



**Testimony of Scott Amey, General Counsel
Project On Government Oversight
before the House Committee on Science, Space, and Technology,
Subcommittee on Investigations and Oversight and Subcommittee on Energy
on “Judicious Spending to Enable Success at the Office of Nuclear Energy”
October 21, 2021**

I want to thank Chairmen Foster and Bowman and Ranking Members Obernolte and Weber for asking the Project On Government Oversight (POGO) to testify about issues related to federal spending. I am Scott Amey, POGO’s general counsel.

POGO is a nonpartisan, independent watchdog that oversees federal agencies, Congress, and government contractors. We made our mark in the 1980s by looking into Pentagon waste, fraud, and abuse, spotlighting overspending on \$640 toilet seats, \$7,600 coffee makers, and \$436 hammers. POGO also has a long history of investigating wasteful spending and performance issues within the Department of Energy.¹

Throughout our 40-year history, POGO has created a niche in investigating, exposing, and helping to remedy waste, fraud, and abuse in government spending.² We have supported many reforms that enhance competition, accountability, oversight, and transparency. Additionally, we have called attention to aspects of the federal spending systems that place taxpayer funds at risk.

Hurricane recovery, stimulus spending, and the pandemic have all highlighted gaps in the federal government’s contract and grant spending systems. Emergency spending exacerbates systemic problems with these spending processes.

Many reforms were imposed prior to the large increase in federal contract spending last year. In fiscal year 2020, contract spending rose to \$667 billion.³ When combined with the \$971 billion in grant awards in FY 2020,⁴ those numbers show that the government is handing out taxpayer money at an unprecedented level. Agencies must follow best practices to avoid waste, fraud, abuse, and corruption and to ensure that money is spent wisely.

¹ “Department of Energy,” Project On Government Oversight, <https://www.pogo.org/topics/department-of-energy/>.

² Founded in 1981, POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. For more information about POGO, please visit www.pogo.org.

³ “Spending Over Time, FY 2020, All Contracts,” USAspending.gov, <https://www.usaspending.gov/search/?hash=d82c11510d1653b3d4164e866c81a935> (Click the “Time” tab to see the FY 2020 total obligations amount).

⁴ “Spending Over Time, FY 2020, All Grants,” USAspending.gov, <https://www.usaspending.gov/search/?hash=78c8495f3d2619cde1eb47709da36f2f> (Click the “Time” tab to see the FY 2020 total obligations amount).

Many events over the past 20 years have called into question the effectiveness of the federal contract and grant systems, and have highlighted how drastically the landscape has changed: Spending has grown tremendously; oversight has decreased; the acquisition and grant workforces are stretched thin and have been supplemented by contractors; and spending on services now outpaces spending on goods. This changing landscape sometimes places public funds at risk.

In light of today's hearing, and to better chart the landscape before us, I present two questions that members of the subcommittees should ask:

1. What are we buying?
2. How are we buying goods and services?

The first question requires a comprehensive look at the government's overall acquisition planning structure and how best to place agencies in a position to achieve their missions. We should ask, for example, "What goods and services are required to meet the Department of Energy's needs?"

The second question — how are we buying it? — places us more in the contracting weeds, which is still vital to buying better. The answer to that question often involves a discussion about types of contracts, levels of competition, award processes, statements of work and requirements, award and incentive fees, the length of term agreements, accountability, oversight, transparency, performance, and results.

Federal Spending Best Practices

Federal contract and grant spending seem complex and riddled with red tape, but they aren't much different from what individuals do every day when buying goods and services. We sit at home conducting research, locating vendors, obtaining written quotes, comparing prices, reviewing warranties, avoiding front-loaded payment options, and checking the finished product to ensure that we are satisfied. Circumstances can speed up or slow down those processes or cause us to make a spending decision that might take a bigger toll on our bank accounts, but we generally make well informed spending decisions. That isn't always the case when the federal government is spending our money.

