

Exposing Corruption *Exploring Solutions*
Project On Government Oversight

Testimony of
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Project On Government Oversight (POGO)
before the
House Veterans' Affairs
Subcommittee on
Oversight and Investigations
Hearing on "Acquisition Deficiencies at the U.S. Department
of Veterans Affairs"
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Thank you for inviting me to testify today. I am the General Counsel of the Project On Government Oversight, also known as POGO.¹ POGO was founded in 1981 by Pentagon whistleblowers who were concerned about weapons that did not work and wasteful spending. Throughout its twenty-eight-year history, POGO has worked to remedy waste, fraud, and abuse in government spending in order to achieve a more effective, accountable, open, and ethical federal government. POGO has a keen interest in government contracting matters, and I am pleased to share POGO's thoughts with the Subcommittee today.

Many events over the past fifteen years have called into question the effectiveness of the federal contracting system and highlighted how drastically the contracting landscape has changed. Contract spending has grown tremendously, exceeding \$530 billion in fiscal years 2008 and 2009²; oversight has decreased; the acquisition workforce has been stretched thin and been supplemented by contractors; and spending on services now outpaces spending on goods. This new emphasis on services has also increased the risk of waste, fraud, and abuse in contracts, as it is more difficult to assess value on services than on goods. Some acquisition reforms have significantly reduced contract oversight, making it difficult for government investigators and auditors to identify and recover wasteful or fraudulent spending. These reforms have also created contracting vehicles that often place public funds at risk.³ In short, poor contracting decisions are placing taxpayer dollars – and sometimes lives – at risk.

¹ For additional information about POGO, please visit www.pogo.org.

² FPDS-NG, *Trending Analysis Report for the Last 5 Years*, no date provided.
http://www.fpdsng.com/downloads/top_requests/FPDSNG5YearViewOnTotals.xls
FPDS-NG, *List of Agencies Submitting Data to FPDS-NG*, December 10, 2009.
http://www.fpdsng.com/downloads/agency_data_submit_list.htm

³ The Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103-355), the Federal Acquisition Reform Act of 1996 (FARA) (Public Law 104-106), and the Services Acquisition Reform Act of 2003 (SARA) (Public Law 108-136) have removed taxpayer protections.

On a positive note, interest in improving the federal contracting system has grown significantly in recent years. Congress created the Commission on Wartime Contracting in Iraq and Afghanistan, which recently released an interim report that discovered many government and contractor contracting processes.⁴ Additionally, the Senate and House have created committees to dig deep into the contracting weeds.⁵ These moves follow efforts in the two most recent National Defense Authorization acts to improve federal contracting.⁶

The contract oversight bug has also hit President Obama's administration. In his first 100 days in office, President Obama issued a contracting memorandum outlining the government's obligation to contract wisely by increasing competition and eliminating wasteful spending.⁷ The President's budget also mentions concerns with risky contract types, wasteful spending, and contracts awarded without full and open competition.⁸ Subsequent contracting and acquisition workforce memoranda have been issued by the Office of Management and Budget.⁹

So far, Congress and the President seem to be well on their way to implementing contracting improvements. On May 22, the President signed the "Weapons Systems Acquisition Reform Act of 2009," which he described as "a bill that will eliminate some of the waste and inefficiency in our defense projects – reforms that will better protect our nation, better protect our troops, and may save taxpayers tens of billions of dollars."¹⁰ Additional contract-related legislation moved through the Senate and the House and was signed by the President in the National Defense Authorization Act for FY 2010.¹¹

⁴ According to the Commission on Wartime Contracting in Iraq and Afghanistan, approximately \$830 billion dollars has been spent since 2001 to fund U.S. operations in Iraq and Afghanistan. Commission on Wartime Contracting in Iraq and Afghanistan, *At What Cost? Contingency Contracting In Iraq and Afghanistan*, June 2009, p. 1.

http://www.wartimecontracting.gov/docs/CWC_Interim_Report_At_What_Cost_06-10-09.pdf

⁵ The Senate Committee on Homeland Security and Governmental Affairs created the Ad Hoc Subcommittee on Contracting Oversight. The House Armed Services Committee created the Panel on Defense Acquisition Reform.

