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# SELLING OUT UNCLE SAM

How the Myth of Small Government  
Undermines National Security

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AMERICAN STRATEGY PROGRAM  
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## Executive Summary

It's 2010. Do you know where your government is? The answer is that, increasingly, government power that should be in the hands of the American people is now in the hands of private companies. This year, we saw lives lost and habitats destroyed from what were widely seen as spectacular regulatory failures: the Upper Big Branch mine disaster and the Gulf of Mexico oil spill. But in both cases, the companies were not simply skirting regulation. Often, they were the de facto regulators, not the civil servants. Businesses themselves are shaping (or obviating) rules of conduct that were supposed to prevent these kinds of catastrophes.

This report focuses on businesses that make their living on federal government contracts, and the potential for much the same result when they take on critical government functions. Gone are the days when contractors, say, just sold military parts. Now their scope is vast and the government's "brain"—internal expertise—is being depleted. They are positioned to influence policy to their liking on even the most sensitive, mission-critical government functions, like fighting wars and guarding against terrorism. The result is that our safety, security, and economy could be jeopardized. The very core of democratic society—citizens' ability to hold their government accountable and have a say in public decisions—is compromised. So is national security.

How has this happened? Over the past decade and a half, without revolution, public debate, or even much public awareness, the government has been ceding many of its critical functions, to private companies, and by extension eroding its control. Ironically, the effort to limit the size of government (identified with the Reagan-era campaign against "big government" but essentially adopted by both political parties), has facilitated the reverse: It has led politicians to outsource much more than printing and food preparation and spurred a bigger and far less transparent "shadow government," even as leaders try to maintain an illusion that they are shrinking federal payrolls. It has shielded Americans from seeing how the work of government gets done and who does it.

The reality is that shadow government can actually be *less* effective than traditional government. And in another bit of irony, the way the work is frequently awarded in our supposedly capitalist system is in clear defiance of free-market principles: a select group of mostly well-entrenched and

connected companies often win work with little or no competitive bidding.

This report zeroes in, primarily, on the involvement of contractors in formulating and influencing policy in homeland security, intelligence, and defense. For those who think the story of contracting excess begins and ends with Blackwater, consider these findings, based on government data and investigations, GAO and inspectors general reports, testimony from government officials, and the work of some public interest watchdogs and investigative journalists.

### **Who's running some of our crucial intelligence operations?**

A single private company has been called the "shadow intelligence community" by a former CIA deputy director because of its enormous influence. At the National Security Agency, the number of contractor facilities approved for classified work jumped from 41 in 2002 to 1,265 in 2006. A full 95 percent of workers at the very secret National Reconnaissance Office, which runs U.S. spy satellites, are full-time contractors. (pp. 2)

### **Could classified information be at risk?**

In one report revealingly titled *Industrial Security: DOD Cannot Ensure Its Oversight of Contractors under Foreign Influence Is Sufficient*, the GAO warns that the agency "cannot ensure that its oversight of contractors...is sufficient to reduce the risk of foreign interests gaining unauthorized access to U.S. classified information." (pp. 11)

### **Has vital government expertise been drained by big business?**

Companies were soliciting active-duty intelligence officers during lunch hour in the CIA cafeteria. Some were later banned. CIA director Michael Hayden complained in 2007 that his agency had begun "to look like the farm system for contractors around here." One reporter said this about top intel officials leaving for the private sector: "It's a privatization of the highest order, in which our collective memory and experience in intelligence—our crown jewels of spying, so to speak—are owned by corporate America." (pp. 13)

### **Could government brain-drain weaken homeland security?**

Managerial and technical expertise is said to be especially lacking at the Department of Homeland Security. During fiscal 2005 and 2006, more than half the senior employees at headquarters either resigned or transferred out.

Here's a whistle-blower from DHS's Transportation Security Administration: "There is not one job that requires any knowledge of terrorism. How can you expect a manager [who] has no knowledge of terrorism to run a security office that was established directly as a result of the 9/11 attacks? There are no requirements for staff members or managers to have knowledge of security." (pp. 13)

### **How dependent is the military on (mostly foreign) contractors while in the battle zone?**

U.S.-paid contractors greatly outnumber U.S. military personnel in Afghanistan and are almost as plentiful as military personnel in Iraq. These contractors supply "mission-critical services," including "information technology systems, interpreters, intelligence analysts ..." (pp. 3)

### **Who runs governmental information technology?**

More than 75 percent of governmental IT was estimated to be contracted out, even before the major Iraq war-related push to contract out. Government outsourcing expert Dan Guttman, with regard to IT, says "contractors are not simply the shadow government, but may become the primary government." (pp. 12)

### **Who runs the databases tracking foreigners as they enter and exit the U.S.?**

Accenture LLP does—a \$10 billion contract. Asa Hutchinson, undersecretary for border and transportation security at DHS under the Bush administration, said this: "I don't think you could overstate the impact of this responsibility in terms of the security of our nation." (pp. 2)

### **Who is staffing important offices? Civil servants charged with protecting the public interest, or contractors employed by companies focused on profits?**

The GAO found that in some Defense Department offices the percentage of contractors was 80 percent or more. (pp. 5)

### **Who's overseeing the contractors?**

Often it's other contractors. And they even draft official documents. One contractor boasted of having written the Army's Field Manual on "Contractors on the Battlefield." (pp. 3)

### **When the government awards contracts, do companies compete as one would expect in a free market?**

Over the past decade and a half, small contracts often have been replaced by bigger, and frequently open-ended, multi-year, multimillion and even multibillion-dollar deals, many of which are awarded with no competitive bidding whatsoever. (pp. 14-16)

This is shadow government run amok. And it leaves government open to influence by private and corporate agendas and power brokers who can co-opt decision-making in the most sensitive and important areas of government, ultimately altering regulations and government structures in ways that generate both the policies they prefer and those that provide these operators with a favorable environment. When these vulnerabilities exist in the realm of national security and foreign policy, the nation's sovereignty can potentially be eroded.

With shadow government encroaching, traditional government power has been abraded and the results are both deadly and costly. The economic collapse and the Gulf oil spill might never have happened had government not been overrun by private interests. With the economy sputtering, terrorism a threat, and U.S. troops still on the ground in two foreign lands, the need for effective and accountable government that is sure to operate in the national interest is urgent.

A key question is how to change a system that has become so entrenched. It is not just a matter of "insourcing" governmental functions that have been outsourced and ensuring that crucial functions that the government itself deems integral to its work are carried out by federal employees. Just as the system developed over many years, it cannot be rolled back overnight. Because so much expertise, information, and institutional memory today lie outside government, comprehensive redesign is necessary, and leaders seeking change will need fortitude to withstand political pushback. They are more likely to have that fortitude if they have public support, and at this moment, the public has only a dim knowledge of the problem. This report aims to shine the light on the risks of reliance on shadow government for mission-critical functions.

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Without revolution, public debate, or even much public awareness, a new form of governing has captured Washington—one that can threaten our national security and public interest from the inside. Ironically, the impetus for this sea change—the push for “efficient” and small or “limited” government—has often resulted in the opposite: big, Swiss-cheese government, full of holes. That is because much of the work of government is done, and many public priorities and decisions are driven, by private companies and players instead of government officials and agencies that are supposed to answer to citizens and sworn to uphold the national interest. The result is that, in the model democracy of the United States, government has been reconstituted, becoming less accountable and sometimes compromised in its ability to pursue the “national” in “national interest.”

A host of policy changes, both big and small, over roughly the last two decades in particular have brought about this capture. For many Americans, the first inkling of governing beyond formal government came when reports surfaced about the extent to which private companies were prosecuting the wars in Iraq and Afghanistan. Although companies like KBR Halliburton (the two split in 2007) and Blackwater (which changed its name to Xe in 2009) have come to symbolize problems in contracting out, these firms, whatever their excesses, have largely provided routine services.<sup>1</sup> Meanwhile, corporations like Booz Allen Hamilton, Science Applications International Corporation (SAIC), Accenture, Lockheed Martin, Boeing, and Northrop Grumman routinely are surrogates for the U.S. government in making policy and performing “inherently governmental” functions—functions that the government itself deems so integral to its work that only federal employees should carry them out. Sometimes these companies de facto even *become*, for all practical purposes, the government. Standing in for the state and backed by its power, such companies guide many policies that affect us on a daily basis—from national to financial security—while government officials merely sign on the dotted line. Private actors are being afforded opportunities to make governing and policy decisions without meaningful government involvement. Whether to advance an agenda or to make a profit, they can privatize policy beyond the reach of traditional moni-

toring systems. This state of affairs is potentially far more threatening to the national and public interest than farming out supply and security services.<sup>2</sup>

Some government executives have sounded alarm bells. In 2007, David M. Walker, the comptroller general of the United States and longtime head of the Government Accountability Office (GAO), called for “a fundamental reexamination of when and under what circumstances we should use contractors versus civil servants or military personnel.”<sup>3</sup> And President Barack Obama acknowledges the problem. Early in his term, Obama announced plans to “insource” certain jobs—transferring work back to the government—and expressed concern about the outsourcing of inherently governmental functions. A March 2009 White House memo states:

Since 2001, spending on Government contracts has more than doubled, reaching over \$500 billion in 2008. ... However, the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private sector competition has been blurred and inadequately defined. As a result, contractors may be performing inherently governmental functions. Agencies and departments must operate under clear rules prescribing when outsourcing is and is not appropriate.<sup>4</sup>

The Obama administration appears to be making some progress toward clarifying guidelines pertaining to the outsourcing of government functions, as well as toward insourcing.<sup>5</sup> In August 2010, Defense Secretary Robert M. Gates announced that the Pentagon will eliminate thousands of contractor jobs along with government positions.<sup>6</sup> But while the administration has proposed the insourcing of certain jobs and some efforts to push back or review the ever-upward spiral of outsourcing, government is utterly dependent on private companies to do much of its work. At this writing it is unclear to what extent these efforts will move forward. The current state of affairs cannot simply be rolled back. A fundamental redesign of the system is necessary. A systemic transformation has taken place over the past decade and a half, resulting in a “blended” workforce, with contractors frequently working alongside federal employees, and, at the top levels, state and private power often intertwining. The resulting institutional forms are the body and soul of federal governing today—the system as it works in practice and the ground upon which any future changes will occur.

