April 10, 2023

The Honorable Jon Tester
Chair
Subcommittee on the Department of Defense
Senate Committee on Appropriations
311 Hart Office Building
Washington, DC 20510

The Honorable Susan Collins
Ranking Member
Subcommittee on the Department of Defense
Senate Committee on Appropriations
413 Dirksen Office Building
Washington, DC 20510

The Honorable Ken Calvert
Chairman
Subcommittee on the Department of Defense
House Committee on Appropriations
2205 Rayburn Office Building
Washington, DC 20515

The Honorable Betty McCollum
Ranking Member
Subcommittee on the Department of Defense
House Committee on Appropriations
2256 Rayburn Office Building
Washington, DC 20515

Dear Chair Tester, Ranking Member Collins, Chairman Calvert, and Ranking Member McCollum:

The Project On Government Oversight (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. POGO champions reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

To further strengthen Congress’s efforts to promote government accountability and transparency, we suggest several modest reforms, all of which could be addressed in either bill text or report language accompanying the Department of Defense appropriations bill.

- Evaluate cost savings and small business impacts of bundled and consolidated contracts.
- Improve Department of Defense sexual assault data compliance.
- Track reporting timelines for resolving PPD-19 retaliation claims.

POGO submits the enclosed requests for language to be included in the fiscal year 2024 Department of Defense appropriations bill and report.
Thank you for your consideration of these proposals to strengthen government accountability and oversight. For more information, please have your staff contact me at joe.spielberger@pogo.org.

Sincerely,

Joe Spielberger
Policy Counsel

Enclosure: 1

cc: Senate Committee on Appropriations Chair Patty Murray
    House Committee on Appropriations Chairwoman Kay Granger
    Senate Committee on Appropriations Vice Chair Susan Collins
    House Committee on Appropriations Ranking Member Rosa DeLauro
POGO Recommendations to Strengthen Government Accountability and Oversight

In order to strengthen government accountability and oversight, the Project On Government Oversight (POGO) recommends the following reforms be incorporated into report language accompanying both the Senate and the Department of Defense appropriations bills for fiscal year 2024.

Evaluate Cost Savings and Small Business Impacts of Bundled and Consolidated Contracts

Appropriations Committee: Defense
Agency: Department of Defense
Account: Salaries, Officers and Employees: Office of the Sergeant at Arms
Type of request: Report Language

Background:
It’s unclear how the Pentagon decides to combine or consolidate contracts, which makes it harder for lawmakers to prevent wasteful spending. In February 2021, the Department of Defense Office of the Inspector General discovered an inconsistency in how the Defense Logistics Agency estimates cost savings for certain contracts. After it audited sole source captains of industry (COI) strategic support contracts, the IG concluded that the agency potentially overstated estimated cost savings on a Boeing COI contract by over $127 million. The IG also found that the Boeing contract included bundling, or the combination of two or more requirements for goods and services, into one contract solicitation. This proved a problem because the Defense Logistics Agency had no previous plans to bundle the contract, and ultimately the agency did not assess the small business impact of bundling the Boeing contract. As a result, small business participation in the contract was lower than previously demonstrated possible for the contract.1

The IG made several recommendations to the Defense Logistics Agency to improve small business participation and cost savings estimation on COI contracts. There is, however, limited information about how the agency estimates cost savings on other types of bundled or consolidated contracts, how it decides to bundle Pentagon contracts, and to what extent it evaluates the potential impacts of its decisions on small businesses. It is critical that Congress understand how the Defense Logistics Agency bundles contracts to prevent waste and support small businesses.

