

Project On Government Oversight

Exposing Corruption Exploring Solutions www.POGO.org



April 23, 2008

The Honorable Carolyn Maloney
House of Representatives
2331 Rayburn House Office Building
Washington, DC 20515-3214

Dear Representative Maloney:

I want to personally thank you for your leadership in improving contracting accountability throughout the years, and to express our gratitude for your hard work on H.R. 3033, the “Contractors and Federal Spending Accountability Act of 2007.”

In a few short years, government contract spending has eclipsed \$440 billion and the federal government is doing little, if anything, to ensure that risky contractors do not receive taxpayer dollars. The Project On Government Oversight (POGO) urges the House and Senate to support H.R. 3033, which would formalize and be similar to POGO’s Federal Contractor Misconduct Database (FCMD),¹ and address the government’s failure to vet contractors as is required by law to determine whether they are truly responsible.

Specifically, H.R. 3033 would go a long way toward improving pre-award contracting decisions and enhancing the government’s ability to weed out risky contractors, especially those with repeated histories of misconduct or poor performance. Your legislation requires contractors, many of which receive a large percentage of their revenue from the federal government, to report nonresponsible behavior. Contractor misconduct has been the subject of SEC filings, annual reports, company audits, and the current movement by the White House and Congress to require more transparency related to contractor ethics and integrity programs. Despite all of those efforts, however, information on risky contractors is not readily available to contracting officers or suspension and debarment officials.²

Government contracts are predicated on a basic principle – taxpayer dollars should be awarded to responsible contractors **only**. Specifically, contractors are required to have adequate financial resources, the ability to deliver the goods or services procured, a satisfactory performance record, and “**a satisfactory record of integrity and business ethics.**”³

Claims that the government’s contractor past performance information system and its Excluded Parties List of suspended and debarred contractors negate the need for a contractor responsibility database are overstated and untrue. Currently, there is no established government-wide definition of “satisfactory,” nor is there any system in place that allows federal acquisition personnel to determine a company’s “record of integrity and business ethics.” As a result, government officials have little to no

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information on risky contractors, including contractors that have defrauded the government, violated laws and regulations, had poor work performance, or had their contracts terminated for default. Continuing to award contracts to such contractors undermines the public's confidence in the fair-play process and exacerbates distrust in our government. It also results in bad deals for the agency and for the taxpayer.

As you are aware, you helped create the VENDEX system that provides detailed information about contractors that conduct business with the City of New York.⁴ That system has worked well and is a model that the federal government should mirror in an effort to protect taxpayers.

For years, POGO has heard the same argument from contractors that a responsibility database will deny contractors the ability to compete for federal work because of allegations or citations that are without merit. Those complaints appear to have been erased in the latest version of your bill, which might even go too far in restricting the civil, criminal, and administrative instances that are entered into the database. As it stands now, the database would only include cases when there is a "finding of fault" and "restitution" paid to the government of \$5,000 or more. Many settlements and administrative agreements, however, are concluded without any admission of guilt, fault, or liability. Additionally, the term "restitution" might not include all fines, penalties, or other financial payments made to the federal government. A literal reading of the bill could exclude a settlement with no admission of fault in which the contractor paid a \$1 million fine.

Contractor industry associations also have contended that good contractors should not be placed in the same basket as one or two bad apples. POGO agrees with them, and believes that H.R. 3033 will help ensure that responsible contractors will not be painted with the same broad brush as risky contractors. Thank you and your staff for your leadership on this important issue.

Sincerely,



Danielle Brian
Executive Director

1. For more information about POGO's Federal Contractor Misconduct Database, please visit <http://www.contractormisconduct.org/>.

2. See the "Contracting and Tax Accountability Act of 2007" (H.R. 4881 – preventing tax cheats from receiving federal contracts); the "Close the Contractor Fraud Loophole Act" (H.R. 5712 – no longer exempting overseas and commercial item/service contracts from the requirement to report to the government criminal violations and overpayments); FAR Case 2007-006 – "Contractor Compliance Program and Integrity Reporting" (72 Fed. Reg. 64019 (November 14, 2007)); and the National Procurement Fraud Task Force Legislation Committee's call for the creation of a "National Procurement Fraud Database" to give contract and grant officials the ability to better detect and prevent companies with questionable histories from receiving taxpayer dollars.

3. FAR Subpart 9.104-1.

4. Mayor's Office of Contract Services, VENDEX, www.nyc.gov/vendex.