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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

July 6, 2010

The Honorable Dr. Steven Chu
Secretary
United States Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Dear Secretary Chu:

As part of the Subcommittee's ongoing oversight of contract management, I am writing to request information regarding the use of contractors to respond to Congress.

Under the Federal Acquisition Regulation (FAR), federal agencies are not permitted to use contractors to respond to Congressional requests. The FAR mandates that agencies shall not use contracts to perform "inherently governmental functions" including the "drafting of Congressional testimony [and] responses to Congressional correspondence."[1] The Office of Management and Budget has provided similar guidance:

> Because of the appearance of private influence with respect to documents that are prepared for Congress or for law enforcement or oversight agencies and that may be particularly sensitive, contractors are not to be used for the drafting of Congressional testimony; responses to Congressional correspondence; or agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.[2]

Last month, I learned that the Defense Department hired a contractor to gather and consolidate data in response to a request for information from the Subcommittee regarding counternarcotics contracts in Latin America. At the Subcommittee's hearing on that topic on May 20, 2010, Defense Department Deputy Assistant Secretary for Counternarcotics and Global Threats testified that the person responsible for legislative affairs in his office when he arrived was a contractor.[3]

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[1] Federal Acquisition Regulation § 7.5.

[2] Office of Management and Budget, *Policy Letter 92-1* (Sept. 23, 1992).

[3] Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight, *Hearing on Counternarcotics Contracts in Latin America* (May 20, 2010).

Other agencies also use contractors to respond to Congress. For example, in 2009 the Department of Energy Office of Inspector General found that the Department of Energy had assigned contractor employees responsibility for providing information and responses to Congressional inquiries, which the DOE-OIG deemed inherently governmental.[4]

To help the Subcommittee understand the extent to which federal agencies use contractors to respond to Congress, I request that you provide a list of all contracts used by the Department of Energy during fiscal year 2009 to provide services relating to the preparation of Congressional testimony or the response to Congressional correspondence. Please submit your response using the spreadsheet provided with the following information for each contract:

(1) The contract number;

(2) The name of the contractor and any subcontractors;

(3) A brief description of the contract scope;

(4) Whether work was performed under a task order and, if so, a brief description of the task order scope;

(5) The timeframe to perform the work;

(6) The name of the organization requesting the contract/task order;

(7) A brief description of work performed;

(8) A brief description of the Congressional request, including the date of the request and the name of the Member and/or Committee; and

(9) The cost of the contract/task order, including ceiling and total amount spent.

In addition, please provide all audit reports performed by internal audit organizations or the Office of Inspector General regarding the use of contractors to provide services relating to the preparation of Congressional testimony or the response to Congressional correspondence, and any written guidance or policies regarding the use of contractors to provide services relating to the preparation of Congressional testimony or the response to Congressional correspondence.

The jurisdiction of the Subcommittee on Contracting Oversight is set forth in Senate Rule XXV clause 1(k); Senate Resolution 445 section 101 (108th Congress); and Senate Resolution 73 (111th Congress). An attachment to this letter provides additional information about how to respond to the Subcommittee's request.

Please contact Tesa Lanoy with the Subcommittee staff at (202) 228-3978 with any questions.

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[4] U.S. Department of Energy Office of Inspector General, *Management Controls Over the Use of Service Contracts at the Office of River Protection* (April 2009) (OAS-M-09-02).

Sincerely,

Claire McCaskill
Chairman
Subcommittee on Contracting Oversight

cc: Scott Brown
Ranking Member
Subcommittee on Contracting Oversight

Enclosure