⁶ The 2008 and 2009 National Defense Authorization acts include many contract-related provisions. See Pub. Laws 110-181 (January 28, 2008) and 110-417 (October 14, 2008).

⁷ Memorandum for the Heads of Executive Departments and Agencies, Subject: Government Contracting, March 4, 2009. http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/. See Jesse Lee, *The White House Blog*, "Priorities – Not Lining the Pockets of Contractors," March 04, 2009.

http://www.whitehouse.gov/blog/09/03/04/priorities_not-lining-the-Pockets-of-Contractors/

⁸ Office of Management and Budget, *A New Era of Responsibility: Renewing America's Promise*, pp. 35, 38-39, 2009. http://www.whitehouse.gov/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf

⁹ OMB, *Increasing Competition and Structuring Contracts for the Best Results*, October 27, 2009.

http://www.whitehouse.gov/omb/assets/procurement_gov_contracting/increasing_competition_10272009.pdf

OMB, *Acquisition Workforce Development Strategic Plan for Civilian Agencies – FY 2010-2014*, October 27, 2009.

http://www.whitehouse.gov/omb/assets/procurement_workforce/AWF_Plan_10272009.pdf

OMB, *Improving Government Acquisition*, July 29, 2009.

http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-25.pdf

OMB, *Improving the Use of Contractor Performance Information*, July 29, 2009.

http://www.whitehouse.gov/omb/assets/procurement/improving_use_of_contractor_perf_info.pdf

OMB, *Managing the Multi-Sector Workforce*, July 29, 2009.

http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-26.pdf

¹⁰ The White House, Office of the Press Secretary, Remarks by the President at Signing of the Weapons Systems Acquisition Reform Act, May 22, 2009. http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-signing-of-the-Weapons-Systems-Acquisition-Reform-Act/

¹¹ Public Law No: 111-84, §§ 810-848, October 28, 2009.

Despite all of those actions, there are more improvements that are needed. In addition to the \$530 billion spent on contracts, agencies and their stretched staffs now awarding hundreds of billions more in Stimulus funds, which is a recipe for waste, fraud, and abuse.

Numerous Government Accountability Office (GAO) and Inspector General (IG) reports highlight contracting deficiencies and recommend ways to correct them.¹² These reports have found that contract planning, requirements definitions, contract types used, administration, and oversight is deficient. These are the leading reasons management of federal contracts at several agencies remains on GAO's "high risk" list.¹³

Industry has also criticized the current system. The Grant Thornton consulting firm's *14th Annual Government Contractor Survey*, released in January 2009,¹⁴ showed that cost reimbursable contracts are used more frequently than fixed price contracts. Cost-reimbursable contracts have also been a subject of concern for both the White House and Members of Congress, and the survey stated that it "is difficult to equate the high use of cost-reimbursable contracts with the notion that the government is attempting to use more commercial processes to streamline federal procurement."¹⁵

Veterans Affairs Procurement Summary

Veterans Affairs (VA) is an agency that has seen its share of growth in contract spending. VA contract jumped to \$14.6 billion in FY 2008 from \$3.9 billion in FY 2000 – the last year complete contract data is available.¹⁶ VA's contract portfolio is as follows:

1. Extent of actual competition is unknown because 54% (nearly \$8 billion) of the contract dollars were listed as "Not identified"¹⁷
2. Full or limited competition was used for 21% of the dollars award¹⁸
3. Sole source contracts totaled nearly 12% (nearly \$1.7 billion)¹⁹
4. Fixed price contracts account for over 98% of the amount spent (\$14.3 billion)²⁰

¹² GAO, *Defense Acquisitions: Actions Needed to Ensure Value for Service Contracts*, GAO-09-643T, April 23, 2009. <http://www.gao.gov/new.items/d09643t.pdf>. Treasury IG for Tax Administration, *Current Practices Might Be Preventing Use of the Most Advantageous Contractual Methods to Acquire Goods and Services*, 2009-10-037, February 10, 2009. <http://www.treas.gov/tigta/auditreports/2009reports/200910037fr.html>

¹³ GAO, *High-Risk Series*, GAO-09-271, pp. 77-84, January 2009. <http://www.gao.gov/new.items/d09271.pdf>

¹⁴ Grant Thornton, *14th Annual Government Contractor Industry Highlights Book – Industry survey highlights 2008*, January 26, 2009. (Hereinafter Grant Thornton Report). http://www.grantthornton.com/staticfiles//GTCom/files/Industries/Government%20contractor/14th_Gov_Con_Highlights_011409small.pdf. Grant Thornton is an international consulting company that provides services to public and private clients.

