

Project On Government Oversight

Exposing Corruption Exploring Solutions www.POGO.org



June 21, 2006

The Honorable Thad Cochran, Chairman
Senate Appropriations Committee

The Honorable Robert C. Byrd, Ranking Member
Senate Appropriations Committee

The Honorable John W. Warner, Chairman
Senate Armed Services Committee

The Honorable Carl Levin, Ranking Member
Senate Armed Services Committee

The Honorable Susan Collins, Chair
Senate Homeland Security and Governmental Affairs Committee

The Honorable Joseph Lieberman, Ranking Member
Senate Homeland Security and Governmental Affairs Committee

The Honorable Jerry Lewis, Chairman
House Appropriations Committee

The Honorable David R. Obey, Ranking Member
House Appropriations Committee

The Honorable Duncan Hunter, Chairman
House Armed Services Committee

The Honorable Ike Skelton, Ranking Member
House Armed Services Committee

The Honorable Peter King, Chairman
House Homeland Security Committee

The Honorable Bennie G. Thompson, Ranking Member
House Homeland Security Committee

Dear Senators and Representatives:

The Project On Government Oversight (POGO) is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more accountable federal government. As such, our organization strongly supports every effort to promote full and open competition in government contracting. Competition allows for innovation, aggressive

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negotiations, and better deals for the taxpayer. Adequate competition also assures taxpayers that the government is looking out for their best interests.

Unfortunately, POGO has witnessed in recent years an increase in no-bid contracts designated either by Congress and/or awarded by federal agencies. Government data shows that at least 45% of the \$329 billion it spent on contracts in FY2004 was awarded without full and open competition.¹ Some independent contracting reviews estimate that the actual percentage of noncompetitive federal contracts is 65%.² POGO has also concluded that the government's estimate of the number of noncompetitive contracts is artificially low. The government counts single-bid contracts and contracts that were steered to a contractor under pre-established multiple award contracts as competitive. However, those contracts were, in fact, awarded without actual competition and should not be considered competitive.

No-bid or sole source contracts may be necessary in some cases, but they should be used sparingly and only in emergency cases. For example, a recent government report stated that 58.8% of the Hurricane Katrina contracts awarded before November 30, 2005, were noncompetitive.³ The justification for allowing no-bid contracts was the urgent need for rapid emergency response. Since then,⁴ however, 50.5% of the Hurricane Katrina contracts have been awarded noncompetitively – despite the fact that an emergency action is no longer required and, therefore, no longer necessitates no-bid contracts.

Katrina contracts are not the only awards that should be scrutinized because of their noncompetitive nature. There are numerous instances in which no-bid or sole source contracts were awarded without good cause. For instance, recent reports have exposed large contracts awarded to newly created homeland security companies and for questionable technologies.⁵ In one such case, Section 528 of the Department of Homeland Security Appropriations Act of 2006 (Pub. L. No. 109-90)⁶ essentially awarded a no-bid contract

¹ “FPDS-NG Federal Procurement Report, Fiscal Year 2004, Section III, Agency Views, Total Federal Snapshot Report.” Available at http://www.fpdsng.com/downloads/FPR_Reports/fpr_section_III_agency_views.pdf.

² “Has acquisition reform failed? Few contracted sent out to bid, CMR finds,” *Contract Manager's Report*, June 24, 2002. See Pace, David, “More than half of \$230 billion in federal contracts awarded without full competition, analysis finds,” *Associated Press*, April 1, 2002.

³ President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, “Oversight of Gulf Coast Hurricane Recovery A Semiannual Report to Congress,” April 30, 2006, p. 13. Available at http://www.dhs.gov/interweb/assetlibrary/OIG_pcie_april06.pdf.

⁴ As of March 31, 2006.

⁵ Lipton, Eric, “In Kentucky Hills, a Homeland Security Bonanza,” *New York Times*, May 14, 2006. Higham, Scott and Robert O'Harrow Jr., “The Quest for Hometown Security Rogers's Sway Over Security Spending Benefits ‘Silicon Holler,’” *Washington Post*, December 25, 2005.

⁶ Available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ090.109.pdf, see § 528, p. 2086.

to the American Association of Airport Executives (AAAE) – an advocacy trade association.⁷ The contract would place all management of the Transportation Worker Identification Credential (TWIC) program, which “can be used for all personnel requiring unescorted physical and/or logical computer access to secure areas of the national transportation system,” with AAAE (who in turn formed a joint venture to perform on the contract). The congressional mandate has been opposed DHS’s Transportation Security Administration (TSA) and the Office of Management and Budget. Congress finally “righted the ship” by striking section 528 in the emergency supplemental signed by President Bush on June 15, 2006.⁸