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This report, intended to highlight key issues (and not purporting to be comprehensive), focuses primarily on the participation of contractors in inherently governmental functions in national and homeland security. In these arenas in particular, questions have been raised about whether policies are being made in the public as well as in the national interest. We base our findings on government sources, including reports by the GAO and inspectors general, and testimony of government officials, supplemented with data from scholars, investigative journalists, public interest organizations, and our own interviews. ❖

## The Indispensable Hand

Over the past decade and a half, government contracting has become a far more integral part, both qualitatively and

quantitatively, of federal governing. Consider, for instance, that government contractors today:

- **Run intelligence operations:** Contractors from private security companies have been hired to help track and kill suspected militants in Afghanistan and Pakistan. At the National Security Agency (NSA), the number of contractor facilities approved for classified work jumped from 41 in 2002 to 1,265 in 2006. A full 95 percent of the workers at the very secret National Reconnaissance Office (one of the 16 intelligence agencies), which runs U.S. spy satellites and analyzes the information they produce, are full-time contractors. In more than half of 117 contracts let by three big agencies of the Department of Homeland Security (DHS)—the Coast Guard, the Transportation Security Administration, and the Office of Procurement Operations—the GAO found that contractors did inherently governmental work. One company, for instance, was awarded \$42.4 million to develop budget and policies for DHS, as well as to support its information analysis, procurement operations, and infrastructure protection.<sup>7</sup>

- **Manage—and more—federal taxpayer monies doled out under the stimulus plans and bailouts:** The government enlisted money manager BlackRock to help advise it and manage the unsuccessful attempt to rescue of Bear Stearns, as well as saving the American International Group (AIG) and Citigroup. BlackRock also won a bid to help the Federal Reserve evaluate hard-to-price assets of Freddie Mac and Fannie Mae.<sup>8</sup> As the *Wall Street Journal* noted, “BlackRock’s multiple hats put it in the enviable position of having influence on setting the prices of both the assets it is buying and selling.”<sup>9</sup> With regard to the fall 2008 \$700 billion bailout, known as the Troubled Asset Relief Program (TARP), the Treasury Department hired several contractors to set up a process to disburse the funds.<sup>10</sup>

- **Control crucial databases:** In a mega-contract awarded by DHS in 2004, Accenture LLP was granted up to \$10 billion to supervise and enlarge a mammoth U.S. government project to track citizens of foreign countries as they enter and exit the United States. As the undersecretary for border and transportation security at DHS at the time remarked, “I don’t think you could overstate the impact of this responsibility in terms of the security of our nation.”<sup>11</sup>

- **Choose other contractors:** The Pentagon has employed contractors to counsel it on selecting other contractors.

The General Services Administration (GSA) enlisted CACI, the Arlington, Virginia-based company, some of whose employees were among those allegedly involved in the Abu Ghraib prisoner abuse scandal in Iraq, according to Department of the Army, to help the government suspend and debar other contractors. (CACI itself later became the subject of possible suspension/debarment from federal contracts.)<sup>12</sup>

- **Oversee other contractors:** DHS is among the federal agencies that have hired contractors to select and supervise other contractors. Some of these contractors set policy and business goals and plan reorganizations. And, in the National Clandestine Service, an integral part of the Central Intelligence Agency (CIA), contractors are sometimes in charge of other contractors.<sup>13</sup>

- **Execute military and occupying operations:** The Department of Defense is ever more dependent on contractors to supply a host of “mission-critical services,” including “information technology systems, interpreters, intelligence analysts, as well as weapons system maintenance and base operation support,” according to the GAO. U.S. efforts in Afghanistan and Iraq illustrate this reliance. As of September 2009, U.S.-paid contractors far outnumbered U.S. military personnel in Afghanistan, composing nearly two-thirds of the combined contractor and military personnel workforce (approximately 104,000 DOD contractors, as compared with 64,000 uniformed personnel). In Iraq, contractors made up nearly half of the combined contractor and military personnel workforce (roughly 114,000 DOD contractors, as compared with 130,000 uniformed personnel). These proportions are in sharp contrast to the 1991 Persian Gulf War: The 540,000 military personnel deployed in that effort greatly outnumbered the 9,200 contractors on the scene.<sup>14</sup>

- **Draft official documents:** Contractors have prepared congressional testimony for the secretary of energy. Web sites of contractors working for the Department of Defense have also posted announcements of job openings for analysts to perform functions such as preparing the defense budget. One contractor boasted of having written the Army’s Field Manual on “Contractors on the Battlefield.”<sup>15</sup>

In short, the outsourcing of many government functions is now routine. Government investigators looking into arenas such as defense, homeland security, and energy have

raised questions about who drives policy—government or contractors?—and whether government has the information, expertise, institutional memory, and personnel to manage contractors—or is it the other way around?

A key issue here is information. Government officials who are directing and implementing crucial policy directives are not always in the information loop. They are often reliant on what the contractors report and recommend, especially when a sole contractor carries out a given program or project, as is often the case. And, when those officials receive incomplete or skewed information (or when contractors are formulating and driving policy, leaving bureaucrats merely to sign on the dotted line), the national and public interest can be compromised. Even when government officials approve projects and decisions, they sometimes may be merely rubber stamping the work of contractors.

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Contractor officials and employees are interdependent with government, involved in all aspects of governing and negotiating “over policy making, implementation, and enforcement,” as one legal scholar has noted.<sup>16</sup> Yet contractors’ imperatives are not necessarily the same as the government’s imperatives. Contractor companies are responsible for making a profit for their shareholders; government is supposedly answerable to the public and the nation in a democracy.

Amid this environment complicated by mixed motives, new institutional forms of governing have gathered force as government and contractor officials interact (or don’t) in the course of projects; as chains of command among contractors and the agencies they supposedly work for have become ever more convoluted; as contractors perform inherently governmental functions beyond the

capacity of government to manage them; and, as contractors standing in for government are not subject to the same rules that apply to government officials. The result is that new forms of governing join together the state and the private, often most visibly in intelligence, military, and homeland security enterprises, where so much has taken place since 9/11. ❖

## Enabling Big Government

How did this state of affairs come to be?

Ironically, the perennial American predilection to rail against “big government” is partly to blame for the creation of still bigger government—the “shadow government” of companies, consulting firms, nonprofits, think tanks, and other nongovernmental entities that contract with the government to do so much of its work. This is government for sure, but of a less visible and accountable kind.

The necessity of making government *look* small—or at least contained—has fueled the rise of this shadow government. Here’s how it works: in an ostensible effort to limit government, caps have been put on how many civil servants government can hire. But citizens still expect government to supply all manner of services—from Medicare and Social Security to interstate highways to national defense. To avoid this conundrum, administrations both Democratic and Republican over the years have been busily enlisting more and more contractors (who often, in turn, hire subcontractors) to do the work of government. Because they aren’t counted as part of the federal workforce, it can look as if government is being reined in. Like the Potemkin village of Russia, constructed to make the ruler or the foreigner think that things are rosy, the public is led to believe they have something they don’t.

The evolution of the shadow government is best understood in the larger historical context stretching back to the end of World War II. After the war, U.S. reformers decided to use contractors instead of government workers when government work needed to be done, according to Dan Guttman, coauthor of the 1976 book *Shadow Government*.<sup>17</sup> A vast, off-the-books government workforce already was entrenched in 1976—and has since done nothing but grow. Specifically, while federal government was officially being contained in size—as measured in terms of civil servants and others employed directly by government—government expenditures and programs continued to proliferate.

Where once federal employees executed most government work, today upwards of three-quarters of the work of federal government, measured in terms of jobs, is contracted out. Many of the most dramatic alterations have occurred since the end of the Cold War. Contracting out accelerated and assumed new incarnations during and after the Clinton administration.<sup>18</sup> The advent of ever more complex technologies, which gave birth to information technologies upon which society now relies and which the U.S. government largely outsources, tipped the balance even further. The shadow government, which devises and implements so much policy and forms the core of governance, is the elephant in the room.

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When politicians and pundits of nearly all stripes decry big government and endorse its containment, they are often its enablers, helping to beget a still bigger shadow government—one that is less accountable. The fear of big government has facilitated the opposite. It has shielded Americans from seeing the elephant and how much of the work of government gets done and who does it.

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The shadow government encompasses all the entities that swell the ranks of contractors and entire bastions of outsourcing—neighborhoods whose high-rise office buildings house an army of contractors and “Beltway Bandits.” Largely out of sight except to Washington-area dwellers, contractors and the companies they work for do not appear in government phone books. They are less likely to be dragged before congressional committees for hostile questioning. They function with less visibility and scrutiny on a regular basis than government employees would face. Most important, they are not counted as government employees, and so the fiction of limited government can be upheld, while the reality is that of an expanding sprawl of entities that are the government in practice.