¹⁵ Grant Thornton Report, at p. 8.

¹⁶ USAspending.gov, *Contracts from Dept. of Veterans Affairs FY 2000-2009*, as of December 10, 2009. (Hereinafter VA FY 2000-2009).

http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=36&reptype=r&database=fpds&fiscal_year=&detail=-1&datatype=T&submit=GO

¹⁷ VA FY 2008.

¹⁸ VA FY 2008. The 21% figure includes full and open competition, one-bid offers, and awards based on limited competition.

¹⁹ VA FY 2008.

5. VA programs received a total of \$1.4 billion in Recovery Act funding, with \$543 million “paid out” as of December 4, 2009²¹
6. Recovery Act contracts were competed 94% of the time²²
7. Small business contract dollars were approximately 35% (nearly \$5 billion)²³
8. Pre-award and post-award oversight potentially saved the VA over \$165 million in FY 2009.²⁴

That data remains relatively consistent to VA’s contracting history from 2000 to 2008 – with the aggregate totals decreasing in the “not identified” competition category (36%), increasing in competitive contracts (nearly 40%), and slightly increasing in noncompetitive contract awards (13%).²⁵ Remaining constant was VA’s 98% figure for fixed price contracts.²⁶

Despite the large figure of contract awards where competition was not identified, the data overall paints a relatively positive picture of VA contracting. However, there are some VA contracting areas that are in need of oversight and improvement.

First, VA’s contract award total has increased from \$3.9 billion to \$14.6 billion since 2000. That spending increase outpaces the government-wide figures (\$200 billion in FY 2000 to \$537 billion in FY 2008). Simply stated, VA is increasingly spending a lot of taxpayer dollars on contracts for goods and services and a comprehensive review should be conducted to ensure taxpayer dollars are being spent wisely.²⁷

Second, according to a recent GAO report,²⁸ lax oversight controls and fraud related to Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Businesses (VOSB) contracts allowed ineligible firms to improperly receive approximately \$100 million in

²⁰ VA FY 2008.

²¹ Office of Inspector General Department of Veterans Affairs, *Semiannual Report to Congress April 1, 2009 - September 30, 2009*, November 30, 2009, p. 61. (Hereinafter VA OIG Report).
<http://www4.va.gov/oig/pubs/VAOIG-SAR-2009-2.pdf>

Recovery.gov, *Agency Reported Data – Veterans Affairs*, as of December 11, 2009.

http://www.recovery.gov/Transparency/agency/reporting/agency_reporting1.aspx?agency_code=36

²² GAO, *Recovery Act: Contract Oversight Activities of the Recovery Accountability and Transparency Board and Observations on Contract Spending in Selected States*, November 30, 2009, p. 4.

<http://www.gao.gov/new.items/d10216r.pdf>

²³ Small Business Administration, *FY2008 Official Goaling Report*, no date provided.

http://www.sba.gov/idc/groups/public/documents/sba_homepage/fy2008official_goaling_report.html

SBA Department of Veterans Affairs Grade Report, 2008.

http://www.sba.gov/idc/groups/public/documents/sba_homepage/goals_08_va.pdf

²⁴ VA OIG Report, p. 37.

²⁵ VA FY 2000-2009.

²⁶ VA FY 2000-2009.

²⁷ Many other federal agencies, including Defense and Homeland Security, are looking at their service contracts, examining the services procured and the cost of hiring contractors. A review should pay close attention to inherently governmental functions and certain services and actions that are not considered to be inherently governmental functions may approach being in that category. See FAR Subpart 7.503.

https://www.acquisition.gov/far/current/html/Subpart%207_5.html#wp1078202

²⁸ GAO, *Service-Disabled Veteran-Owned Small Business Program – Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts* GAO-10-108, November 19, 2009.

