



## **Contract Spending: Escaping the Dark Ages**

In 2009, the federal government awarded more than \$523 billion in federal contracts—contracts for goods, including complex weapons systems, and services.<sup>1</sup> Following the life of a federal contract is difficult, if not impossible in the current labyrinth of government databases. In fact, only recently the government hinted that it might post contracts online.<sup>2</sup> Cynics argue that the government's hide the ball mentality in federal contracting is intended to prevent the public from truly knowing about government spending and the contractors that receive taxpayer dollars. It is very difficult to believe differently until the government decides that absolute openness in federal contract spending is vital to improving competition, building trust in government policies and programs, establishing integrity in the contracting system, and ensuring that contractors are responsible and performing in the best interest of taxpayers.

There are three main issues to focus on when considering contracting transparency. First, the public is not receiving a comprehensive and accurate picture of federal contract spending. Second, the government's stovepipe approach to creating, organizing, and maintaining federal contract data resources unnecessarily confuses the public. Third, a long list of impediments that remove contract data from public view hinders transparency. This white paper discusses concerns in those areas, and provides recommendations to shine a bright light on federal contract spending.

### **Nominal Public Disclosure**

Despite numerous advances in technology, the system for disclosing contract information is barebones to say the least. In fact, the system as it currently stands only provides scant summaries of how the federal government is spending over \$500 billion for goods and services each year. For example, USAspending.gov provides addresses, company profile information, good or service codes, some dollar and competition figures, place of performance, and "check the box" information about a contractor's socio-economic factors. The public cannot access copies of solicitation notices, contracts, delivery and task orders, amendments and modifications, responsibility and performance information, and other source selection materials that would provide a more complete picture of federal contract spending.

The current Administration is pressing agencies to do their part in actively releasing information to the public, shifting the presumption under the Freedom of Information Act (FOIA) back to disclosure and using technology to provide searchable, sortable, and downloadable contracting information to the public. No matter how

---

<sup>1</sup> USAspending.gov, "Top 100 Recipients of Federal Contract Awards for FY 2009," Last updated on May 3, 2010. Available at <http://www.usaspending.gov/fpds/tables.php?tabtype=t2&subtype=t&year=2009>

<sup>2</sup> 75 Federal Register 26916, May 13, 2010. Available at <http://edocket.access.gpo.gov/2010/pdf/2010-11381.pdf>. See POGO Blog, "Contracts Online -- OMG!," May 13, 2010. Available at <http://pogoblog.typepad.com/pogo/2010/05/contracts-online-omg.html>

vigorously the Administration promotes openness, however, it must also ensure that information is accurate and timely. The upgrades to the contracting system have been constructive, but the data being released is rudimentary and errors plague the system. For example, past and current versions of the top 100 contractor lists include questionable entries, such as subsidiaries being listed independently of their parent companies, companies being assigned multiple rankings, the listing of federal agencies, and even a bizarre listing called “Government of the United States.”

## Stovepipe Approach

The current contracting oversight landscape includes approximately nineteen resources, databases, or informational sites. The following is a non-comprehensive list of government web sites that the public should have access to in order to track contract spending and federal contractors:

1. Central Contractor Registration (CCR)
2. Online Representations and Certifications Application (ORCA)
3. Federal Agency Registration
4. Federal Business Opportunities (FBO)
5. GSA Schedule Library
6. Federal Procurement Data System-Next Generation (FPDS-NG)
7. USAspending.gov
8. Excluded Parties List System (EPLS)
9. Past Performance Information Retrieval System (PPIRS)
10. Federal Awardee Performance and Integrity and Information System (FAPIIS)
11. Electronic Subcontracting Reporting System
12. GAO Bid Protests
13. DoD Revolving Door Database
14. SEC Filings (EDGAR)
15. Senate and Executive branch lobbying reports
16. Public Financial Disclosure Report for Executive branch officials (SF-278)
17. FEC PAC and individual contributions
18. DOL violations
19. Wage Determinations On-Line (WDOL)

What is severely lacking is a comprehensive, user-friendly “one-stop shop” for contracting information. Unfortunately, attempts to move legislation through Congress have failed.<sup>3</sup>

The General Services Administration (GSA) appears to finally have listened to POGO, OMB Watch, the Sunlight Foundation, and many others who are frustrated with the current user-unfriendly systems.<sup>4</sup> According to the GSA,<sup>5</sup> nine databases will be integrated by IBM— at a cost of \$74.4 million. Absent from the list is USAspending.gov “Version 2.0” (although FPDS-NG, the feeder system into USAspending.gov, is included)

