



**Testimony of Scott Amey, General Counsel
Project On Government Oversight (POGO)
before the House Committee on Homeland Security’s
Subcommittee on Management, Investigations, and Oversight**

**“Waste, Abuse, & Mismanagement: Calculating
the Cost of DHS Failed Contracts”**

September 17, 2008

Good morning, Chairman Carney, Ranking Member Rogers, and Members of the Subcommittee.

Thank you for inviting me to testify today about the state of Department of Homeland Security contracting. I am Scott Amey, General Counsel and 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.¹

Throughout its twenty-seven-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. Since that time, particularly in the 1990s, many acquisition reforms have been implemented. The reforms, however, were not all they were cracked up to be. The problems created by the reforms became starkly apparent after the beginning of the Afghanistan and Iraq Wars, and after Hurricane Katrina devastated the Gulf Coast. These events showed that contracting decisions were placing taxpayer dollars – and sometimes lives – at risk.

The war on terror and the post-hurricane recovery and reconstruction effort also highlighted how drastically different the federal government’s contracting landscape is now from what it was in past decades. Contracting dollars have increased, oversight has decreased, the acquisition workforce is stretched thin, and spending on services now outpaces spending on goods. (Because the return on services is more difficult to quantify than on goods, contracting is even more vulnerable to waste, fraud, and abuse.) If the problems with the contracting process are not corrected now, POGO believes the next consulting, management, or information technology contract will mirror the misspending characterized by the hammers and coffee makers in the mid-1980s. We provide the following procurement history and recommendations as a roadmap to assist Congress in better overseeing the use of taxpayer dollars.

¹ For more information on POGO, please visit www.pogo.org.

Contracting Past

The 1980s witnessed some of the strongest pro-taxpayer contracting reforms implemented to date. During the decade, the Competition in Contracting Act (CICA) was passed,² the Cost Accounting Standards (CAS) Board was reestablished,³ the False Claims Act was strengthened,⁴ and there was a greater emphasis placed on the Truth in Negotiations Act (TINA)⁵. Those actions increased competition in contracting, provided uniformity in contractor accounting practices, prevented fraud, and allowed the government to review contractor cost or pricing data to ensure taxpayer dollars were being spent wisely.

In the 1990s, the Clinton Administration's effort to reinvent government so that it operated more like the private sector and decrease contracting red-tape succeeded to a point. But acquisition reform – which was part of reinventing government – resulted in several laws that made government contracts more susceptible to misconduct, cost more, and get results contractors care about rather than making the government “work better, cost less, and get results Americans care about.”⁶ Those laws reduced contract oversight, making it difficult for government investigators and auditors to find waste, fraud, and abuse,⁷ and created risky contracting vehicles that often place public funds at risk.

Finally, “best value contracting”⁸ further swung the pendulum away from protecting taxpayers and allowed contracts to be steered to well-connected, influential, and sometimes undeserving contractors.

² 10 U.S.C. § 2304(a) (1) (applicable to DOD); 41 U.S.C. § 253(a) (1) (applicable to other executive agencies); 41 U.S.C. § 403(6) (definition of “full and open competition”).

³ The Board's regulations are codified at 48 CFR, Chapter 99. *See* FAR Part 30 (Cost Accounting Standards Administration).

⁴ The False Claims Act (31 U.S.C. §§ 3729-3733) was originally passed in 1863 at the urging of President Abraham Lincoln, who was attempting to halt the Civil War profiteering that was crippling the Union Army. Amendments to the Act in 1986, championed by Senator Charles Grassley (R-IA), increased the penalties for fraud and encouraged private citizens to come forward if they were aware of corporations defrauding the government.

⁵ 10 U.S.C. § 2306a, 41 U.S.C. § 254b.

⁶ The Clinton-Gore initiative was known as the “National Performance Review” and the “National Partnership For Reinventing Government.” Available at <http://govinfo.library.unt.edu/npr/index.htm>.

⁷ The Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103-355), the Federal Acquisition Reform Act of 1996 (FARA) (Public Law 104-106), and the Services Acquisition Reform Act of 2003 (SARA) (Public Law 108-136).

