

DOJ Announces New Procurement Fraud Task Force

On October 10, 2006, Deputy Attorney General Paul J. McNulty announced the formation of a National Procurement Fraud Task Force. The new Task Force is being formed to “intensify the government’s detection efforts and to continue prosecuting those who defraud taxpayers” and will coordinate the Department of Justice’s efforts nationwide. The members of the Task Force include the FBI, all defense-related investigative agencies, Inspector Generals for all Intelligence Agencies and some departments, various United States Attorneys’ Offices, and the Civil and Criminal Divisions.

The Task Force is modeled on several previous DOJ Task Force initiatives, which have resulted in increased numbers of prosecutions. In 2002, the President established a Corporate Fraud Task Force in response to revelations about Enron and other major corporations. Since that time, a similar model has been used for a Task Force to coordinate investigative efforts involving the aftermath of Katrina. More recently, the Eastern District of Virginia established a Procurement Fraud Task Force that has been investigating and prosecuting contracting fraud, as well as post employment conflicts of interest and bribery matters.

By establishing this Task Force, DOJ sends a message that it is prioritizing procurement fraud investigations. The increased staffing will result in investigations moving more quickly. DOJ is well aware that significant attention is being focused on fraudulent activity associated with Iraqi contracting and increased military funding, and it wants to send a strong deterrent message.

It is also expected that the Department will increase its use of civil and criminal remedies for matters, which traditionally have been more in the nature of administrative contractual disputes. On the same day that the new Task Force was unveiled, DOJ announced a \$98.5 million settlement with Oracle Corporation over allegations that PeopleSoft Inc. (acquired by Oracle) had committed fraudulent defective pricing on a GSA Multiple Award Schedule contract for the sale of software licenses and maintenance services. The settlement represents the largest payment ever in a civil False Claims Act case involving the Multiple Award Schedule (MAS) program.

Under the MAS program, vendors agree to disclose their commercial pricing policies and practices in exchange for an opportunity to gain access to the broad federal marketplace and the ease of administration that comes from selling to hundreds of government purchasers under one central contract. GSA regulations require that vendors seeking a MAS contract disclose their “current, accurate and complete” commercial pricing policies and practices to GSA during negotiations. DOJ alleged that PeopleSoft understated the discounts it provided to some of its commercial customers. In particular, DOJ claimed that PeopleSoft failed to disclose to GSA its practice of offering commercial customers incrementally steeper discounts off list prices of software products based on the number of products purchased at one time.

While GSA advertises the MAS program as a streamlined, commercial-like way of doing business, the underlying disclosure regulations are fraught with peril, as Oracle discovered. There is a fine line between defective pricing arising from negligent omission and fraud. With the new Task Force and the Oracle settlement, we will likely see DOJ pursue more such cases in the fraud arena where, under the False Claims Act, the remedy includes treble damages and penalties.

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