As much as possible, the government should engage in the same practices we do at home:

1. Seek adequate competition;
2. Provide sufficient administration and accountability;
3. Add transparency; and
4. Practice low risk spending processes.

I will discuss each of these issues in detail and provide recommendations that will improve the way federal contracts and grants are created, awarded, monitored, and reviewed.

Adequate Competition

To better evaluate goods and services, and to get the best value for taxpayers, the government

must encourage genuine competition. At first glance, it may seem that federal agencies frequently award contracts competitively. For example, data shows that government-wide, 61% of contract dollars were awarded with competition in fiscal year 2020. In the Department of Energy, the competition award total was 97%.⁵

Those numbers, however, do not tell the entire story. The “competitive” label includes contracts awarded through less than full and open competition. This includes competitions within a limited pool of bidders, offers on which only a single bid was received, and follow-on contracts to a previously competed action.⁶

Data on grants is simply less transparent than contract awards, which creates genuine difficulties and limitations for robust analysis. Through the System for Award Management, we receive information on the process of awarding contracts, including solicitations and scope of work details, but there is no similar disclosure for grants or loans. And while grant awards and other types of assistance (loans, direct payments, insurance, and more) are included in USA Spending.gov, the public doesn’t get the same level of detail for these assistance awards as we do for contracts.

The public doesn’t get access to requests for information, for example, or to the number of applications received versus approved. We get even less information about companies receiving assistance awards than we do federal contractors. Agencies fail to collect any information on the demographics of business owners or industry sectors of companies awarded assistance funds. Without this data, we don’t know whether assistance programs are reaching minority businesses, women-owned businesses, veteran-owned businesses, and others. Without this data, we don’t know who benefits.

Genuine competition between prospective awardees means the government gets the best quality goods and services at the best price. Competition also prevents waste, fraud, and abuse because contractors know they must perform at a high level or risk being replaced.

To ensure that contracts and grant awards are subject to genuine competition, federal agencies should:

1. Revise the definition of “competitive bidding” to ensure that genuine competition, and not pseudo-competition, takes place. To accurately track or evaluate competition, this term should apply only to awards on which more than one bid was received.
2. Reverse the current philosophy of quantity over quality. Acquisition is now about speed, treating competition as a burden. Circumventing the most important principles of a free market is a recipe for waste, fraud, abuse, and corruption. Federal agencies should conduct full and open competitions, to the maximum extent practicable, for all non-urgent purchases. Non-competitive awards should be used sparingly.
3. Require all spending opportunities in excess of \$100,000 to be publicly announced for a at least 14 days prior to award unless public exigency or urgent national security considerations dictate otherwise.
4. Ensure that they are obtaining fair and reasonable prices when non-competitive

⁵ “Competition Standard Report,” System for Award Management, <https://sam.gov/reports/awards/standard>.

⁶ “Glossary,” USA Spending.gov, <https://www.usaspending.gov/?glossary=extent-competed>.

- procedures are used.
5. Unbundle requirements in order to invite more bidders to the table. Lumped-together requirements unnecessarily constrain the awardee pool that can provide goods and services to the government, excluding smaller businesses that could successfully provide one good or service, but are incapable of managing massive, multi-part contracts. Breaking apart unrelated items will reduce the multiple layers of subcontracting, which can drive up costs while adding little value.

The above recommendations fall in line with President Joe Biden's July executive order to promote competition in the American economy. President Biden's order stated that "a fair, open, and competitive marketplace has long been a cornerstone of the American economy," and highlighted that the federal government needs to do its part "through the procurement process."⁷

Federal agencies should heed President Biden's pro-competition mandate in federal spending awards.

Sufficient Administration and Accountability

Through the years, the government has placed a premium on speeding up the spending process, cutting administrative and oversight mechanisms, and, at times, propping up the industrial base.⁸ Those policies led to a buying workforce that could not keep pace with growing government spending and a gutting of the oversight community.⁹ When considering the large-scale increase in contract and grant spending during the past decade, we need to ask whether we have sufficient people and resources to watch the money as it goes out the door and to ensure we are obtaining the results agencies want.