⁸ “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” 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 a more objective criteria that would prevent the unjustified steering of contracts to non-responsible, questionable, or politically-connected companies.

Contracting Present

Simply stated, the contracting landscape has drastically changed in recent years and the government must do a better job to ensure that taxpayer dollars are spent wisely. Federal contract spending has dramatically increased while government control, competition, and oversight has been reduced. This recipe bodes ill for taxpayers, which is demonstrated by the problems below.

The Big Picture

- Contract spending for goods and services has doubled in recent years, increasing from \$219 billion in fiscal year 2000 to over \$465 billion in fiscal year 2007.⁹
- The federal government is spending more on services than goods.¹⁰
- No-bid contracts, a rarity in the private sector,¹¹ have become commonplace in the government. Nearly 40 percent of all contract spending is awarded without competition.¹²
- In addition, one-bid offers account for 20 percent of “competed” contract spending.¹³
- The government is relying on contractors to execute jobs once performed by civil servants, including policy-making and budgetary decisions.¹⁴ The federal contracting workforce, depending on the definition that you use, has leveled-off since the mid-1990s.¹⁵

⁹ Federal Procurement Data Service - Next Generation, “Trending Analysis Report for the Last 5 Years and “List of Agencies Submitting Data to FPDS-NG,” as of September 4, 2008. Available at http://www.fpdsng.com/downloads/top_requests/FPDSNG5YearViewOnTotals.xls and http://www.fpdsng.com/downloads/agency_data_submit_list.htm.

¹⁰ Acquisition Advisory Panel, “Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress,” December 2006, “Introduction,” pp. 2-3. Available at <http://www.acqnet.gov/comp/aap/documents/DraftFinalReport.pdf>. Hereinafter “1423 Panel Report.”

¹¹ 1423 Panel Report, “Executive Summary,” p. 2.

¹² 1423 Panel, “Findings and Recommendations on Data,” August 10, 2006, pp. 3-4. Hereinafter “1423 Panel Data.” Available at <http://www.acqnet.gov/comp/aap/documents/Data%20Findings%20and%20Recommendations%20Charts%2008%2010%2006.pdf>. See percentages in USAspending.gov, at <http://www.usaspending.gov/fpds/tables.php?tabtype=t1&rowtype=a&subtype=p&sorttype=2007>.

¹³ 1423 Panel Data, at p. 7.

¹⁴ See FAR Subpart 7.503. Available at http://www.arnet.gov/far/current/html/Subpart%207_5.html#wp1078196.

¹⁵ 1423 Panel Report, p. 3.

- The vastly expanded definition of “commercial item” has resulted in decreased oversight of and accountability for contractors because they no longer have to provide certified cost or pricing data for the “commercial” goods or services.¹⁶
- Interagency contracting continues to increase – GSA schedule sales totaled \$35.1 billion in FY 2006.¹⁷ Although interagency contracts provide agencies flexibility to purchase commonly required goods and services, which can save taxpayers money, they are also risky and prone to abuse. Monitoring and oversight have been very poor and competition has been lacking.¹⁸
- The government recovered \$2 billion in settlements and judgments in cases involving allegations of fraud against the government in FY 2007 and has recovered more than \$20 billion since 1986.¹⁹
- Bid protest sustain rates (when GAO agrees that a contract was awarded improperly) are 27 percent,²⁰ which illustrates that flawed contract award decisions – both honest and egregious – are being made at a troubling rate.

Homeland Security

- DHS contract spending has increased from \$3.4 billion in fiscal year 2003 to \$12.2 billion in fiscal year 2007.²¹ DHS spent \$11 billion on contracts in FY 2008 thus far.²²
- The use of sole source contracts decreased from approximately 40 percent in FY

¹⁶ Commercial item contracts have increased from \$23 billion in 2005 to nearly \$31 billion in 2006. Available at http://www.fpdsng.com/downloads/FPR_Reports/2005_fpr_section_III_agency_views.pdf (p. 6 of 205) and http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_III_agency_views.pdf (p. 6 of 201).

