

Project On Government Oversight

Exposing Corruption Exploring Solutions www.POGO.org

March 7, 2011

Commission on Wartime Contracting
1401 Wilson Boulevard
Suite 300
Arlington, VA 22209

Dear Commission,

Pursuant to the Commission on Wartime Contracting's (Commission) request that the record for the hearing held on February 28, 2011, "Ensuring contractor accountability: Past performance and suspensions and debarments," be supplemented within thirty days, the Project On Government Oversight (POGO) provides the following information. Specifically, POGO believes the Commission should recommend that the Federal Awardee Performance and Integrity Information System (FAPIIS)¹ be expanded in scope and that the Department of Defense's (DoD) revolving door database of senior level acquisition officials be made publicly available.²

First, the scope of misconduct contained in FAPIIS is too narrow. The current database only includes civil, criminal, and administrative instances involving federal contracts and grants which occurred in only the most recent five-year period. Those instances must have resulted in a conviction or a finding or acknowledgment of fault or liability in order to be included in FAPIIS, even though the vast majority 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 exacerbate this trend. POGO's Federal Contractor Misconduct Database (FCMD) includes no such limitations because 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 assessing a contractor's overall integrity and performance history.

POGO's recommendation is not a stretch. In fact, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) considered

¹ Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (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

² National Defense Authorization Act for Fiscal Year 2008 (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>

making such improvements when the final FAPIIS rule was published on March 23, 2010.³ The Councils stated:

In addition to working out an appropriate plan for collecting State information, the Councils will explore the feasibility of collecting local government information. Further, the Councils and OMB are carefully considering the issuance of a proposed rule to further enhance the utility of FAPIIS by ... expanding the current scope of reporting to include other violations of laws, as opposed to violations only in the context of Federal contracts and grants.

Second, POGO shares the concern Dr. Zakheim voiced at the hearing about the revolving door between the Pentagon and the defense industry, and the integrity of the federal contracting system. POGO authored a revolving door report in 2004⁴ that highlighted the dangers corporate money and influence pose to the integrity of the system, and we have issued many recommendations for adding transparency to the process.

The National Defense Authorization Act for Fiscal Year 2008⁵ 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 also required DoD contractors to ensure that new hires obtain an ethics opinion. Failure to do so could result in cancellation of the contract, suspension, or debarment. The legislation also required 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.⁶

That database still has not been made publicly available, and therefore it is impossible to monitor the post-government movements of former government officials, and any actual or apparent conflicts of interest.

In a time when the public is questioning the federal government's ability to spend taxpayer dollars wisely, especially in contingency operations, we urge the Commission to recommend that FAPIIS be expanded in scope and that DoD make its revolving door database publicly available.

³ "Federal Acquisition Regulation; FAR Case 2008-027, Federal Awardee Performance and Integrity Information System," 75 Fed. Reg. 14059, 14060 (March 23, 2010) (to be codified at 48 C.F.R. pts. 2, 9, 12, 42, and 52). <http://edocket.access.gpo.gov/2010/pdf/2010-6329.pdf>

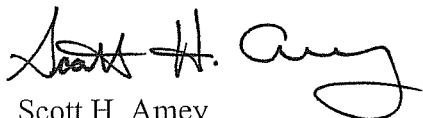
⁴ Project On Government Oversight, *The Politics of Contracting*, June 29, 2004. <http://www.pogo.org/pogo-files/reports/government-corruption/the-politics-of-contracting/gc-rd-20040629.html>

⁵ Pub. Law 110-181, Sec. 847.

⁶ 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.

We appreciate your consideration of these issues, and we look forward to working with the Commission. If you have any questions or would like to discuss these issues further, please contact me at 202-347-1122.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott H. Amey". The signature is written in a cursive style with a large, looping "A" and "y".

Scott H. Amey
General Counsel