



April 15, 2013

Office of Federal Procurement Policy
Office of Management and Budget
ATTN: Ms. Aisha Hasan
725 17th Street, N.W.
Washington, D.C. 20503

Submitted via regulations.gov

Subject: Public Comments on the Use of Cost Comparisons

Dear Ms. Hasan:

The Project On Government Oversight (POGO) provides the following public comment regarding the use of cost comparisons outlined at 78 Fed. Reg. 11232 (February 15, 2013). Founded in 1981, POGO 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 the important but often ignored issue of service contracting costs.

The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) announced a public meeting on March 5, 2013, and requested public comments on "the practice of comparing the relative cost of performance by Federal employees versus contract performance in order to identify the most cost-effective source." POGO hopes that all of the oral and written comments will be used to create a comprehensive cost comparison model that will be used when making human capital planning decisions.

Establishing a uniform, effective cost comparison model is one of the most, if not *the* most, important tasks facing the government today. This model, whether established by improving the A-76 process or building a new cost comparison process, must be initiated earlier in the human capital policy and planning phase. It also must compare the full life-cycle costs of outsourcing federal services to contractors with the costs of having those services performed by federal employees.

POGO realizes that such a system is difficult to create and will be subject to harsh criticism by all stakeholders involved. However, previous decisions to hire military or civilian personnel or to contract out have often been made without any strategic thinking about government operations and costs, and that needs to change.

Proof that change is needed can be seen in the current sequestration debate. POGO is critical of any cuts to either the federal or contractor workforce when those cuts are based on nothing more than a quota or a buyout that fails to account for costs, continuity in programs and missions, and other non-cost factors. POGO has been equally critical of the growing reliance on contractors and the unchecked growth of federal service contract spending. In a hearing last year, Chairman Claire McCaskill (D-MO) stated, “the cost of service contracts has increased by 44 percent over the last ten years...to \$324 billion, while in the same time, spending on federal employees has only increased by 34 percent...to \$229 billion.”¹

Additionally, service contract spending exceeds the amount of federal contract spending on goods. In fiscal year 2012, the federal government spent over \$307 billion on services,² nearly 60 percent of the \$517 billion awarded for all federal contracts.³ The Government Accountability Office (GAO) reported that in fiscal year 2011, nearly 80 percent of all civilian agency contract spending was for services—services such as professional management and information technology support.⁴

The Defense Department (DoD) has stated with regard to service contracts that “[t]he savings are here. This is Total Force Manpower, but its growth has been unchallenged and often we don’t even know what is in the base.”⁵ As the following chart shows, from 2001 to 2010, the growth of service contractor personnel has far outpaced that of active duty military and civilian DoD personnel.

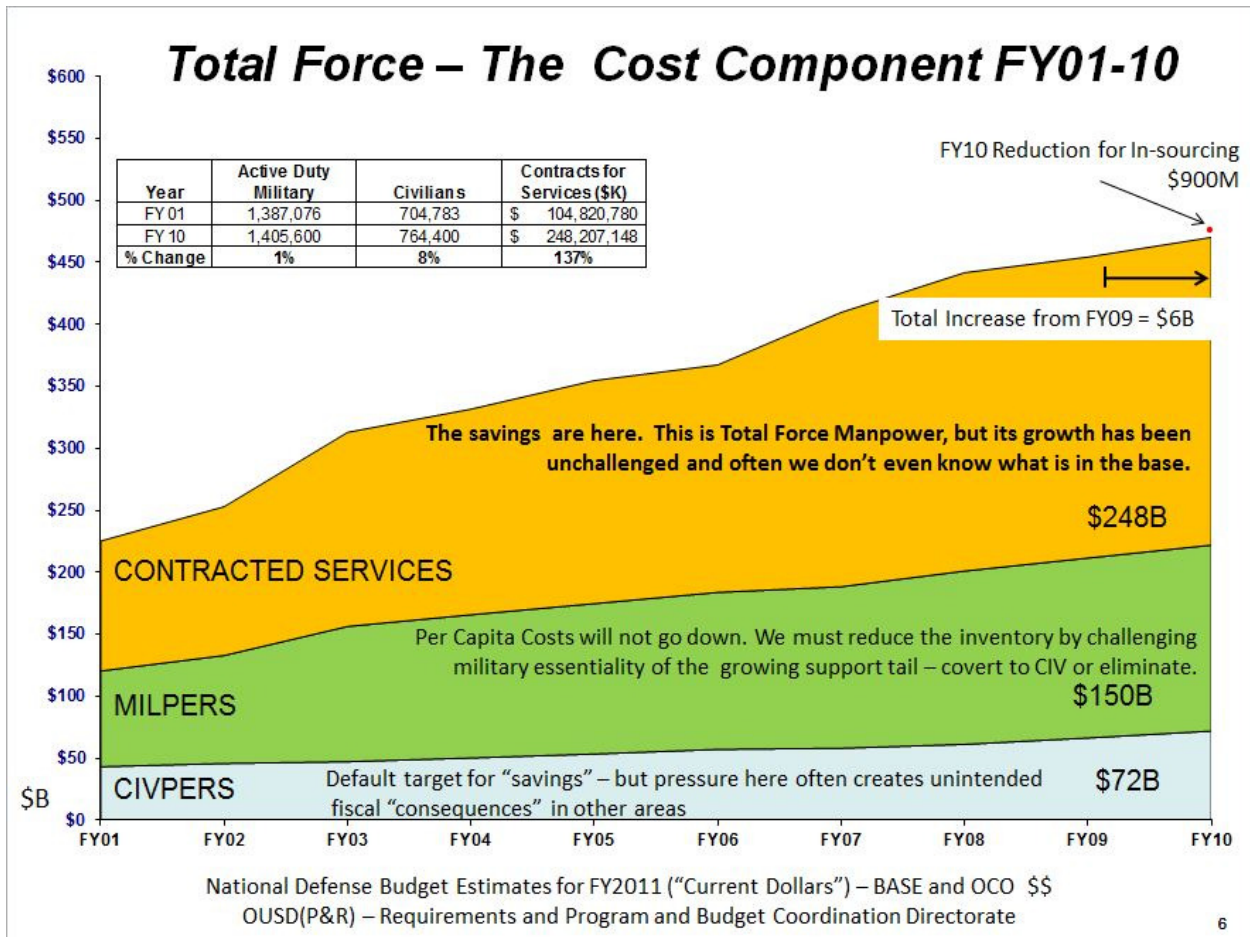
¹ Opening Statement of Chairman Senator Claire McCaskill, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight, “How Much Are They Costing the Government?,” March 29, 2012. <http://www.hsgac.senate.gov/download/mccaskills-opening-statement-sco-03-29-2012> (Downloaded April 15, 2013)