¹⁷ GAO Report (GAO-07-310), High-Risk Series: An Update, January 2007, p. 77. Available at <http://www.gao.gov/new.items/d07310.pdf>.

¹⁸ *Id.*

¹⁹ DOJ Press Release (07-873), “Justice Department Recovers \$2 Billion for Fraud Against the Government in FY 2007; More Than \$20 Billion Since 1986,” November, 1, 2007. Available at http://www.usdoj.gov/opa/pr/2007/November/07_civ_873.html.

²⁰ GAO Report (GAO-08-247R), Letter to The Honorable Nancy Pelosi Speaker of the House of Representatives, December 10, 2007, p. 2. Available at <http://www.gao.gov/special.pubs/bidpro07.pdf>.

²¹ FPDS-ND, “List of Agencies Submitting Data to FPDS-NG,” as of September 4, 2008. Available at http://www.fpdsng.com/downloads/agency_data_submit_list.htm.

²² *Id.*

2006 to 20 percent in FY 2007.²³ Sole source contracts might decrease again in 2008 – currently only 14 percent.²⁴

- Approximately 42 percent (\$6.6 billion) of DHS contract dollars were awarded in fixed-price contracts in fiscal year 2006²⁵ – a sharp decrease from the approximately 65 percent (\$6.8 billion) awarded in fixed-price contracts in fiscal year 2005.²⁶
- Commercial item acquisitions accounted for \$354 million in FY 2006²⁷ – a decrease from the \$467 million in commercial item acquisitions in 2005.²⁸
- Performance-based service acquisitions, contracts that focus on outcomes rather than prescriptive requirements, accounted for nearly \$1.8 billion in FY 2006²⁹ – an increase from \$1.46 billion in 2005.³⁰
- DHS awarded 31.6 percent of its contract dollars to small businesses – exceeding the general 23 percent small business goal.³¹

²³ USAspending.gov, DHS Summary Data for FY 2006 and 2007. Available at http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=70&detail=-1&datatype=T&reptype=r&database=fpds&fiscal_year=2006&submit=GO and http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=70&detail=-1&datatype=T&reptype=r&database=fpds&fiscal_year=2007&submit=GO.

²⁴ Available at http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=70&detail=-1&datatype=T&reptype=r&database=fpds&fiscal_year=2008&submit=GO.

²⁵ FPDS-NG, “Federal Procurement Report FY 2006,” p. 89 of 201. Available at http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_III_agency_views.pdf.

²⁶ FPDS-NG, “Federal Procurement Report FY 2005,” p. 89 of 205. Available at http://www.fpdsng.com/downloads/FPR_Reports/2005_fpr_section_III_agency_views.pdf.

²⁷ FPDS-NG, “Federal Procurement Report FY 2006,” p. 90 of 201. Available at http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_III_agency_views.pdf.

²⁸ FPDS-NG, “Federal Procurement Report FY 2005,” p. 90 of 205. Available at http://www.fpdsng.com/downloads/FPR_Reports/2005_fpr_section_III_agency_views.pdf.

²⁹ FPDS-NG, “Federal Procurement Report FY 2006,” p. 90 of 201. Available at http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_III_agency_views.pdf.

³⁰ FPDS-NG, “Federal Procurement Report FY 2005,” p. 90 of 205. Available at http://www.fpdsng.com/downloads/FPR_Reports/2005_fpr_section_III_agency_views.pdf.

³¹ FPDS-NG, “Small Business Goaling Report FY 2006.” As of July 1, 2007. Available at http://www.fpdsng.com/downloads/top_requests/FPDSNG_SB_Goaling_FY_2006.pdf. According to the FPDS-NG website, the “Small Business Goaling Report FY 2007” will be available soon.

As the above information shows, DHS is doing some things well. For instance, DHS's use of risky contract vehicles (sole source and commercial item acquisitions) decreased in FY 2006 and the agency met its small business contracting goal. DHS, however, decreased its use of fixed-price contracts and is doing more performance-based contracting, which have been problematic and expose taxpayers to risk.³² That stated, POGO has a number of additional concerns about the state of DHS contracting and some hidden costs to the agency and taxpayers.