So when politicians and pundits of nearly all stripes decry big government and endorse its containment, they are

often its enablers, helping to beget a still bigger shadow government—one that is less accountable. The fear of big government has facilitated the opposite. It has shielded Americans from seeing the elephant and how much of the work of government gets done and who does it.<sup>19</sup> ❖

## The Elephant in the Room

While it may be the elephant in the room, we know little about the nature of the beast. A key barometer of the growth of the shadow government, driven in part by the increase in demand for military, nation-building, and homeland security services after 9/11, is the number of government employees versus contractors. Government scholar Paul C. Light compiles the most reliable figures on contractors, but these are inexact. The number of contract workers—as compared with civil servants, uniformed military personnel, and postal service employees—increased steadily over the last two decades. In 1990 roughly three of every five employees in the total federal labor force worked indirectly for government—in jobs created by contracts and grants, as opposed to jobs performed by civil servants, uniformed military personnel, and postal service workers. By 2002, two of every three employees in the federal labor force worked indirectly for government; and, by 2008, the number was three out of four.<sup>20</sup>

In DHS—the mega-bureaucracy established in 2003 with the merger of 180,000 employees and 22 agencies, including the Customs Service, the Coast Guard, and the Transportation Security Administration—contractors are more numerous than federal employees. DHS estimated that it employs 188,000 workers, as compared with 200,000 contractors. Light assesses that the number of contractors is likely much higher.<sup>21</sup>

DHS, the creation of which entailed the largest reorganization of the federal government in more than half a century, has relied substantially on contractors to shore up gaps and fill new security needs. In nine cases examined by the GAO, “decisions to contract for ... services were largely driven by the need for staff and expertise to get DHS programs and operations up and running quickly.”<sup>22</sup> DHS is now reviewing the balance of contracting and federal positions.<sup>23</sup>

Contractors and government employees often work side by side in what has come to be called the “blended” or “embedded” workforce, often sitting next to each other in cubicles or sharing an office and doing the same or similar work (but typically with markedly different pay).<sup>24</sup> When the GAO looked into the setup of Defense Department offices, its investigation established that in some, the percentage of contractors was in the 80s.<sup>25</sup>

Another barometer of the growth of shadow government is the federal budget. Under George W. Bush, shadow government captured record levels of procurement (or contract) spending. The cost of services alone (not counting goods) provided by contractors soared from some \$125 billion in 2001 to an estimated \$314 billion-plus in 2009. The American federal government today is the world’s largest customer for goods and services. Where once the government procured mainly manufactured goods from the private sector, a huge and growing portion of government purchases is now for work that would once have been performed by the civil service.<sup>26</sup>

The DOD is the federal government’s biggest buyer of services. In 1984, nearly two-thirds of the Pentagon’s shopping budget was for products as opposed to services. But by the early 1990s the figure was even, and, by fiscal

## The Shadow Intelligence Community

Joan Dempsey, a former CIA deputy director, has referred to the consulting giant Booz Allen Hamilton, headquartered in McLean, Virginia, as “the shadow intelligence community.” With 13,000 of its more than 19,000 employees located in the Washington area alone, the company is one of the region’s biggest employers and suppliers of services to government. Booz was named 2003 Government Contractor of the Year in the \$500+ million annual revenue category. That such an award category exists is revealing in its own right. Departments that contract with Booz Allen Hamilton include Homeland Security, Defense, the Internal Revenue Service, and the Department of Health and Human Services. For Defense alone, during the five-year period from 1998 to 2003, Booz Allen was awarded contracts worth more than \$3 billion, 26 percent of them with no open bidding.<sup>32</sup>

2003, 56 percent went toward services. This trend continues to the present.<sup>27</sup>

In recent years both the DOD and the DHS have recorded colossal increases in contract spending (for both goods and services). Between fiscal 2001 and 2008, DOD's obligations to service contracts more than doubled—from some \$92 billion to just over \$200 billion.<sup>28</sup> In 2009, Defense accounted for nearly three-quarters of the total federal procurement budget.<sup>29</sup> DHS, for its part, spent one-third of its annual budget of \$42 billion (not including supplemental appropriations) on contracted goods and services in 2009.<sup>30</sup>

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Meanwhile, about 70 percent of the budget of the U.S. intelligence community is devoted to contracts, according to the Office of the Director of National Intelligence, which was created in 2005 and supervises 16 federal agencies. Contract employees make up an estimated one-quarter of the country's core intelligence workforce, according to the same office. The director both heads the U.S. intelligence community and serves as the main adviser to the president on national security matters.<sup>31</sup>

Contractors are plentiful in other arenas of government that directly affect national and homeland security, not only the departments of defense and homeland security. For instance, nearly 90 percent of the budgets of the Department of Energy and NASA go to contracts.<sup>33</sup>

The proliferation of contracting widens the de facto base of government in which new forms of unaccountable governance can flourish. Contractors are so integrated into the federal workforce that proponents of insourcing acknowledge that they face an uphill battle.<sup>34</sup> Meanwhile, the façade

of small government—so effective as rhetoric espoused by Republicans and Democrats alike—appears as a perennial ruse in public discourse despite the enduring reality that de facto federal government has long been growing. ■

## From Printing to Policy

Contractors long ago began doing much more than preparing food, photocopying, or landscaping and invaded the realm of inherently governmental functions—activities that involve “the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements.” Beginning as early as 1955 with the Eisenhower administration, the U.S. government has issued guidelines to federal agencies regarding its policy vis-à-vis private contractors. These guidelines have been revised periodically as industry has ratcheted up the pressure for service contracts.<sup>35</sup>

The 20 “inherently governmental” functions on the books include:

- The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.
- The conduct of foreign relations and the determination of foreign policy.
- The determination of agency policy, such as determining the content and application of regulations, among other things.
- The determination of Federal program priorities or budget requests.
- The direction and control of Federal employees.
- The direction and control of intelligence and counter-intelligence operations.
- The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.
- The approval of position descriptions and performance standards for Federal employees.<sup>36</sup>

Because these functions focus substantially on designing and directing policy, it is mostly in this realm that the potential exists for private players to serve their own policy agendas or purposes—rather than those of the public.

The Clinton administration gave contracting out, including of government functions, a push with its Federal

Activities Inventory Reform (FAIR) Act of 1998. FAIR supplied the legislative mandate for Bush's 2003 "competitive sourcing" directive, a head-on attack on inherently governmental functions instituted under the President's Management Agenda of 2001. Competitive sourcing mandates competition with the private sector and encourages the outsourcing of government work.<sup>37</sup> That directive, buried in an Office of Management and Budget circular, ate away at the long-established norm that "certain functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by Federal employees." The new mandate, in a subtle language shift, fundamentally weakened the definition of "inherently governmental" functions, going from activities requiring "the exercise of discretion in the application of government authority" to "the exercise of *substantial* discretion" (emphasis added). In effect, the directive expanded the definition of commercial activity and established the legal basis for more contracting. It thus provided justification for practices that were already routine: private companies performing inherently government functions, including crafting and practically directing policy.<sup>38</sup> Government agencies have been faced with having to justify not contracting out a government program, project, or function, rather than the other way around.

Moreover, the government is utterly dependent on private contractors to carry out many inherently governmental functions. As the Acquisition Advisory Panel, a government-mandated, typically contractor-friendly task force made up of representatives from industry, government, and academe, acknowledged in its final 2007 report: "Many federal agencies rely extensively on contractors in the performance of their basic missions. In some cases, contractors are solely or predominantly responsible for the performance of mission-critical functions that were traditionally performed by civil servants." This trend, the report concluded, "poses a threat to the government's long-term ability to perform its mission" and could "undermine the integrity of the government's decision making."<sup>39</sup>

Contractors who carry out inherently governmental functions or closely support them are firmly entrenched both in DHS and in the Department of Defense. In fiscal 2005 DHS obligated \$1.2 billion to procure professional and management support services—activities that the GAO

assesses to closely support the performance of inherently governmental functions.<sup>40</sup> The GAO also has found that contractors have exercised influence over DHS's acquisition planning, a decision-making function that is supposed to minimize risk and enhance the value and performance of the goods and services obtained. This state of affairs puts the government at risk of losing control over mission-related decisions and the decision-making process, the GAO has concluded.<sup>41</sup>

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**DOD contractors today supply intelligence analysis, security services, program management, engineering and technical support, logistical support on the battlefield, and the operation of information technology systems. They "provide a range of mission-critical services" that are similar to functions performed by government employees and are involved in the full range of activities, according to the GAO. A close look at these activities shows they are littered with potential conflicts of interest.**

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With respect to the DOD, the GAO observed that new categories of service contracts such as "professional, administrative, and management support" and information technology appeared from 1996 to 2005.<sup>42</sup> DOD contractors today supply intelligence analysis, security services, program management, engineering and technical support, logistical support on the battlefield, and the operation of information technology systems.<sup>43</sup> They "provide a range of mission-critical services" that are similar to functions performed by government employees and are involved in the full range of activities, according to the GAO.<sup>44</sup>

A close look at these activities shows they are littered with potential conflicts of interest. At the beginning of an acquisition process, for instance, contractor employees in DOD program offices look for alternative ways to acquire desired capabilities, help draft requirements, and assist in designing and evaluating Requests For Proposals and

responses to them. They also give advice on the past performance of the contractors who are competing for the work. In addition, after a contract is awarded, contractor employees recommend corrections to any contractor performance problems; analyze the contractors' costs, schedules, and performance data; and help decide the amount of the award or fees for other contractors. Contractor employees also devise long-range financial plans and yearly budgets and perform administrative tasks that can include tracking travel budgets and investigating and reconciling payment discrepancies.<sup>45</sup>

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**In addition to plans to reduce the Pentagon's contractor workforce announced in August 2010, the DOD under Obama has declared a moratorium on new studies to determine if work that is currently being performed by federal employees should be considered for contracting out. While these measures may dampen the ever-upward spiral of service outsourcing, the danger posed by massive dependency on private contractors for mission-critical functions persists.**

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The GAO devoted an entire report to the use of contractors in developing the contracts under which contractors are hired. For instance, in the Army Contracting Agency's Contracting Center for Excellence, which has used contractor employee contract specialists since 2003, contractors represented 42 percent of the center's contract specialists in 2007. The center is just "one of many government agencies that have turned to contractors to support their contracting functions," the GAO reported. "It is now commonplace for agencies to use contractors to perform activities historically performed by federal government contract specialists. Although these contractors are not authorized to obligate government money, they provide acquisition support to contracting officers, the federal decision makers who have the authority to bind the government contractually. Among other things, contract specialists perform market research, assist in preparing statements of work, develop and manage acquisition plans, and prepare the

documents the contracting officer signs, such as contracts, solicitations, and contract modifications."<sup>46</sup>