Contract and grant dollars have more than tripled since 2000, when contract and grant spending totaled \$205 billion and \$295 billion, respectively.¹⁰ By 2020, contract and grant spending were \$667 billion and \$971 billion, respectively. Yet the acquisition and grant management workforce has not increased on pace with spending.¹¹

According to Office of Personnel Management federal employee data, Energy Department personnel involved in contracts and grant management were 622 and 72, respectively, as of June

⁷ Executive Order No. 14036, 86 Fed. Reg. 36987, 36989 (July 9, 2021), <https://www.federalregister.gov/documents/2021/07/14/2021-15069/promoting-competition-in-the-american-economy>.

⁸ Jack Corrigan, "New Law Aims to Cut Red Tape," *Government Executive*, July 19, 2017, <https://www.govexec.com/management/2017/07/new-law-aims-cut-red-tape/139564/>; Sarah Ladislaw, "The United States Needs an Energy Industrial Strategy, and Everybody Knows It," Center for Strategic & International Studies, May 5, 2020, <https://www.csis.org/analysis/united-states-needs-energy-industrial-strategy-and-everybody-knows-it>.

⁹ "Career Opportunities in the Federal Contracting Series (GS-1102)," Federal Acquisition Institute, (2020), 2, <https://www.fai.gov/sites/default/files/1102-Career-Field-Brochure.pdf>; Council of the Inspectors General on Integrity and Efficiency, *Top Management and Performance Challenges Facing Multiple Federal Agencies*, February 2021, 7-8, 16-22, https://www.ignet.gov/sites/default/files/untracked/TMPC_report_02022021.pdf.

¹⁰ "FedSpending.org," Project On Government Oversight, <https://www.fedspending.org/>.

¹¹ CIGIE, *Top Management and Performance Challenges*, 7-8 [see note 9].

2021.¹² An average of the last ten years shows that 613 contracting and 67 grants management officials have worked on contracting and grants issues.¹³ This stagnant contract and grant workforce occurred at the same time that the Energy Department increased spending on contracts and grants from \$22.5 billion in 2000 to nearly \$40 billion in 2020.¹⁴ About the same number of people are spending and administering nearly twice as much money, which places taxpayer funds at risk.

Agencies need to invest in the contract and grant workforce as well as in the auditors and accountants who provide oversight and promote integrity in federal spending. Improving oversight will enhance contract management, resulting in savings that would more than pay for this workforce expansion. A strong oversight workforce can help the government get better returns for the taxpayer and can also help prevent programs from falling behind schedule and running over budget.

External watchdogs are also key. Inspectors general are known for a high return on investment, with an average return of about \$17 for each taxpayer dollar invested into that watchdog community.¹⁵ Oversight provides great benefits to taxpayers, but it is often the first thing agencies cut when they need to make budget cuts.¹⁶ Cuts to inspectors general budgets were on the table during the Trump administration, with a proposal to “cut more than \$63 million from the IG offices at five agencies.”¹⁷

While staffing issues are a real problem, the existing procurement and oversight workforces also lack tools they need to buy smart and review that spending. If government officials are going to buy in the dark without sticker prices and the oversight community has trouble looking at invoices, wasteful spending runs rampant.

¹² “FedScope,” Office of Personnel Management, <https://www.fedscope.opm.gov/employment.asp>. (In the June 2021 dataset, select “DN-Department of Energy” in the “Agency” field. In the “Occupation” field, select “White Collar,” then select “11xx-Business and Industry,” and then select “1102-Contracting” or “1109-Grants Management” to see results.)

¹³ “FedScope,” [see note 12]. The range for the “contracting” code was 590 to 639 employees and the “grants management” code was 60 to 72 employees since 2012.

