

November 30, 2012

The Honorable Claire McCaskill
Chairman, Subcommittee on Contracting Oversight
Committee on Homeland Security and Government Affairs
United States Senate
Washington, DC 20510

Dear Chairman McCaskill:

Following the Subcommittee's March 29, 2012, hearing on the cost of contractors, you and Senator Daniel Akaka submitted questions for the record (QFRs) to government witnesses. The Office of Management and Budget (OMB), Department of Homeland Security (DHS), and Department of the Army have submitted responses to those questions. The Project On Government Oversight (POGO) submitted written testimony for the record in March, and would like to take the opportunity to comment on the agencies' responses as well.

OMB's Response

In response to whether OMB plans to release additional guidance on in-sourcing and cost analyses, OMB stated that it expected to issue guidance by mid-July of this year to further shape the guidance set forth in Memorandum M-09-26, which OMB issued in July 2009¹; specifically, OMB promised to identify "where analyses are likely to be most effective." OMB also advised agencies to "strengthen the use of service contract inventories." It should be noted that as of the date of this letter, OMB has yet to issue further guidance.

Three observations are relevant:

1. Although OMB memorandum M-09-26 mandated that agencies perform a cost analysis that addresses the full costs of government and private sector performance and provide "like comparisons" of costs that are of a sufficient magnitude to influence the final decision on the most cost effective source of support for the organization," OMB has neither offered guidance on how to conduct detailed cost comparisons nor implemented any policies for hiring a cost-efficient workforce.
2. OMB has not released any results from the memo's mandated "intermediate steps," which include having improved human capital planning and management of the multi-sector workforce, conducting an analysis of one program in which there are concerns about the reliance

¹ Memorandum from Peter R. Orszag, Director of Office of Management and Budget to the Heads of Executive Departments and Agencies, regarding Managing the Multi-Sector Workforce, July 29, 2009.
http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_fy2009/m-09-26.pdf (Downloaded October 9, 2012)

on contractors, and establishing sound in-sourcing guidelines. OMB provided no evidence that any agency has complied with those steps or that any agency has reduced its reliance on service contractors. It has been three years since OMB released M-09-26, and the operative value of the memorandum should be questioned. OMB should be held accountable for its failure to act.

3. POGO sees no evidence that any federal agency has complied with OMB's advice to "strengthen the use of service contract inventories." Equally important, not a single federal agency reports a service contract inventory that contains cost-comparison data. Consequently, even if agency decision-making were based on a review of service contract inventories to rebalance its government/contractor workforce in accordance with criteria for cost-effective decision-making, these inventories are devoid of the data necessary to make rational workforce decisions. Accordingly, POGO supports congressional efforts to amend service contract inventory reporting to provide agencies with enhanced data on service contracts.²

DHS's Responses

DHS's answers to the Subcommittee's QFRs raise additional questions.³ Consequently, POGO submitted a Freedom of Information Act (FOIA) request to obtain relevant information related to DHS's Balanced Workforce Strategy (BWS). Unfortunately, DHS's FOIA response failed to provide detailed records and data that would help better understand how its workforce comparison program is saving taxpayer dollars by reducing reliance on costly contractors.

Additionally, it should be noted that DHS has identified an estimated \$28 million in savings that resulted when it insourced work in 2009 and 2010, and an additional \$2.3 million using the BWS. Nevertheless, if DHS isn't using the BWS on all new and existing contracts, and conducting a cost comparison analysis in all cases, the savings only reflect a small portion of those that could be realized.

Army's Responses

The Army provided a response that contained many helpful answers.⁴ Most critically, its responses revealed that the Army is unique in creating the Contracting Manpower Reporting

² Project On Government Oversight, Letter to Senators Sherrod Brown and Kirsten Gillibrand and Representative Maurice Hinchey, "POGO Challenges DoD's Disclosure of Budgeting and Spending Service Contract Data," October 25, 2012, Exhibit A, Enclosure 4, Attachment A. <http://www.pogoarchives.org/m/co/enclosure4-20121017.pdf> (hereinafter POGO's Letter to Senators Sherrod Brown and Kirsten Gillibrand and Representative Maurice Hinchey)