² According to data compiled by POGO from USAspending.gov. <http://1.usa.gov/XCV5F4> (Downloaded April 15, 2013)

³ According to data compiled by POGO from USAspending.gov. http://usaspending.gov/index.php?q=node%2F3&fiscal_year=2012&tab=By+Agency (Downloaded April 15, 2013)

⁴ Government Accountability Office, *Civilian Service Contract Inventories, Opportunities Exist to Improve Agency Reporting and Review Efforts*, GAO-12-1007, September 27, 2012, p. 1. (Downloaded April 12, 2013) (hereinafter GAO-12-1007)

⁵ Department of Defense, American Society of Military Comptrollers, “Service Support Contractors: One of the FY 2012 Budget Efficiencies,” October, 2011, slide 6. <http://www.asmconline.org/wp-content/uploads/2011/10/ASMCBreakfastServiceSupportContractors.pptx> (Downloaded March 27, 2012)



Despite all of the collected data, much remains unknown about the true size and cost of both the federal and contractor workforces. Decisions to cut budgets, freeze federal hiring and pay, furlough millions of public servants, and trim contract spending are being considered and implemented without this critical knowledge.

Even with laws in place requiring government agencies to submit service contract inventories to the OMB annually,⁶ civilian agencies are not fully complying with the law. Only the DoD submits inventories of service contractors that include both costs and contractor full-time equivalents FTEs (CFTEs). According to a September 2012 GAO report, civilian agencies are not providing information on the total dollar amount invoiced for services, or the number of contractor and subcontractor personnel.⁷ If the government is serious about reining in federal spending, three simple questions about federal and contractor employees must be asked: (1) Who is performing services?; (2) What are they doing?; and (3) How much do they cost?

To put it into terms most of us can relate to, home buyers use a mortgage calculator **prior to buying** a house in order to make an informed decision based on the total amount borrowed, the term of the loan, the interest rate, taxes owed, home association fees, and other factors. The

⁶ 31 U.S.C. § 501 Note and 10 U.S.C. § 2330a.

⁷ GAO-12-1007, p. 8.

government needs a similar tool to permit federal agencies to factor in both cost and non-cost criteria to ensure that the government is making the best and most cost-efficient human capital decisions. Cost criteria should include all life-time costs: salary,⁸ overhead, facilities, equipment, supplies, and fringe benefits, some of which are not currently part of cost comparison processes.

A comprehensive framework for comparing and subsequently re-comparing such costs will ensure agencies are getting the best value for the taxpayers and ensure better results.

POGO's Cost Comparison Findings

POGO has conducted two studies to highlight why federal service contract spending is not in line with budgetary priorities. In September 2011, POGO released a report entitled *Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors*.⁹

POGO's study analyzed the total compensation paid to federal and private sector employees and the annual billing rates for contractor employees across 35 occupational classifications covering more than 550 service activities. POGO found that the government pays billions of dollars more annually to hire contractors than it would cost to hire federal employees to perform comparable services. Specifically, the federal government approves service contract billing rates—deemed fair and reasonable—that pay contractors **1.83 times more** than the government pays federal employees in total compensation (including benefits), and more than **2 times** the total compensation paid in the private sector for comparable services.

