



**Testimony of Scott Amey, General Counsel  
Project On Government Oversight (POGO)  
before the  
House Subcommittee on Government Management, Organization,  
and Procurement  
Committee on Oversight and Government Reform**

**Federal Contracting: Why Do Risky Contractors Keep Getting  
Rewarded With Taxpayer Dollars?**

July 18, 2007

Good afternoon Chairman Towns, Ranking Member Bilbray, and Members of the Subcommittee.

Thank you for inviting me to testify today about the state of the federal contracting system. I am Scott Amey, General Counsel and a Senior Investigator with the Project On Government Oversight (POGO), a nonpartisan public interest group. Founded in 1981, POGO investigates and exposes corruption and other misconduct in order to achieve a more accountable federal government.<sup>1</sup> Throughout its twenty-six-year history, POGO has created a niche in investigating, exposing, and helping to remedy waste, fraud, and abuse in government spending. One of POGO's most celebrated investigations uncovered outrageously overpriced military spare parts such as the \$7,600 coffee maker and the \$436 hammer.

The subject of today's hearing is near and dear to POGO. In 2002, POGO created, and has since maintained, a Federal Contractor Misconduct Database ([www.contractormisconduct.org/](http://www.contractormisconduct.org/)). POGO is releasing a new and improved Federal Contractor Misconduct Database (FCMD) today, which serves as the model for the kind of database the government should create for use by acquisition professionals and the public. POGO's FCMD includes criminal, civil, and administrative cases, as well as investigative findings. Misconduct cases fall into the following fifteen misconduct types: (1) antitrust, (2) cost/labor mischarge, (3) defective pricing, (4) environment, (5) ethics, (6) government contract fraud, (7) health, (8) human rights, (9) import/export, (10)

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<sup>1</sup> For more information on POGO, please visit [www.pogo.org](http://www.pogo.org).

intellectual property, (11) labor, (12) non-governmental contract fraud, (13) securities, (14) tax, and (15) other.

With federal contract dollars doubling over the past few years, POGO hopes that the FCMD will be used by government officials to make well-informed contracting decisions. Additionally, POGO hopes that the FCMD will be used by Congress, the media, the public, and other contractors when reviewing a contractor's history of responsibility, an important prerequisite for receiving taxpayer dollars.

## **The Changing Contracting Landscape**

Many acquisition reforms have been implemented over the years. The reforms, however, have not been all they were cracked up to be. The problems created by the reforms became starkly apparent during the Afghanistan and Iraq Wars, and after Hurricane Katrina devastated the Gulf Coast. These events showed that contracting decisions often place taxpayer dollars – and sometimes lives – at risk. They also highlighted how drastically different the federal government's contracting landscape is now from what it was in the past:

- “Best value” contracting<sup>2</sup> eroded taxpayer protections and allowed contracts to be steered to well-connected, influential, risky, and sometimes undeserving contractors.
- Contract award dollars have increased from \$219 billion in fiscal year 2000 to nearly \$420 billion in fiscal year 2006.<sup>3</sup>
- Contract administration and oversight have decreased.
- The acquisition workforce is stretched too thin.
- Approximately 50 percent of all contract dollars were awarded on a sole source (a rarity in the private sector because competition benefits the buyer)<sup>4</sup> or a one-bid basis in fiscal year 2005.<sup>5</sup>
- Spending on services now outpaces spending on goods – this shift is important because the government has moved away from buying tangible items to intangible services.<sup>6</sup>
- Although the number of contractor bid protests have fluctuated, the sustain rates (when GAO agrees that a contract was awarded improperly) have increased to

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<sup>2</sup> “Best value” contracting had been used in certain instances, but was added to the Federal Acquisition Regulation (FAR) in August 1997. A policy debate continues pitting “low price” against “best value” (FAR Subpart 1.102) as the preferred method for buying goods and services. Buying goods and services at the “lowest practical cost” would allow for some buying flexibility and provide more objective criteria that would prevent the unjustified steering of contracts to risky or politically-connected companies.

<sup>3</sup> Federal Procurement Data Service – Next Generation, “Agencies Submitting Data to FPDS-NG,” as of July 12, 2007. Available at [http://www.fpdsng.com/downloads/agency\\_data\\_submit\\_list.htm](http://www.fpdsng.com/downloads/agency_data_submit_list.htm).