These contractors not only "work side by side and perform the same functions as their government counterparts," as the GAO put it, but "the line separating contractor from government employee is blurry." And contractors did not always identify themselves as such in the documents they prepared or when dealing with the public, the GAO learned.<sup>47</sup> In some cases contractors were even specified on contract documents as the government's point of contact. "In situations such as these," the GAO concluded, "contractor employees may appear to be speaking for the government, a situation that could create the impression in the general public that they are government employees."<sup>48</sup> The GAO also noted that the Army's Contracting Center for Excellence pays nearly 27 percent more for its contracted-provided contract specialists than for government employees with comparable grades.<sup>49</sup>

In addition to plans to reduce the Pentagon's contractor workforce announced in August 2010, the DOD under Obama has declared a moratorium on new studies to determine if work that is currently being performed by federal employees should be considered for contracting out.<sup>50</sup> While these measures may dampen the ever-upward spiral of service outsourcing, the danger posed by massive dependency on private contractors for mission-critical functions persists. With respect to the contracting out of professional and management support services, for instance, the GAO, in its characteristic bureaucratized, had this to say: "Of key concern is the loss of government control over and accountability for mission-related policy and program decisions when contractors provide services that closely support inherently governmental functions."<sup>51</sup> The comptroller general summed up his concern by saying: "The closer contractor services come to supporting inherently governmental functions, the greater the risk of contractors influencing the government's control over and accountability for decisions that may be based, in part, on the contractor's work."<sup>52</sup> ■

## **Swiss-Cheese Government**

In theory, contracts and contractors are overseen by government employees who would guard against abuse. But that has become less and less true as the capacity of government oversight has diminished—a lessening that seems to flow directly from the need to maintain the façade

of small government. A look at trend lines is illuminating. The number of civil servants who could potentially oversee contractors fell during the Clinton administration and continued to drop during the Bush administration. The contracting business boomed under Bush, while the acquisition workforce—government workers charged with the conceptualization, design, awarding, use, or quality control of contracts and contractors—remained virtually constant. In 2002, each federal acquisition official oversaw the disbursement of an average of \$3.5 million in service contracts. In 2006 the average workload expanded to \$7 million and, in 2008, to \$10.6 million, while also demanding of the workforce increasingly complex contracting skills.<sup>53</sup>

In the Department of Defense, the number of procurement professionals has been shrinking since the early 1990s, even as the volume of contracts (both the numbers of contracts awarded and the value of these contracts) has risen rapidly. This puts the government at risk of losing control over mission-related decisions and the decision-making process, the GAO has concluded.<sup>54</sup> Government officials are made responsible for not only properly awarding contracts, but also supervising and evaluating the performance of contractors on the job. There is not enough capacity for them to do all this effectively.<sup>55</sup> As the comptroller general expressed, “at the same time procurement spending has skyrocketed, fewer acquisition professionals are available to award and—just as importantly—administer contracts. Two important aspects of this issue are the numbers and skills of contracting personnel and DOD’s ability to effectively oversee contractor performance.”<sup>56</sup> The comptroller

general concluded that “the acquisition workforce faces serious challenges” in such matters as “size, skills, knowledge, and succession planning.”<sup>57</sup>

When these deficiencies play out on the ground, as they have done, for instance, in Iraq, they can lead to serious consequences. The GAO found that “problems with management and oversight of contractors have negatively impacted military operations and unit morale and hindered DOD’s ability to obtain reasonable assurance that contractors are effectively meeting their contract requirements in the most cost-efficient manner.”<sup>58</sup>

With regard to DHS, both the inspector general and the GAO have cited as a serious problem DHS’s inadequate contract management and oversight.<sup>59</sup> Complicating oversight, the GAO observed, has been the existence of dual accountability for acquisitions between the GAO’s chief procurement officer and the heads of each DHS component.<sup>60</sup> The problem persists in 2010, despite the GAO having repeatedly highlighted it. As the GAO summed it up: DHS “lacks a sufficient acquisition workforce to implement and oversee its complex and varied procurement needs.”<sup>61</sup>

Neither DHS as a whole nor its separate agencies have the level of oversight to hold contractors accountable to their decisions or performance, even when the functions they perform are closely related to inherently governmental ones. These functions include budget preparation, developing or interpreting regulations, intelligence services,

## Securing the Borders

The job of securing U.S. borders falls to DHS and is obviously crucial in an era of terrorist threats. One DHS program with oversight deficiencies is US-VISIT. US-VISIT is a large and complex program that aims to secure the country by providing biometric information on foreign visitors to local and federal agencies. It is implemented by more than one DHS agency, each of which is responsible for overseeing its share of contracts.

The program spent billions of dollars without effective management or oversight. The GAO found that “effective financial controls were not in place on any contracts that [it] reviewed.” The GAO also found that US-VISIT set up controls for contracts it managed directly, but that oversight did not extend to contracts managed by other DHS agencies or agencies outside DHS.

Perhaps even more disturbing is that, according to the GAO, US-VISIT did not fully know the scope of its own contract activities, so there was not just a lack of oversight but even a lack of full knowledge of what needed overseeing.<sup>65</sup>

policy development, and reorganization and planning. The GAO warned that “DHS program officials did not assess the risk that contractor judgments could influence government decisions and did not provide enhanced oversight, despite federal procurement guidance requiring [it]...Most contracting and program officials we spoke to were not only unaware of federal requirements for enhanced oversight, but did not see a need for it.”<sup>62</sup> The lack of institutional capacity has also been echoed by DHS Inspector General Richard Skinner: “The department does not have a cadre of skilled program and acquisition management personnel, as well as robust business processes and information systems, to meet its urgent schedule demands and complex program objectives in a timely and effective manner.”<sup>63</sup>

This paucity of oversight is one factor that has led the GAO to identify large procurement operations as “high risk” due to “their greater susceptibility to fraud, waste, abuse, and mismanagement.” The list of high-risk areas has, since 1990 or 1992 (depending on the specific area), included the large procurement operations of the Departments of Defense and Energy, as well as NASA. DHS has been on

the high-risk list since its creation in 2003 and has been faulted for lack of oversight in procurement. The comptroller general said he is “not confident that [high-risk] agencies have the ability to effectively manage cost, quality, and performance in contracts.” He added that the current challenges to contract oversight are “unprecedented.”<sup>64</sup>

The issue of oversight is further complicated by the multiple layers of contracting and subcontracting that are endemic to the contracting system. Contractors working on large projects typically farm out work to multiple subcontractors. While the practice makes sense in terms of assembling a variety of competencies in one project, it further distances government monitoring from the work being done and the ability to assess it.

In sum, when the number of civil servants available to supervise government contracts and contractors proportionately falls, thus decreasing the government’s oversight capacity, and when crucial governmental functions are outsourced, government begins to resemble Swiss-cheese—full of holes. The governance landscape becomes vulner-

## Outsourcing Government Oversight

Further eroding government is the practice of outsourcing oversight itself—to contractors who are enmeshed with government. The BlackRock case cited earlier is one example. Another is known as SWIFT. In this case, a private company was given government access to sensitive, private data about U.S. citizens and other countries. The company not only worked alongside government to analyze the data, but then also (supposedly) oversaw the process.

Following the 9/11 terrorist attacks, one government surveillance program tracked money flowing into and out of the United States, transactions abroad, and, in a small portion of cases, financial transactions within the United States. “SWIFT” takes its name from the Belgium-based Society for Worldwide Interbank Financial Telecommunications, a “member-owned cooperative” that processes international financial transactions. Through SWIFT, the U.S. Treasury Department sought and gained access to large numbers of financial and communication records.

Treasury then established the Terrorist Finance Tracking Program, run out of the CIA, to analyze the SWIFT data and later shared it with the CIA and FBI. It also hired Booz Allen Hamilton (whose majority owner is the Carlyle Group), as an “independent” auditor, which, along with SWIFT, reviewed Treasury’s logs of information searches. When the surveillance program was exposed amid controversy in 2006, a key question was how Booz Allen could be impartial, given its record as a government contractor and the close ties of its executives to high government officials, and considering the fact that some of these executives are themselves one-time intelligence officials. As Barry Steinhardt, director of the American Civil Liberties Union’s Technology and Liberty Project, put it: “It is bad enough that the administration is trying to hold out a private company as a substitute for genuine checks and balances on its surveillance activities. But of all companies to perform audits on a secret surveillance program, it would be difficult to find one less objective and more intertwined with the U.S. government security establishment.”<sup>69</sup>

able to personal and corporate agendas and to operations that fall short of the public or national interest. ■

## The Information Revolution?

This is the information era, right? The age of Web 2.0, smartphones, and twenty-four-hour news cycles. But one of the most important dangers in contracting government functions is that information that is supposedly of and for government often ends up, and remains, in private hands. When contractors have superior information, they have the edge over their competition—and over their government overseers.

Government sometimes lacks the specific information it needs to carry out its work, let alone monitor the entities that work for it. The GAO has examined contracts government-wide with this issue in mind. Katherine Schinasi, a top GAO official, reported that, in many cases, government decision makers scarcely supervise the companies on their payrolls. As a result, she observed, they are unable to answer simple questions about what the firms are doing, whether they have performed well or not, and whether their performance has been cost effective. In April 2002, eleven months before the war in Iraq, the Army reported to Congress that its best guess was that it directly or indirectly employed between 124,000 and 605,000 service contract workers—a range of half a million workers.<sup>66</sup> This information deficit is part of a larger problem at the Defense Department. As the GAO's director of acquisition and sourcing management reported, "At this point, DOD does not know how well its services acquisition processes are working, which part of its mission can best be met through buying services, and whether it is obtaining the services it needs while protecting DOD's and the taxpayers' interests."<sup>67</sup>

Lest one think it inconsequential whether the Army or any other arm of government gathers information on its contractors, consider Defense's meager ability to monitor contractors who work with classified information, as detailed by the GAO. In a report revealingly titled "Industrial Security: DOD Cannot Ensure Its Oversight of Contractors under Foreign Influence Is Sufficient," the GAO warned that the agency "cannot ensure that its oversight of contractors ... is sufficient to reduce the risk of foreign interests gaining unauthorized access to U.S. classified information." The report elaborated that Defense "does not systematically collect information to know if contractors are report-

ing certain foreign business transactions," which would enable Defense to learn when a contractor has come under foreign influence and determine "what, if any, protective measures are needed to reduce the risk of foreign interests gaining unauthorized access to U.S. classified information." For example, one foreign-owned contractor appeared to have had access to U.S. classified information for at least six months before a protective measure was implemented. Moreover, Defense neither centrally collects information regarding contractors potentially under foreign influence nor assesses the effectiveness of its oversight so it can identify weaknesses in its protective measures and make necessary adjustments. In 2007 the GAO added a new category to its high-risk list: "ensuring the effective protection of technologies critical to U.S. national security interests."<sup>68</sup>

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Government officials, through no fault of their own, are often absent with leave. Conversations with officials and contractors, as well as those monitoring them (such as GAO investigators) and interacting with them (such as congressional staff), yield records of countless instances in which contractors vastly outnumber government officials in "government" meetings—or in which officials are altogether absent.<sup>70</sup> GAO official Katherine Schinasi described a high-level meeting she attended at a military command. Because she did not know any of the participants, she asked everyone around the table who employed them. "There were several people who worked for the military command, but the majority of people sitting at the table worked for contractors," she said.

