



PROJECT ON GOVERNMENT OVERSIGHT

August 25, 2011

General Services Administration  
Regulatory Secretariat (MVCB)  
1275 First Street, NE  
Washington, DC 20417  
ATTN: Hada Flowers/IC 9000-0164

Submitted via Regulations.gov

**Subject: Information Collection 9000-0164, Contractor Business Ethics Compliance Program and Disclosure Requirements**

Dear Ms. Flowers:

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 provides the following public comments to OMB Control No. 9000-0164, "Information Collection 9000-0164, Contractor Business Ethics Compliance Program and Disclosure Requirements," (76 Fed. Reg. 37353, June 27, 2011).

The General Services Administration Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a contractor information collection requirement. Specifically, the Federal Acquisition Regulation (FAR) requires contractors to make timely disclosures of credible evidence of criminal violations related to any aspect of a federal contract or subcontract, violations of the civil False Claims Act, and significant overpayments on a contract.<sup>1</sup> POGO supports the FAR mandatory disclosure requirement and welcomes its extension. The collection of this information is necessary for the proper performance of functions of the FAR and has practical utility.

The mandatory disclosure requirement benefits everyone. For contractors, it forces them to strengthen their internal compliance and business ethics practices and helps foster a strong working relationship with the government. For the government and taxpayers, it enables the early detection and reporting of contract-related problems before they worsen and lead to costly enforcement actions, poor contract performance, contract terminations, and the loss of taxpayer money to fraud, waste, and abuse. The requirement complements the provisions in FAR Subparts 52.209-5, 3.10, and 9.1 and the Federal Awardee Performance and Integrity Information System (FAPIIS) database as a means of ensuring contractor responsibility, integrity, and honesty.

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<sup>1</sup> FAR Subparts 9.406-2 and 9.407-2.

The mandatory disclosure requirement seems to be a vast improvement over the previous voluntary disclosure program. Unlike the voluntary disclosure program, which yielded only a handful of disclosures each year,<sup>2</sup> contractors seem to be taking the mandatory disclosure requirement very seriously. *Government Executive* reported in August 2009, about nine months after the requirement went into effect, that contract violation disclosures were “flowing” into the Department of Defense Inspector General’s office.<sup>3</sup> The article noted that contractors were being very careful and erring on the side of disclosure, and that the vast majority of disclosures involved relatively trivial billing discrepancies resolved without the need for a formal investigation.

Unfortunately, aside from this article and a few statistics buried in government reports,<sup>4</sup> no substantive data about the mandatory disclosure requirement’s successes, failures, strengths, and/or weaknesses has been shared with the public. POGO believes a more comprehensive public accounting of the requirement is needed.

Every year, the Department of Justice provides the public an array of statistics regarding its False Claims Act enforcement activities.<sup>5</sup> It should not be too difficult or burdensome for the government to do the same with regard to the mandatory disclosure requirement. Every agency’s Inspector General should be required to periodically report, for example, the number and types of disclosures, the actions that were taken in response to those disclosures, whether any contractors were suspended or debarred for violating the requirement, and most importantly, how much money was recovered. Compiling and sharing these statistics would further the interests of government transparency and accountability and help agencies determine if the requirement is achieving its intended objectives.

In conclusion, extending the mandatory disclosure requirement is the right thing to do, but Congress and the public need to know more about its implementation and impact.

Thank you for your consideration of these comments.

Sincerely,



Neil Gordon  
Investigator  
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<sup>2</sup> Angela B. Styles, “The Department of Justice’s Call for Integrity: Will Federal Contractors Answer?” *Federal Contracts Report*, Vol. 89, No. 5, February 5, 2008, p. 2. [http://www.crowell.com/documents/the-doj-s-call-for-integrity\\_bna-federal-contracts-report\\_styles.pdf](http://www.crowell.com/documents/the-doj-s-call-for-integrity_bna-federal-contracts-report_styles.pdf) (Downloaded August 24, 2011)

<sup>3</sup> Elizabeth Newell, “Contractor reports of violations flowing into Defense IG’s office,” *Government Executive*, August 26, 2009. <http://www.govexec.com/dailyfed/0809/082609e1.htm> (Downloaded August 24, 2011)

<sup>4</sup> See, for example, Department of Defense Inspector General, “Semiannual Report to the Congress: October 1, 2009 – March 31, 2010,” p. 11 (“Contractors made 73 disclosures to the Contractor Disclosure Program during this reporting period.”) [http://www.dodig.mil/sar/SAR\\_Book\\_MAR\\_10.pdf](http://www.dodig.mil/sar/SAR_Book_MAR_10.pdf). (Downloaded August 24, 2011)

<sup>5</sup> The Department of Justice typically announces its annual False Claims Act enforcement statistics toward the end of the year. For example, the announcement for Fiscal Year 2010 was posted on November 22, 2010, at <http://www.justice.gov/opa/pr/2010/November/10-civ-1335.html>. The nonprofit government watchdog group Taxpayers Against Fraud collects these statistics from the past several years and posts them on the Web at <http://www.taf.org/statistics.htm/>.