<sup>4</sup> Acquisition Advisory Panel, “Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress,” December 2006, at p. 2-3.

<sup>5</sup> 1423 Panel Data, at p. 3, 7. Available at <http://acquisition.gov/comp/aap/documents/FPDS-NG%20Data%20Presentation%2007%2024%2006.pdf>.

<sup>6</sup> 1423 Panel Report, at Executive Summary, at p. 2. Available at <http://acquisition.gov/comp/aap/documents/DraftFinalReport.pdf>.

nearly 30 percent.<sup>7</sup> That sustain rate illustrates that flaws in contract award decisions – both honest and egregious – are being made at a higher rate than in the past.

## **Detecting and Preventing Federal Contractor Misconduct**

Contractor misconduct is not on the wane. Currently, there is widespread evidence of waste, fraud and abuse in federal contracting. According to the Department of Justice, the federal government has collected \$18 billion in settlements and judgments in cases involving allegations of fraud against the government since 1986; a record \$3.1 billion of that amount was collected in 2006 alone.<sup>8</sup> The President's Council on Integrity and Efficiency's (PCIE) and Executive Council on Integrity and Efficiency's (ECIE) fiscal year 2006 "Progress Report to the President" also states that Office of Inspectors General activities resulted in \$9.9 billion in potential savings from audit recommendations and \$6.8 billion in investigative recoveries.<sup>9</sup>

However, those Councils identified "procurement and grant management" and "performance management and accountability" as two of the most serious management and performance challenges facing federal agencies.<sup>10</sup> The government officials who are making the decisions about contracting are at a disadvantage because they do not have the tools they need to make genuine decisions regarding a contractor's history of responsibility.

Although the government is recovering federal funds from prosecutions and enforcement actions, more can be done preventively to ensure contract dollars are not awarded to risky contractors at the contract award stage. The problem is that agencies do not have comprehensive contractor responsibility information readily available to use to make award determinations. A federal contractor responsibility database will shine additional light on agency audits, investigative findings, criminal and civil actions, and suspensions and debarments. This information can be used to benefit contracting decisions by ensuring that government contracts go to responsible contractors.

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<sup>7</sup>GAO Report (GAO-07-155R), Letter to The Honorable J. Dennis Hastert, Speaker of the House of Representatives, November 15, 2006, at p. 2. Available at <http://www.gao.gov/special.pubs/bidpro06.pdf>.

<sup>8</sup> DOJ Press Release (06-783), "Justice Department Recovers Record \$3.1 Billion in Fraud and False Claims in Fiscal Year 2006," November, 21, 2006. Available at [http://www.usdoj.gov/opa/pr/2006/November/06\\_civ\\_783.html](http://www.usdoj.gov/opa/pr/2006/November/06_civ_783.html).

<sup>9</sup> It is important to note that the changed contracting landscape has made it more difficult to detect misconduct. The contracting reforms of the 1990s focused on increasing contracting efficiency, but in the process, transparency and accountability were left by the wayside, making it harder for the Department of Justice and Inspectors General to identify misconduct. For example, as a result of these reforms, the government generally does not have access to contractor cost or pricing data, and it no longer awards contracts based on tangible best price practices. The government has moved away from awarding contracts based on specific performance requirements with specific materials and specific tests. Instead, contract awards are made based on contractor promises and "spiral acquisitions," which essentially prevent the government from holding contractors to any fixed standards.

<sup>10</sup> President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), "A Progress Report to the President, Fiscal Year 2006," no date provided, at p. Results in Brief & Foreword. Available at <http://www.ignet.gov/randp/fy06apr.pdf>.

Instead of relying on post-award and post-performance audit actions, the government needs to prevent contractors with risky responsibility and performance histories from receiving taxpayer dollars from the beginning of the contract process.

