June 13, 2011

Ms. Hada Flowers
General Services Administration
Regulatory Secretariat (MVCB)
1275 First Street, NE
Washington, DC 20417

Subject: Information Collection 9000–00XX

Dear Ms. Flowers:

The Project On Government Oversight (POGO) provides the following public comment to IC 9000–00XX, “Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions.” 76 Fed. Reg. 27648, May 12, 2011. Founded in 1981, the Project On Government Oversight is a nonpartisan independent watchdog that champions good government reforms. POGO’s investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. POGO has a keen interest in government contracting matters, especially matters related to acquisition and conflicts of interest. The request for public comment involves reporting requirements concerning FAR Case 2008-025—“Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions.” 74 Fed. Reg. 58584, November 13, 2009.

That proposed rule would amend the FAR to implement Section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. Law 110-417). The Office of Federal Procurement Policy, and the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council proposed a policy and contract clause that would require each contractor that has employees performing acquisition functions closely associated with inherently governmental functions to identify and prevent personal conflicts of interest for such employees, and would create a framework to prevent the use of nonpublic government information for personal gain.

The proposed rule is the result of a Government Accountability Office (GAO) report, Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees (GAO–08–169) released in March 2008. That report found that in certain DoD offices, “contractor employees outnumbered DoD employees and comprised as much as 88 percent of the workforce.” The functions these contractors performed include “studying alternative ways to acquire desired capabilities, developing contract requirements, and advising or assisting on source selection, budget planning, and award-fee determinations.” The Councils’ proposed rule was a result of GAO’s finding that “government officials believed that current requirements are inadequate to prevent conflicts from arising for certain contractor employees influencing DoD decisions, especially financial conflicts of interest and impaired
impartiality.” Simply stated, very few conflict-of-interest laws and regulations that apply to federal employees apply to contractor employees performing the same jobs.

The stated intent of the Section 841(a) was to require covered contractors to prohibit employees from conducting DoD work with respect to a program, company, contractor, or other matter in which contractor employees have a financial interest.

POGO supports the reporting of personal conflict of interest for contractor employees performing acquisition functions. The federal government is spending over $535 billion each year on goods and services, and therefore the contract process must be conducted with the utmost integrity and in the public interest. As stated in FAR Subpart 2.301-1:

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

POGO believes that the collection of personal conflict of interest information from contractors performing acquisition functions will add integrity to the contracting system, and ensure that government programs and taxpayer dollars are not jeopardized.

If you have any questions, please contact me at (202) 347-1122.

Sincerely,

Scott H. Amey
General Counsel