<http://www.gao.gov/new.items/d10108.pdf>

SDVOSB contracts, and an additional \$300 million in contracts set aside for other small businesses.²⁹ Because there are no requirements for improper contract awards, many of those contractors were allowed to continue their work.³⁰ The Small Business Association (SBA), awarding agencies,³¹ and the VA verification process were all blamed for the problem.³²

Third, the Subcommittee might want to inquire about the frequency of VA outsourcing efforts. If VA human resource planning is tailored to hiring service contractors rather than service members, the agency is doing a major disservice to the one constituency that it was created to assist – a group who is struggling in the private sector. To help highlight my concern, please consider the following employment statistics. Currently, national unemployment figures run about 10 percent,³³ but the figure for returning service members is approximately 12 percent and 18 percent for service members who left the military in the past three years.³⁴ Responding to those elevated rates, President Obama issued an Executive Order intended to “enhance recruitment of and promote employment opportunities for veterans within the executive branch.”³⁵ VA should be doing its best to assist qualified service members find jobs with the agency rather than hiring contractor employees.

Big Picture Contracting Concerns

Many contracting experts and government officials blame the inadequate size and training of the acquisition workforce for today’s problems in the contracting system. POGO agrees that workforce reduction is a major problem, but we believe additional problems deserve equal attention. These problems are:

1. Inadequate Competition
2. Deficient Accountability
3. Lack of Transparency
4. Risky Contracting Vehicles

²⁹ GAO, Statement of Gregory D. Kutz, Managing Director Forensic Audits and Special Investigations Before the House Committee on Small Business, *Service-Disabled Veteran-Owned Small Business Program – Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts* GAO-10-255T, November 19, 2009, pp. 1, 3, and 9. (Hereinafter GAO-10-255T).
<http://www.gao.gov/new.items/d10255t.pdf>

³⁰ GAO-10-255T, p. 3.

³¹ According to the GAO, “VA exceeded its prime contracting goals for SDVOSBs and VOSBs in fiscal years 2007 and 2008.” GAO, *Department of Veterans Affairs Contracting with Veteran-Owned Small Businesses*, March 19, 2009, p. 3.
<http://www.gao.gov/new.items/d09391r.pdf>

³² GAO-10-255T, pp. 9-11.

³³ U.S. Bureau of Labor Statistics, *Employment Situation Summary*, December 4, 2009.
<http://www.bls.gov/news.release/empstat.nr0.htm>

³⁴ American Federation of Government Employees, *VA Outsourcing Threatens Employment Opportunities For Veterans*, November 30, 2009.
<http://www.afge.org/Index.cfm?Page=PressReleases&PressReleaseID=1080>

³⁵ 74 Federal Register No. 218, Executive Order 13518, *Employment of Veterans in the Federal Government*, November 9, 2009, p. 58533.
<http://edocket.access.gpo.gov/2009/pdf/E9-27441.pdf>

I will discuss all of these issues in detail, and provide realistic recommendations that will improve the way federal contracts are awarded, monitored, and reviewed. I will defer to today's other panelists to recommend specific ways to improve contract award, administration, project management, and contract oversight within the VA.

Inadequate Competition

To better evaluate goods and services, and to get the best value for taxpayers, the government must encourage genuine competition. At first glance, it may seem that federal agencies frequently award contracts competitively. For example, the Department of Defense (DoD) claims that 64 percent of its contract obligations were competitive in 2008,³⁶ and federal contracting data shows that the Department of Homeland Security competes approximately 70 percent of its contracts.³⁷ These numbers, however, do not tell the entire story. The "competitive" label includes contracts awarded through less than full and open competition, including competitions within a selected pool of contractors, offers on which only a single bid was received, or a follow-on contract to a previously competed action.

The 110th Congress limited the length of certain noncompetitive contracts and mandated competitive procedures at the task and delivery level,³⁸ but the government must do more to ensure that full and open competition involving multiple bidders is the rule, not the exception. Consequently, to accurately track or evaluate competition, the definition of "competitive bidding" should be revised to apply only to contracts on which more than one bid was received.