### **POGO's Federal Contractor Misconduct Database (FCMD)**

Contractor misconduct is a term used by POGO to highlight instances when companies that sell goods or services to the government violate laws or regulations, or are accused of wrongdoing in their dealings with the government, persons, and private entities. POGO has compiled this Federal Contractor Misconduct Database (FCMD) because there is no government repository for federal contractor misconduct information. At best, the General Services Administration's (GSA) Excluded Parties List System (EPLS) lists suspended or debarred individuals and contractors, but it does not document a contractor's overall performance or responsibility track record.<sup>11</sup> Additionally, the government's Past Performance Information Retrieval System (PPIRS)<sup>12</sup> provides contractors' past performance information to the federal acquisition community for use in making responsibility determinations. But PPIRS is not publicly available and, because bad actors continue to receive federal contract awards, it is not being used effectively.

POGO's new and improved version of its FCMD is a compilation of misconduct and alleged misconduct committed by the top 50 federal government contractors between 1995 and the present. POGO compiled these instances through searches of public records. We do not claim to have identified every instance of misconduct and alleged misconduct involving these contractors. We have attempted, however, to find and categorize specific instances of misconduct that should help government officials. One of the major upgrades in this version of the FCMD is the upload of the primary source documentation about each instance. POGO has tirelessly scanned the internet and utilized the Freedom of Information Act (FOIA) to find government and contractor press releases, settlement agreements, court documents, and other government reports to get these primary sources.

In an effort to provide an accurate database, and to allow the contractors to respond for the record, POGO contacted every contractor featured in the FCMD. POGO's correspondence and the contractor's reply (if received) are included on each contractor's page.

### **What Does the FCMD Show Us?**

First, the FCMD reveals that in fiscal year 2005 the top 50 federal contractors received nearly 50 percent of taxpayer dollars awarded in contracts -- \$178 billion of the approximately \$384 billion awarded in contracts.<sup>13</sup> Second, since 1995, the 50 contractors

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<sup>11</sup> The Excluded Parties List System (EPLS) lists individuals and contractors prohibited, for a specified time period, from receiving future government contracts. A search can be performed for both current and archived individuals or contractors. Available at <http://www.epls.gov/>.

<sup>12</sup> Available at <https://www.ppirs.gov/>.

<sup>13</sup> Federal contract award totals are available at [http://www.fpdsng.com/downloads/top\\_requests/FPDSNG5YearViewOnTotals.xls](http://www.fpdsng.com/downloads/top_requests/FPDSNG5YearViewOnTotals.xls).

featured in this database – some of the world’s largest military hardware manufacturers, information technology consultants, construction firms, education institutions, and energy companies – paid fines, penalties, restitution, or civil settlements totaling over \$12 billion, averaging roughly \$1 billion per year. Specifically, POGO has identified over 370 instances of misconduct totaling over \$12.6 billion,<sup>14</sup> (See Attachment A, “Top 50 Contractors”). Monetary penalties range from the relatively small, such as a \$2,400 fine paid by Honeywell in a state environmental enforcement action, to the record-setting \$3.56 billion civil verdict returned against Exxon Mobil in a natural gas royalties underpayment case. Nearly half of the penalties were under \$1 million.

In an effort to prevent contracting with the “usual suspects” that have misconduct rap sheets, government officials must look for alternative, responsible vendors. Some of the largest contractors hired to respond to Hurricane Katrina have checkered histories of misconduct: Bechtel has 11 instances; Halliburton/KBR has 13; and Fluor has 21. Instances of misconduct include: false claims against the government, violations of the Anti-Kickback Act, fraud, conspiracy to launder money, retaliation against workers’ complaints, and environmental violations.

Despite these repeat offenses, the Army recently awarded its LOGCAP IV (the Army’s logistics support services contract) contract to Fluor and KBR. Dyncorp, which under its parent company Veritas Capital Fund, L.P.<sup>15</sup> only has 1 instance of misconduct in POGO’s FCMD, could also receive a portion of the LOGCAP contract. According to the Army’s press release,<sup>16</sup> three other contractors bid on the LOGCAP contract – one can only wonder if they were less risky contractors.

The government is shirking its responsibility to protect its constituents, the American public, by not vetting contractors to determine whether they are truly responsible. POGO is concerned that pre-award contractor responsibility determinations have fallen by the wayside. Federal agencies seem more concerned with awarding contracts quickly rather than ensuring that the government gets the best goods or services at the best practical price from responsible contractors. POGO hopes that the FCMD will be used by government officials to make well-informed contracting decisions.