---

<sup>3</sup> “Strengthening Transparency and Accountability in Federal Spending Act of 2008,” S. 3077, 110<sup>th</sup> Congress. Available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:s3077is.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s3077is.txt.pdf)

<sup>4</sup> GSA Press Release, “GSA to Consolidate Contract Performance Databases,” February 18, 2010. Available at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=10430&channelId=-24825&P=&contentId=29131&contentType=GSA\\_BASIC](http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=10430&channelId=-24825&P=&contentId=29131&contentType=GSA_BASIC)

<sup>5</sup> The nine data sets include: 1. FedBizOpps, 2. Wage Determinations On-Line (WDOL), 3. Central Contractor Registration (CCR), 4. Federal Agency Registration, 5. Online Representations and Certifications Application (ORCA), 6. Past Performance Information Retrieval System (PPIRS), 7. Excluded Parties List System (EPLS), 8. Federal Procurement Data System-Next Generation (FPDS-NG), 9. Electronic Subcontracting Reporting System.

and the recently available Federal Awardee Performance and Integrity Information System (FAPIIS),<sup>6</sup> which will allow government officials to review a contractor's record of integrity or business ethics as required by law. The possible integration of the above data sets is wonderful, but due to the fact that PPIRS is not publicly available, this integrated contracting resource likely will only be available to government officials and it is far from being comprehensive.

## **Impediments on Contract Spending Disclosure**

In addition to the deficiencies caused by the release of barebones contracting information and the lack of integration of systems, other factors may also prevent public access to some of the most useful contracting information. One factor is time. Although contract information can be requested through the Freedom of Information Act (FOIA),<sup>7</sup> it takes months or years to receive an agency response. The public and the media have essentially abandoned using FOIA to request contracting information because of the unreasonable delay.

The second factor is FOIA fees. Exorbitant FOIA fees create additional obstacles that prevent the public from obtaining vital contracting information. Converting to an electronic system will allow documents to be immediately posted on an agency's web site and will reduce many of the burdens of requesting, processing, and delivering requested information under FOIA. Unfortunately, those improvements are slow in coming because the culture within agencies many times disfavors disclosure, which is often considered to result in the punishment of a program, agency, or contractor.

Even if FOIA is used, numerous laws, regulations, and an executive order limit public access to comprehensive contract information. Specifically, public access to contracting information is impeded by Executive Order 12600,<sup>8</sup> source selection information restrictions,<sup>9</sup> the Procurement Integrity Act,<sup>10</sup> the Privacy Act,<sup>11</sup> trade secrets provisions,<sup>12</sup> Controlled Unclassified Information (CUI) designations,<sup>13</sup> and numerous FOIA exemptions, most notably 5 U.S.C. 552(b)(4), which protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Some of reasons for protecting certain information are legitimate. The government and contractors have a right to limit public access to genuine national and homeland security information, information that provides an unfair competitive advantage to other companies, private personal information, and company trade secrets. The problem is that through the years there seems to be a movement toward non-disclosure that only recently has showed signs of shifting in the opposite direction. Urging the Obama Administration to find the proper balance is the goal of today's conference, and is a message that we must deliver to the public, Congress, and the White House.

---

<sup>6</sup> FAPIIS is modeled after POGO's Federal Contractor Misconduct Database and requires, prior to awarding a contract, federal officials to review and consider past performance information with respect to the offeror when making an evaluation of their responsibility and past performance. Pub. Law 110-417, Sec. 872, October 14, 2008. Available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ417.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ417.110.pdf)

<sup>7</sup> 5 U.S.C. § 552.

<sup>8</sup> In 1987, President Ronald Reagan signed EO 12600, which states that pursuant to a FOIA request, a contractor "may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed." EO 12600 Sec. 4. Available at <http://www.archives.gov/federal-register/codification/executive-order/12600.html>

<sup>9</sup> FAR Subparts 2.101, 3.104-3, 3.104-4, and 42.1503(b) and (d). Available at <https://www.acquisition.gov/Far/current/pdf/FAR.pdf>

<sup>10</sup> 41 U.S.C. § 423. Available at [http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=\\$\\$xa\\$\\$busc41.wais&start=960618&SIZE=26916&TYPE=PDF](http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=$$xa$$busc41.wais&start=960618&SIZE=26916&TYPE=PDF)

<sup>11</sup> 5 U.S.C. § 552a.

<sup>12</sup> 18 U.S.C § 1905.

