

No. 80-03

Date: October 29, 1980

Foreign Corrupt Practices Act

Review Procedure Release

A domestic concern has submitted a proposed contract for review pursuant to the Review Procedure Releases Procedure. The proposed contract is with an attorney domiciled and functioning in West Africa. It makes two specific references to the Foreign Corrupt Practices Act. In one such reference, the attorney agrees and represents that he is not, and during the course of the agreement will not be, a foreign official. The other such reference expressly prohibits payments to foreign officials, using the language of the Act. Pursuant to Section 50.18(g) of the Review Procedure, the Criminal Division sought additional facts and circumstances concerning the attorney's background and qualifications. Government connections, his relationship with the domestic concern, the nature of the African business, particular performance expectations and pending projects of special interest in Africa were also inquired into.

The original review request consisted only of the proposed contract and a cover letter. It and the responses to our further inquiries did not reflect any facts or circumstances which could reasonably cause concern about the application or possible violation of the Act. If in fact there was a reasonable concern, a mere contract provision, without other affirmative precautionary steps, would not be sufficient.

In the absence of any reasonable concern about the application of or possible violation of the Act, review of a proposed contract is not an appropriate function of the Review Procedure. The Criminal Division therefore has declined to respond to this Review Request by stating whether or not it will take an enforcement action.