POGO's *Bad Business* report also found:

- Federal employees were less expensive than contractors in **33 of the 35** occupational classifications POGO reviewed;
- In one instance, contractor billing rates were **nearly 5 times** more than the full compensation paid to federal employees performing comparable services; and
- Private sector compensation was lower than contractor billing rates in **all 35** occupational classifications we reviewed.

Most importantly, our study found that the federal government has failed to determine how much money it saves or wastes by outsourcing, in-sourcing, or retaining services, and has no comprehensive system for doing so.

POGO issued a second study on contractor costs in October 2012,¹⁰ which found that the DoD expends between 2.35 and 3.53 times more of its funding on service contracts than on its civilian

⁸ POGO urges OFPP to annually update the executive and contractor compensation benchmark, as it might impact the cost of services provided by contractors.

⁹ Project On Government Oversight, *Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors*, September 13, 2011. <http://www.pogo.org/our-work/reports/2011/co-gp-20110913.html> (hereinafter *Bad Business*)

¹⁰ Project On Government Oversight, Letter to Senators Sherrod Brown and Kirsten Gillibrand and Representative Maurice Hinchey, *POGO Challenges DoD's Disclosure of Budgeting and Spending Service Contract Data*, October 25, 2012. <http://www.pogoarchives.org/m/co/enclosure4-20121017.pdf> (hereinafter *POGO Challenges DoD's Disclosure of Budgeting and Spending Service Contract Data*)

workforce, and that the cost of an average CFTE is nearly 3 times more than an average DoD civilian full-time equivalent (GFTE).¹¹

Both studies, which include citations to numerous government reports and data, agency testimony, bid protests, and court decisions, show that using contractors to perform services can often increase rather than decrease costs to the taxpayer.

Government Cost Comparisons Find Savings

POGO cited numerous examples in our *Bad Business* report and in subsequent publications of instances when savings were found after comparing government and contractor costs. For example:

- House Oversight and Government Reform Chairman Darrell Issa (R-CA) questioned the SEC for hiring Booz Allen Hamilton at a rate of \$100 to \$300 an hour for consulting services when SEC staff cost just \$93 per hour.¹²
- The Congressional Budget Office, examining contract expenditures in Iraq between 2003 and 2007, found that the government paid 1.78 times more to outsource security guard functions to Blackwater than it would have cost to use military personnel.¹³
- DoD found that the full cost to the government of hiring a civilian federal employee operations research analyst was \$168,349, and that the cost of outsourcing the position to a contractor was \$218,592— 30 percent higher.¹⁴

In a March 29, 2012, Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight hearing regarding the cost of contractors, a Department of Homeland Security (DHS) official testified that the agency identified an estimated \$28 million in savings that resulted when it insourced work in 2009 and 2010, and an additional \$2.3 million using the DHS's Balanced Workforce Strategy (BWS) Tool.¹⁵ At the same hearing, an Army

¹¹ *POGO Challenges DoD's Disclosure of Budgeting and Spending Service Contract Data*, Enclosure 1. <http://www.pogoarchives.org/m/co/enclosure1-20121017.pdf>

¹² Charles S. Clark, "Issa quizzes SEC on possible overuse of consultants," *Government Executive*, January 7, 2013. <http://www.govexec.com/oversight/2013/01/issa-quizzes-sec-possible-overuse-consultants/60511/> (Downloaded April 15, 2013)

¹³ Congressional Budget Office, *Contractors' Support of U.S. Operations in Iraq* (Pub. No. 3053), August 2008, pp. 16-18. <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf> (Downloaded September 27, 2010); Additional savings might be realized if a DoD civilian security workforce is included in a cost comparison because DoD civilians could be more cost efficient when compared to military personnel and contractor guards.

¹⁴ Memorandum from Christine H. Fox, Director of Cost Assessment and Program Evaluation, to the Secretaries of the Military Departments, "Directive-Type Memorandum (DTM) 09-007, 'Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support,'" January 29, 2010, revised April 3, 2013, pp. 23-25. www.dtic.mil/whs/directives/corres/pdf/DTM-09-007.pdf (Downloaded April 15, 2013) (hereinafter DTM-09-007)

¹⁵ Testimony of Debra Tomcheck, Balanced Workforce Program Management Office, U.S. Department of Homeland Security, Executive Director, before Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight, "Contractors: How Much Are They Costing the Government?," March 29, 2012. <http://www.hsgac.senate.gov/download/tomchek-testimony-sco-2012-03-29> and

official testified that the Army saved anywhere from 16 to 30 percent by comparing costs and in-sourcing work functions.¹⁶

Those numbers go hand-in-hand with DoD's in-sourcing activities. For example, in 2011, DoD reported that in fiscal year 2010 it had established (insourced) nearly 17,000 new government civilian positions to perform services that had been performed by contractors.¹⁷ Of the reasons cited by the Pentagon for in-sourcing those services, cost savings were cited **50 percent** of the time.¹⁸

On the other hand, there are also instances where contracting out has saved taxpayers money.