In some cases we see a disturbing role reversal, with vital information in the hands of the contractors rather than those of the relevant government officials, putting the contractors firmly in the driver's seat. Companies also some-

times drive policy, rather than the other way around. Or they draft rules that benefit themselves. Conversations with government officials and contractors reveal that this happens frequently. To offer just two examples, both from the huge government contractor SAIC:

- The company suggested the idea of a biosurveillance shop in a study it conducted for DHS. The agency subsequently bought the idea of such an operation, decided to contract it out, and awarded SAIC the contract.
- While advising the Nuclear Regulatory Commission (NRC) on rules regarding the recycling of radioactive materials, SAIC also worked as a contractor on such a recycling project and concealed that fact, a federal jury found, even as the firm's recycling business could benefit from its NRC consulting. Moreover, a top SAIC official also helped manage an association that promoted favorable nuclear recycling standards at the same time the company was embarking on a venture that would be subject to the very rules it was helping to write, according to Department of Justice documents.<sup>71</sup> This case went to court and the government won. According to the NRC, "The jury found SAIC failed to avoid and disclose conflicts of interests that had the potential to bias its work helping the NRC create a rule that would govern whether radioactive materials from nuclear facilities could be released or recycled. The jury found that SAIC knowingly concealed business relationships with private corporations that stood to benefit from the rule."<sup>72</sup>

A similar scenario happened at DHS. A Transportation Security Administration (TSA) staff member blew the whistle on a case that involved information sharing with a private firm. Alfonzo Diaz, an aviation security specialist at TSA reported, "My bosses at TSA appropriated ideas and technical recommendations about aviation security and gave them to a contractor who then, through a \$1 million contract, issued a book containing my ideas and technical recommendations." This fraud case involved the creation of a company that was awarded a \$135 million contract with DHS.<sup>73</sup>

While these stories have come to light, consider what others, given how much is outsourced, remain hidden.

The outsourcing of information technologies themselves also touches practically every area of government operations. Although contracting out some IT such as computer network services may be unproblematic or even desirable, other IT functions often can't be separated from other vital operations like logistics that are integral to an agency's mission.

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Contractors perform most of the federal government's IT work. Upwards of three-quarters of governmental IT is estimated to have been outsourced even before the major Iraq war-related push to contract out. For companies in search of federal business, IT is the "the new frontier," according to Thomas Burlin, who is in charge of IBM Business Consulting Services's federal practice. With ever more complex technologies always on the horizon, the outsourcing of IT only stands to grow. "What has really changed today in this market," Burlin says, "is that line where the traditional IT services and best practices are blended with the mission." In fact, in 2004, Dan Guttman speculated that, with regard to IT, "contractors are not simply the shadow government, but may become the primary government."<sup>74</sup>

Government that literally doesn't know what it is doing can scarcely be operating effectively. Moreover, it is vulnerable on all fronts. ❏

## Brain Drain

Wrapped up with the shifting balance and transfer of functions from state to private is not only the privatization of information that should be official, but also the privatization of legitimacy, expertise, institutional memory, and leadership, which, in turn, relegates information to private hands. It is telling that, nowadays, not only are salaries and perks for comparable jobs typically greater in the private sector, but, often, so is prestige.

The draining of official government appears to be widespread, and it is depriving the government of crucial

in-house expertise and institutional memory. Take, for example, DHS. During fiscal 2005 and 2006, according to the GAO, more than half the senior employees at the department's headquarters either resigned or transferred to another executive-branch department. DHS's Federal Emergency Management Agency, even before Hurricanes Katrina and Rita, lost the services of demoralized professionals. This and the recruitment of government talent by private industries are a general problem. CIA director Michael Hayden complained in 2007 that his agency had begun "to look like the farm system for contractors around here." In response, agency officials banned some companies from soliciting in the CIA cafeteria.<sup>75</sup>

Managerial and technical expertise is said to be especially lacking in DHS. According to a whistleblowing case brought by an employee at DHS's Transportation Security Administration who works in personnel, "there is not one job that requires any knowledge of terrorism. How can you expect a manager [who] has no knowledge of terrorism to run a security office that was established directly as a result of the 9/11 attacks? There are no requirements for staff members of managers to have knowledge of security."<sup>76</sup>

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Of course, many government executives, retirees, and other employees follow the money by moving to the private sector. The landing spots that supply the big bucks, and with them influence and stature, are often those held by former government officials. Although there are rules to address the revolving door syndrome, companies with significant government contracts are often headed by former senior officials of intelligence- and defense-related government agencies.<sup>77</sup> For instance, William Studeman went from being a director of the National Security Agency, where outsourcing has grown rapidly, to serving as a vice president of Northrop Grumman, the defense giant. A number of former defense and intelligence officials, including former defense secretaries Melvin R. Laird and William J. Perry, current defense secretary Robert M. Gates (also a former

CIA director), former CIA director John M. Deutch, and former NSA director Bobby R. Inman, have either worked for SAIC or served on its board. "Three of Booz Allen's current and former vice presidents previously served as intelligence agency directors, including James Woolsey, who headed the CIA during the Clinton administration."<sup>78</sup>

The problem is not only that intelligence and military professionals are switching between the public and private sectors. While conflict-of-interest laws and regulations are well established, rules and practices that can address "coincidences of interest" are not. (A coincidence of interest occurs when a player crafts an array of overlapping roles across organizations to serve his own agenda—or that of his network—rather than those of the organizations for which he supposedly works.) Means of accountability have not evolved accordingly. When government contractors hire former directors of intelligence- and defense-related government agencies, they are banking on coincidences of interest between their hires and their hires' former (government) employers. In these coincidences, "the Intelligence Community and the contractors are so tightly intertwined at the leadership level that their interests, practically speaking, are identical," one intelligence expert said.<sup>79</sup> As a reporter who has investigated the issue observes, "What we have today with the intelligence business is something far more systemic: senior officials leaving their national security and counterterrorism jobs for positions where they are basically doing the same jobs they once held at the CIA, the NSA, and other agencies—but for double or triple the salary and for profit. It's a privatization of the highest order, in which our collective memory and experience in intelligence—our crown jewels of spying, so to speak—are owned by corporate America."<sup>80</sup> ■

## "Competition" Without Competing

A widely held belief is that contracting out is motivated by efficiency and that contracts are awarded through competitive processes. A look at the reforms instituted during the Clinton administration helps explain how this often is not the case.

The administration of President George H.W. Bush did little to expand the role of contractors (and in fact presided over a number of contract oversight investigations). But the opposite is true of the Clinton administration, which introduced regulations and statutes in the procurement system that ushered in noncompetitive, network-friendly practices

that are substantially hidden from government overseers and accountability. Contracting rules established under Clinton paved the road for the actions of his successor. A top government procurement official whose tenure spanned the administrations of George H.W. Bush, Bill Clinton, and George W. Bush said it succinctly: “Clinton laid the framework and set the speed limit at 500 miles per hour but never drove the car past 250. Bush tested the limit.”<sup>81</sup>

The crux of the story is this: Under the rubric of “reinventing government” and deregulation, the Clinton administration transformed contracting rules with regard to oversight, competition, and transparency. Industry associations, including the Acquisition Reform Working Group and the Professional Services Council, worked to make government purchasing faster for the agencies and “friendlier” for contractors. Many of these industry-energized reforms were embodied in the Federal Acquisition Streamlining Act (FASA) of 1994 and the Federal Acquisition Reform Act (FARA) of 1996.<sup>82</sup>

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FASA and FARA removed many of the traditional competition and oversight mechanisms that had been in place for decades and provided the statutory basis for new kinds of mega contracts, such as the “multiple award” Indefinite Delivery/Indefinite Quantity (IDIQ) system, under which an estimated 40 percent of all federal government contracts are now awarded in areas ranging from computer support to analysis of intelligence. (In some functional areas this proportion is much higher. For instance, more than two-thirds of all contractors in Iraq are under IDIQ contracts.) Like the euphemisms of politicians obscuring their intentions, the language of these awards is telling: “contracts” that aren’t really contracts; “competitions” without real competition; “task” orders that may sound like small potatoes but can net billions of dollars for the contractor.<sup>83</sup>

The stated intention of the “reforms” was a streamlined procurement process that would reduce the time, costs, and bureaucracy incurred in separate purchases and make contracting more efficient. As a result, over the past decade and a half, small contracts often have been replaced by bigger, and frequently open-ended, multiyear, multimillion-, and even billion-dollar and potentially much more lucrative (IDIQ) contracts with a “limited pool of contractors,” as the Acquisition Advisory Panel put it. The changes may, in part, have simplified bureaucracy, but players on this terrain also reinvented it and helped bring about new institutional forms of governing in which government and business cozily intertwine. The IDIQ contracting system substantially removes public information and transparency from the contracting process and creates conditions that encourage network-based awarding of contracts, off-record deal making, and convoluted lines of authority—the personalization of bureaucracy.<sup>84</sup>

Legally, IDIQ contenders engage in “full and open competition.” But IDIQ contracts are not traditional contracts; they are agreements to do business in the future, with the price and scope of work to be determined. “Competitions” for open-ended contracts preapprove contractors for almost indeterminate periods of time (five to ten years, for instance) and money ranging into the billions of dollars. When so anointed, contractors’ names appear on a list maintained by a government agency. That agency, and usually other agencies, can turn to the chosen contractors, who now possess what has been called a “hunting license,” to purchase everything from pens to services. The old system required publicly announcing—through posting in the Commerce Business Daily—each solicitation for government work over \$25,000, and then allowing companies to compete for it. Under today’s IDIQ system, only competitions for hunting licenses are required to be announced in advance (by posting on a government Web site).