In addition to redefining competition, federal agencies must:

1. Reverse the philosophy of quantity over quality. Acquisition is now about speed, making competition a burden; this is a recipe for waste, fraud, and abuse.
2. Debundle contract requirements in order to invite more contractors to the table. Contracts that lump together multiple goods and services exclude smaller businesses that could successfully provide one good or service, but are incapable of managing massive multi-part contracts. Breaking apart multi-supply or -service contracts reduce the multiple layers of subcontracting which can drive up costs while adding little value.³⁹

³⁶ Shay D. Assad, Director Defense Procurement & Acquisition Policy, to the Office of Federal Procurement Policy, March 4, 2009.

<http://www.acq.osd.mil/dpap/cpic/cp/docs/dodfy2008competitionreport.pdf>

USAspending.gov DOD summary for FY 2008

http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=97&reptype=r&database=fpds&fiscal_year=2008&detail=-1&datatype=T&submit=GO

³⁷ USAspending.gov reports 70.4 percent of DHS contract were subject to competition in 2008

http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=70&reptype=r&database=fpds&fiscal_year=2008&detail=-1&datatype=T&submit=GO

³⁸ Pub. Law 110-181, Sec. 843, January 28, 2008. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ181.110.pdf

Pub. Law 110-417, Sec. 862, October 14, 2008. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ417.110.pdf

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ417.110.pdf

³⁹ The 2009 Defense Authorization bill directed DoD to minimize the excessive use of multiple layers of subcontractors that add no or negligible value to a contract. Pub. Law 110-417, Sec. 866, October 14, 2008.

3. Update USAspending.gov to include a searchable, sortable, and user-friendly centralized database of all contracts and delivery/task orders awarded without full and open competition, including all sole-source awards. The database would enhance the requirement created by the National Defense Authorization Act of 2008 to disclose justification and approval documents for noncompetitive contracts.⁴⁰
4. Ensure that waivers of competition requirements for task and delivery orders issued under multiple-award contracts or the federal supply schedule program are granted infrequently.⁴¹
5. Increase emphasis on sealed bidding to receive the lowest prices.⁴²
6. Use reverse auctions more frequently. In a Department of Energy reverse auction for pagers, two companies' submitted initial bids for \$43 and \$51 per pager. At the close of bidding, the government awarded the contract at the low price of \$38 per pager.⁴³

Why is competition in contracting important? In a nutshell, genuine competition between contractors means the government gets the best quality goods and services at the best price. Competition also prevents waste, fraud, and abuse because contractors know they must perform at a high level or risk being replaced.

Deficient Accountability

Through the years, the government has placed a premium on speeding up the contracting process and cutting red tape. Those policies led to downsizing the acquisition workforce and gutting the oversight community. When considering the large-scale increase in procurement spending during the past decade, the contracting and oversight communities lack sufficient resources to watch the money as it goes out the door.

Many acquisition reforms also eliminated essential taxpayer protections. For example, one “reform”—commercial item contracting—made it so federal contracting officials now lack the cost or pricing data necessary to ensure that the government is getting the best value. Commercial item contracts, which prevent government negotiators and auditors from examining a contractor’s cost or pricing data, might make sense when buying computers, office supplies, or

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ417.110.pdf

⁴⁰ Pub. Law 110-181, Sec. 844, January 28, 2008. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ181.110.pdf. On January 15, 2009, a Federal Register notice was issued creating an interim rule and requesting public comment on the proposed public database of justification and approval documents for noncompetitive contracts. 74 Fed. Reg. 2731.

<http://edocket.access.gpo.gov/2009/pdf/E9-555.pdf>

⁴¹ See GAO, *Contract Management: Guidance Needed to Promote Competition for Defense Task Orders*, GAO-04-874, July 30, 2004. <http://www.gao.gov/new.items/d04874.pdf>

⁴² Sealed bidding is a method of contracting that employs competitive bids and the contract is then awarded by the agency to the low bidder who is determined to be responsive to the government’s requirements. FAR Subpart 6.4 and Part 14.

