

Project On Government Oversight

Exposing Corruption Exploring Solutions www.POGO.org



25
POGO
Anniversary
Celebration

January 29, 2009

President Barack H. Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We would like to extend our congratulations on your assumption of office as President of the United States. We would also like to take this opportunity to reintroduce our organization to you and share our suggestions regarding two laws creating government databases designed to reduce fraud and waste in federal government spending. The first law establishes a contractor responsibility and performance database,¹ and the second law establishes a revolving door database of senior level Department of Defense (DoD) acquisition officials.²

Since its founding in 1981, the Project On Government Oversight (POGO) has investigated and exposed corruption and other misconduct in order to achieve a more effective, accountable, open, and honest federal government. We worked with your Senate office on a number of good government improvements, including the “Federal Funding Accountability and Transparency Act of 2006” and the “Strengthening Transparency and Accountability in Federal Spending Act of 2008.”

Contractor Responsibility

POGO created the Federal Contractor Misconduct Database (<http://www.contractormisconduct.org/>), a free, web-based resource that provides users with the post-1995 civil, criminal, and administrative misconduct histories of the federal government’s largest suppliers of goods and services. POGO developed this database as a way to help government contracting officers, who lack a centralized repository of information on vendors’ responsibility histories, make smarter procurement decisions and ensure that the hundreds of billions of dollars awarded every year only go to companies with solid records of responsibility, integrity, and performance.

¹ Pub. Law 110-417, Sec. 872, October 14, 2008. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ417.110.pdf. POGO anticipates that OMB will issue a rule with a request for comments in 2009.

² Pub. Law 110-181, Sec. 847, 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, DoD issued an interim rule implementing the federal statute and requesting comments on it. 74 Fed. Reg. 2408. <http://edocket.access.gpo.gov/2009/pdf/E9-679.pdf>.

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Based on POGO's example, Congress passed a law last year that requires the government to create a contractor responsibility database. Title VIII, subtitle G, section 872 of the Fiscal Year 2009 National Defense Authorization Act (Public Law 110-417) directs the Administrator of General Services to "establish, not later than one year after the date of the enactment of this Act, and maintain a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants for use by Federal agency officials having authority over contracts and grants."

Unfortunately, the passage of this database required two critical compromises that will blunt its effectiveness. First, the scope of misconduct it will include was significantly narrowed. Civil, criminal, or administrative instances must involve the award or performance of state or federal contracts or grants which occurred in the most recent five-year period, and those instances must have resulted in a conviction or a finding or acknowledgment of fault or liability. POGO's database includes no such limitations because we believe that misconduct occurring more than five years ago or involving matters not related to the award or performance of contracts or grants is still highly relevant in measuring and showing patterns in a contractor's integrity and performance history. Also, a large number of contractor misconduct cases are resolved with no convictions or findings or admissions of fault or liability. Indeed, the government's new database might even lead to a rise in such cases, as contractors will have an incentive to resolve their misconduct cases in a way that keeps them out of the database.

The second problem with the government's database is that it will not be accessible to the public. POGO is a fervent believer in the aphorism "sunshine is the best disinfectant," which is why we make our contractor database free to the public. The public has a right to know the responsibility histories of the contractors and grantees that receive hundreds of billions of taxpayer dollars each year.³

POGO worked with your Senate office on the "Strengthening Transparency and Accountability in Federal Spending Act of 2008,"⁴ which would have corrected both of the above-mentioned deficiencies. In fact, that legislative effort would have expanded the USAspending.gov database, making it more informative and user-friendly – a real one-stop shop for information on federal spending and those who receive taxpayer dollars. Unfortunately, that legislation stalled in the Senate.

DoD Revolving Door

POGO shares both your concern about the integrity of the federal contracting system and your desire to shine light on the revolving door between the Pentagon and the defense industry.⁵

³ POGO, along with 32 other good government organizations, urged Congress to make the government's contractor responsibility database public. <http://www.pogo.org/pogo-files/letters/contract-oversight/co-fcmd-20080519.html>.

⁴ S. 3077, 110th Congress.

⁵ The White House website includes priorities for the Obama-Biden Administration, including developing a sensible contracting strategy ("rather than continually handing off governmental jobs to well-connected companies") and closing the revolving door for certain political appointees and their former and future private sector employers. <http://www.whitehouse.gov/agenda/defense/> and <http://www.whitehouse.gov/agenda/ethics/>.

POGO authored a revolving door report in 2004,⁶ and has been trying to add transparency to the process since that time.

The “National Defense Authorization Act for Fiscal Year 2008”⁷ mandated that covered DoD acquisition officials (Certain Executive Schedule, Senior Executive Service, and general or flag officer positions) must obtain a post-employment ethics opinion before accepting a paid position from a DoD contractor within two years after they leave DoD service. It will also require that DoD contractors ensure that new hires have an ethics opinion. Failure to do so could result in cancellation of the contract, suspension, or debarment. The legislation also requires that:

Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a **central database or repository** for not less than five years beginning on the date on which the written opinion was provided.⁸ [Emphasis added.]

Again, POGO’s concern is that the legislation does not mandate that this database be made publicly available.

In a time when the public is questioning the ethics and integrity of the federal government and its spending of taxpayer dollars, we urge you to expand the types of responsibility instances that are included in the federal contractor integrity and performance database. Additionally, we ask that you make it and the DoD revolving door database publicly available.

We appreciate your taking the time to consider our views and we look forward to working with you. If you have any questions or would like to discuss these issues further, please contact either me or Scott Amey at 202-347-1122.

Sincerely,



Danielle Brian
Executive Director

⁶ *The Politics of Contracting*, June 29, 2004. <http://www.pogo.org/pogo-files/reports/government-corruption/the-politics-of-contracting/gc-rd-20040629.html>.

⁷ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ181.110.pdf. On January 15, 2009, DoD issued an interim rule requesting comments. 74 Fed. Reg. 2408. <http://edocket.access.gpo.gov/2009/pdf/E9-679.pdf>.

⁸ Pub. Law 110-181, Sec. 847(b)(1). It was not that long ago that such reporting and transparency provisions were in effect. See 10 U.S.C. § 2397 (which required former military officers and Defense Department employees to submit to the Defense Department reports concerning their employment with defense contractors for two years after leaving government service).