October 11, 2011

Debra A. Carr, Director
Division of Policy, Planning, and Program Development
Office of Federal Contract Compliance Programs
Room C-3325
200 Constitution Avenue, NW
Washington, DC 20210

Submitted via Regulations.gov

Subject: RIN 1250-AA03

Dear Ms. Carr:

The Project On Government Oversight (POGO) provides the following public comment to RIN 1250-AA03, “Non-Discrimination in Compensation; Compensation Data Collection Tool,” (76 Fed. Reg. 49398, August 10, 2011). The Office of Federal Contract Compliance Programs (OFCCP) seeks input on a proposal to develop and implement a tool to collect compensation data from federal supply and service contractors and subcontractors.

As an independent nonprofit organization committed to achieving a more accountable and transparent federal government, POGO has a keen interest in federal contracting matters. POGO supports the creation of this compensation data collection tool. It will improve OFCCP’s ability to identify, and ultimately eliminate, discriminatory pay practices by federal contractors, which may improve overall performance of the government’s contractor workforce. It will also help the government keep better track of the contractor workforce.

**More Responsible Contractors, Higher Quality Goods and Services**

The award of contracts is predicated on the basic principle of responsibility, which, according to the Federal Acquisition Regulation (FAR), includes “a satisfactory record of integrity and business ethics.” POGO believes that a contractor’s labor practices, including its employee compensation practices, constitute a large part of its record of integrity and business ethics. The proposed compensation data collection tool will improve the government’s ability to determine companies’ responsibility, which in turn will lead to better contracting decisions and help the agencies achieve their missions.

---

1 FAR Subpart 9.104-1(d) [https://www.acquisition.gov/far/current/html/Subpart%209_1.html#wp1084058](https://www.acquisition.gov/far/current/html/Subpart%209_1.html#wp1084058)
Recent studies have confirmed that contractors’ labor practices—how they treat their employees in terms of compensation and workplace conditions—directly affect the quality of goods and services they deliver to their government customers. Unfortunately, contractors with checkered or questionable labor practice track records still make up a substantial segment of the government’s vendor list. For example, POGO’s Federal Contractor Misconduct Database (www.contractormisconduct.org), which tracks the misconduct records of the largest federal contractors, shows that the government awards billions of taxpayer dollars to companies with multiple instances of gender, race, religion, ethnicity, and disability-based discrimination resulting in millions of dollars in fines, penalties, and legal settlements.

The federal government is starting to accept that a direct correlation exists between a contractor’s labor practices and the overall quality of its goods and services. As a result, there is movement toward placing greater emphasis on criteria such as a company’s compensation practices when making responsibility determinations.

**A More Accurate Picture of the Size and Cost of the Contractor Workforce**

OFCCP’s proposed data collection tool also has the potential for enabling the government to better monitor and assess the size of its “shadow” contractor workforce, as well as the savings or excessive costs resulting from reliance upon contractors. Currently, the federal government does not keep timely and accurate statistics about its contractor workforce: the number of employees, the race/ethnicity/gender make-up of the workforce, and the wages and benefits contractors pay their workers. This leaves the government unable to assess whether using contractors saves money and helps agencies achieve their missions.

POGO suggests that the new tool be designed and utilized to facilitate specific public/private sourcing decisions as well as to facilitate cost effectiveness analyses of program and agency contracting practices. Specifically, POGO makes the following recommendations:

1. Design two sets of questions, one crafted for small business contractors, the other for larger contractors. Much of the proposed data would not be cost-beneficial as applied to small business contractors. The tool should apply to all federal contractors—supply and service contractors, as well as construction contractors. Data should be collected periodically to establish accurate trend lines on the size and cost of the government’s contractor workforce.
2. Design the tool to require contractors to provide contract-specific information as well as company-wide data, thereby facilitating more valid and reliable public/private cost comparisons.
3. Design the tool to require contractors to provide data not only for themselves but also for all tiers of subcontractors providing services under each specific contract.
4. Regarding which job classification system to adopt, OPM’s General Schedule Classification System is preferable because it permits the best match for comparing contractor compensation with federal employee compensation. If OFCCP adopts the

---

2 See, for example, National Employment Law Project, “The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services,” June 2009, p. 3 (“[A] growing body of research demonstrates that in many industries, contractors that provide good wages and benefits and respect workplace laws deliver higher quality services for government agencies and the taxpayers.”). http://nelp.3cdn.net/fd1c66786fb98867e7_1dm6brs8l.pdf (Downloaded October 4, 2011)
Bureau of Labor Statistics’ Standard Occupational Classification (SOC) system, it should upgrade and update OPM’s crosswalk between the GS and SOC job classifications.

5. Because there are significant variances in the range of compensation within any job classification, POGO recommends adopting a method for stratifying levels of compensation within each job classification, similar to OPM’s stratification system. In addition, this breakdown should be contract specific to allow for valid and reliable public/private cost comparisons.

6. There is value in collecting data on both an establishment basis as well as a nationwide basis, as costs and practices vary in different markets and locales.

7. Companies bidding on federal contracts should be required to submit compensation data as part of the request for proposal process. This is most critical to an agency’s ability to make fair and reasonable cost comparisons that should inform their sourcing decisions.

8. OFCCP should require contractors to submit data electronically. These submissions should also be made available to the public in a format that fully describes and explains the data. This will allow the public to monitor whether the government is effectively analyzing the data.

9. OFCCP should confer with other federal agencies (for example, the Office of Personnel Management, the Office of Federal Procurement Policy, the Bureau of Labor Statistics, and the Office of Management and Budget) to ensure that this data collection tool is achieving its goals without imposing unnecessary duplication.

Conclusion

The proposed compensation data collection tool would greatly enhance government transparency and accountability. Past experience with a similar initiative, the OFCCP’s 2000 Equal Opportunity Survey, strongly suggests that this tool could provide valuable information with minimal burden on contractors.

Thank you for your consideration of these comments.

Sincerely,

Neil Gordon  Paul Chassy
Investigator  Investigator
ngordon@pogo.org  pchassy@pogo.org