

Senator and Representatives Question Pentagon Halt to Improvement in Contractor Oversight

BY NICK SCHWELLENBACH

NOVEMBER 17, 2011

Last month, the Pentagon's director of Defense Procurement and Acquisition Policy (DPAP) directed every part of the Department of Defense (DoD) to halt compliance with a law to improve oversight of contractors signed by the President last year, according to a DPAP memo obtained by POGO.



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

OCT 11 2011

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Contractor Reporting of Full-Time Equivalents in Service Contracts

Senator Claire McCaskill (D-MO), who chairs a Senate panel on contract oversight, questioned DPAP's decision. "I am deeply concerned by an October 11, 2011, memorandum issued by the Director, Defense Procurement and Acquisition Policy, which appears to defy the direction of 321 and prohibit the use of direct labor hours as a basis for contractor inventories," McCaskill wrote in an October 21 letter that POGO obtained. Similarly, this week, House Armed Services Committee Chairman Buck McKeon (R-CA) and Ranking Member Adam Smith (D-WA) also expressed concern in a letter to Defense Secretary Leon Panetta.

“321” refers to section 321 of the National Defense Authorization Act for Fiscal Year 2011. Another section, 8108 of the Department of Defense and Full Year Continuing Appropriations Act for 2011 (Public Law 112-10), funds the requirement in 321 for the DoD to “develop plans for reporting contractor full-time equivalents (FTE).”

The October 11, 2011 DPAP memo states: “No Military Department, Defense Agency or Field Activity is to modify existing contracts/task orders to require contractors to report FTEs nor require such reporting in new contracts/task orders.”

The DPAP memo further states that the same methodology used for counting FTEs developed internally by DoD in 2010 should continue to be used and that the Army should continue using its separate Contractor Manpower Reporting Application. The approach mandated by the law was supposed to supplant the DoD-developed methodology because it would provide more accurate and detailed information on the contractor workforce.

According to McCaskill, “contractor-supplied data, although it may have to be supplemented with estimates for the purpose of completeness, generally provides greater fidelity as to numbers of employees and the functions in which they are engaged.”

McKeon and Smith noted in their letter that “an accounting of contracted services” is important “in order to inform decisions for long-term budgetary planning,” for “identifying inherently governmental functions inappropriately performed under contract, informing strategic human capital planning, facilitating appropriate workforce mixes, and enhancing total force management.”

Throughout the DoD, the military services, DoD agencies, and field activities had signed off on their ability and willingness to modify contracts directing private sector firms to report their direct labor costs and direct labor hours for the previous fiscal year. POGO reviewed memos from various parts of the DoD that show widespread agreement within DoD that it could implement section 321.

The first contractual modifications were supposed to begin this fall, meaning the first reporting would occur in October 2012 for the info covering fiscal year 2012 (September 30 marks the end of the fiscal year).

But with the DPAP memo, that will not happen, putting efforts to come up with an accurate fine-grained count of the service contractor workforce and its cost per full-time employee back at least a year to the end of 2013 at the earliest.

Richard Ginman, the director of DPAP, wrote in the memo that “the Department will initiate public rule-making procedures to determine the appropriate path forward.”

But McKeon and Smith argue that they do not believe compliance with the law “requires a change to federal regulations.” They explain they have been told that “the Department’s resistance to fully complying with the statute is predicated on certain reservations over complying with 41 USC 1707, relating to the publication of procurement regulations and notices, and the Paperwork Reduction Act.” The two congressmen “note that the

Department of the Army has successfully compiled its inventory [of contracted services] without burdensome paperwork requirements or changes to federal regulations."

The out-of-control cost of service contractors is eating the Defense Department alive. Last week, POGO pointed out that the DoD spends more on its service contractor workforce than members of the military and DoD civilian employees combined. The estimated size of the DoD service contractor workforce is substantially smaller than the size of the DoD's combined military and government civilian workforce. This means the average service contractor employee costs much more than the average service member or government civilian. POGO's recent *Bad Business* report found that in 33 of 35 occupation types, the average contractor billing rate is more than the average cost of full compensation paid to federal employees.

McCaskill, McKeon and Smith's oversight is welcome. POGO hopes Congress follows up on why DPAP stopped this serious attempt to get a handle on the individual cost of service contractor employees, despite the law requiring it and the widespread agreement within the Pentagon that it was doable.