What comes next—after the award of a mega contract—takes place behind closed doors and constitutes a virtual revolution in government procurement. Under the old system, overseers could document the amount of the contract because the amount was, more or less, clear when the contract was awarded. Under the current system, services are contracted in the form of “task orders,” mini-contracts that specify particular work assignments. There is no public posting of task orders, so the ability to obtain sub rosa information is crucial to success. Issuances of task orders

occur on an ad hoc basis without prior announcement. For instance, in July 2007, the government awarded a telecommunications IDIQ contract worth \$50 billion to twenty-nine companies. Such awards are only the beginning of the day at the hunt. No open bidding will divvy up those billions. With competition off the books, rather than through bureaucratically monitored processes, the deciders are afforded more discretion and are subject to less oversight than in the past. Who you know and who you owe are more likely to be decisive.

Not surprisingly, since the institution of the IDIQ system, an entire support industry has taken off, replete with trade publications (such as *Washington Technology*, *Federal Computer Week*, and *Government Computer News*) that highlight new business opportunities and “networking events” that bring together companies and government officials. There contractors lobby officials who select the contractors they want to do the work. A company can say good-bye to competition for years while collecting millions or even billions of taxpayer dollars. All of this happens mostly out of public view.<sup>85</sup>

Not only has the process of determining who gets what been banished to the basement with only those involved having the facts to question it, but the new system also requires little to be disclosed: Neither the company nor the government agency must make any public announcement or report transactions involving task orders except that which is reported on a long list in the Federal Procurement Data System (FPDS)—a resource friendly only to government procurement wonks—long after deals are done, sometimes months after the fact. For example, by August 2008, the Federal Procurement Web site that lists transactions had not posted any transactions for 2007. Thus, not only are important goings-on substantially behind the scenes, but one cannot be sure that reliable data will be made available. The current practices are largely beyond monitoring, let alone real-time accountability.<sup>86</sup>

Another practice that has risen sharply over the past decade and a half that makes monitoring even more difficult is the use of IDIQ contracts for interagency acquisition of services. IDIQ contracts are the primary form of interagency contracts. In an interagency contract, the agency that actually needs the contractor’s services, and with whom the contractor will work most closely, isn’t necessarily the legal contracting entity or legally responsible for monitoring the contractor.

CACI, whose employees allegedly participated in Abu Ghraib prisoner abuse, was working under such a contracting arrangement. When the Defense Department, in the midst of a war for which it wasn’t fully prepared, needed personnel, CACI, which had a long collaboration with the department, was well positioned to supply them. CACI officials told GAO investigators that they “marketed their services directly to Army intelligence and logistics officials in Iraq because of relationships they had developed over time.” Contractors such as CACI are not legally authorized to sell goods or services not provided for in their contract. Yet with relationships often trumping contracts, that rule is often breached. During their investigation, the inspector general of the Department of Interior (legally, CACI’s monitoring authority) and the General Services Administration (the government agency that manages government properties and purchasing) found that the contract under which CACI supplied interrogators was for technology, including computer integration and data processing work: CACI was not approved to provide interrogation services.<sup>87</sup>

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The personalization of bureaucracy in the awarding of contracts and task orders is only the beginning. Interagency contracts are vulnerable to diffusion of authority and responsibility, helping to create the mother of all Swiss-cheese bureaucracies. While the Defense Department enlisted the services of CACI, and CACI worked for Defense in Iraq, Defense was not legally responsible for CACI. The Interior Department, better known for its management of national parks, was. (Interior manages some Defense contracts in exchange for a fee.) Interior, not surprisingly, had little capacity to monitor CACI. Moreover,

Defense relied on the absentee Interior Department not only to manage the contract but also to issue individual task orders. Clearly, the official operational control that would apply through a government chain of command does not necessarily apply to contractors. One result, obviously, is the obfuscation of authority.<sup>88</sup>

Information, or its lack, is a key issue. The government personnel with particulars about a given project have no contractual monitoring responsibility, while the contracting officer—without those specifics—is responsible. With regard to CACI, the GAO determined that the army officials who were supposed to oversee CACI “for the most part, lacked knowledge of contracting issues and were not aware of their basic duties and responsibilities in administering the orders.” The result was de facto governing by contractor. CACI “effectively replaced government decision makers in several aspects of the procurement process,” the GAO concluded.<sup>89</sup>

With much of the work in government contracting of services done under IDIQ contracts, many of them also interagency ones, CACI is unlikely to be an aberrant case. Moreover, the dearth of manpower and expertise in government, thanks to caps on or reductions in the number of civil servants, leaves still more contractors to fill the holes.

Another complex (but not unusual) case, this one involving compensation to nuclear weapons workers via interagency contracting, was first brought to light by Richard Miller, former senior policy analyst at the Government Accountability Project, a public-interest NGO, in 2004. In this case, the Department of Energy outsourced responsibility to a well-connected IT firm called Science and Engineering Associates, which was hired under a GSA contract through an interagency agreement with the Navy. In the process, the work to be done transmuted from an IT contract into a contract for workers’ compensation claims development and processing. The entity chosen to do the job had scant qualifications, experience, or in-house knowledge for it, and contracting arrangements were convoluted and nearly impossible to track. Miller summarized the case: “An IT contract issued through the GSA morphed into a completely different scope of work and ballooned in size. Meanwhile, the contractor failed to perform. No federal agency was willing to accept responsibility for the circle of mismanagement. Ultimately, Congress was forced to strip the Energy Department of the program, restructure it,

and offload it to the Labor Department.” A slew of congressional hearings and press reports followed Miller’s revelations about the case. When GAO investigators tried to hold agencies accountable for who contracted with whom for what and why—not to mention the results produced—each agency rejected culpability. The buck stopped nowhere and a circular firing squad formed. Not surprisingly, in 2005 the GAO added the “management of interagency contracting” to its high-risk list. A clear chain of command and real-time oversight are lost in such a contracting system.<sup>90</sup>

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Competition among businesses—supposedly the free market’s signature feature—was also diminishing. Now, for the first time on record, most federal procurement contracts are conferred either without competition or through the use of IDIQ contracts to a limited set of contractors.

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Real-time monitoring may not be in the cards, but what of after-the-fact sanctions? The CACI and Energy Department examples, unusually, culminated with in-your-face excesses that eventually hit the press with little consequence to the entities involved. Once the General Services Administration initiated an investigation into whether CACI had broken federal contracting rules, the results of which could have resulted in its being barred from further government work, CACI retained the services of powerful Washington lobbyists. CACI was cleared in July 2004 and, that August, was awarded a contract without competitive bidding—this time for interrogation services.<sup>91</sup>

While a substantial portion of government contracting was being drained of its accountability lifeblood, competition among businesses—supposedly the free market’s signature feature—was also diminishing. Now, for the first time on record, most federal procurement contracts are conferred either without competition or through the use of IDIQ contracts to a limited set of contractors. Industry consolidation (defense is a case in point) has produced fewer and larger firms. The Acquisition Advisory Panel notes that this development results in more opportunities for organizational conflicts of interest in which, for instance,

one section of the organization bids on a project that the other section designed.<sup>92</sup>

Although IDIQ contracts help maintain the façade of government efficiency, the reality is that favored contractors sometimes make the list because they have personal connections with government officials. For instance, huge, noncompeted awards, justified on national security grounds, have been granted for work in Iraq. Defense companies linked to senior members of the Bush administration's inner circles were the beneficiaries of some of these awards. Audits conducted by the inspectors general for the Departments of Defense and Interior found that more than half of the contracts inspected were granted without competition or without checking to see that the prices were sensible. And in the aftermath of Hurricanes Katrina and Rita, FEMA initially contracted with four large companies to provide housing by using noncompetitive procedures. Some government procurement specialists have also argued that the supposedly cost-saving IDIQ system has often kept government contracting officials from getting good deals for their agencies. In fact, in the few cases in which government agencies have insourced, they have done so after calculating they would save significant amounts of money. The money salvaged through competitive sourcing is also overstated, according to the GAO. So much for competition and the free market.<sup>93</sup>

The Obama administration has acknowledged the increase over the past decade in the number of sole source contracts. A White House Memo states: "Since 2001, spending on government contracts has more than doubled, reaching over \$500 billion in 2008. During this same period, there has been a significant increase in the dollars awarded without full and open competition and an increase in the dollars obligated through cost-reimbursement contracts."<sup>94</sup> To address this problem, the administration has directed agencies to take steps to shrink the share of dollars obligated through new contracts where there is little or no competition, according to a July 2010 statement issued by the White House.<sup>95</sup> ❏

## Reclaiming Government

One need only look at the devastation in the Gulf of Mexico or the unemployment lines around the country to see the impact of disasters that resulted in no small measure from ineffective regulatory control and from the influence of businesses that became so enmeshed with government

that they were able not just to bend the rules but to actually make them. Contracting gone wild is part of a fundamental redesign of government that has taken place over the past several decades, one that has delivered vast amounts of government expertise and information, and by extension, public power, into the hands of a select few.<sup>96</sup>

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### A top-to-bottom rethinking of how the government makes use of contractors is necessary.