<sup>13</sup> Controlled Unclassified Information is not considered classified, but "the Government must be able to prevent the public disclosure of information where such disclosure would compromise the privacy of American citizens, national security, or other legitimate interests." White House Memorandum for the Heads Of Executive Departments and Agencies, "Classified Information and Controlled Unclassified Information," May 27, 2009. Available at <http://www.archives.gov/cui/documents/2009-presidential-memo.pdf>

Looking at one example, contractor performance information (compiled in PPIRS and FAPIIS) is considered protected source selection information that **cannot** be released to the public. This is analogous to a parent who isn't permitted to see their child's report card. As a result of this non-disclosure, the public and government appear to have very different opinions about what constitutes acceptable contractor performance.

Performance information can be thought about in many ways, including award or incentive fees or percentages, actual performance grades given during the performance of a contract, a contractor's ability to remain on budget and on time, a contractor's performance record being considered during source selection, a contractor's performance record on non-government contracts, a contractor's record on labor and environmental issues, a bidder's compliance with tax laws, and a company's performance on Wall Street. Performance information might also be considered based the effectiveness of federal agencies in meeting their missions.

All of those criteria are useful to government officials and the public, but there seems to be a wide difference of opinion as to what constitutes adequate or poor contractor performance. For example, the general public has relatively low opinion of KBR, Halliburton, and Blackwater (currently known as Xe) based on media accounts of their performance in Iraq and Afghanistan. Repeated allegations of overbilling, fraud, bribery, poor performance, legal infractions, and excessive use of force against civilians have convinced the public that the government should terminate these contracts and not award any new contracts. Some people are demanding that the companies and executives be held criminally liable for their alleged misdeeds.

However, the government seems to think that KBR, Halliburton, and Blackwater are performing very well in Iraq and Afghanistan. Contracting experts have claimed that the State Department is very happy with Blackwater's performance because all of its officials have been protected, traveling safely in and out of many dangerous sectors of Iraq and Afghanistan. Many of the criticisms of KBR and Halliburton have been dismissed as a cost of doing business with the federal government. As a result, there hasn't been any movement to suspend or debar those contractors, although some individual employees have been held accountable.<sup>14</sup> Instead, the government continues to award billions in contracts to them. Either the government's performance criteria differ greatly from that of the public, or the government has no choice but to continue doing business with risky contractors.

Equally troubling is the degree of influence contractors have over their performance evaluations. POGO has been approached on several occasions by contracting officers who stated that they feel compelled to provide a performance evaluation that will not be challenged by the contractor.

FAPIIS was also crafted with contractors in mind. Contracting officers must give offerors the opportunity to provide additional information that demonstrates their responsibility before the contracting officer makes a nonresponsibility determination based on relevant information from FAPIIS.

It's easy to accept a certain level of due process, but at the same time, the public should be able to see performance information and ensure that the government is making decisions that are in the interest of taxpayers.

---

<sup>14</sup> See POGO's Federal Contractor Misconduct Database (FCMD):

KBR (<http://www.contractormisconduct.org/index.cfm/1,73,221,html?ContractorID=29&ranking=13>)

Halliburton (<http://www.contractormisconduct.org/index.cfm/1,73,221,html?ContractorID=149&ranking=101>)

Blackwater/Xe (<http://www.contractormisconduct.org/index.cfm/1,73,221,html?ContractorID=123>)

## Recommendations

To regain public faith in the contracting system, the government must provide the public with open access to federal contracting information. POGO provides the following recommendations to make government contract spending more transparent:

1. The government should require more electronic filing of information to allow for timely online posting. The result will be a decrease in FOIA requests and the time required to process them.
2. USAspending.gov must become the “one-stop shop” for government officials and the public to access comprehensive, accurate, and timely contracting information. This includes actual copies of each contract, delivery or task order, modification, amendment, other transaction agreement, grant, and lease. Additionally, proposals, solicitations, all award decisions and justifications, audits, performance and responsibility data, and other related government reports should be incorporated into USAspending.gov.
3. Contractor performance metrics must be established and defined and incorporated into contracting information that is publicly available. PPIRS and FAPIIS should be available to the public.
4. The government’s use of non-disclosure practices (CUI, FOIA exemptions and unreasonable fees, contractor claims of proprietary data or trade secrets), must be minimized.
5. The Defense Department’s revolving door database should be publicly accessible.
6. Executive branch lobbying records should be publicly available, including detailed lobbying reports that describe persons present at a meeting and the policies and programs discussed.