GAO released a study in 2010 that conducted a cost analysis of security services provided by contractors and federal employees for both the Defense and State Departments during contingency operations in Iraq.¹⁹ Specifically, GAO studied one contract for Baghdad embassy security and four distinct task orders under the Worldwide Personal Protective Services II contract. The cost analysis showed that contractors performed for less cost on the Baghdad Embassy contract as well as on three of the four task orders, saving an estimated \$872 million for taxpayers,²⁰ although the fourth task order showed that the use of DoD military rather than contractor employees would have saved the government nearly \$141 million.²¹

These findings highlight the importance of conducting cost analyses on a function-by-function basis prior to award in order to create a realistic cost baseline for either awarding a service contract or performing the work in-house.

Prioritizing When to Conduct Cost Comparisons

POGO agrees with OMB's assertion that cost comparisons will validate workforce decisions, encourage cost savings, and provide for conversion if and when savings are not realized or

<http://www.hsgac.senate.gov/download/mccaskill-qfr-to-tomchek-for-march-29-2012-hearing> (Downloaded March 28, 2013)

¹⁶ Testimony of Jay Aronowitz, Force Management, Manpower and Resources, U.S. Army, Deputy Assistant Secretary, before Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight, "Contractors: How Much Are They Costing the Government?," March 29, 2012, p. 40. <http://www.hsgac.senate.gov/download/preliminary-hearing-transcript> (Downloaded March 28, 2013) (hereinafter Aronowitz Testimony)

¹⁷ Department of Defense, Office of the Under Secretary of Defense for Personnel and Readiness, *Report to the Congressional Defense Committees on the Department of Defense's FY 2010 In-sourcing Actions*, September 2011, p. 3. <http://pogoarchives.org/m/ns/fy2010-insourcing-report-iaw-sec-323-of-fy2011-ndaa-20110902.pdf> (Downloaded March 26, 2012) (hereinafter 2010 DoD In-sourcing Report)

¹⁸ 2010 DoD In-Sourcing Report, p. 5.

¹⁹ Government Accountability Office, *Warfighter Support: A Cost Comparison of Using State Department Employees Versus Contractors for Security Purposes in Iraq* (GAO-10-266R), March 4, 2010, p. 2. <http://www.gao.gov/new.items/d10266r.pdf> (Downloaded September 27, 2010) (hereinafter GAO-10-266R)

²⁰ GAO-10-266R, p. 6. The Baghdad Embassy contract saved the government \$785.1 million, one Worldwide task order saved \$43.7 million, a second Worldwide task order saved \$40.3 million, and a third Worldwide task order saved \$3.3 million.

²¹ GAO-10-266R, p. 6.

performance declines.²² The problem is deciding when a cost comparison should be conducted. Holding an A-76-type competition might be too late in the process as it requires agencies and contractors to jump through many procedural and contracting hoops. The timing of DoD's system (created pursuant to DTM-09-007) to estimate and compare the full costs of civilian and military manpower with contractors is more appropriate, as it is a workforce decision occurring earlier in the process. DTM-09-007 explains the advantages of this process:

Defense officials are aware of the full costs of manpower and have a thorough understanding of the implications of those costs to the Department of Defense and, on a broader scale, to the Federal Government when developing national security policies and making program commitments. Accordingly, the DoD Components shall use the business rules set forth in Attachment 2 of this DTM to estimate the full costs of the defense workforce in support of strategic planning, defense acquisition, and force structure decisions.²³

When deciding who should perform a particular service, the agencies need to ask these basic questions. First, is the work necessary for government operations? If no, efforts should be made to reassign federal workers or terminate the contract. Second, is the work an inherently governmental,²⁴ closely associated to inherently governmental, or critical function that requires performance by a federal employee? If yes, there is no need to proceed, the government should hire, retain, or assign a federal employee to conduct the work. Third, what is the estimated fully-burdened cost to have the work performed by federal versus contractor workers? Fourth, are there non-cost factors that should be considered? Fifth, how soon should agencies revisit workforce decisions to ensure that the answers to the above questions have not changed over time?

With regard to reviewing services currently being performed by federal employees or contractors, cost comparisons should be conducted to determine the most cost efficient workforce. With regard to those services currently being performed by contractors, the government should prioritize reviews, starting with service contracts with long-term performance periods (five years or more), and contracts with escalating costs and/or a record of poor performance.