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The Obama administration appears to be looking to amend certain aspects of the system that have contributed to this redesign, through its plans to insource certain jobs, reduce the amounts of dollars let to contractors with little or no competition, and the review of specific practices and guidelines. The administration has issued insourcing directives for government agencies. As the president puts it: "The American people's money must be spent to advance their priorities—not to line the pockets of contractors. ... There is a fundamental public trust that we must uphold..." But Office of Management and Budget officials have warned that the agencies are not necessarily making strategic, big-picture reforms, and that simply insourcing jobs that had formerly been outsourced is not the wholesale, reasoned reform that's needed.<sup>97</sup>

Indeed, we face an entrenched problem that cannot be fixed simply by hiring more government employees to oversee contractors, as some observers have suggested. A top-to-bottom rethinking of how the government makes use of contractors is necessary. One particularly important issue that deserves attention is how to rebuild capacity that has been lost with the privatization of information, expertise, and institutional memory. Another set of challenges lies in reforming the contract laws and regulations that have been changed over the past decade and a half—and that have made the contracting system less transparent and accountable and more vulnerable to the influence of private and corporate agendas. These challenges are worth confronting: At risk are our nation's security and the very core of democratic society—the ability to hold government accountable and have a say in public decisions. And when these vulnerabilities exist, as they do, in the realm of national and homeland security and foreign policy, the nation's sovereignty is also at risk. ❏

## Notes

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1 For Halliburton split, see: KBR. “Halliburton Announces Commencement of KBR Exchange Offer,” March 2, 2007, [http://www.kbr.com/news/2007/corpnews\\_070302.aspx](http://www.kbr.com/news/2007/corpnews_070302.aspx). For discussion of the companies that constitute Blackwater, see <http://pogoblog.typepad.com/pogo/2008/07/blackwater-more.html> and <http://pogoblog.typepad.com/pogo/2009/08/black-ops-program-blackwater-black-eye-for-us-government.html>.

2 With regard to inherently governmental functions, see: [https://www.acquisition.gov/far/html/Subpart%207\\_5.html](https://www.acquisition.gov/far/html/Subpart%207_5.html); and the section in this paper titled “From Printing to Policy.”

For analysis of the ability of today’s top power brokers to make governing and policy decisions without meaningful government involvement—and examination of the new system of power and influence that has evolved over the last several decades beyond the reach of traditional monitoring systems—see Wedel, *Shadow Elite*, especially chapters 1, 2, and 7.

3 Government Accountability Office, *Federal Acquisition and Contracting: Systemic Challenges Need Attention*, Statement of David M. Walker, comptroller general of the United States,” GAO-07-1098T, July 17, 2007, 8, <http://www.gao.gov/new.items/do71098t.pdf>.

4 Barack Obama, *Memorandum for the Heads of Executive Departments and Agencies — Subject: Government Contracting*, The White House Press Office, March 4, 2009, [http://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government-Contracting/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government-Contracting/).

5 The Office of Federal Procurement Policy (OFPP) is in the process of issuing a new policy letter on “Work Reserved for Performance by Federal Government Employees,” of which inherently governmental functions are a part. Some elements of the new policy will be incorporated into the Federal Acquisition Regulation (conversation with Mathew Blum of the OFPP, July 2, 2010). The draft policy letter proposes to “Adopt the FAIR Act definition of ‘inherently governmental function’ as the single government-wide definition of this term. (The FAIR Act defines an activity as inherently governmental when it is so

intimately related to the public interest as to mandate performance by Federal employees.)” (*Federal Register*, vol. 75, no. 61, March 31, 2010, 16190, <http://edocket.access.gpo.gov/2010/pdf/2010-7329.pdf>). OFPP testimony about and reactions to the letter are at: [http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=3c262d77-6a85-49e4-aa22-67f2e569d9da](http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=3c262d77-6a85-49e4-aa22-67f2e569d9da).

6 See, for instance, Craig Whitlock, “Pentagon to Cut Thousands of Jobs, Defense Secretary Says,” *Washington Post*, August 10, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/09/AR2010080904903.html?hpid=topnews>.

7 With regard to private security companies hired to help track and kill suspected militants, see: Dexter Filkins and Mark Mazetti, “Contractors Tied to Efforts to Track and Kill Militants,” *New York Times*, March 14, 2010, <http://www.nytimes.com/2010/03/15/world/asia/15contractors.html?pagewanted=all> and Walter Pincus, “Defense investigates information-operations contractors,” *Washington Post*, March 29, 2010, [http://www.washingtonpost.com/wp-dyn/content/article/2010/03/28/AR2010032802743\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/03/28/AR2010032802743_pf.html). This practice has been under review by the secretary of defense (see: [http://www.google.com/hostednews/ap/article/ALeqM5iBDFkaSWc4t99kkAWPHoOmjSFP\\_gD9EKG0380](http://www.google.com/hostednews/ap/article/ALeqM5iBDFkaSWc4t99kkAWPHoOmjSFP_gD9EKG0380)). *The Atlantic*, which obtained a copy of the Pentagon’s resulting internal report, states that “According to the report, the Office of the Secretary of Defense is scrutinizing all of the contracts that the Joint Information Operations Warfare Center, where [Defense employee Michael] Furling [who had hired contractors from private security companies that employed former Special Forces and C.I.A. operatives] worked, has taken out. Located at Lackland Air Force Base in Texas, the JIOWC is the focal point for the military’s information operations activities, which often use contractors. The Pentagon is also trying to determine which JIOWC programs, most of which are highly classified, are better carried out by intelligence units or by other government agencies.” (Marc Ambinder, “Pentagon: Information Ops ‘Plagued with Confusion,’” *The Atlantic*, <http://www.theatlantic.com/politics/archive/2010/06/pentagon-information-ops-plagued-with-confusion/58136/>.)

The number of NSA-approved contractor facilities was reported by Shaun Waterman, “Unveiling US Intel Spending and Contractors,” *Washington (UPI)*, June 27, 2007, [http://www.spacewar.com/reports/Unveiling\\_US\\_](http://www.spacewar.com/reports/Unveiling_US_)

Intel\_Spending\_And\_Contractors\_999.html (accessed 7/3/2007).

The data on the National Reconnaissance Office are from: Tim Shorrock, See his: “Private Spies,” *New York Post*, May 11, 2008, [http://www.nypost.com/seven/05112008/postopinion/postopbooks/private\\_spies\\_110301.htm](http://www.nypost.com/seven/05112008/postopinion/postopbooks/private_spies_110301.htm).

In another example of intelligence outsourcing, in August 2007 the Defense Intelligence Agency (DIA) announced its plans to contract out upwards of \$1 billion to private companies. These contractors would conduct, in the words of the DIA (as published on a procurement Web site) “operational and mission requirements” that involve “Gathering and Collection, Analysis, Utilization, and Strategy and Support” of intelligence—in other words, some core intelligence functions. Walter Pincus, “Defense Agency Proposes Outsourcing More Spying: Contracts Worth \$1 Billion Would Set Record,” *Washington Post*, August 19, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/18/AR2007081800992.html>.

With regard to GAO’s analysis of 117 selected statements of work, the GAO found that these inherently governmental functions included “reorganization and planning activities, policy development, and acquisition support—services that closely support the performance of inherently governmental functions...” Government Accountability Office, *Department of Homeland Security: Risk Assessment and Enhanced Oversight Needed to Manage Reliance on Contractors*, Statement of John P. Hutton, director acquisition and sourcing management, GAO-08-142T, October 17, 2007, 2, <http://www.gao.gov/new.items/d08142t.pdf>. Information about the company being awarded \$42.4 million is found in: GAO, *Risk Assessment and Enhanced Oversight Needed* 6, <http://www.gao.gov/new.items/d08142t.pdf>.

8 See: <http://topics.nytimes.com/top/news/business/companies/blackrock-inc/index.html>.

9 Liz Rappaport and Susanne Craig, “BlackRock Wears Multiple Hats,” *Wall Street Journal*, May 19, 2009, <http://online.wsj.com/article/SB124269131342732625.html>.

10 See for example, Eric Dash, “Bank of New York Mellon Will Oversee Bailout Fund,” *New York Times*, October 14, 2008, <http://www.nytimes.com/2008/10/15/busi->

[ness/economy/15tarp.html?scp=4&sq=bank%20of%20new%20york%20mellon&st=cse](http://www.nytimes.com/2008/10/15/business/economy/15tarp.html?scp=4&sq=bank%20of%20new%20york%20mellon&st=cse).

11 The undersecretary was Asa Hutchinson. Anitha Reddy and Sara Kehaulani Goo, “Database on U.S. Visitors Set for Huge Expansion: Reston Firm’s Contract Worth Up to \$10 Billion,” *Washington Post*, June 2, 2004. <http://www.washingtonpost.com/wp-dyn/articles/A7176-2004Jun1.html>.

12 With regard to the Pentagon employing contractors who choose other contractors, see: Larry Makinson, “Outsourcing the Pentagon: Who Benefits from the Politics and Economics of National Security?” Washington, D.C., the Center for Public Integrity, September 29, 2004, 4, <http://projects.publicintegrity.org/pns/report.aspx?aid=385> (accessed June 2, 2009).

With regard to the involvement of CACI employees in prisoner abuse at Abu Graib, see, for instance, “Executive Summary: Investigation of Intelligence Activities At Abu Ghraib pages 1-5; AR 15-6 Investigation of the Abu Ghraib Prison and 205th Military Intelligence Brigade, LTG Anthony R. Jones, pages 6-33; AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade MG, George R. Fay, pages 34-176,” <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf>.

With respect to CACI’s possible suspension/debarment, see Project On Government Oversight, “GSA Hired CACI to Process Suspension and Debarment Cases,” February 5, 2007, <http://www.pogo.org/pogo-files/alerts/contract-oversight/co-gp-20070205.html>.

13 With regard to contractors overseeing other contractors in Homeland Security, see: GAO, *Department of Homeland Security: Risk Assessment and Enhanced Oversight Needed*, Hutton statement, 1.