### **Award Contracts to Responsible Contractors ONLY**

Government contracts are predicated on a basic principle – taxpayer dollars should only be awarded to responsible contractors. The Federal Acquisition Regulation (FAR) Subpart 9.103 states:

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<sup>14</sup> If a single incident resulted in several distinct violations, such as when one act of wrongdoing results in the filing of separate criminal, civil, or administrative cases (for example, the ethics violation involving Darleen Druyun, Michael Sears, and Boeing), POGO treated these violations as separate instances to prevent bundling of names, case types, and financial terms. This system is not intended to artificially inflate the total number of instances. Rather, it is intended to be user-friendly by allowing better sorting and searching.

<sup>15</sup> Dyncorp was acquired by Veritas Capital Fund in 2005.

<sup>16</sup> Available at <http://www.army.mil/-news/2007/06/28/3836-asc-selects-logcap-iv-contractors/>.

(a) Purchases shall be made from, and contracts shall be awarded to, **responsible prospective contractors only**.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. (Emphasis added.)

For a government contracting officer to determine whether a contractor is responsible, the contractor must meet the following standards. These standards, however, are extremely vague and provide no concrete definitions of responsibility. According to FAR Subpart 9.104-1, contractors must:

(a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104-3(a));

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) **Have a satisfactory performance record** (see 9.104-3(b) and Subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;

(d) **Have a satisfactory record of integrity and business ethics.**

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See 9.104-3(a).)

(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see 9.104-3(a)); and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.<sup>17</sup> (Emphasis added.)

These standards, especially subparts (c) and (d), require contractors to prove that they have a satisfactory performance and responsibility record. However, there is no

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<sup>17</sup> FAR Subpart 9.104-1.

established government-wide definition of satisfactory. As a result, these standards have not prevented the government from awarding contracts to risky contractors. These include contractors that have defrauded the government, violated laws and regulations, had poor work performance during a contract, or had their contracts terminated for default. Continuing to award contracts to such contractors undermines the public's confidence in the fair-play process and exacerbates distrust in our government. It also results in bad deals for the agency and for the taxpayer.

Even the president of the contractor industry association, the Professional Services Council, agrees. In an April column in *Washington Technology*, Stan Soloway wrote: "After all, no one advocates the award of government contracts to proven crooks.... No one wants to see his or her tax dollars go to companies or individuals that routinely and blithely violate the law."<sup>18</sup> He argues, however, that there are too many subjective contractor responsibility factors, placing contractors at a disadvantage.

POGO agrees that responsibility determinations should not be overly subjective. A comprehensive government-operated federal contractor misconduct database would be an objective tool, which can only improve contracting officers' ability to make well-informed contract awards. If contractors are as clean as they claim, and the government and the contractors' internal systems for holding them accountable are working well, contractors should not have anything to worry about by adding transparency to the responsibility determination process.

### **Current Tools To Discourage Misconduct Are Not Working**

The award fee system is one example of a contracting tool that is not working. The Government Accountability Office (GAO) has criticized the government for awarding fees to programs that were behind schedule or over budget.<sup>19</sup> The GAO found:

DOD practices—such as routinely paying its contractors nearly all of the available award fee, amounting to billions of dollars, regardless of whether the acquisition outcomes fell short of, met, or exceeded expectations; rolling an estimated \$669 million in unearned or withheld award fees to future evaluation periods; and paying a significant portion of the available fee for what award-fee plans describe as "acceptable, average, expected, good, or satisfactory" performance—all lessen the motivation for the contractor to strive for excellent performance.<sup>20</sup>

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<sup>18</sup> Stan Soloway, *Washington Technology*, "The debate on contractor responsibility flares anew," April 9, 2007. Available at [http://www.washingtontechnology.com/print/25\\_05/30430-1.html](http://www.washingtontechnology.com/print/25_05/30430-1.html).

<sup>19</sup> GAO Report (GAO-06-66), "Defense Acquisitions: DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes," December 19, 2005, at p. 2. Available at <http://www.gao.gov/new.items/d06666.pdf>.