DHS Responsibility

DHS's mission is to prevent terrorist attacks in the U.S., reduce America's vulnerability to terrorism, and minimize damage from terrorism and natural disasters. To fulfill this mission, DHS has a vast organizational mandate that ranges from protecting the President (U.S. Secret Service), to protecting our oceans (U.S. Coast Guard), to protecting our borders (Customs & Border Protection and Immigration & Customs Enforcement), to protecting our airports (Transportation Security Administration), and to helping every town, city, county, and state in relief, recovery, and reconstruction efforts (Federal Emergency Management Agency). As a result, DHS has to be on the cutting edge of innovation, technology, and services to stay at least one step ahead of threats to our nation. Yet, it still must protect the U.S. taxpayers.

It is difficult to tell if DHS is meeting its contracting goals – especially considering the emergency contracting environment in which the agency often works. Last year, however, the House Homeland Security Committee released a report on “The State of Homeland Security,” which rated DHS in light of how it performed on seventeen homeland security issue areas.³³ POGO was disappointed to learn that no DHS component received a grade higher than a “B,” and that four components received a “C-” or lower. The two functions at the heart of today's hearing – “Emergency Preparedness/FEMA” and “Procurement” – each received a “C-.” The fact that DHS received a C- is indicative of the broader problems that DHS is experiencing in contracting and that it must become more responsible when spending taxpayer dollars.

While the Committee's report card stated that DHS succeeded in awarding some contracts, it also found for the most part that the agency failed in three key procurement measures – “cost, performance/meeting requirements, and schedule. Unfortunately, the Department's [DHS's] track record in all three is poor.”³⁴ The Committee further stated that “oversight and

³² GAO Report (GAO-08-263), “Department of Homeland Security: Better Planning and Assessment Needed to Improve Outcomes for Complex Service Acquisitions,” April 2008. Available at <http://www.gao.gov/new.items/d08263.pdf>.

³³ U.S. House of Representatives Committee on Homeland Security, “The State of Homeland Security: The 2007 Annual Report Card on the Department of Homeland Security,” April 13, 2007, p. 5. Hereinafter “DHS Report Card.” Available at <http://homeland.house.gov/SiteDocuments/20070413143439-12273.pdf>.

³⁴ DHS Report Card, at p. 66.

management of basic procurement processes [have] been weak.”³⁵ The report highlighted procurement missteps in the Deepwater program,³⁶ the Integrated Surveillance Intelligence System (ISIS), and eMerge2. Those contracting missteps compound the many mistakes made prior to and after Hurricane Katrina – some of the same contracting problems that occurred in the “aftermath of Hurricane Andrew in 1992, which leveled much of South Florida.”³⁷

The Committee’s findings are confirmed by more recent examples of waste, fraud, abuse, and mismanagement in DHS contracting.

- Last week, a news report surfaced about a DHS IG finding millions of dollars wasted on sole source Hurricane Katrina contracts .³⁸ The IG report states that the total of wasted dollars could be at least \$1 billion.
- After the Government Accountability Office (GAO) detailed problems with advanced spectroscopic portal monitors (ASPs),³⁹ devices thought to detect radiation and identify radiological materials, the Washington Post last week reported that the program will be scaled back with cost much higher than originally estimated.⁴⁰
- GAO recently found that SBInet, a “multiyear, multibillion-dollar program to secure the nation’s borders through, among other things, new technology,

³⁵ *Id.*

³⁶ POGO applauds the Coast Guard’s decision to take over the role of lead systems integrator for the \$24 billion Deepwater acquisition program. That shift in management and control of the program should enhance oversight of and accountability in the Deepwater program.

³⁷ GAO Report (GAO-06-442T), “Hurricane Katrina: GAO’s Preliminary Observations Regarding Preparedness, Response, and Recovery,” March 8, 2006, p. 2. Available at <http://www.gao.gov/new.items/d06442t.pdf>.

