March 16, 2009

Sent by e-mail to: dfars@osd.mil

Defense Acquisition Regulations System
Attn: Ms. Angie Sawyer
OUSD (AT&L) DPAP (DARS)
IMD 3D139
3062 Defense Pentagon
Washington, DC 20301-3062

Subject: DFARS Case 2008-D007

Dear Ms. Sawyer,

The Project On Government Oversight (POGO) provides the following public
comment to DFARS Case 2008-D007 – “Defense Federal Acquisition Regulation
Supplement; Senior DoD Officials Seeking Employment With Defense Contractors.”
(74 Fed. Reg. 2408 (January 15, 2009)). POGO is an independent nonprofit
organization that investigates and exposes corruption and other misconduct in order to
achieve a more accountable federal government. Accordingly, POGO has a keen
interest in the subject matter of the interim rule and proposed final rule – senior
Department of Defense officials seeking employment with defense contractors after
leaving DoD service.

The interim rule implements Section 847 of the National Defense Authorization Act
for Fiscal Year 2008 (Pub. L. 110-181), which requires that a DoD official, who has
participated personally and substantially in a DoD acquisition exceeding $10 million
or who has held a key acquisition position, must obtain a written opinion from a DoD
ethics counselor regarding the activities that the official may undertake on behalf of a
DoD contractor within two years after leaving DoD service before accepting
compensation from a DoD contractor. In addition, Section 847 prohibits a DoD
contractor from providing compensation to such a DoD official without first
determining that the official has received or appropriately requested a post-
employment ethics opinion. Failure of a DoD contractor to comply with these
requirements could result in cancellation of the contract, suspension, or debarment.
Section 847 also requires that all requests for a written opinion and all written
opinions provided pursuant to such requests “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.”
POGO supports the rule, as well as its objectives. POGO believes, however, that the central database/repository established under Section 847(b)(1) should be made publicly available.

POGO has written extensively about the dangers posed by the so-called “revolving door” between the government and private contractors (see, for example, POGO’s report “The Politics of Contracting,” June 29, 2004; available at http://www.pogo.org/pogo-files/reports/government-corruption/the-politics-of-contracting/gc-rd-20040629.html) and has been trying to add transparency to the process. If left unregulated or unmonitored, the movement of officials between government and contractor positions can potentially subvert the contracting process, resulting in flawed policies and bad procurement decisions, ultimately exacerbating public distrust in the government. In the case of the Department of Defense, this could even pose special risks to vital national security matters such as military readiness and weapons systems development.

POGO is a fervent believer in the aphorism “sunshine is the best disinfectant.” Contractors receive hundreds of billions of taxpayer dollars each year from the Department of Defense. The public has a right to know when former senior DoD officials covered under the requirements of Section 847 seek employment with those contractors. In January of this year, POGO wrote to President Obama urging him to make the Section 847 central database/repository available to the public (POGO’s letter is posted at http://www.pogo.org/pogo-files/letters/contract-oversight/cotic-20090129.html).

POGO urges the Department of Defense to make the central database/repository under Section 847(b)(1) publicly available. It could even be integrated with the Office of Management and Budget’s contract spending database, USAspending.gov.

Thank you for your consideration of this comment. If you have any questions, you may contact me at (202) 347-1122.

Sincerely,

Scott H. Amey
General Counsel
scott@pogo.org