¹⁴ “Spending Over Time, FY 2020, All Contracts and All Grants, Energy Department,” USAspending.gov, <https://www.usaspending.gov/search/?hash=4354cc10c066369deab0967d9dd0553b> (Click the “Time” tab to see the FY 2020 total obligations amount); “Assistance from Dept. of Energy (FY 2000),” FedSpending.org, https://www.fedspending.org/fpds/fpds.php?sortp=r&maj_agency_cat=89&detail=1&datatype=T&reptype=r&database=fpds&fiscal_year=2000&submit=GO; “Contracts from Dept. of Energy (FY 2000),” FedSpending.org, https://www.fedspending.org/faads/faads.php?sortp=r&maj_agency_cat=89&detail=1&datatype=T&reptype=r&database=faads&fiscal_year=2000&submit=GO.

¹⁵ *Top Management and Performance Challenges Identified Government-wide by the Inspector General Community: Hearing before the House Committee on Oversight and Government Reform*, 115th Cong. 2 (April 18, 2018) (testimony of Department of Justice Inspector General Michael E. Horowitz, Chair, Council of the Inspectors General on Integrity and Efficiency, and National Science Foundation Inspector General Allison C. Lerner, Vice Chair, Council of the Inspectors General on Integrity and Efficiency), https://oig.justice.gov/sites/default/files/2019-12/04-18-2018_0.pdf.

¹⁶ Rebecca Jones, “Knowing Their Worth: President’s Budget Sought Big Cuts to Inspectors General,” Project On Government Oversight, August 23, 2018, <https://www.pogo.org/analysis/2018/08/knowning-their-worth-presidents-budget-sought-big-cuts-to-inspectors-general/>.

¹⁷ Jory Heckman, “Inspectors general fear staff cuts, less oversight under Trump budget plan,” *Federal News Network*, August 17, 2018, <https://federalnewsnetwork.com/budget/2018/08/inspectors-general-fear-staff-cuts-less-oversight-under-trump-budget-plan/>.

Then-Senator Harry S. Truman (D-MO), member of the Military Affairs Committee, famously stated in 1941, “I have never yet found a contractor who, if not watched, would not leave the Government holding the bag.”¹⁸

To strengthen the federal spending administrations and oversight workforce, Congress should:

1. Ensure agencies have appropriate people and tools. Agencies should have a large enough cadre of contract and grant specialists with appropriate tools to compete awards, obtain fair and reasonable prices, administer contracts and grants, and hold awardees accountable for overruns, schedule delays, and poor performance.
2. Require contractors to provide cost or pricing data to the government for all contracts, except those where the actual goods or services being provided are sold in substantial quantities in the commercial marketplace.
3. Provide enforcement tools to prevent, detect, and remedy waste, fraud, and abuse in federal spending, including more frequent pre-award and post-award audits.
4. Eliminate the Right to Financial Privacy Act requirement that inspectors general notify contractors prior to obtaining the companies’ financial records. This requirement tips off contractors and can harm the government’s ability to investigate federal contracts.
5. Realize that auditors and accountants are worth the investment.
6. Enhance the procuring workforce through improvements in hiring, pay, training, and retention.
7. Hold agencies and contractors accountable when small business contracts are diverted to large corporations and when small business dollars don’t reach their legally intended targets.

Executive branch officials and entities receiving taxpayer money have claimed ensuring government and awardee accountability are burdensome and unnecessary. This perception needs to be replaced with one that recognizes that accountability measures are essential to protecting taxpayers. Oversight should be seen as an acceptable cost of doing business with the federal government.

Enhancing Transparency to Expose Mismanagement and Corruption

The government spends trillions of dollars each year, and taxpayers should know that spending will be reported completely, accurately, and with enough detail that we can rigorously evaluate it. Our current system is broken and incomplete, but it doesn’t have to remain that way — we can fix current reporting requirements, fill reporting gaps, and track new data points.¹⁹

Currently, the federal contracting and grant-making system is opaque. The government lacks rules to ensure that the contracting and grant-making processes are open and visible to the public. To rebuild public faith in federal spending, the government must proactively provide the public with contract and grant information, including records from the pre-award stage to contract or

¹⁸ Senator Harry S. Truman, speaking on defense spending, on February 10, 1941, 77th Cong., 1st sess., *Congressional Record*, 837, <https://www.govinfo.gov/content/pkg/GPO-CRECB-1941-pt1/pdf/GPO-CRECB-1941-pt1-24-1.pdf>.