³⁸ Hope Yen, Associated Press, “Audit: FEMA wasted millions on no-bid contracts,” September 10, 2008. Available at http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0908/091008ap2.htm.

³⁹ GAO Report (GAO-07-581T), Combating Nuclear Smuggling: DHS’s Decision to Procure and Deploy the Next Generation of Radiation Detection Equipment Is Not Supported by Its Cost-Benefit Analysis,” Statement of Gene Aloise, Director Natural Resources and Environment, March 14, 2007. Available at <http://www.gao.gov/new.items/d07581t.pdf>. GAO Report (GAO-07-133R), “Combating Nuclear Smuggling: DHS’s Cost-Benefit Analysis to Support the Purchase of New Radiation Detection Portal Monitors Was Not Based on Available Performance Data and Did Not Fully Evaluate All the Monitors’ Costs and Benefits,” October 17, 2006. Available at <http://www.gao.gov/new.items/d07133r.pdf>.

⁴⁰ Robert O’Harrow Jr., Washington Post, “Radiation Detector Plan Falls Short, Audit Shows Concerns About Cost and Effectiveness Could Curtail Program,” September 4, 2008, D01. Available at http://www.washingtonpost.com/wp-dyn/content/article/2008/09/03/AR2008090303326_pf.html.

increased staffing, and new fencing and barriers,” is in an uncertain state.⁴¹ The GAO stated that “important aspects of SBInet remain ambiguous and in a continued state of flux, making it unclear and uncertain what technology capabilities will be delivered and when, where, and how they will be delivered.” Additionally, “requirements have not been effectively defined and managed” and management has not been effective.⁴²

These three examples highlight the cost of mismanagement. The risks and vulnerabilities associated with poor contract planning, inadequate management, and deficient oversight cost taxpayers money. Although many government officials placed a lot of the blame on acquisition workforce shortages, more investigations and audits of DHS’s overall contracting system should be forthcoming in an effort to better protect the best interests of both DHS and taxpayers.

While DHS is struggling with its contracting procedures, its contractors are lining up to learn the tricks to receiving more contract dollars. Fedmarket.com held a seminar on May 26, 2006, with topics including: “The advantages and disadvantages of selling to DHS,” “Ways to keep your investment in the DHS market reasonable and your sales costs down,” “Locating DHS sales opportunities,” “Identifying DHS procurement decisions makers,” and “Simplified Acquisition Procedures.”⁴³ Although this is common in and around the Beltway, it emphasizes the fact that contractors are jumping at the opportunity to learn how to maximize some, if not all, of the agency’s contracting vulnerabilities.

Although many Members of Congress, media outlets, and public interest groups point fingers at the contractors, the problem is much deeper. DHS is in a vulnerable position: the agency has poor contract management policies and procedures, it is buying infant technologies, and buying under emergency circumstances when competition is, by necessity, limited or non-existent. As a result, DHS is frequently placed in a position mirroring the Department of Defense in the 1980s. In order to avoid the pitfalls that we have seen through history, Congress and DHS must place a greater emphasis on full and open competition, market research, contractor data, pre-award decisions, and on post-award monitoring and administration. These criteria will help establish integrity in DHS’s buying system.

⁴¹ GAO Testimony (GAO-08-1148T) Before the Committee on Homeland Security, House of Representatives, “Secure Border Initiative DHS Needs to Address Significant Risks in Delivering Key Technology Investment,” Statement of Randolph C. Hite, Director Information Technology Architecture and System Issues Wednesday, September 10, 2008. Available at <http://homeland.house.gov/SiteDocuments/20080910100952-17753.pdf>.

⁴² *Id.*, at p. 2.

⁴³ Fedmarket.com, “Selling to the Department of Homeland Security Seminar,” May 26, 2006. Available at <http://www.fedmarket.com/seminars/DHS.shtml>.

Awards to Responsible Contractors

DHS must improve its ability to weed out risky contractors. Government contracts are predicated on a basic principle – taxpayer dollars should be awarded to responsible companies. FAR Subpart 9.103 states that “[p]urchases shall be made from, and contracts shall be awarded to, **responsible prospective contractors only**” and that “[i]n the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility.”⁴⁴ (Emphasis added.)

