

Project On Government Oversight

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June 14, 2010

Ms. Hada Flowers
General Services Administration
Regulatory Secretariat (MVCB)
1800 F Street, NW, Room 4041
Washington, DC 20405

Re: FAR Case 2009-006—Labor Relations Costs

Dear Ms. Flowers:

The Project On Government Oversight (POGO) is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more effective, accountable, open, and ethical federal government. As such, one of POGO's areas of focus is contracting oversight and the Federal Acquisition Regulation (FAR) contract cost principles.

In this vein, POGO strongly supports the Notice of Proposed Rulemaking under FAR case 2009-006, Labor Relations Costs, published at *75 Fed. Reg.* 19345 (April 14, 2010). This long-overdue proposed rule amends FAR Subpart 31.205-21 to make unallowable contractor costs incurred to persuade employees with respect to unionization. At present, the existing cost principle appearing at FAR Subpart 31.205 has been interpreted to permit, as an allowable cost of contract performance, those contractor costs incurred to persuade employees with respect to unionizing. As a practical matter, this means that taxpayers are paying costs incurred by contractors to conduct meetings and presentations and hire consultants in order to deter employees from unionizing. There have been reports that some contractors have incurred millions of dollars in costs to promote anti-unionization drives.

The position of the government concerning unionization should be one of neutrality. This position is expressed at FAR Subpart 22.101-1(b), which requires federal agencies to remain neutral with respect to labor disputes. However, paying the costs to promote one side's position concerning unionization (i.e., a contractor's position) via reimbursement of costs, is hardly a neutral position. It is in effect a public policy recognition that taxpayers should pay the costs of promoting an employer's view of the subject. Obviously, in almost all cases, this will be a biased view. Moreover, the current cost principle wastes resources by allowing reimbursement of a non-value added cost. Whether employees should exercise their rights to unionize is a matter for workers to decide, and employers, within the context of existing labor law, may promote their own views on the matter. However, to permit contractors to pass on their costs incurred to persuade employees with

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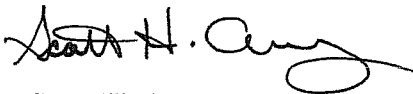
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respect to unionization only increases the costs incurred by government agencies in acquiring goods and services. These additional costs are ultimately passed on to taxpayers in the form of higher contract costs and prices. This in no way benefits the public, and, in fact, is a detriment to obtaining better value on government contracts.

Other cost-based federal programs have long made costs incurred to persuade employees with respect to unionization unallowable as a matter of public policy (e.g., see 42 U.S.C. § 1395x(v)(1)(N), 42 U.S.C. § 9839(e), and 42 U.S.C. § 12634(b)(1)). Equity and common sense dictates that this same concept should be extended to contracts governed by the FAR. The proposed rulemaking extends this well-considered and already-established position. In contrast, the existing FAR cost principle does little more than fund anti-union activity carried out by contractors, an obvious waste of taxpayer money.

In summary, the position of the government respecting unionization should be neutral. As a consequence, contractors should not be permitted to pass on costs incurred to persuade employees—whether for or against unionization—to their federal contracts. The proposed revisions to FAR Subpart 31.205-21 add a badly needed element of accountability to cost-based federal contracts, and will promote more considered and efficient use of contract dollars and taxpayers funds.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott H. Amey". The signature is fluid and cursive, with a large loop at the end.

Scott H. Amey
General Counsel