²² OMB reports that the act of competition generates cost savings of 10% to 40% on average regardless of who wins a competition. Executive Office of the President, Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 2. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDIQFjAA&url=http%3A%2F%2Fwww.whitehouse.gov%2Fsites%2Fdefault%2Ffiles%2Fomb%2Fprocurement%2Fcomp_sourcing_072403.pdf&ei=WPFrUcyqN8TA0gHy14CQCw&usg=AFQjCNFr7mGvFFB-D4gyXm0M1pAU7DuENw&bvm=bv.45175338,d.dmQ&cad=rja (Downloaded April 15, 2013)

²³ DTM-09-007, p. 2.

²⁴ Inherently governmental function cannot be outsourced pursuant to the Federal Activities Inventory Reform Act (FAIR Act) of 1998. As Policy Letter 11-01, *Performance of Inherently Governmental and Critical Functions*, points out, there are multiple definitions of an inherently governmental function – the FAIR Act, the Federal Acquisition Regulation (FAR), the 2003 revision to Circular A-76, and OFPP Policy Letter 92-1 (clarifying the concept of inherently governmental functions). POGO urges OFPP to revise Circular A-76 so that the definition of inherently governmental functions is consistent government-wide.

Services that can be performed by either workforce should first be supported by estimated needs, requirements, full-time equivalents, and position descriptions to serve as the foundation of the cost comparison. If the comparison indicates that the work would be more cost effective if done by federal employees, the agency should hire or retain the needed personnel. Hiring or retention must occur despite any ceilings on GFTEs.²⁵ Agencies should have flexibility to make hiring decisions. The government could also do a better job of utilizing existing authorization to hire short-term, at-will federal employees to meet short-term needs rather than hiring contractors.²⁶

Simply stated, cost comparisons should be part of human resources planning and management rather than part of agency acquisition functions.

OMB's Slow Progress Hinders Savings

As stated earlier, the effort to create non-DoD agency cost comparison policies has been an uphill battle. In July 2009, OMB expressed many concerns with the current workforce balance and the need for improved management of the government and contractor workforces:

In particular, overreliance on contractors can lead to the erosion of the in-house capacity that is essential to effective government performance. Such overreliance has been encouraged by one-sided management priorities that have publicly rewarded agencies for becoming experts in identifying functions to outsource and have ignored the costs stemming from loss of institutional knowledge and capability and from inadequate management of contracted activities. Too often agencies neglect the investments in human capital planning, recruitment, hiring, and training that are necessary for building strong internal capacity—and then are forced to rely excessively on contractors because internal capacity is lacking. In many cases, agencies lack the information that would allow managers to understand how contractor employees are deployed throughout their organization and integrated with federal employees. The full potential of our total workforce—both contracted and federal—often goes unrealized due to insufficient or ineffective management attention. These management shortcomings work against effective government performance and must be corrected.²⁷

Following Chairman McCaskill's hearing in March 2012 on the cost of service contracts, OMB stated that it planned to release additional guidance on in-sourcing and cost analyses in mid-July

²⁵ Capping the federal workforce reduces flexibility for agencies to utilize the most cost-efficient personnel to meet its missions. The size of the government must be measured in terms of total government workforce; forcing agencies to contract out work rather than hire federal employees does a disservice to taxpayers. It also further hampers the ability of the government to track the true size and cost of its total government workforce.

²⁶ Authority comes from 5 C.F.R. Part 316 for competitive services and 5 C.F.R. Part 213 for excepted service appointments; *Bad Business*, p. 34.

²⁷ Memorandum from Peter R. Orszag, Director of Office of Management and Budget to the Heads of Executive Departments and Agencies, regarding Managing the Multi-Sector Workforce, July 29, 2009, p. 1. http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_fy2009/m-09-26.pdf (Downloaded October 9, 2012) (hereinafter M-09-26)

of 2012.²⁸ OMB promised to identify “where [cost] analyses are likely to be most effective” and to “strengthen the use of service contract inventories.”²⁹

Although OMB memorandum M-09-26 mandated that agencies perform a cost analysis that addresses the full costs of government and private sector performance and provide “‘like comparisons’ of costs that are of a sufficient magnitude to influence the final decision on the most cost effective source of support for the organization,”³⁰ OMB has neither offered guidance on how to conduct such detailed cost comparisons nor implemented any policies for hiring a cost-efficient workforce.

Additionally, OMB has not released any results from the memo’s mandated “intermediate steps,” which include having improved human capital planning and management of the multi-sector workforce, conducting an analysis of one program in which there are concerns about the reliance on contractors, and establishing sound in-sourcing guidelines.³¹ OMB has provided no evidence, nor has POGO seen any evidence, that any agency has complied with those steps or that any agency has reduced its reliance on service contractors. It has been nearly four years since OMB released M-09-26 and the government has made little progress toward resolving workforce issues and improving multi-sector workforce inventories.³²

OMB’s failure to move the ball forward on these initiatives leaves the government without the cost data necessary to make rational workforce decisions. In the meantime, POGO has supported congressional efforts to amend service contract inventory reporting to provide enhanced service contract data that can be used for workforce planning purposes.³³

Fully-Burdened Costs Required

The Army is working to improve workforce data collection and close the gaps in that data. The Army is using “fully-burdened cost for [the] civilian and military manpower,” including pensions, child care costs, subsidies for groceries, and retirement.³⁴ However, for the contractors, the Army only uses “what is invoiced to the Government and what [it pays].”³⁵

As seen on the Army’s chart below, contractors often perform work inside government facilities and use government equipment. Such costs, as well as all government overhead for the administration, management, and oversight of the contract, must be included in a cost comparison—both sides of the equation must be fully “loaded” or burdened.