As POGO has been urging Congress for years,⁴⁵ the government needs a contractor responsibility database to ensure that taxpayer dollars are not at risk.⁴⁶ Questions should be raised within DHS, and the government in general, when contracts are awarded to risky contractors. These include contractors that have defrauded the government or violated laws or regulations, contractors that had poor work performance during a contract, or contractors that 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 DHS and taxpayers.

In an effort to prevent contracting with the “usual suspects” that have long rap sheets of misconduct, DHS should look for responsible vendors during its planning and contingency contracting phase. Some of the largest contractors hired to respond to the hurricanes in 2005 have checkered histories of misconduct dating back thirteen years: CH2M Hill (5 instances); Bechtel (12 instances); Halliburton/KBR (20 instances); and Fluor (22 instances). 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.⁴⁷ DHS is shirking its responsibility to vet contractors and determine whether they are truly responsible. POGO is concerned that pre-award contractor responsibility determinations have fallen to the wayside. DHS and other federal agencies seem more concerned with awarding contracts quickly rather than ensuring the government gets the best goods or services at the best practical price.

Another problem that faces DHS is the under-utilization of the suspension and debarment system as a tool to weed out risky contractors. To be fair, the problem is not limited to DHS – all federal agencies under-use suspension and debarment against large contractors that supply the majority

⁴⁴ Available at http://www.arnet.gov/far/current/html/Subpart%209_1.html#wp1084058.

⁴⁵ POGO published a Federal Contractor Misconduct Database (FCMD) in 2002 and updated it in 2007. Available at <http://www.contractormisconduct.org/>. A new and improved version of that database, including misconduct involving the Top 100 federal contractors will be released in fall 2008.

⁴⁶ FAR Subpart 9.104-1 (“General standards”) outlines insignificant responsibility regulations. Available at http://www.arnet.gov/far/current/html/Subpart%209_1.html#wp1084075.

⁴⁷ POGO’s FCMD at <http://www.contractormisconduct.org/>.

of the \$465 billion worth of goods and services to the federal government each year. Overall, the government needs to reemphasize the importance of preventing risky contractors from receiving future taxpayer dollars.

The Revolving Door

Another issue of concern is the aging workforce and the potential for conflicts of interest in the small homeland security contracting world. According to the GAO, 15 percent of DHS's workforce is greater than 55 years old and 20 percent of the workforce is eligible for retirement by fiscal year 2012.⁴⁸ There is a high likelihood that we will see many public servants leave the government in the coming months, and accept jobs with DHS contractors.

POGO has coined the term the "politics of contracting,"⁴⁹ and we have learned about many instances of questionable employee movement from DHS to the private sector and vice-versa. Examples include government employees going to work for a sole source contract awardee and another government employee who is allegedly overseeing his former company. POGO urges Congress to regulate the transition through the revolving door and many of the ethical hurdles that it presents. DHS should also increase transparency regarding movement between the public and private sectors, and increase oversight and enforcement of regulated behavior.

Outsourcing Government

Evidenced by the Coast Guard's Deepwater program failures, DHS should be looking at the jobs, functions, and positions that are outsourced to service contractors. POGO is not sold on the sales pitch that contractor employees are more effective and cost less as many proponents of outsourcing claim. DHS should be conducting personnel audits to determine if outsourcing went too far. Deepwater set a high watermark in showing what happens when a government agency turns over virtually all management functions to the private sector – a program behind schedule, over budget, and not meeting performance expectations.

Outsourcing also raises personal and organizational conflicts of interest issues. The GAO studied the problem and found:

Decisions to contract for professional and management support services were

⁴⁸ GAO Report (GAO-08-630T), Testimony Before the Senate Special Committee on Aging, "Older Workers, Federal Agencies Face Challenges, but Have Opportunities to Hire and Retain Experienced Employees," Statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues and Robert N. Goldenkoff, Director, Strategic Issues, April 30, 2008, pp. 7-8. Available at <http://www.gao.gov/new.items/d08630t.pdf>.