⁴³ Steve Sandoval, *LANL NewsBulletin*, “Reverse auctions save Lab money,” January 23, 2007.

http://www.lanl.gov/news/index.php/fuseaction/nb.story/story_id/9654

landscaping services, but has been exploited in some cases, such as the C-130J cargo planes procured by the Air Force. Because the C-130J was determined to be a commercial item, government auditors were not allowed to have access to have cost or pricing data. After Senator McCain forced the Air Force to convert the contract back to a traditional contracting vehicle, the taxpayers saved \$168 million.⁴⁴

Contract oversight provides great benefits to taxpayers. According to the Veterans Affairs Office Of Inspector General, “OIG audits, investigations, and other reviews identified over \$2.3 billion in monetary benefits, for a return of \$59 for every dollar expended on OIG oversight” for the 2nd half of the FY 2009 and \$38 for entire fiscal year.⁴⁵

POGO believes that Congress should:

1. Appropriate money to agencies to end their reliance on the industrial funding fees collected from other agencies for orders placed on interagency contracts. This system creates a perverse incentive to keep costs or prices high. In other words, agencies might not be seeking the best prices because program revenue would be lost.
2. Require contractors to provide cost or pricing data to the government for all contracts, except those where the actual goods or services being provided are sold in substantial quantities in the commercial marketplace.
3. Provide enforcement tools needed to prevent, detect, and remedy waste, fraud, and abuse in federal spending, including more frequent pre-award and post-award audits to prevent defective pricing.⁴⁶
4. Eliminate the Right to Financial Privacy Act requirement requiring IGs to notify contractors prior to obtaining the companies’ financial records. This requirement “tips off” contractors and can harm the government’s ability to investigate federal contracts.⁴⁷
5. Realize that audits are worth the investment. On average, all IGs appointed by the President return \$9.49 for each dollar appropriated to their budgets – which is low in comparison to the VA oversight returns.⁴⁸
6. Enhance the acquisition workforce through improvements in hiring, pay, training, and retention.

⁴⁴ Secretary of the Air Force, Office of Public Affairs, Press Release (051006), *Officials announce C-130J contract conversion*, October 25, 2006.

<http://www.af.mil/information/transcripts/story.asp?id=123029927>

⁴⁵ VA OIG Report, pp. 1 and 5.

⁴⁶ National Procurement Fraud Task Force, Legislation Committee, *Procurement Fraud: Legislative and Regulatory Reform Proposals*, June 9, 2008. (Hereinafter *Fraud White Paper*). <http://pogoarchives.org/m/co/nptflc-white-paper-20080609.pdf>

⁴⁷ *Fraud White Paper*, pp. 4-5.

⁴⁸ GAO, *Inspector General – Actions Needed to Improve Audit Coverage of NASA*, GAO-09-88, p. 5, December 2008. <http://www.gao.gov/new.items/d0988.pdf>

7. Require comprehensive agency reviews of outsourcing practices, especially for contract-related management and consulting service contracts.⁴⁹
8. Pass the Contracting and Tax Accountability Act of 2009 (H.R. 572) prohibiting federal contracts from being awarded to contractors that have an outstanding tax liability.⁵⁰
9. Hold agencies and contractors accountable when small business contracts are diverted to large corporations and when set-aside dollars don't reach their legally intended targets.⁵¹

Through the years, measures to ensure government and contractor accountability have been viewed as burdensome and unnecessary. This attitude needs to be replaced with one recognizing that accountability measures are essential to protecting taxpayers, and should be seen as an acceptable cost of doing business with the federal government.

Lack of Transparency

To regain public faith in the contracting system, the government must provide the public with open access to information on the contracting process, including contractor data and contracting officers' decisions and justifications.

The following actions should be taken to provide the public with contracting information:

1. USA Spending.gov should become the one-stop shop for government officials and the public for all spending information. This includes actual copies of each contract, delivery or task order, modification, amendment, other transaction agreement, grant, and lease. Additionally, proposals, solicitations, award decisions and justifications (including all documents related to contracts awarded with less than full and open competition and single-bid contract awards), audits, performance and responsibility data, and other related government reports should be incorporated into USA Spending.gov.
2. To better track the blended federal government workforce, Congress should require the government to account for the number of contractor employees working for the government using a process similar to FAIR Act inventories of government employees filed by federal agencies.