²⁸ Letter from Jeffrey D. Zients, Acting Director of the Office of Management and Budget, to Chairman McCaskill, May 25, 2012, p. 2. <http://www.hsgac.senate.gov/download/omb-response-to-subcommittee-about-cost-guidance> (Downloaded April 15, 2013) (hereinafter OMB Post-Hearing Letter)

²⁹ OMB Post-Hearing Letter, p. 2.

³⁰ M-09-26, p. 2.

³¹ M-09-26, pp. 1-2.

³² M-09-26, Attachment 2.

³³ POGO Challenges DoD’s Disclosure of Budgeting and Spending Service Contract Data, Enclosure 4. <http://www.pogoarchives.org/m/co/enclosure4-20121017.pdf>

³⁴ Aronowitz Testimony, p. 54.

³⁵ Aronowitz Testimony, p. 54.

FY 2011 Contract Services Inventory

(Contractor Manpower Reporting Application)

PORTFOLIO GROUP	Total Invoices	Overhead *	Direct Non-Labor Costs	Direct Labor Costs	Contractor FTEs **	Work Space Provided	Equipment Provided
Knowledge Based Services	\$ 13,174,041,467	\$ 6,750,200,903	\$ 1,554,721,748	\$ 4,869,118,815	50,910	82.5%	71.1%
Equipment Related Services	\$ 5,541,496,412	\$ 4,039,104,914	\$ 403,436,965	\$ 1,098,954,533	16,963	68.6%	85.5%
Electronics & Communication Services	\$ 2,279,606,794	\$ 681,956,726	\$ 554,807,233	\$ 1,042,842,835	8,928	83.9%	77.3%
Medical Services	\$ 368,645,920	\$ 59,310,779	\$ 8,444,247	\$ 300,890,894	2,353	76.3%	76.1%
Transportation Services	\$ 150,346,172	\$ 62,043,944	\$ 18,365,042	\$ 69,937,186	874	64.8%	47.8%
Facility Related Services	\$ 4,347,515,339	\$ 2,089,402,528	\$ 695,749,207	\$ 1,562,363,604	28,103	87.3%	61.9%
PSC Not Assigned to Portfolio Group *	\$ 5,860,000,402	\$ 2,953,230,350	\$ 816,667,112	\$ 1,890,102,941	16,878	47.4%	45.5%
Total:	\$ 31,521,652,505	\$ 16,635,250,145	\$ 4,052,191,553	\$ 10,834,210,807	125,010		

*** Overhead = Total Invoices - (Direct Labor Costs + Direct Non-Labor Costs)**

OCO: \$8,782,993,082 Total Invoices / 90,537 Contractor FTEs

** Contractor FTEs = Direct Labor Hours + 2088 [2088 is the number of compensable hours in FY 2011]

*** PSCs that are not assigned to a portfolio group include R&D, quality control, testing, inspection, operation of government owned facilities, and lease / rental of facilities / equipment

Establishing fully-burdened cost data points will not be easy. The cost factors outlined in Circular A-76 and the DTM-09-007 have been subject to criticism by federal employee unions and contracting associations. In addition, a Center for Strategic and International Studies (CSIS) report highlights the inherent problems with government life-cycle cost comparison models and appropriate overhead rates, and proposed a cost-estimating methodology.³⁶ Although the report is critical of the current A-76 and the DTM, it is silent on all the costs the government incurs—above and beyond fixed billing rates—associated with the award, administration, and oversight of service contracts.

In an effort to get specific proposals, POGO urges OFPP to create a federal advisory committee that can conduct an investigation into previous OMB and DoD attempts to compare workforce costs. Circular A-76 is a start, but in the 1980s and 1990s there were multiple memoranda and instructions that guided government workforce decisions.

POGO also had trouble identifying specific cost factors and corresponding rates or percentages. POGO is conducting further research in this area, including a Freedom of Information Act request for information regarding any studies of A-76 and DTM-09-007 cost factors that were

³⁶ Center for Strategic and International Studies, *DoD Workforce Cost Realism Assessment*, May 2011, pp. 11-19. http://csis.org/files/publication/110517_Berteau_DoDWorkforceCost_Web.pdf (Downloaded May 18, 2011) (hereinafter *DoD Workforce Cost Realism Assessment*)

conducted by DoD and/or OFPP since 2000. POGO plans to offer a comprehensive comment when the proposed cost comparison rule is published by OFPP.