<sup>20</sup> *Ibid*, at p. 14.

This reward system actually provides incentives to perform poorly. The award fee system is so broken that James I. Finley, Deputy Under Secretary of Defense, Acquisition and Technology, had to issue a memorandum stating:

Award fee contracts must be structured in ways that will focus the government's and contractor's efforts on meeting or exceeding cost, schedule, and performance requirements. The ability to earn award fees needs to be directly linked to achieving desired program outcomes.<sup>21</sup>

Another problem that faces the government is the under-utilization of the suspension and debarment system as a tool to weed out risky contractors. According to PCIE's and ECIE's joint report to the President, there were 7,300 suspensions or debarments in 2006. This number is alarming because it shows that the suspension and debarment tool is only used against small and mid-sized contractors because no large contractors were suspended in 2006.<sup>22</sup> All federal agencies under-use suspension and debarment against large contractors that supply the majority of the nearly \$420 billion worth of goods and services to the federal government each year. In the future, the government needs to emphasize the importance of preventing risky contractors from receiving taxpayer dollars.

Only one of the top 50 contractors in POGO's FCMD, Boeing, has been suspended or debarred from doing business with the government since 1995. In July 2003, several Boeing individuals and its launch vehicle unit were suspended from receiving new federal contracts for approximately twenty months because of a pending criminal investigation into Boeing's unlawful possession and use of another contractor's proprietary data. The only time that the government used this system is when the misconduct harmed another company, rather than the numerous instances in which misconduct harmed taxpayers or public health. In the end, even that one instance of suspension was undermined when the government granted Boeing a waiver on three occasions to award the company new contracts.

Furthermore, POGO could only find one other instance of suspension/debarment of a large contractor in the past 20 years – the General Electric Aircraft Division was suspended for five days. In other words, in almost twenty years – during which billions of taxpayer dollars were spent and countless acts of contractor misconduct took place – the federal government ceased doing business with large federal contractors on only two occasions.

Currently, suspension and debarment officers do not believe that contractor misconduct should be used to hold contractors accountable because it would constitute a punishment,

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<sup>21</sup> James I. Finley, Deputy Under Secretary of Defense, Acquisition and Technology, Memorandum on "Award Fee Contracts," March 29, 2006. Available at <http://www.acq.osd.mil/dpap/policy/policyvault/2006-0334-DPAP.pdf>.

<sup>22</sup> For more information on the suspension and debarment system, please visit POGO's investigative report, Federal Contractor Misconduct: Failures of the Suspension and Debarment System. Available at <http://www.pogo.org/p/contracts/co-020505-contractors.html>.



which is not permitted under contracting laws and regulations. POGO believes, however, that instances of misconduct should be considered when evaluating a contractor's current level of responsibility. The suspension and debarment system should be used to protect the government from risky contractors at both the bidding and award stage.

### **Why Is The Government So Reluctant To Disrupt Business-As-Usual?**

In 2006, the top 50 contractors spent over \$146 million on lobbying. During the 2006 election cycle, they donated over \$15 million to federal campaigns. These totals are only a conservative estimate – the campaign spending total only includes contributions made by contractors' eponymous Political Action Committees (PACs) to federal candidates, and both the campaign spending and lobbying totals do not include the expenditures of business or trade organizations to which contractors belong. None of these numbers include the money spent on lobbying the Executive Branch.

The big political contributors were General Electric, Northrop Grumman, Exxon Mobil, Lockheed Martin, General Dynamics, and Boeing, each with combined 2006 lobbying and 2005-2006 campaign expenditures exceeding \$10 million. Perhaps it is not a coincidence that Lockheed Martin, Boeing, Northrop Grumman, and General Dynamics were the top four recipients of federal contractors in FY 2005.<sup>23</sup>

At the same time, contractors were subsidizing the travel of high-ranking government officials. While most of these government trips, retreats, and junkets are touted as educational or "fact-finding," the inescapable fact is that travelers are often treated like vacationing VIPs, while contractors enjoy many hours of valuable face time with policymakers.

