



October 13, 2017

The Honorable John McCain
Chairman
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Mac Thornberry
Chairman
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515

The Honorable Jack Reed
Ranking Member
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Adam Smith
Ranking Member
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen and Ranking Members:

The Project On Government Oversight (POGO) has spent over 36 years investigating waste, mismanagement, and abuse inside the Department of Defense (DoD). We ask you to consider the following positions on open issues during the conference of the Fiscal Year (FY) 2018 National Defense Authorization Act (H.R. 2810). We applaud your Committees' oversight and legislative work to address these issues and hope you will ensure this bill results in policies that benefit our service members and taxpayers, not defense companies.

I. Strengthening Integrity and Accountability

Slowing the revolving door to drain the swamp. We support Senate Sec. 1043 creating a 2-year lobbying cooling-off period for senior DoD leaders. As President Trump has extended lobbying restrictions for members of his Cabinet to 5 years, the Senate's proposal will slow the revolving door and level the playing field for all competitors working with DoD.

Focusing contracts on performance. POGO supports Senate Sec. 818, which restricts DoD's use of certain labor hour service contracts rather than contracts based on outcomes and performance. Looking at outcomes and performance rather than timesheets will result in savings.

Strengthening the acquisition workforce. POGO supports House Sec. 822 to learn more about the acquisition workforce, but cautions against removing money from the Acquisition Workforce Development Fund to pay for the fund's management. All of the money in that fund should go to training the acquisition workforce to make sure they can perform at peak effectiveness.

Public-private competitions based on data and cost-effectiveness. We object to Senate Sec. 801, which repeals the suspension of the A-76 process. Decisions about the appropriate mix of

the DoD workforce should be based on what will provide the Department the most effective and agile workforce. The A-76 process has been criticized by both government officials and companies for a number of reasons, including that the government needs more information about the cost and number of services contracts. We support Senate Sec. 829, which would only allow those competitions to occur after service contract data, including cost estimates, are submitted to Congress or promised by the next fiscal year. POGO further supports House Sec. 814 to require DoD to collect and use service contracting information for budgeting purposes, although it could be improved to connect to existing law and the implementation of the Enterprise-wide Contractor Manpower Reporting Application, and Sec. 869, which promotes the use of the Army's service contract checklist to ensure that work is insourced or outsourced appropriately.

Responsible contracting processes. Contractors that violate safety laws pose a bigger performance risk to the government, and they should not have an unfair advantage over law-abiding contractors. POGO supports Sec. 830 in the Senate bill, which requires contracting officers to identify and consider company safety violations prior to awarding or renewing a contract, and refer such violations to DoD's suspension and debarment office. Companies have an opportunity to oppose a contracting officer's findings and file a bid protest; therefore, this provision should incentivize companies to protect workers and be better suited to perform on their DoD contracts.

Fair and reasonable prices for commercial items. POGO supports Senate Sec. 841 and House Sec. 866, creating a comprehensive commercial item training program. Commercial item buying is likely to increase in the future, and knowing the rules and obtaining fair and reasonable prices is essential because competition is often lacking in commercial item buys. Additional training will protect the DoD and the public. However, the mandate to eliminate commercial item reporting to Congress in House Sec. 1051(j) is ill-advised, and will result in less information about when commercial item exceptions and waivers were granted and why—information that is important to determine if DoD is abusing its commercial item procurement authority. POGO is opposed to any commercial item waivers or exceptions, and therefore we cannot concede to hiding them from Congress and the public.

Enhancing Congress's contractor fraud oversight. POGO supports Senate Sec. 10803, requiring DoD to report fraud-related criminal, civil, and administrative cases to Congress. POGO supported a similar proposal in the past, citing the need to know more about those receiving taxpayer dollars.

Improving purchase and travel card purchases. We support Senate Secs. 11021-11026 improving government credit card buying. Those provisions will establish important requirements to more effectively identify and prevent improper payments for both purchase and travel cards.

Audit readiness. POGO supports Senate Sec. 1004, which will hold military secretaries accountable for failing to obtain audit opinions on full financial statements for fiscal year 2018. Taxpayers should be confident the largest federal agency knows where its money is going. It is inexcusable that the Department of Defense is the only major federal agency that has been unable to pass an audit.

Preserving the Department’s ability to go after overcharges. POGO opposes House Sec. 802, which we believe will result in a less efficient audit process and cause significantly more unallowable costs to be paid to contractors. Section (d)(4) could force the government to pay contractors for unallowable costs if the audit is even a day late. DCAA should be allowed to regularly cover two years in a single in a single audit, which DCAA estimates reduces government costs by approximately 40 percent while providing minimal inconvenience to contractors. We are also concerned about increasing materiality standards, which will prevent the government from recovering a significant amount of unsupported costs and leave money on the table. Raising the materiality thresholds also undermines the Defense Contract Audit Agency’s (DCAA) effectiveness in one of its most important roles—deterring contractor abuses.

Making sure contractors don’t pick their own auditors. POGO supports House Sec. 874, which repeals a misguided provision that allows contractors to choose their own auditors and would require the Department to accept those findings without oversight from DCAA. Contractors can easily pad their profits at taxpayers’ expense if these costs are not examined.

II. Missed Opportunities for Cost Savings

Excessive spending. Unfortunately, both bills authorize funding above the amounts agreed to in the Budget Control Act, creating a risk of sequestration or unfunded mandates, and continue to rely upon the Overseas Contingency Operations (OCO) account as a slush fund for various pet projects. Undermining budget clarity jeopardizes national security.