The information we have reviewed indicates that current cost factors in A-76 would benefit from thorough evaluation, and in some cases adjustment, to ensure that cost comparisons going forward reflect the actual costs associated with both federal and contractor employees. Specifically, POGO thinks that the following A-76 cost factors would benefit from such an evaluation and potential adjustment: overhead, excluded costs, any conversion differential, calculation for civilian position pay and wages, and costs of capital and depreciation.

One factor that has received criticism from all sides of the debate is the overhead factor.³⁷ Currently, A-76 requires that the agency multiply civilian position costs, including fringe benefits, by 12 percent to calculate the overhead amount in a federal employee bid.³⁸ According to the definition section of A-76, overhead includes operations overhead or those “generally associated with recurring management or support of the activity[,]” and general and administrative overhead, which refers to those tasks “external to the activity, but in support of the activity being competed.”³⁹ The latter category includes “salaries, equipment, space and other tasks related to headquarters management, accounting, personnel, legal support, [and] data processing management....”⁴⁰

The remarkable thing about the 12 percent overhead factor is that it fails to even correspond to the broad categories established by the A-76 definition itself. It is an arbitrary figure that was chosen by OMB because it was near the midpoint of standard overhead figures proposed by government agencies and private sector groups,⁴¹ not a figure that represents actual overhead costs associated with performance.⁴²

Both the DoD and the GAO have concluded that the 12 percent overhead factor is a farce. In a 2003 report, the DoD Inspector General (DoD IG) found that the overhead factor in A-76 is “not supported by any data.”⁴³ The report, which reviewed an A-76 competition performed by the Defense Finance and Accounting Services (DFAS), states that even though DFAS “fully complied with OMB and DoD guidance on the use of the overhead factor—the use of the 12

³⁷ *DoD Workforce Cost Realism Assessment*; Statement for the Record, John Gage, American Federation of Government Employees (AFGE), National President, before Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight, “Contractors: How Much Are They Costing the Government?,” March 29, 2012. (Downloaded March 28, 2013).

³⁸ OMB Circular A-76, Appendix C.

³⁹ OMB Circular A-76, Appendix D.

⁴⁰ OMB Circular A-76, Appendix D.

⁴¹ Department of Defense Inspector General, *Infrastructure and Environment, Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions*, D-2003-056, March 21, 2003, p. 21 (citing Government Accountability Office, *Defense Outsourcing Better Data Is Needed to Support Overhead Rates for A-76 Studies*, NSIAD-98-62, February 27, 1998) <http://www.gao.gov/assets/230/225218.pdf> (hereinafter NSIAD-98-62)

⁴² *DoD Workforce Cost Realism Assessment*, p. 14.

⁴³ Department of Defense Office of the Inspector General, *Infrastructure and Environment, Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions*, D-2003-056, March 21, 2003, p. 24. <http://www.dodig.mil/audit/reports/fy03/03-056.pdf> (hereinafter *Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions*)

percent overhead factor affected the results of the cost comparison and DFAS managers were not empowered to make a sound and justifiable business decision.”⁴⁴

The DoD IG ultimately recommended that the DoD conduct a study to “identify and quantify those overhead costs that are affected by the conversion from in-house to contractor performance and, in conjunction with the Office of Management and Budget, clarify guidance so that unaffected overhead costs will not be included in operations and general and administrative overhead costs.”⁴⁵ To POGO’s knowledge, no such study was ever done.

The standard overhead rate was a problem even prior to the 2003 revision to A-76. A 1998 GAO report describes how the 12 percent overhead factor came into being, noting that OMB lacked “sound empirical data on which to base an overhead rate[,]” and as a result met with representatives from both the government and private sector to solicit proposals for an appropriate rate. It sounds a bit like the fairy tale “Goldilocks and the Three Bears”:

Proposed rates ranged from 0 to 30 percent; the higher rates were proposed by representatives from the private sector. An OMB official told us that further discussions with these representatives enabled them to reach an understanding that the extremes of this range were not realistic. For example, zero overhead costs did not recognize any operations overhead or general and administrative costs. And 30 percent would likely cover a full allocation of overhead costs rather than proportionate costs. After considering the various proposed rates, OMB decided on the 12-percent rate and included it in a draft of what would become the March 1996 revision to the A-76 supplemental handbook.⁴⁶

POGO recommends that a study on this issue be conducted immediately so that cost comparisons are based on actual differences between agency and contractor performance, rather than on indiscriminate and inaccurate factors that have no bearing on true costs. Any study of overhead costs should also take into account standardized methods for accounting for overhead on the contractor side. A new formula for calculating overhead should ensure that contractor and agency overhead estimates are readily comparable.

