



March 1, 2021

Allison Lerner
Chair, Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW, Suite 825
Washington, DC 20006

Dear Chair Lerner:

I am writing on behalf of the Project On Government Oversight (POGO) to express our concern about systemic issues regarding government contracts failing to include mandatory whistleblower protections, both at the Department of Justice and across the federal government. Furthermore, I write to urge the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to encourage all inspectors general to conduct a review of contracts within their own agency to ensure that contractors are incorporating mandatory whistleblower protections into employment agreements and, if they are not, to work with agency leadership to incorporate this mandatory language in all employment agreements.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

On February 10, 2021, Department of Justice Inspector General Michael Horowitz released a management advisory memorandum outlining systemic concerns with the department's compliance regarding whistleblower rights and protections for contractors.¹ This memorandum highlighted how contracting officers failed to include mandatory contract clauses regarding whistleblower rights and did not verify whether contractors informed their workers of reprisal protections as required. Two office of inspector general investigations found that contracts were inconsistent with statutory whistleblower protections for employees of contractors and even identified one contractor who required workers to sign a nondisclosure agreement that didn't mention protected disclosures of wrongdoing. As the department acknowledges, these are systemic issues. Therefore, there should be a concerted effort to address these issues not only at the Justice Department but across all agencies to ensure compliance with federal law.

As you know, federal law prohibits a federal contractor from discharging, demoting, or otherwise discriminating against a contract worker as a reprisal for disclosing information that the worker

¹ Memorandum from Inspector General Michael E. Horowitz to Deputy Assistant Attorney General and Senior Procurement Executive Michael H. Allen about notification of concerns regarding the Department of Justice's compliance with laws, regulations, and policies regarding whistleblower rights and protections for contract workers supporting Department of Justice programs, February 10, 2021, 1-4.

<https://oig.justice.gov/sites/default/files/reports/21-038.pdf>

reasonably believes is evidence of gross waste, gross mismanagement, abuse of authority, or a violation of a law, rule, or regulation related to a contract.² The statute also requires the head of each executive agency to ensure that its contractors inform their workers in writing of the rights and remedies under the statute.

Congress extended these whistleblower protections to contractors in part because contractors are often in the best position to highlight waste, fraud, and abuse due to their direct knowledge of mismanagement or waste in their daily jobs. Unfortunately, the implementation of this important law has not been encouraging. As POGO reported, a 2017 Government Accountability Office report³ found that during a pilot program on contractor whistleblower protections, there was “inconsistent implementation of some portions of the law” and that “the program was poorly communicated to contractors and the guidance within IGs was often vague.”⁴ These inconsistencies resulted in contractor employees being unaware of the statutory protections they have against whistleblower reprisal. Not only does the lack of inclusion of whistleblower protection language in employment contracts make it more difficult to enforce these legal protections, it also reduces the likelihood that those who witness waste, fraud, abuse, or mismanagement in government contracts will come forward.

Because this is a systemic problem, every inspector general should work with their agency to ensure that all federal contractors understand their obligations under the law. These laws protect those who are best positioned to expose problems that, if left unaddressed, could result in the loss of billions of dollars, endanger public health, or jeopardize our national security. As such, POGO urges CIGIE to encourage inspectors general to conduct similar reviews of their agencies’ compliance regarding whistleblower rights and protections for contractors.

If you have any questions or need additional information, please contact POGO Policy Counsel Melissa Wasser at mwasser@pogo.org.

Sincerely,



Danielle Brian
Executive Director

² 41 U.S.C. § 4712.

³ Government Accountability Office, *Contractor Whistleblower Protections Pilot Program: Improvements Needed to Ensure Effective Implementation*, GAO-17-227 (March 2017), 2. <https://www.gao.gov/assets/690/683105.pdf>

⁴ Daniel Van Schooten, “Govt Watchdog Finds Flaws in Implementation of Contractor Whistleblower Law,” Project On Government Oversight, March 7, 2017. <https://www.pogo.org/analysis/2017/03/govt-watchdog-finds-flaws-in-implementation-of-contractor-whistleblower-law/>