POGO has also voiced its concern about a forthcoming no-bid contract to build and operate a wastewater treatment plant in Mexico to solve a pollution problem on San Diego beaches.⁹ If the deal is finalized, American taxpayers will subsidize – to the tune of an estimated \$600 million¹⁰ to \$1 billion¹¹ – a private company’s plan to treat wastewater and profit from selling it back to Mexico. POGO found that since 1996, when Bajagua Project, LLC, proposed building the wastewater treatment plant, the principals of the company, their family members, and one of the company’s attorneys have given thousands of dollars in campaign contributions to Members of Congress. Those Members pushed through Title VIII of Public Law 106-457 and have been integral in steering the “sole source” contract to Bajagua.¹²

Another anti-competitive issue that has caused concern is the proposed joint venture between Boeing and Lockheed Martin to form the United Launch Alliance (ULA), which is currently being reviewed for potential antitrust violations by the Federal Trade Commission. The ULA would “combine the production, engineering, test and launch operations associated with U.S. government launches of Boeing Delta and Lockheed Martin Atlas rockets.”¹³ POGO opposes this proposed joint venture because it would reduce

⁷ Available at <http://www.aaae.org/>.

⁸ Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Pub. L. No. 109-234, § 7006. Available at http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp109&sid=cp109s8xQ8&refer=&r_n=hr494.109&item=&sel=TOC_437458&.

⁹ POGO report, “The Politics of Contracting: Bajagua’s No-Bid Deal,” March 31, 2006, and POGO letter to the USIBWC, August 15, 2005. Available at <http://www.pogo.org/p/contracts/Bajagua/co-060301-Bajagua.html> and <http://www.pogo.org/p/contracts/cl-050803-noncompetitive.html>.

¹⁰ Congressional Budget Office, “H.R. 4794, A bill to amend the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 to extend the authorization of appropriations, and for other purposes,” September 9, 2004. Available at <http://www.cbo.gov/showdoc.cfm?index=5799&sequence=0>.

¹¹ Rother, Caitlin, “Border sewage pact done, but debate isn’t,” *San Diego Union-Tribune*, February 26, 2006. Available at <http://www.signonsandiego.com/news/mexico/tijuana/20060226-9999-1n26bajagua.html>.

¹² A February 14, 2006, “Development Agreement” between the U.S. Section of the International Boundary and Water Commission and Bajagua LLC outlined the “sole source” deal. Available at <http://www.pogo.org/m/cp/cp-Bajagua-B.pdf>.

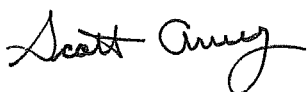
¹³ Boeing Press Release, May 2, 2005. Available at http://www.boeing.com/news/releases/2005/q2/nr_050502b.html.

competition, repress innovation, create a space launch monopoly, and set a dangerous legal precedent that will likely be costly to taxpayers.¹⁴ The monopoly will be compounded by the fact that the Air Force “announced plans to allocate launches through 2011 between the two providers,” essentially eliminating all competition for the foreseeable future.¹⁵ We believe that the practice of allowing so many mergers among Department of Defense contractors is a clear example of the Pentagon’s acquiescence to the defense industry – a practice that is counter to the interests of the warfighter and the American public.

POGO supports the efforts of House Armed Services Chairman Duncan Hunter (R-CA) to insert language into the 2007 Department of Defense authorization bill that would re-compete weapons programs if their costs increase significantly.¹⁶ We also endorse Senator Coburn’s (R-OK) and Senator Obama’s (D-IL) bipartisan effort requiring all federal contracts in excess of \$500,000 for Katrina reconstruction to be competitively bid.¹⁷

POGO urges Congress to ensure that **full and open competition** is used to obtain goods and services at the lowest practicable cost.¹⁸ Thank you for your leadership in these matters. If you have any questions or comments, please contact me at (202) 347-1122.

Sincerely,



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¹⁴ POGO letter to Kenneth J. Krieg, DoD Under Secretary of Defense Acquisition, Technology and Logistics, March 16, 2006. Available at <http://www.pogo.org/p/contracts/cl-060301-unitedlaunch.html>.

¹⁵ Christie, Rebecca, “Boeing, Lockheed Tout Launch Pact, Oppose Other Options,” *Dow Jones Newswires*, October 27, 2005.

¹⁶ Scully, Megan, “House panel OKs tougher steps to control weapons costs,” *GovExec.com*, May 4, 2006. Available at <http://govexec.com/dailyfed/0506/050406cdam2.htm>.

¹⁷ Senate Bill 2766, S. Amdt 4254. Available at http://coburn.senate.gov/public/index.cfm?FuseAction=LatestNews.PressReleases&ContentRecord_id=d92648f9-802a-23ad-464f-65a5ae168084 and http://obama.senate.gov/press/060616-obama_coburn_amendment_to_stop_no-bid_contracts_for_gulf_coast_restoration_included_in_dod_authorization_bill/index.html.

¹⁸ A policy debate continues pitting “low price” against “best value” as the preferred method for buying goods and services. Buying goods and services at the “lowest practicable cost” would allow for some buying flexibility and provide a more objective criteria that would prevent the unjustified steering of contracts to non-responsible, questionable, or politically-connected companies.