Risky Contracting Vehicles

As previously mentioned in my testimony, POGO is concerned with the government's acceptance of limited competition in contracting as well as its over-reliance on cost-

⁴⁹ Alice Lipowicz, Federal Computer Week, *DHS draws flak for review of services contracts*, June 5, 2009. <http://fcw.com/articles/2009/06/08/news-dhs-contracts.aspx>

⁵⁰ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h572ih.txt.pdf

⁵¹ Department of the Interior, Office of the Inspector General, *Interior Misstated Achievement of Small Business Goals by including Fortune 500 Companies*, W-EV-MOI-0003-2008, July 2008.

<http://www.doiioig.gov/upload/2008-G-0024.pdf>

Carol D. Leonnig, *Washington Post*, "Agencies Counted Big Firms As Small," A1, October 22, 2008.

http://www.washingtonpost.com/wp-dyn/content/article/2008/10/21/AR2008102102989_pf.html

reimbursement, time and material contracts, and commercial item contracts – although as I mentioned previously, the vast majority of VA contracts are awarded on a fixed price basis, which bodes well for taxpayers. POGO realizes that there are benefits to these vehicles in certain circumstances, but we are not alone in voicing concerns about how these contract vehicles are used in practice.

POGO has concerns with the government placing taxpayer dollars at risk by over-designating many items and services as commercial. The changes to procurement law and regulation during the past fifteen years have been most stark in this area. Designating an item or service as commercial when there is no actual commercial marketplace places the government at risk because the government doesn't have access to cost or pricing data that is essential for ensuring the contract is fair and reasonable. The government's failure or inability to obtain cost or pricing data has been nothing short of shocking, and has invited outright price gouging of the public fisc.

POGO believes that risky contracts can work in practice, but only if additional oversight protections are added, including:

1. For commercial item contracts, goods or services should be considered to be “commercial” only if there are substantial sales of the actual goods or services (not some sort of close “analog”) to the general public. Otherwise, the goods or services should not be eligible for this favored contracting treatment.
2. The Truth in Negotiations Act (TINA) should be substantially revised to restore it to the common-sense requirements that were in place prior to the “acquisition reform” era. Specifically, all contract awards over \$500,000, except those where the goods or services are sold in substantial quantities to the general public in the commercial marketplace, should be subject to TINA. This small step would result in enormous improvements in contract pricing, negotiation, and accountability, and save taxpayers billions of dollars per year.
3. All contracting opportunities in excess of \$100,000 – including task or delivery orders, and regardless of whether the action is subject to full and open competition, award against a GSA Federal Supply Schedule or an agency Government Wide Acquisition Contract, or any other type of contracting vehicle – should be required to be publicly announced for a reasonable period prior to award, unless public exigency or national security considerations dictate otherwise.
4. All contracting actions, including task and delivery orders, should be subject to the bid protest process at the GAO. While POGO recognizes that many will decry this recommendation as adding “red tape” to the process, we believe it is the only meaningful way to ensure that contractors are treated on an even playing field, and that the public can confident in agency contract award decisions.

Thank you for inviting me to testify today. I look forward to working with the Subcommittee to further explore how the government should improve the federal contracting system to better protect taxpayers and welcome any questions.

Exposing Corruption Exploring Solutions

Project On Government Oversight

Scott Amey, General Counsel

Mr. Amey rejoined the POGO staff in 2003 and directs POGO's Contract Oversight investigations, including reviews of federal spending on goods and services, the responsibility of top federal contractors, and conflicts-of-interest and ethics concerns that have led to questionable contract awards. Mr. Amey has testified before Congress and federal agency panels, submitted public comments on proposed regulations, educated the public by working with the media, and authored reports, alerts, and blogs on contracting issues.

Mr. Amey previously worked at POGO in the mid-1990s as a Research Associate, and was one of the organization's most prolific investigators. One of his most notable projects during that time was an investigation into Area 51 that resulted in the Air Force admitting the black facility's existence and submitting to compliance with environmental laws. Mr. Amey also undertook investigations into Boston's Big Dig project and safety concerns at nuclear power plants. Mr. Amey left POGO in 1998 to attend law school, after which he clerked for the Honorable James A. Kenney, III, at the Court of Special Appeals of Maryland from 2001-2003. Mr. Amey received a J.D., magna cum laude, from the University of Baltimore School of Law in 2001, and a B.A. from the University of Pittsburgh in 1993. Mr. Amey is licensed to practice law in Maryland.