Base Realignment and Closure (BRAC) would result in savings and increase effectiveness. POGO opposes House Sec. 2702 and Senate Sec. 2702 prohibiting the Department from conducting another BRAC round. BRAC results in savings, which can be used to increase readiness and capabilities of our military forces.

Wasting money on failed nuclear programs. POGO opposes continued funding for the Mixed Oxide Fuel Facility (MOX) program authorized by House Sec. 3119 and Senate Sec. 3112. Both the Obama and the Trump administrations have asked Congress to cancel MOX, which is billions of dollars over budget, 41 years behind schedule, and will never succeed. Congress should cancel this program and avoid 50 years of wasteful spending on a program that has clearly failed.

Block buy lets F-35 program off the hook. POGO opposes House Sec. 141 and Senate Sec. 141. Buying more F-35s than requested and increasing production at this point will waste billions of taxpayer dollars. The F-35 program has still not finished the design phase, let alone the critical operational testing period necessary to determine whether the F-35 can actually fulfill its intended combat role. The Department is already paying billions more than necessary to fix problems identified by a reckless concurrency strategy, and considering leaving hundreds of planes without needed upgrades to find cost savings.

Wasted money on troubled Littoral Combat Ship (LCS) program. POGO opposes buying more LCS ships. Large cost overruns, schedule delays, and a demonstrated lack of combat

survivability and lethality discovered during operational testing and deployments should have resulted in cancelling, or at least slowing down, the program. Moreover, the Government Accountability Office (GAO) has repeatedly found, and the Navy agrees, there is no compelling industrial base considerations for additional ships because the shipyards will be building LCS under contract through fiscal year 2021.

III. Giveaways for Contractors Could Cost Taxpayers Billions

Weakening contractor oversight. Senate Secs. 812 and 813 will increase the simplified acquisition and the Truth In Negotiations Act (TINA) thresholds. Increasing both will hinder DoD oversight by restricting the agency's access to vital cost and pricing information that ensures DoD is paying fair and reasonable prices. House Sec. 803 would also hinder the government's buying ability by raising thresholds and limiting DoD's ability to receive pricing information. Simply stated, these proposals will force DoD to buy a luxury car without seeing the sticker price. Additionally, the increased thresholds will waste vital contracting staff time and resources to determine on their own whether DoD is paying fair prices, which is a recipe for waste, fraud, and abuse.

Weakening tools to control contract costs. Senate Sec. 824 would prohibit the use of reverse auctions and lowest price technically acceptable (LPTA) contracting methods for safety equipment. Last year's NDAA prohibited those contracting tools from being used to procure personal protective equipment. While no one advocates buying inferior safety or protective equipment, the real problem isn't with those buying vehicles, but with buying smarter and with well crafted requirements. Banning these buying vehicles will result in paying higher costs for the equipment.

Increasing risk taxpayers will be overcharged for spare parts. Despite our support for more increased legitimate commercial item procurement training (as opposed to an infomercial for buying everything as a commercial item), POGO strongly opposes Senate Secs. 851-855, which will redefine what is commercial and lock DoD into previous commercial item determinations. If passed, DoD will continue to buy items that are not genuinely commercial, and we'll see more DoD Inspector General reports detailing wasteful commercial spending. The added "preference" to buy commercial will further add to wasteful spending and harm small businesses that will no longer hold a set-aside preference.

Expanding use of risky and costly contract vehicles. The proposed expansion of and preference for other transaction authority (OTA) in Senate Secs. 871-874 will also be detrimental to smarter buying. OTA is a term commonly used to refer to the DoD's authority to enter into transactions other than contracts, grants or cooperative agreements, which means that many pro-taxpayer contracting laws and regulations do not apply. OTA is a customized agreement rather than contracts that can be specifically tailored based on the government's needs. The inherent problem, however, is that rather than the government controlling what it needs, the OTA participants are placed in the powerful position of saying "here's what we will do for you," which is attractive to traditional contracts, but doesn't lure in non-traditional contractors as was promised when OTA was created. POGO supports Senate Sec. 872 to provide more training on the use of other transactions to prevent wasteful spending on this risky procurement vehicle.

Reduced Oversight Undermines Weapon Capabilities

Weakening testing standards. One of the fundamental questions to answer before deciding to procure a new weapon system is whether that system is more combat-capable than those it is replacing. POGO is concerned House Sec. 833 could undermine the ability of Congress and Pentagon officials to assess the combat suitability of new weapon systems. Moreover, this language is troubling because its immediate effect would be to undermine previous legislation prohibiting the retirement of any additional A-10s until the currently planned operational testing of the F-35 versus A-10 close support capabilities is complete.

Preserve key safety tests for carrier program. POGO opposes House Sec. 121(c) and urges you to preserve the requirement for full ship shock trials on the *Gerald R. Ford* aircraft carrier before its first deployment. Waiting until deployment to test and discover problems would unnecessarily endanger the lives of the 4,300 sailors of the ship's complement and risk massive cost overruns in the years ahead as the Navy continues building what will continue to be an untested ship.

We appreciate your consideration and attention to our concerns and welcome an opportunity to meet with you or your staff to discuss these matters further.

Sincerely,

A handwritten signature in black ink that reads "Danielle Brian". The signature is written in a cursive, flowing style.

Danielle Brian
Executive Director