³ Post-Hearing Questions for the Record Submitted to Debra Tomchek, Executive Director, Balanced Workforce Program Management Office, U.S. Department of Homeland Security, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight hearing on Contractors: How Much Are They Costing the Government? March 29, 2012. From Senator Claire McCaskill: <http://www.hsgac.senate.gov/download/mccaskill-qfr-to-tomchek-for-march-29-2012-hearing>; and from Senator Daniel Akaka: <http://www.hsgac.senate.gov/download/akaka-qfr-to-tomchek-for-march-29-2012-hearing> (Downloaded November 8, 2012)

⁴ Post-Hearing Questions for the Record Submitted to Jay Aronowitz, Deputy Assistant Secretary, Force Management, Manpower and Resources, U.S. Army, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight hearing on Contractors: How Much Are They Costing the Government? March 29, 2012. From Senator Claire McCaskill: <http://www.hsgac.senate.gov/download/mccaskill->

Application (CMRA) to collect much of the information that could result in improved human capital spending.

The Army's testimony provided insight into the unique strengths of its CMRA, but its answers to your QFRs left several questions unanswered:

1. The Army testified that it uses the CMRA to collect critical data, but not in the budget process (as required by 10 U.S.C. § 235). The Army indicated that it would do so in the future, but didn't indicate an expected date of implementation. Now that there is a new Deputy Assistant Secretary, POGO believes the Army should define its precise plans and timelines for complying with the law.

2. The Army testified it had not used the data collected from the CMRA to conduct any cost analyses. One of the critical policy mandates contained in the law requiring annual service contract inventories is that decision makers review costs and determine if continued dependency upon contractors is cost-justified.⁵ The Army's responses to your QFRs provided no explanation for why the cost data collected from the Army's CMRA is not used to conduct the necessary cost analyses. The Army should use this critical cost data.

The Army also testified that CMRA data had not been used in its acquisition process. A review of the types of data the CMRA collects makes it clear that it collects myriad data that would be useful to the Army's acquisition planning and implementation processes. The Army's response to your QFRs fails to explain why it isn't doing so. The Army should specify the date for when it expects to do so.

3. The Army testified that it had identified inherently governmental functions (IGFs) that were still being performed by contractors, but its response to your QFRs failed to address specifically what actions would be taken to correct violations and when. The Army should detail what corrective actions are being or will be taken, and by what date all inherently governmental functions would be performed by military or civilian personnel.

In addition, the Army's answer to whether contractor inventory data informs or improves the process by which Army personnel are making acquisition decisions does not fully address your concerns. The Army's inventory contains no cost-comparison data, nor does the inventory identify which contracts transfer IGFs to the contractor workforce or how many contractor employees are performing IGFs. The Army references the Panel for Documentation of Contractors and states that the Panel conducts a contractor inventory review to identify IGFs, but it is silent on what documents other than the Army's Inventory of Service Contracts the panel reviews. Of greater significance is the Army's silence on the number of IGFs it finds contractors are performing, the number of detected IGFs it consequently insources, the number of civilian employees it assigns to perform the insourced IGFs, and what the cost consequences were as a result of the need to rebalance its workforce.

[qfr-to-aronowitz-for-march-29-2012-hearing](http://www.hsgac.senate.gov/download/akaka-qfr-to-aronowitz-for-march-29-2012-hearing); and from Senator Daniel Akaka: <http://www.hsgac.senate.gov/download/akaka-qfr-to-aronowitz-for-march-29-2012-hearing> (Downloaded November 7, 2012) (hereinafter Aronowitz Replies to QFR)

⁵ 10 U.S.C. § 2330a(e).

Further, it is inconceivable that the Army is the only DoD component that outsources IGFs. Yet, DoD's most recent annual *Report to Congress: Fiscal Year 2011 Inventory of Contracts for Services* fails to address the issue of outsourced IGFs.⁶ POGO believes it would be helpful to submit QFRs to the Secretary of Defense concerning this failure.

