Government Reform Chairman Edolphus “Ed” Towns (D-NY) is questioning the effectiveness of Department of Justice (DOJ) settlements and plea agreements that prevent contracting waste and fraud, based on recent examples where companies that reached plea deals or deferred prosecution agreements with DOJ continued to receive lucrative government contracts. Towns wrote to Attorney General Eric Holder, expressing concern that settlements of criminal and civil cases by DOJ are being used as a shield to prevent other government agencies from taking appropriate action, including suspension and debarment, against poor performing contractors.

“As we review policy options for determining the eligibility of companies with a history of poor performance, I want to know why DOJ settlements of serious cases, often for hundreds of millions of dollars in fines, still allow these companies to continue receiving new contracts,” said Chairman Towns. “It is not in the best interest of the American people to continue awarding contracts to those firms with a record of violations.”

In the letter to Attorney General Eric Holder, Chairman Towns questioned DOJ's policy after the Department filed a lawsuit against Kellogg, Brown and Root (KBR) alleging violations of the False Claims Act for improperly charging the United States for security services in Iraq. This lawsuit comes on the heels of a 2009 guilty plea by KBR for violating the Foreign Corrupt Practices Act, resulting in a \$402 million fine.

Despite KBR's agreement to cooperate with DOJ's ongoing investigations, the new lawsuit raises questions about a lack of cooperation by KBR and whether KBR is now subject to prosecution under the previous agreement. Neither the 2009 settlement, nor the recent charges filed by DOJ, nor the numerous allegations of waste, fraud and abuse by KBR precluded the company from receiving a new contract worth up to \$2.8 billion to provide logistical support to U.S. forces in Iraq. In a [letter to Secretary of Defense Robert Gates](#), Chairman Towns questioned DOD's decision and outlined his concerns about the contract award.

Unfortunately, KBR does not appear to be an isolated example where DOJ pursues fines and criminal sanctions, but the company's eligibility to receive new contracts is not affected. In 2004, DOJ settled charges of widespread securities fraud with Computer Associates (CA) and agreed to intervene on CA's behalf to ensure that it would still be considered a responsible company for federal contracting purpose. CA's admitted wrongdoing had no apparent impact on its ability to secure lucrative contracts and it boasted of contracts with more than 95 percent of all federal agencies in 2007.

The type of clause negotiated by CA appears to have become standard and continues to this day. An April 2010 settlement between the Department of Justice and Daimler in which Daimler agreed to pay \$185 million to settle criminal and civil charges that it violated the Foreign Corrupt Practices Act is the latest example where DOJ agrees to take the company's side in suspension and debarment proceedings.

In his letter to Attorney General Holder, Chairman Towns requested a list of all instances where DOJ officials intervened in a suspension and debarment proceeding on behalf of government contractors since 2005 and asked whether DOJ consults with federal government contracting authorities when entering into settlement agreements with companies that compete for government contracts.

"Suspension and debarment is not a penalty, but an important part of preventing waste, fraud and abuse of government spending," said Chairman Towns. "We cannot continue to allow companies with troubling past contract performance to continue receiving lucrative government contracts."

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Documents and Links

[Letter from Chairman Towns to Attorney General Eric Holder](#)