⁴⁹ "POGO Investigative Report - "The Politics of Contracting." The report details the revolving door between the government and large private contractors where conflict of interest is the rule, not the exception. It also highlights specific revolving door cases and sheds light on the flawed system that allows them. June 29, 2004. Available at <http://www.pogo.org/p/contracts/c/co-040101-contractor.html>.

driven by the need for staff and expertise to get programs and operations up and running. However, for the nine cases we reviewed, program officials did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments.⁵⁰

Many other federal agencies are looking at this important issue and are not outsourcing work that should be performed by public servants. DHS must ensure that it isn't losing control over its mission and accountability of its management.

Recommendations

Acquisition reform and the changed contracting landscape have placed taxpayer dollars at risk. POGO has witnessed the weakening or bypassing of taxpayer protections, and the unraveling of free market forces that protect government agencies. For years, IG and GAO reports have exposed specific contracting missteps in individual cases of waste, fraud, and abuse. But the findings and recommendations from the individual cases are applicable to the larger systemic problems with DHS's, and the rest of the federal government's, contracting laws and regulations. I am not certain that anyone can provide the actual cost of DHS contracting missteps, and therefore more needs to be done to identify contracting waste, fraud, and abuse, as well as prevent those errors from reoccurring in the future.

POGO has highlighted the following government-wide contracting problems, which we hope will be considered by the Committee:

1. **Cozy Negotiations** – To make every effort to get the best value for the taxpayer, the government must promote aggressive arm's-length negotiations with contractors.
2. **Inadequate Competition** – To better evaluate goods and services and get the best value, the government must encourage genuine competition so that it can correct the trend of entering into non-competitive contracts in 40 percent of federal purchases.
3. **Lack of Accountability** – To ensure that taxpayer dollars are being spent responsibly, the government must regularly monitor and audit contracts after they are awarded.
4. **Lack of Transparency** – To regain public faith in the contracting system, the government must ensure that the contracting process is open to the public, including contractor data and contracting officers' decisions and justifications.
5. **Risky Contracting Vehicles** – To prevent abuse, the government must ensure that risky contract types that have been abused in the past (including performance-based

⁵⁰ GAO Report (GAO-07-990), "Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services," September 2007, p. 3. Available at <http://www.gao.gov/new.items/d07990.pdf>.

contracts, interagency contracts, “task and delivery orders,” also known as Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, under multiple award and government-wide acquisition contracts (GWACs), time & material contracts, purchase card transactions, commercial item purchases, and other transaction authority) are only used in limited circumstances and are accompanied by audit and oversight controls.

Specifically, POGO respectfully requests that this Committee consider the following recommendations to improve DHS contracting:

1. Ensure that full and open competition is the rule and restore the definition of “competitive bidding” to require at least two bidders.
2. Require that risky contract vehicles are used in limited circumstances and only when supported by proper justifications and oversight protections.
3. Review DHS commercial item and service acquisitions to ensure that a commercial marketplace exists.
4. Examine the use of ID/IQ and GWAC contracts to ensure that contractors are not receiving improper fees.
5. Investigate how prime contractors bill the government at their own labor rate(s) rather than the rate that they pay their subcontractors on Time and Material or Labor Hour (T&M/LH) contracts.
6. Confirm that contractors are not performing inherently governmental functions, which must be performed by civil servants.
7. Reestablish the taxpayer-protection checks and balances that have been removed from the contracting system.
8. Review DHS’s use of the suspension and debarment system, especially as it has been applied to large contractors with repeated histories of misconduct.
9. Provide a fair playing field for all DHS contractors by requiring public posting of all task and delivery order opportunities on FedBizOpps website, and require copies of contracts and task and delivery orders awards be made public on USAspending.gov.
10. Examine and improve the conflict of interest and ethics system to ensure that DHS employees comply with all federal conflict of interest laws and regulations.

Thank you for inviting me to testify today. I look forward to working with Chairman Carney and Ranking Member Rogers, and the entire Subcommittee to further explore how the Department of Homeland Security can reduce contracting missteps that cost taxpayers.