Non-Cost Factors

There were numerous references to the inclusion of non-cost factors in a workforce comparison during the March 5, 2013, public meeting. Although POGO agrees that non-cost factors are important and must be carefully crafted, we urge OFPP to exclude non-cost workforce factors from the current effort, as it will add unnecessary complexity and shift the focus from cost issues. POGO recommends issuing a second notice to initiate an analysis and comments

⁴⁴ *Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions*, p. 23.

⁴⁵ *Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions*, p. 23.

⁴⁶ GAO/NSIAD-98-62, p. 5.

regarding non-cost factors that should be used when comparing federal and contractor employees.

If non-cost factors are considered by OFPP at this time, POGO recommends that the following variables be considered only after the cost comparison is conducted (not in order of importance):

1. Continuity in mission;
2. Length of the contract;
3. Long-term needs of the government;
4. Past performance;
5. Skill sets required;
6. Flexibility offered;
7. Transparency;
8. Subcontracting plans, including small business participation;
9. Conflicts of interest; and
10. Taxpayer risk.

Like the cost factors, non-cost factors should periodically be revisited. Continued oversight will lower costs and ensure satisfactory performance as needs or circumstances change over time. If cost saving are not realized, the government should perform another cost comparison. Although this is a burdensome activity to perform, POGO recommends that it be conducted at least every two years or prior to the exercise of a contract extension or option, as the benefits should outweigh the burden involved.

Non-cost factors create special challenges for the government as most are difficult to quantify. As long as cost remains the primary focus of the comparison, non-cost factors can be used to supplement workforce decisions, allowing the government to function smoothly and save taxpayer dollars.

POGO Recommendations

OFPP should:

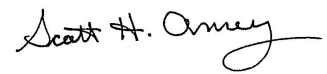
1. Only consider cost factors for now to ensure the debate about non-cost factors does not muddy the waters.
2. Convene an advisory panel of economists representing a broad spectrum of perspectives to evaluate the cost principles set forth in Appendix C of Circular A-76. The panel should evaluate cost factors including but not limited to the following: overhead, excluded costs, the conversion differential, calculation for civilian position pay, wages, and benefits, and costs of capital and depreciation. Each of these factors should be adjusted so that the amounts used in cost comparisons reflect the fully burdened life-cycle costs associated with performing a given function.
3. Require that each agency conducting cost comparisons establish a Director of Cost Assessment and Program Evaluation, similar to that in the DoD, to ensure compliance with the cost comparison policies. In the alternative, OMB could house a civilian office

of Cost Assessment and Program Evaluation to assist agencies with workforce cost comparisons.

4. Conduct an independent analysis of any cost analysis models to evaluate their strengths and weaknesses and propose an optimal model.
5. Complete cost comparisons for all existing and future service contracts. Activities and requirements that are no longer needed should be terminated. Those functions deemed inherently governmental should remain in-house or be insourced without conducting a cost comparison, because these functions cannot legally be carried out by contractors.
6. Reconsider the exemptions 31 U.S.C. § 501 and enhance data on service contractors. In addition to the current inventory requirements, agencies should collect, report, and consider for each contract and task order:
 - a. The number of employees used by the prime contractor and by subcontractors of the contractor at any tier, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors.
 - b. Whether the services are performed on government property or private property.
 - c. The unburdened labor rate for each service provided, where each service is specified in accordance with a standardized occupational code that can be matched with a comparable occupational code and level of performance when the service is performed by a federal employee.
 - d. The percentage limitation for fringe benefits set by the government on the unburdened labor rate.
 - e. The total amount billed that is attributable to fringe benefits.
 - f. The percentage limitation for overhead set by the government on the unburdened labor rate.
 - g. The total amount billed that is attributable to overhead costs of the contractor and of subcontractors at all tiers.
 - h. The percentage limitation for general and administrative costs (G&A) set by the government on the unburdened labor rate.
 - i. The total amount billed that is attributable to G&A.
 - j. The percentage limitation for fixed fees (i.e. profits), set by the government on the unburdened labor rate.
 - k. The total amount billed that is attributable to fixed fees.
 - l. The total amount billed by contractors for the services provided.
 - m. The total costs to agencies if the services had been performed by federal employees in accordance with cost-comparison models, using the appropriate General Services Occupational Series crosswalks and DoD calculated fringe benefits, overhead, and G&A.
 - n. A statement of the difference, expressed in dollars, between the total amount billed by contractors for the services provided and the total costs to the government if the services had been performed by federal employees in accordance with agency cost-comparison models.
 - o. Whether the activity includes any inherently governmental functions.
 - p. The number of employees used by the prime contractor and by subcontractors of the contractor at all tiers who perform an inherently governmental function.
 - q. Creating all service contract inventory data in a widely accepted, non-proprietary searchable platform.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Scott H. Amey". The signature is written in a cursive style with a long horizontal flourish at the end.

Scott H. Amey
General Counsel
scott@pogo.org