¹⁹ Sean Moulton, “Blueprint to Fix Reporting of Federal Spending,” Project On Government Oversight, August 2, 2021, <https://www.pogo.org/analysis/2021/08/blueprint-to-fix-reporting-of-federal-spending/>.

grant close-out, and at the subcontract or subgrant level.

Additionally, companies with hidden ownership structures are a serious global problem, and in many instances those entities are involved in international corruption. As POGO's previous work has shown, such anonymous companies have been involved in a wide variety of illicit activities, ranging from "public corruption to government and defense contract fraud, organized crime, intellectual property theft, money laundering, terrorism financing, and the opioid crisis."²⁰

The following actions should be taken to provide the public with comprehensive spending information:

1. Improve USAspending.gov so it becomes the one-stop shop for all federal spending information. This means including actual copies of contracts, delivery or task orders, modifications, amendments, other transaction agreements, grants, and leases. Proposals, solicitations, award decisions and justifications (including all documents related to contracts awarded with less than full and open competition and single-bid contract awards), audits, performance and responsibility data, and other related government reports should also be incorporated into USAspending.gov.
2. Strengthen the beneficial ownership identification law to enable government officials and the public to learn more about the real owners of companies. This step would enable the government to ensure that taxpayer dollars are going to law-abiding contractors and grantees rather than to companies engaging in fraud or posing national security risks.

It is disturbing that the public, the media, and even congressional offices must send request letters or use the Freedom of Information Act to access government contract and grant records. While USAspending.gov and the System for Award Management have been revamped through the years, additional reforms are needed so that spending records are publicly available. Let's not forget that "Sunlight is said to be the best of disinfectants."²¹

Low Risk Spending

While it is easy to point a finger at contractors and grantees when federal programs or projects go wrong, federal policies, procedures, and practices are often part of the problem. So too are federal officials and their spending decisions, including what to buy and how to buy it.

Taxpayer dollars can be protected by proper contract and grant requirements in the pre-award phase, multiple bids and data that allows genuine negotiations during the award phase, and appropriate administration and oversight of the spending post-award. Conversely, bad requirements, a lack of competition, the wrong contract type, improper vendor vetting, a lack of transparency, accelerated payments, and deficient administration and oversight can shift risk away from those we hired to provide the goods or services and onto agencies and taxpayers.

²⁰ Tim Stretton, "Defense Bill Includes Two Landmark Transparency Provisions," Project On Government Oversight, January 21, 2021, <https://www.pogo.org/analysis/2021/01/defense-bill-includes-two-landmark-transparency-provisions/>.

²¹ Louis D. Brandeis, *Other People's Money and How the Bankers Use It* (New York: Frederick A. Stokes Company, 1914), 92, https://www.google.com/books/edition/Other_People_s_Money/uCpMAAAIAAJ.

There have been numerous spending methods that promise to speed up the process and to attract small businesses and non-traditional companies. POGO's warnings about some of those industry-promoted concepts started over 20 years ago,²² and they continue to this day.²³

Unfortunately, our concerns turned out to be right, and the promise that these new systems would attract new companies hasn't panned out. In fact, it's the traditional or incumbent companies that have been doing business with the government for years that continue to get federal business,²⁴ often with awards that circumvent the normal rules.²⁵

The federal government is also buying goods and services labeled as commercial, but which have no real or actual sales in the commercial market.²⁶ Additionally, government procurement systems have shifted the rules, and excessive overcharges are the sign of a widespread problem in the process that hamstrings the ability of the government to negotiate fair and reasonable prices.²⁷

While the government must accept some risk in its business dealings, federal agencies are taking an outsized share, at the cost of mission, programs, and taxpayer dollars. Bad deals and wasted money are the frequent result when too much of the burden and risk shifts to the government.

