

*Exposing Corruption Exploring Solutions*

# Project On Government Oversight

July 12, 2010

Ms. Hada Flowers  
General Services Administration  
Regulatory Secretariat (MVCB)  
1800 F Street, NW, Room 4041  
Washington, DC 20405

Re: FAR Case 2009-004—Enhancing Contract Transparency

Dear Ms. Flowers:

The Project On Government Oversight (POGO) is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more effective, accountable, open, and ethical federal government. As such, POGO is interested in enhancing transparency in the area of federal contract spending.

In this vein, POGO strongly supports the intent of the advanced notice of proposed rulemaking under FAR case 2009-004, Enhancing Contract Transparency (75 Fed. Reg. 26916, May 13, 2010). This case will amend the FAR to enable the online posting of contracts and task and delivery orders. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are “seeking information that will assist in determining how best to amend the Federal Acquisition Regulation (FAR) to enable public posting of contract actions, should such posting become a requirement in the future, without compromising contractors’ proprietary and confidential commercial or financial information.” Specifically, the Councils request how to best protect contractor proprietary and confidential commercial or financial information. Although POGO agrees with the intent of the rulemaking, the Councils should reconsider the focus of the rule and shift it toward disclosure of information rather than concealment of information. In order to regain public faith in the contracting system, the government must provide open public access to information on the contracting process, including actual copies of contracts rather than coded summary data, and contracting officers’ decisions and justifications.

POGO finds it highly unlikely that contractors will stop competing for federal awards if contract information is disclosed. Some states have already adopted a move toward a more transparent contracting system. For example, the Commonwealth of Virginia allows public access to procurement transactions, (Code of Virginia § 2.2-4342). The public is permitted to see cost estimates and competitive bids and offers. The exclusion of trade

secrets or proprietary information is only permitted when “the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary,” (Code of Virginia § 2.2-4342(f)).

When contract information is publicly accessible, genuine competition will increase and the government will be better situated to receive discounts and rebates that will benefit the government and taxpayers—especially as budget constraints take hold. Simply stated, the government will be in a much improved position to leverage its robust buying power.

The best way to introduce this transparency in contracting is for USAspending.gov to become the one-stop shop for government officials and the public for federal contract spending information. This includes actual copies of each contract, task and delivery order, modification, amendment, other transaction agreement, grant, and lease, including price and cost information. Additionally, proposals, solicitations, award decisions and justifications (including all documents related to contracts awarded with less than full and open competition and single bid contract awards), audits, performance and responsibility data, and other related government reports should be incorporated in USAspending.gov.

In order to store and provide access to this information, the government must shift to a government-wide integrated electronic system that would create and store pre- and post-award contracting records. That system should permit automatic redactions of only the most protected information or data fields, including classified information and other information that would potentially cause substantial harm to a contractor, but only when those exceptions are not outweighed by the public benefit that would be realized by the disclosure of such information. Additionally, as described in the Virginia example above, the burden should be placed on the prospective contractors and awardees to justify withholding information from public view.

The notice inquired about whether a public meeting on this subject would be beneficial. Holding a public meeting on the methods by which contracts will be made public and the types of information that should be publicly accessible would allow various stakeholders, including the public, to share different viewpoints on the topic. If such a meeting is held, POGO would like to be a presenter.

In his memorandum on Transparency and Open Government, President Obama asks agencies to “disclose information rapidly in forms that the public can readily find and use” through the use of innovative technologies and systems. Additionally, the Administration’s emphasis on disclosure under FOIA and its Open Government Directive are efforts to place government information in the hands of the public. POGO believes that the concepts contained in those initiatives should be incorporated into the FAR, including Subparts 5.4 (“Release of Information”) and 24.2 (“Freedom of Information Act”), so that an emphasis on user-friendly tools and transparency are embedded throughout the contracting community.