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1 Inspector General, Department of Defense, Audit of the Defense Logistics Agency’s Sole Source Captains of Industry Strategic Support Contracts, DODIG-2021-053 (February 11, 2021), 3, https://media.defense.gov/2021/Feb/16/2002582503/-1/-1/1/DODIG-2021-053.PDF.
Proposed Report Language:
One year after the enactment of this Act, the Committee directs the Government Accountability Office to report on the Defense Logistics Agency’s process for bundling, including substantial bundling, and consolidating Pentagon contracts to determine whether bundling achieves cost savings or other substantial benefits and maximizes small business participation. This report should consider the agency’s original written determination to confirm whether bundling requirements was necessary and justified. The report should include a review of how the Defense Logistics Agency prioritizes the benefits received from bundling in relation to small business participation, as well as an analysis of what incentives, if any, exist for prime contractors to exceed small business goals.

Improve Department of Defense Sexual Assault Data Compliance

Appropriations Subcommittee: Defense Agency: Department of Defense Type of Request: Report Language

Background:
Between 2004 and 2019, Congress passed 249 statutory requirements to better combat sexual assault in the military. A recent Government Accountability Office report finds that, while the Department of Defense has met most of these requirements, it failed to fully implement all requirements addressing sexual assault, particularly data reporting requirements concerning whistleblower retaliation connected to sexual assault. For instance, while the DOD has reported aggregate data on retaliation complaints, it has not reported specific information on each retaliation claim connected to a report of sexual assault, nor has it included in its reports a description of the results of completed retaliation investigations, as required.²

Military sexual assaults have continued to rise: A 13% jump in reports last year brought recent estimates up to almost 36,000 service members per year, even though a majority of these cases go unreported.³ Service members must be able to safely report these crimes without fear of retaliation. Without complete and accurate data, Congress and DOD will be unable to evaluate the success or failure of the department’s reforms in responding to military sexual assault and protecting those who report it.

Proposed Report Language:
The Secretary of Defense shall ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Sexual Assault Prevention and Response

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Office and the Secretaries of the military departments, include all required information in DOD annual reports and establish an oversight process to track implementation of NDAA statutory requirements related to sexual assault response and whistleblower retaliation.

**Reporting Timelines for Resolving PPD-19 Retaliation Claims**

**Appropriations Subcommittee:** Defense  
**Agency:** Office of the Inspector General of the Director of National Intelligence  
**Type of Request:** Report Language

**Background:**
Presidential Policy Directive 19 (PPD-19) prohibits one common strategy agencies use to retaliate against whistleblowers: taking adverse action regarding a security clearance or access to classified information. But while such retaliation for making a protected disclosure is specifically prohibited, whistleblowers cannot always prove retaliation. And reprisal cases can last for years, jeopardizing or ending a whistleblower’s career.

A February 2017 document from the Office of the Inspector General of the Intelligence Community states that many intelligence agencies are not following “legally mandated … policies, procedures, and standards … Causing non-substantiation of reprisal claims, incomplete investigations, and for complaints not to be processed.”

In 2016, a CIA officer sued in federal court to force the CIA to investigate his whistleblower retaliation complaint after waiting 630 days since filing his complaint. The court dismissed his case, finding that the CIA had no legal obligation to investigate his claim. Without an IG decision, the officer could not even appeal to the Inspector General of the Intelligence Community for an external review board.

A recent Government Accountability Office (GAO) review of whistleblower complaints made to six intelligence community offices of inspector general found that an average wait time for closed complaints ranged from 113 to 410 days to complete. Of the 87 cases that remained

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open, the average open case time was 589 days. In a 2019 investigation done by the intelligence community, inspectors general themselves found that only one case out of 190 sided in favor of the whistleblower, and that case lasted 742 days. A case from 2010 remained open. Although GAO has recommended that the Inspector General of the Intelligence Community “establish specific timeliness objectives for completing investigations,” this recommendation has not yet been implemented.

**Proposed Report Language:**
The Office of the Inspector General of the Office of the Director of National Intelligence shall coordinate with intelligence community Offices of Inspectors General to track and include in its semiannual reports the number of PPD-19 reprisal complaints closed during the reporting period, including the number of days each agency took to close each complaint and whether each agency met statutory and internal policy timelines for each complaint that was closed or remained open.

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