Federal agencies must:

1. Compete spending opportunities to the fullest extent practicable.
2. Avoid risky spending vehicles, including cost-reimbursement, time and material, commercial items, and other transactions, which place substantial risk on the government and can make it difficult for agencies to control costs.
3. Substantially revise the Truth in Negotiations Act (TINA) to restore it to the commonsense requirements that were in place prior to the "acquisition reform" era of the

²² *Defense Waste & Fraud Camouflaged As Reinventing Government*, Project On Government Oversight, September 1, 1999, <https://www.pogo.org/report/1999/09/defense-waste-fraud-camouflaged-as-reinventing-government/>; *Pick-Pocketing The Taxpayer: The Insidious Effects of Acquisition Reform*, Project On Government Oversight, March 11, 2002, <https://www.pogo.org/report/2002/03/pick-pocketing-taxpayer-insidious-effects-of-acquisition-reform/>; "Written Testimony of POGO's Danielle Brian on DoD's Use of 'Commercial' Acquisition and 'Other Transaction Authority' before the Senate Armed Services Committee, Airland Subcommittee," Project On Government Oversight, March 15, 2005, <https://www.pogo.org/testimony/2005/03/written-testimony-of-pogos-danielle-brian-on-dods-use-of-commercial-acquisition-and-other-transaction-authority-before-senate-armed-services-committee/>; Mandy Smithberger and Scott Amey, "Thornberry Buying Industry Commercial-Item Policies," Project On Government Oversight, April 28, 2015, <https://www.pogo.org/analysis/2015/04/thornberry-buying-industry-commercial-item-policies/>.

²³ Mandy Smithberger, "Commercial Item Contracting Scam Continues," Project On Government Oversight, June 25, 2021, <https://www.pogo.org/analysis/2021/06/commercial-item-contracting-scam-continues/>; Scott Amey, "Other Transactions: Do the Rewards Outweigh the Risks?" Project On Government Oversight, March 15, 2019, <https://www.pogo.org/report/2019/03/other-transactions-do-the-rewards-outweigh-the-risks/>.

²⁴ Scott Maucione, "As OTAs grow, traditional contractors are reaping the benefits," *Federal News Network*, July 17, 2018, <https://federalnewsnetwork.com/contracting/2018/07/as-otas-grow-prime-contractors-are-reaping-the-benefits/>.

²⁵ Congressional Research Service, *Department of Defense Use of Other Transaction Authority: Background, Analysis, and Issues for Congress*, R45521 (2019), 8-10, 13-14, <https://crsreports.congress.gov/product/pdf/R/R45521>.

²⁶ Smithberger, "Commercial Item Contracting Scam Continues" [see note 23].

²⁷ Mandy Smithberger and Scott Amey, "In for a TransDigm, Out for Billions," Project On Government Oversight, May 29, 2019, <https://www.pogo.org/report/2019/05/in-for-a-transdigm-out-for-billions/>.

1990s. Specifically, all contract awards over \$500,000, except those where the goods or services are sold in substantial quantities to the general public in the commercial marketplace, should be subject to TINA. This small step would result in enormous improvements in contract pricing, negotiation, and accountability, and would save taxpayers billions of dollars per year.

4. Allow protests or challenges to ensure that bidders are on an even playing field, and that agency award decisions can be justified in a way that will instill public confidence.

POGO supports cutting buying costs, buying faster, encouraging innovation, and bringing nontraditional companies to the government table. But our current system is allowing cut corners and worst practices that can result in noncompetitive awards, crony capitalism, bad deals, and wasteful spending.

Thank you for inviting me to testify today. I look forward to working with the subcommittees to further explore how the government should improve federal spending oversight to better protect taxpayers, and I welcome any questions that you may have.