



**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE CHAIRMAN**  
Washington, DC 20570-0001

November 10, 2008

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

This letter reports two violations of the Antideficiency Act, as required by section 1351 of Title 31, United States Code.

Violations of section 1341 of Title 31, United States Code, occurred in the National Labor Relations Board Salaries & Expenses account (63-07-0100) as a result of a contracting officer entering into two contracts with open-ended indemnification clauses.

The first violation occurred on April 5, 2007, in connection with a \$407,588 contract with Mythics for Oracle-Siebel software and support. The second violation occurred on April 19, 2007, in connection with an \$85,008 contract with Four Points Technology for Pointsec disk encryption software and support. The open-ended indemnification clauses contained in these two software licensing agreements have not resulted in any liability claims. Both licensing agreements were executed by Mr. Madan Kar, Associate Chief Information Officer for Program Management.

The violations came to the attention of the Office of Inspector General (OIG) during an audit of procurement actions that were conducted by the Office of the Chief Information Officer. A subsequent investigation found that Mr. Kar did not exercise due diligence in either reading or understanding the terms of the licensing agreements that he executed. Mr. Kar implicitly acknowledged that he knew that open-ended indemnification clauses were improper, but that he was not aware that the indemnification clause was a part of either agreement. Mr. Kar defended his actions in this matter by stating that the agreements were reviewed by other officials, including attorneys, who should have brought the improper indemnification clauses to his attention. Although the investigation found that the Mythics agreement was reviewed by other Agency officials prior to being executed by Mr. Kar, there was no evidence that the Four Points Technology software licensing agreement was reviewed by any Agency official other than Mr. Kar. Additionally, there was no evidence that either software license agreement was reviewed by an Agency attorney prior to being signed by Mr. Kar.

The President  
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November 10, 2008

The OIG submitted the facts involving these violations to the U.S. Attorney's Office for the District of Columbia which then declined prosecution of this matter. Mr. Kar's Certificate of Appointment for Contracting Authority has been revoked and he has been assigned duties that do not involve acting as a contracting officer.

The Agency has taken the following steps to correct the violations and to ensure that future violations do not occur:

- Counsel and contracting officers are negotiating with the software vendors to remove indemnification language from the software licensing agreements. Our plan is to conclude these negotiations and have revised contracts in place by the end of 2008.
- We created the requirement that all software licensing agreements be reviewed by an attorney. We are also investigating whether separating the budget and procurement functions would lead to greater internal controls.
- Counsel conducted Antideficiency Act training that was attended by Agency personnel responsible for the procurement process.

The NLRB fund control regulations, as required by the Antideficiency Act, were reviewed and approved by the Office of Management and Budget in October 2007. I am satisfied that they, along with the greater internal controls for software licensing agreements, are adequate to prevent future violations of the Antideficiency Act.

Identical reports will be submitted to the presiding officer of each House of Congress as well as the Comptroller General.

Sincerely,



Peter C. Schaumber  
Chairman



**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE CHAIRMAN**  
Washington, DC 20570-0001

November 10, 2008

The Honorable Richard B. Cheney  
President of the Senate  
Washington, D.C. 20510

Dear Mr. Cheney:

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Identical reports will be submitted to the President, the Speaker of the U.S. House of Representatives as well as the Comptroller General.

Sincerely,



Peter C. Schaumber  
Chairman



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**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE CHAIRMAN**  
Washington, DC 20570-0001

November 10, 2008

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear Madam Speaker:

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Peter C. Schaumber  
Chairman