According to the Center for Public Integrity, the top 50 contractors sponsored nearly 400 trips taken by Members of Congress, their staffers, and families between 2000 and 2005. More than half of the trips were underwritten by just five contractors – the University of California, Boeing, General Electric, BNFL Corporation, and L-3 Communications. Again, this does not take into account the trips sponsored by the various industry-wide trade groups which represent the interests of nearly all the contractors in the database.

Admittedly, outsourcing government functions to the private sector and the changes in contracting laws have made adequately safeguarding taxpayers' interests an incredibly daunting challenge. As a result, speed and convenience frequently trump accountability and oversight.

In addition to agency and contractor accountability, the government has a large task in ensuring that competition drives its decisions. Yet, in some instances only a handful of contractors can provide the needed services or goods. As a result, as time goes on, the government becomes increasingly dependent on particular contractors to fulfill particular functions – if one of the contractors is suspended or debarred, competition is seriously

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<sup>23</sup> GE and Exxon Mobile rank 16<sup>th</sup> and 41<sup>st</sup> in contract award dollars respectively.

diminished. In the aforementioned Boeing suspension case, for example, the Air Force found it necessary to temporarily lift the suspension because it had important work to do and hiring Boeing was in the best interest of the government.

All of these factors help to explain why agencies do not find large contractors risky, the rarity of contractor suspensions and debarments, as well as why, more and more, the government is cutting corners in the contracting process itself, awarding open-ended contracts in non-competitive circumstances. Still, POGO believes that contractor responsibility should be a primary consideration when awarding contracts and holding contractors accountable.

### **The Contractors and Federal Spending Accountability Act of 2007**

Since 2002, POGO has worked with Representative Carolyn Maloney (D-NY) and supported her on contractor accountability issues. The most recent version of the bill (the Contractors and Federal Spending Accountability Act of 2007 – H.R. 3033), which was introduced on July 12, 2007, is a great step forward in preventing risky contractors from receiving federal contract awards. The bill orders the government to create a contractor performance and responsibility database, directs agencies to debar certain repeat wrongdoers, and requires contractors to report during the bid process suspensions, debarments, criminal, civil, and administrative proceedings and agreements, and contract terminations for default that occurred in the past five years. H.R. 3033 will help ensure that taxpayer dollars are going to responsible contractors.

H.R. 3033 would also bring closed-door agreements into the light. In 2005, the GAO reported that agencies sometimes use administrative agreements and compelling reason determinations as alternatives to suspension and debarment.<sup>24</sup> Those actions are believed to improve contractor responsibility, ensure compliance through monitoring, and maintain competition. The GAO report stated:

[N]either ISDC [Interagency Suspension and Debarment Committee] nor any other entity collects or reports data on administrative agreements or compelling reason waivers. Increased sharing of information on the terms and effectiveness of past and current administrative agreements would be helpful to officials in considering new agreements. Similarly, reporting information on compelling reason determinations would allow suspension and debarment officials to assess the use of these waivers and would promote greater transparency and accountability.<sup>25</sup>

In the past, there has also been Senate support for a federal contractor responsibility database. On October 6, 2005, Senator Frank Lautenberg (D-NJ) introduced the “Truth in

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<sup>24</sup> GAO Report (GAO-05-479), “Federal Procurement: Additional Data Reporting Could Improve the Suspension and Debarment Process,” July, 2005, at p. 3. Available at <http://www.gao.gov/new.items/d05479.pdf>.

<sup>25</sup> Ibid, at p. 3.

Contracting” Amendment to the Department of Defense Appropriations Act of 2006.<sup>26</sup> That amendment passed the Senate by voice vote, although it was later removed in conference. Senator Lautenberg’s amendment attempted to require “the Pentagon to maintain a list of ALL contractor misconduct”<sup>27</sup> (Emphasis in original). The amendment stated:

Publication of Information on Federal Contractor Misconduct.--The Secretary of Defense shall maintain a publicly-available website that provides information on instances of improper conduct by contractors entering into or carrying out Federal contracts, including instances in which contractors have been fined, paid penalties or restitution, settled, plead guilty to, or had judgments entered against them in connection with allegations of improper conduct.

