

Project On Government Oversight
Exposing Corruption, Exploring Solutions

**Presentation Before the
Acquisition Advisory Panel
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Who is POGO?

Founded in 1981,
POGO is a politically-independent,
nonprofit watchdog that strives
to promote a government that
is accountable to the citizenry.

POGO's Mission

To investigate, expose, and seek to remedy systemic abuses of power, mismanagement, and subservience by the federal government to powerful special interests

POGO's Five Areas of Investigation

- Defense
- Contract Oversight
- Open Government
- Homeland Security
- Energy and Environment

How POGO Works



Recent Procurement Scandals

- Darleen Druyun
- Federal Technology Service (FTS)
- Purchase Cards
- Iraq Sole Source Contracts
- C-130J
- Abu Ghraib

Urban Procurement Myths

- Having to turn to Japan for radios during the first Gulf War
- Equal Allocation of Overhead
- Hordes of companies turned off from government work because of "red tape"

Contracting Comparisons

- Goods v. Services
 - Some distinctions, but services actually need MORE oversight
 - Differentiating goods and services is facilitating damaging procurement policies
 - The 1980s - 1990s spare parts horror stories will be reborn in tomorrow's service acquisition rip-offs

Contracting Differences

- Commercial v. Government: The differences
 - Shareholder money v. taxpayer dollars
 - Innovation v. risks
 - Defense industry consolidation and monopsony position of government makes comparison to commercial model largely irrelevant

Vulnerabilities

1. Negotiations
2. Competition
3. Accountability
4. Transparency
5. Contracting Vehicles

Vulnerabilities (cont'd)

- Death by a 1000 paper cuts – each year new industry-driven reforms
 - Acquisition System Improvement Act of 2005 -- H.R. 2067 (ASIA)
 - Acquisition Reform Working Group 2005 Legislative Package – no Truth in Negotiations Act (TINA), no control clauses, increased Cost Accounting Standards (CAS) dollar thresholds, CAS waivers, limit small business to subcontracts, no transparency

Negotiations

- Commercial system would work if the government operated like the commercial market
- Government should aggressively negotiate like contractors negotiate with their vendors
- Should be arms-length cooperation not partnerships with industry
- There are no incentives to reduce prices

Negotiations (cont'd)

- Government should not merely accept schedule prices or contractor proposals
- Federal Technology Service (FTS) & Federal Supply Schedule (FSS) awarded without full and open competition
- Fear of political interference from within an agency, Congress, or the industry prevents aggressive negotiating

Competition

- Full & Open competition should be **REQUIRED**
 - \$109 billion of awards are straight non-competitive awards
 - \$40 billion that does not meet the looser “fair opportunity to be considered” standard for Indefinite Delivery/Indefinite Quantity (IDIQ) contracts
- No phony competitions
 - Examine the definition of competition
 - Too much sole source contracting
 - “Competitive” one-bid contracts
 - Best value can mean best price

Competition (cont'd)

- Schedules and Indefinite Delivery/Indefinite Quantity (IDIQ) contracts stifle price competition
- Contractors say: “Avoid public procurements like the plague ... with as little competition as possible.”
(Fedmarket.com 6/25/04)
- Department of Defense (DoD) grants too many competition waivers ... hindering innovation and best value
- Should strengthen bid protests
- Bundling hurts small business

Accountability

- There should be no more bad-mouthing oversight by federal contracting community
- Continuous monitoring is essential
 - Sen. McCain saves the day with review of the C-130J and Future Combat System (FCS) programs
 - General Accountability Office (GAO) found that in government contracting offices, monitoring “is not as important” as awarding contracts
- Audits
 - Contracting Officers’ only tools ensuring fair and reasonable prices
 - GAO is “hindered” by decline in pre-award & post-award audits
 - Post-award audits average annual recovery \$18 million
 - Increase in pre-award audits never materialized
 - Contractors want no post-award audits

Accountability (cont'd)

- Re-embrace the Truth in Negotiations Act (TINA), Cost Accounting Standards (CAS), and Audits
- Workforce overworked & understaffed
- Over 5,000 contracting personnel cut over 10 years
 - Nearly 50% at the Department of Defense (DoD)
 - Bad for moral
 - Insufficient for protecting taxpayer dollars
 - Absurd considering the explosion of contract award dollars

Transparency

- No public confidence that the system is truly full and open
 - Little or no documentation of contracting officers' decisions
 - No transparency of delivery/task orders
 - Misuse of redactions
- Vendors need to know about all opportunities for government business
- Public and vendors must see government Request for Proposals (RFPs), Request for Information (RFIs), Request for Quotes (RFQs), and solicitations
- e-Buy is not transparent, need for all contracts over \$25,000 to be on Fed Biz Ops

Contracting Vehicles

- Best value contracting
 - Good in theory, but a license to use unfettered discretion
 - Fosters scope or requirements creep
 - Misused contract vehicles
- Performance-based contracting
 - How well are incentives measured and monitored?
 - The Department of Energy (DOE) relied on unvalidated contractor performance data
 - Should only be used in instances with simple easily specified services

Contracting Vehicles (cont'd)

- Interagency contracts – HIGH RISK
 - Rapid growth from \$14.7 billion in FY 2000 to \$32.5 billion in FY 2004
 - Lack of compliance with competition requirements
 - Lack of reduced costs envisioned
 - 60% lacked documentation proving effective negotiations
 - Outside the scope
 - Responsibility on both contractors and the government
 - No justification or documentation
 - Inadequate monitoring
 - Excludes small businesses
 - Must scale back use

Contracting Vehicles (cont'd)

- Time & Material (T&M) and Labor hour (LH)
 - Two industry witnesses have testified that they do not prefer to use T&M contracts and would not use them for Information Technology (IT) work
 - Billing without producing a product or service
 - The Senate receded from an amendment placing additional safeguards and limitations
 - The General Services Administration Inspector General found “heavy use without justification”

Contracting Vehicles (cont'd)

- Share in Savings
 - No reliable baselines
 - Energy contracts show increased costs of 8% to 56%
 - Too risky for small businesses
- Purchase Card fraud is not tolerable
 - Non-competitive micropurchases without checks or balances

Contracting Vehicles (cont'd)

- Commercial Items
 - POGO 100% behind purchasing truly commercial items
 - Should restrict definition to items actually “sold” in substantial quantities in commercial marketplace
 - Should eliminate “of a type” commercial item definition
- Other Transaction Authority
 - Expanded to Department of Homeland Security
 - Congressional intent lost – up to 97% to “traditional” contractors
 - No controls (*i.e.*, Competition in Contracting Act (CICA), Truth in Negotiations Act (TINA), Cost Accounting Standards (CAS), Procurement Integrity Act (PIA))

Conclusions

- Best Value (*i.e.*, reduced costs, enhanced efficiency, solutions-oriented, performance-based contracting) works
 - In limited circumstances
 - With government oversight
- POGO urges you to invite or receive testimony from retired contracting personnel

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