Finally, the Army asserts that identifying IGFs being performed by contractors is an ongoing process, and that the longer it goes on the greater the likelihood they will be identified and appropriately remedied. The following facts are not in dispute: the law prohibits outsourcing IGFs,⁷ DoD contracting officers are responsible for detecting IGF violations on an ongoing basis, and the vast majority of DoD service contracts are for extended periods of time. Nevertheless, the Army has made no attempt to explain: (a) how there were 1,935 instances of contractors performing IGFs,⁸ (b) how long that had been known, or (c) a date by which these functions would be insourced. Congress is being assured that inappropriately outsourced functions will be remedied sometime in the future. There is no credible assurance from the Army, let alone the entire DoD, that IGFs will be insourced on an expedited basis. POGO supports legislative proposals to amend the FY 2013 NDAA by requiring that DoD components specify in their annual Inventory of Service Contracts how many contractor full-time equivalents (CFTEs) are performing IGFs for each service contract or task order inventoried.⁹ Were this proposal adopted, Congress would be able to monitor the progress DoD makes in coming into compliance with the law and pass legislative reforms if the rate of progress were unacceptable.

4. The Army answered that, when using a federal employee is the best route, it is able to either insource functions or authorize new civilian positions. However, of the 246,916 full-time contractor employees in FY 2011,¹⁰ the Army only gave permission to insource 640 positions, or .26 percent of positions that might be inherently governmental or imposing unjustifiable costs.¹¹

⁶ Defense Procurement and Acquisition Policy Office website at Acquisition of Services Policy; see pdf file in "Inventory of Service Contracts FY2011 DOD Services Contract Inventory." http://www.acq.osd.mil/dpap/cpic/cp/acquisition_of_services_policy.html (Downloaded September 21, 2012). Please note however that inherently governmental functions was listed as the rationale for insourcing 9 percent of the nearly 17,000 new government civilian positions in FY 2010. Department of Defense, Office of the Under Secretary of Defense for Personnel and Readiness, *Report to the Congressional Defense Committees on the Department of Defense's FY 2010 In-sourcing Actions*, September 2011. <http://pogoarchives.org/m/ns/fy2010-insourcing-report-iaw-sec-323-of-fy2011-ndaa-20110902.pdf> (Downloaded March 26, 2012)

⁷ FAR Subpart 7.503.

⁸ Government Accountability Office, *Defense Acquisitions: Further Actions Needed to Improve Accountability for DOD's Inventory of Contracted Services* (GAO-12-357), April 2012, p. 18. <http://www.gao.gov/assets/590/589951.pdf> (Downloaded November 8, 2012)

⁹ POGO's Letter to Senators Sherrod Brown and Kirsten Gillibrand and Representative Maurice Hinchey.

¹⁰ Department of Defense, *Report to Congress: The Fiscal Year 2011 Inventory of Contracts for Services*, August 2012, p. 1. <http://www.pogoarchives.org/m/co/ics-2011-report-20120919.pdf> (Downloaded November 8, 2012) (Hereinafter *The Fiscal Year 2011 Inventory of Contracts for Services*)

¹¹ This figure is inconsistent with the 1,126 civilians the Army stated it had insourced in FY 2011 later in its response to the QFRs. The Army provides no explanation for this inconsistency. Post-Hearing Questions for the Record Submitted to Jay Aronowitz, Deputy Assistant Secretary, Force Management, Manpower and Resources, U.S. Army, from Senator McCaskill, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight hearing on Contractors: How Much Are They Costing the Government? March 29, 2012, pp. 2, 4. <http://www.hsgac.senate.gov/download/mccaskill-qfr-to-aronowitz-for-march-29-2012-hearing>

The Army's efforts to rebalance its workforce to conform to Congress's mandated standard of cost-effectiveness are window dressing at best and misleading at worst.

5. The Army's ostensible justification for implementing a self-imposed freeze on in-sourcing is to be compliant with the full-time employee (FTE) freeze. But that freeze hasn't prevented the Army from continuing to contract out hundreds of thousands of FTEs which potentially impose billions of dollars in higher costs over what those services would cost if performed by civilian personnel.¹² There is no economic justification to freeze the number of Army FTEs while allowing more costly contractor full-time equivalents (CFTEs) to proliferate.¹³

It should be noted that DoD's *FY 2011 Inventory of Service Contracts* reported that DoD components awarded approximately \$144.5 billion in government obligations, and estimated that there are 709,879 CFTEs across the Department.¹⁴ The DoD has already acknowledged there are billions of dollars to be saved by reducing expenditures on service contracts.¹⁵ POGO believes the Subcommittee should request that the Secretary of Defense explain why DoD continues to increase the number of CFTEs while it continues to freeze the number of DoD civilian employees.

