

CARL LEVIN, MICHIGAN  
DANIEL K. AKAKA, HAWAII  
THOMAS R. CARPER, DELAWARE  
MARK L. PRYOR, ARKANSAS  
MARY L. LANDRIEU, LOUISIANA  
CLAIRE McCASKILL, MISSOURI  
JON TESTER, MONTANA  
ROLAND W. BURRIS, ILLINOIS  
EDWARD E. KAUFMAN, DELAWARE

SUSAN M. COLLINS, MAINE  
TOM COBURN, OKLAHOMA  
SCOTT BROWN, MASSACHUSETTS  
JOHN MCCAIN, ARIZONA  
GEORGE V. VOINOVICH, OHIO  
JOHN ENSIGN, NEVADA  
LINDSEY GRAHAM, SOUTH CAROLINA

# United States Senate

COMMITTEE ON

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

MICHAEL L. ALEXANDER, STAFF DIRECTOR  
BRANDON L. MILHORN, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

July 6, 2010

The Honorable Arne Duncan  
Secretary  
United States Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Dear Mr. Secretary:

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."<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

---

<sup>1</sup> Federal Acquisition Regulation § 7.5.

<sup>2</sup> Office of Management and Budget, *Policy Letter 92-1* (Sept. 23, 1992).

<sup>3</sup> 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.<sup>4</sup>

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 Education 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 (108<sup>th</sup> Congress); and Senate Resolution 73 (111<sup>th</sup> 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.

---

<sup>4</sup> 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,

A handwritten signature in blue ink, appearing to read "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" written in a larger, more prominent script than the last name "McCaskill".

Claire McCaskill  
Chairman  
Subcommittee on Contracting Oversight

cc: Scott Brown  
Ranking Member  
Subcommittee on Contracting Oversight

Enclosure