The contractor responsibility movement has expanded as Congress and the public learn more about federal contracting decisions. Bills or amendments have been proposed that would prevent war profiteering,<sup>28</sup> hold contractors accountable for abuse of the federal tax system,<sup>29</sup> and debar government contractors that hire undocumented workers.<sup>30</sup>

What is clear is that the current system is not preventing risky contractors from receiving new contracts. There is already an anti-misconduct system in place. Contractors have codes of business conduct. The Defense Industry Initiative (DII) sets standards for ethical conduct.<sup>31</sup> Federal contracting laws permit withholding future federal funds.<sup>32</sup> Federal laws require contracts only to be awarded to responsible contractors.<sup>33</sup> There is a suspension and debarment system to prevent risky contractors from receiving future taxpayer dollars.<sup>34</sup> But yet, the contractors that have been found again and again to have engaged in various types of misconduct, some of which are very serious violations of the law, continue to receive federal contract awards.

Clearly something needs to be done. Full and open transparency is required to improve the responsibility determination system, agencies should prevent risky contractors from receiving taxpayer dollars, the Department of Justice must hold contractors accountable, and contractors with repeat instances of misconduct or poor performance have to alter their corporate cultures.

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<sup>26</sup> Senate Amendment 1963 (109<sup>th</sup> Cong. - H.R. 2863).

<sup>27</sup> Senator Lautenberg Press Release, October 6, 2005. Available at <http://lautenberg.senate.gov/newsroom/record.cfm?id=254543>.

<sup>28</sup> S. 119, the War Profiteering Prevention Act of 2007, introduced on January 4, 2007, by Senator Leahy.

<sup>29</sup> “The FAR does not currently require contracting officers to take into account a contractor’s tax debt when assessing whether a prospective contractor is responsible.” GAO Report (GAO-07-742T), “Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System,” April 19, 2007, at p. 3. Available at <http://www.gao.gov/new.items/d07742t.pdf>.

<sup>30</sup> H.R. 2 (Fair Minimum Wage Act of 2007), Sec. 249.

<sup>31</sup> For more information visit <http://www.dii.org/>.

<sup>32</sup> FAR Subpart 52.216-26(a)(3) (Payments of Allowable Costs Before Definitization) allows the government to withhold up to 15 percent of reimbursements to a contractor for specified contracts.

<sup>33</sup> FAR Subpart 9.1. Available at [http://www.arnet.gov/far/current/html/Subpart%209\\_1.html#wp1084058](http://www.arnet.gov/far/current/html/Subpart%209_1.html#wp1084058).

<sup>34</sup> For more information visit <http://www.epls.gov/>.

## **Conclusion**

For years POGO has heard the same argument from contractors that “no more regulations are needed.” The contractor industry associations generally contend that good contractors should not be placed in the same basket as one or two bad apples. That argument is usually followed with the caveat that bad actors must alter their corporate culture to promote accountability.

It is POGO’s position that there is no better way to compel contractors to make that cultural shift than to add light to a very dark system. POGO’s database is a step in the right direction. Representative Maloney’s bill (H.R. 3033) is a giant leap toward better contracting decisions and the ability to weed out risky contractors, especially those with repeated histories of misconduct or poor performance.

Thank you for inviting me to testify today. I look forward to working with Chairman Towns, Ranking Member Bilbray, and the entire Subcommittee to further explore how the government can hold agencies and contractors accountable.