6. The Army opposes civilian FTE ceilings, stating:

The current caps on federal employees hiring have hampered agencies from actually making cost-analysis based decisions when contracting. The civilian full time equivalent cap instituted by the Secretary of Defense in Resource Management Decision 703A2 has had the side effect of removing some of the flexibility that the Army and its attendant Commands previously had to manage its workforce to the appropriate manpower mix. In practical terms, if the Army cannot hire civilians, then it must turn to other sources of labor—like contracting—when it needs to execute missions, provided the work is not inherently governmental.¹⁶

The Army also stated that “[c]ost-effective workforce management decisions ought to be based on allowing for the hiring of civilians to perform missions, rather than contractors, if the civilians will be cheaper.”¹⁷

Despite those assertions, the Army or other components of DoD aren't using the A-76 cost comparison process because DoD has not fully implemented the requirements of 10 U.S.C. § 2330a. Additionally, the Army or other DoD agencies are not highlighting wasteful spending hat

¹² POGO's Letter to Senators Sherrod Brown and Kirsten Gillibrand and Representative Maurice Hinchey.

¹³ According to DoD, in FY 2010 there were 622,722 CFTEs with obligations over \$121 billion, which increased to 709,879 CFTEs and \$144 billion in obligations in FY 2011. Department of Defense, *Report to Congress: The Fiscal Year 2010 Inventory of Contracts for Services*, August 2011, p. 2.

http://www.pogoarchives.org/m/co/dod_2010_contracts_20120801.pdf (Downloaded November 8, 2012); *The Fiscal Year 2011 Inventory of Contracts for Services*.

¹⁴ *The Fiscal Year 2011 Inventory of Contracts for Services*, p. 1.

¹⁵ Department of Defense, American Society of Military Comptrollers, “Service Support Contractors: One of the FY 2012 Budget Efficiencies,” October, 2011, slide number 6. <http://www.asmcnline.org/wp-content/uploads/2011/10/ASMCBreakfastServiceSupportContractors.pptx> (Downloaded October 9, 2012)

¹⁶ Aronowitz Replies to QFR from Senator McCaskill, p. 2.

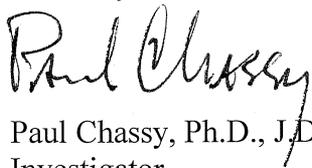
¹⁷ Aronowitz Replies to QFR from Senator Akaka, p. 1.

results from workforce cost comparisons pursuant to Directive-Type Memorandum 09-007.¹⁸ Simply stated, something has to give—ceilings need to be lifted and the Army and other agencies should be required to conduct genuine cost comparisons to ensure that the government is utilizing the most cost-efficient personnel prior to insourcing or outsourcing any government work.

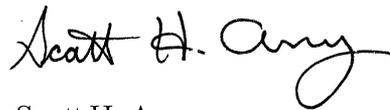
7. The Army states it is able to distinguish between non-Overseas Contingency Operations (OCO) and OCO-related service contracting costs. It is interesting to note, however, that other DoD service components rely upon the Federal Procurement Data System (FPDS) to derive contracting costs, and the FPDS does not distinguish between non-OCO and OCO service contracting costs. The Army's data collection system should be adopted by other DoD components. POGO suggests that the Secretary of Defense be asked to explain why the Army's data collection system has not been adopted across all components.

Thank you for the opportunity to submit these comments. Please feel free to contact us at 202-347-1122 for clarification or for additional information.

Sincerely,



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Investigator



Scott H. Amey
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cc: Jeffrey D. Zients, Director, Office of Management and Budget
Debra Tomcheck, Executive Director, Balanced Workforce Program Management
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¹⁸ Memorandum from Christine H. Fox, Director of Cost Assessment and Program Evaluation, to the Secretaries of the Military Departments, "Directive-Type Memorandum (DTM) 09-007, 'Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support,'" January 29, 2010, revised September 2, 2011. <http://www.dtic.mil/whs/directives/corres/pdf/DTM-09-007.pdf> (Downloaded August 21, 2012)