## **Attachment A**



# Federal Contractor Misconduct Database

## Top 50 Contractors

<u>Contractor</u>	<u>Federal Contract \$</u> (FY2005)	<u>Instances of</u> <u>Misconduct</u> (Since 1995)	<u>Misconduct \$</u> (Since 1995)
1. <u>Lockheed Martin</u>	\$24944.6m	39	\$ 288.5m
2. <u>Boeing Company</u>	\$19718.2m	23	\$ 856.0m
3. <u>Northrop Grumman</u>	\$15111.3m	21	\$ 382.0m
4. <u>General Dynamics</u>	\$12592.0m	8	\$ 58.9m
5. <u>Raytheon Company</u>	\$9218.2m	15	\$ 475.6m
6. <u>Halliburton</u>	\$5907.2m	13	\$ 194.2m
7. <u>BAE Systems</u>	\$5392.5m	1	\$ 0.0m
8. <u>United Technologies Corporation</u>	\$5050.4m	10	\$ 322.6m
9. <u>L-3 Communications</u>	\$4737.1m	0	\$ 0.0m
10. <u>SAIC</u>	\$4540.4m	8	\$ 7.6m
11. <u>University of California</u>	\$4364.4m	17	\$ 37.4m
12. <u>McKesson</u>	\$4332.4m	4	\$ 982.4m
13. <u>Computer Sciences Corporation</u>	\$4143.1m	3	\$ 31.7m
14. <u>Bechtel Corporation</u>	\$4007.3m	11	\$ 2.1m
15. <u>ITT Industries</u>	\$2608.0m	3	\$ 100.0m
16. <u>General Electric</u>	\$2526.3m	26	\$ 29.0m
17. <u>Honeywell International Inc.</u>	\$2355.2m	23	\$ 573.4m
18. <u>Humana</u>	\$2220.2m	7	\$ 121.4m
19. <u>United Space Alliance</u>	\$2041.6m	1	\$ 0.0m
20. <u>Booz Allen Hamilton</u>	\$1963.1m	1	\$ 3.4m
21. <u>Health Net, Inc.</u>	\$1932.5m	10	\$ 349.8m
22. <u>Triwest Healthcare Alliance Company</u>	\$1810.0m	0	\$ 0.0m
23. <u>URS Corporation</u>	\$1806.4m	3	\$ 0.6m
24. <u>Alliant Techsystems Inc.</u>	\$1798.5m	2	\$ 8.3m
25. <u>Textron, Inc.</u>	\$1769.1m	6	\$ 105.9m
26. <u>Electronic Data Systems</u>	\$1734.1m	3	\$ 259.3m
27. <u>Fluor Corporation</u>	\$1698.2m	21	\$ 186.3m
28. <u>BP Amoco P.L.C.</u>	\$1523.6m	10	\$ 691.9m
29. <u>California Institute of Technology</u>	\$1519.2m	0	\$ 0.0m
30. <u>GM/GDLS Defense Group</u>	\$1513.3m	0	\$ 0.0m
31. <u>Oshkosh Truck Corporation</u>	\$1480.2m	0	\$ 0.0m
32. <u>Public Warehousing Company KSC</u>	\$1425.3m	0	\$ 0.0m
33. <u>FedEx Corporation</u>	\$1410.3m	11	\$ 72.4m
34. <u>MacAndrews AMG Holdings</u>	\$1406.2m	0	\$ 0.0m
35. <u>BNFL Corporation</u>	\$1338.5m	9	\$ 4.6m
36. <u>Stewart &amp; Stevenson Services</u>	\$1312.1m	1	\$ 7.0m
37. <u>Veritas Capital Fund, L.P.</u>	\$1251.1m	1	\$ 0.0m
38. <u>IAP Worldwide Services, Inc.</u>	\$1227.7m	2	\$ 0.2m
39. <u>Battelle Memorial Institute</u>	\$1142.9m	1	\$ 0.3m
40. <u>AmerisourceBergen</u>	\$1077.6m	7	\$ 9.2m
41. <u>Exxon Mobil</u>	\$1072.9m	25	\$4836.9m
42. <u>Bell Boeing Joint Program</u>	\$1051.3m	0	\$ 0.0m

43. <u>Royal Dutch Shell PLC</u>	\$1029.5m	7	\$ 828.7m
44. <u>CACI International, Inc.</u>	\$1000.7m	1	\$ 0.0m
45. <u>IBM Corporation</u>	\$ 992.4m	7	\$ 800.6m
46. <u>Alliance Contractor Team</u>	\$ 985.9m	2	\$ 1.1m
47. <u>Harris Corporation</u>	\$ 953.4m	3	\$ 1.6m
48. <u>UT-Battelle LLC</u>	\$ 944.3m	2	\$ 0.3m
49. <u>Dell, Inc.</u>	\$ 934.5m	3	\$ 0.9m
50. <u>Washington Group International</u>	\$ 902.5m	3	\$ 0.1m
<b>Total</b>	<b>\$177817.8m</b>	<b>374</b>	<b>\$12632.3m</b>