With regard to the NCS, see: R. J. Hillhouse, “Who Runs the CIA? Outsiders for Hire,” *Washington Post*, July 8, 2007, B5, <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/06/AR2007070601993.html>.

14 The GAO quote is from: Defense Acquisitions, DOD Needs to Exert Management and Oversight to Better Control Acquisition of Services, Statement of Katherine V. Schinasi, managing director acquisition and sourcing management, GAO-07-359T, January 17, 2007, 4, <http://www.gao.gov/>

new.items/do7359t.pdf. The figures for U.S. military personnel and contractors in Afghanistan and Iraq are from: Moshe Schwartz, *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*, Congressional Research Service, December 14, 2009, 7, 11-12, <http://www.fas.org/sgp/crs/natsec/R40764.pdf>.

The 1991 figures regarding the Persian Gulf War can be found in: John M. Broder and James Risen, "Contractor Deaths in Iraq Soar to Record," *New York Times*, May 19, 2007, <http://www.nytimes.com/2007/05/19/world/middleeast/19contractors.html>.

15 With regard to the secretary of energy, see: Paul R. Verkuil, *Outsourcing Sovereignty* (New York: Cambridge University Press, 2007), 45.

With regard to the Army's Field Manual, see: Dan Guttman, "The Shadow Pentagon: Private Contractors Play a Huge Role in Basic Government Work—Mostly Out of Public View" (Washington, DC: Center for Public Integrity), September 29, 2004, <http://projects.publicintegrity.org/pns/report.aspx?aid=386>. See also: Headquarters: Department of the Army, *Contractors on the Battlefield, Field Manual No. 3-100.21*, Washington, D.C., January 3, 2003, [www.osc.army.mil/gc/files/fm3\\_100x21.pdf](http://www.osc.army.mil/gc/files/fm3_100x21.pdf).

16 The legal scholar here cited is Jody Freeman, "The Private Role in Public Governance," *New York University Law Review* 75, issue 3 (June 2000), 548.

17 Guttman and Barry Willner, *The Shadow Government: The Government's Multi-Billion-Dollar Giveaway of Its Decision-Making Powers to Private Management Consultants, "Experts," and Think Tanks* (New York: Pantheon, 1976).

18 The three-quarters figure is from government scholar Paul C. Light. In 2008 he calculated that the contract workforce consisted of upwards of 7.6 million employees, or "three contractors for every federal employee." Light, "Open Letter to the Presidential Candidates," *Huffington Post*, June 25, 2008, [http://www.huffingtonpost.com/paul-c-light/open-letter-to-the-presid\\_b\\_109276.html](http://www.huffingtonpost.com/paul-c-light/open-letter-to-the-presid_b_109276.html). See also: Light, *A Government Ill Executed: The Decline of the Federal Service and How to Reverse It*, (Cambridge, Massachusetts: Harvard University Press, 2008).

19 On bipartisan support for shadow government, see Guttman, "Contracting, an American Way of Governance:

Post 9/11 Constitutional Choices," *Meeting the Challenge of 9/11: Blueprints for More Effective Government*, Thomas H. Stanton, ed. (Armonk, N.Y.: M. E. Sharpe Publishers, 2006), 233, 236.

20 Regarding efforts to cap or reduce the number of civil servants: From 1940 to 1997, there were 24 pieces of legislation or executive actions to limit the number of civil servants who could be hired, to stop their hiring, or decrease their total number. During the same period, there were only 10 pieces of legislation or executive actions that created the potential to increase the civil service. Light, *The True Size of Government* (Washington, DC: Brookings Institution Press, 1999), 207–209. The number of contractor and grantee jobs as a proportion of the total federal workforce (contractor and grantee jobs plus federal civil servants, uniformed military personnel, and postal service workers) increased steadily over a dozen years, from 59 percent in 1990, to 61 percent in 1993, 63 percent in 1999, and 66 percent in 2002. Light, *Fact Sheet on the New True Size of Government*, Center for Public Service, Brookings Institution, <http://www.brookings.edu/gs/cps/light20030905.pdf> (accessed March 15, 2009). In 2008, Light calculated that the contract workforce consisted of upwards of 7.6 million employees, or "three contractors for every federal employee." Light, "Open Letter." With regard to data predating 1990, comparing 1984 to 1996 (earlier and annual data between these years are not available), the ratio of contractor and grantee workers to civil servants decreased 4.3 to 1 in 1984 to 4.2 to 1 in 1996 (Light, *The True Size of Government*, 198–199). This relative decrease is attributable to drastic cuts in defense contracting associated with the end of the Cold War. However, when defense jobs are excluded, the ratio of contractor and grantee workers to civil servants increased from 3.5 to 1 in 1984 to 3.9 to 1 in 1996 (Ibid., 41 and 198–199.) In recent years defense and homeland security jobs have accounted for a sizeable portion of the growth in government outsourcing.

Light explains: "The numbers were generated through an analysis of all contract and grant transactions using the Bureau of Economic Analysis input/output model of the economy. Each transaction has a standard code that identifies labor hours required for production of a good or service. These labor hours are summed into full-time equivalent hours and converted into an estimated headcount of contractors and grantees. (E-mail from Light to author, July 12, 2010.)

21 For DHS figures, see: Ed O’Keefe, “At Homeland Security, Contractors outnumber Fed. Workers,” *Washington Post*, Feb. 25, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/24/AR2010022405433.html?nav=emailpage>. Light told the *Washington Post*: “I think it’s a larger number, particularly when you start counting the subcontractors and the state and local employees who are working under grants and contracts.” Light assesses that DHS created an estimated 140,000 contracting jobs from 2002 to 2005 ([http://wagner.nyu.edu/performance/files/True\\_Size.pdf](http://wagner.nyu.edu/performance/files/True_Size.pdf)).

22 GAO, *Department of Homeland Security: Risk Assessment and Enhanced Oversight Needed*, Hutton statement, 2.

23 Secretary of homeland security Janet Napolitano said that her office hopes to reduce contractor support by 40 percent, as specified in the department’s 2011 budget requests. O’Keefe, “At Homeland Security.”

24 The Acquisition Advisory Panel has written: “In many cases contractor personnel work alongside federal employees in the federal workspace; often performing identical functions.” Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress*, January 2007, 392, [http://acquisition.gov/comp/aap/24102\\_GSA.pdf](http://acquisition.gov/comp/aap/24102_GSA.pdf).

25 Government Accountability Office, *Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees*, GAO-08-169, March 2008, 7, <http://www.gao.gov/new.items/do8169.pdf>.

26 With respect to the rise in federal dollars spent on contractors’ services: These figures are calculated from data available on the Federal Procurement Data System (FPDS), at <https://www.fpds.gov/>. While the FPDS data base shows the 2001 service figures by category, this is no longer the case as of 2006. The total combined figure of goods and services for 2009 is \$524 billion. Procurement spending on services currently accounts for more than 60 percent of total procurement dollars; the \$314 billion figure is 60 percent of \$524 (see [http://www.fpdsng.com/downloads/agency\\_data\\_submit\\_list.htm](http://www.fpdsng.com/downloads/agency_data_submit_list.htm) [accessed July 12, 2010]). For the assessment that “procurement spending on services accounts for more than 60 percent of total procurement dollars,” see *Report of the Acquisition Advisory Panel*, 3, [http://acquisition.gov/comp/aap/24102\\_GSA.pdf](http://acquisition.gov/comp/aap/24102_GSA.pdf).

The latest FPDS data in which services are compiled by category are for 2006, and the figure for that year is \$244.7 billion. See Federal Procurement Data System, *Federal Procurement Report 2006*, “Section 1: Total Federal Views,” 31-32, [http://www.fpdsng.com/downloads/FPR\\_Reports/2006\\_fpr\\_section\\_1\\_total\\_federal\\_views.pdf](http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_1_total_federal_views.pdf). The number was calculated by adding total spending on R&D (31), plus total spending on other services (32).

With regard to the portion of government purchases now spent on work previously performed by the civil service: The proportion of services, as compared with total procurement (goods and services) went from 39 percent at the end of the Reagan administration (FY1988) to 46.5 percent at the beginning of the Clinton presidency (FY 1993) to approximately 60 percent in 2006. (See <https://www.fpds.gov/>). See also Project On Government Oversight, *Pick Pocketing the Taxpayer: The Insidious Effects of Acquisition Reform, Revised Edition*, March 11, 2002, <http://www.pogo.org/pogo-files/reports/contract-oversight/pickpocketing-the-taxpayer/co-rcv-20020311.html>. The 2007 report of the Acquisition Advisory Panel assessed that “procurement spending on services accounts for more than 60 percent of total procurement dollars” (*Report of the Acquisition Advisory Panel*, 3).

27 The 2003 information can be found in: Larry Makinson, “Outsourcing the Pentagon: Who Benefits from the Politics and Economics of National Security?” Center for Public Integrity, September 29, 2004, <http://projects.publicintegrity.org/pns/report.aspx?aid=385>. The 2008 trend information is from: GAO, *Defense Acquisitions: Actions Needed to Ensure Value for Service Contracts*, GAO-09-643T, 1.

28 The 2008 trend information is from: GAO, *Defense Acquisitions* 1. See also: *House Armed Services Committee Panel On Defense Acquisition Reform: Findings And Recommendations*, March 23, 2010, <http://armedservices.house.gov/pdfs/DARFINALREPORT/DARFINALREPORT032310.pdf>. The report states (11): “The Department obligates approximately \$200 billion for contractor supported services, more than double the amount spent on such services a decade ago. This trend is not unique to DOD; federal spending on services represents over 60 percent of total contract spending government-wide.”

29 With regard to Defense accounting for almost three-quarters of the total federal procurement budget in 2009, these figures are calculated from data available on the

Federal Procurement Data System (FPDS), at [http://www.fpdsng.com/downloads/agency\\_data\\_submit\\_list.htm](http://www.fpdsng.com/downloads/agency_data_submit_list.htm) (accessed July 12, 2010).

30 In 2009 DHS spent \$14 billion on contracted goods and services and its net budget authority (not including supplemental appropriations made under the American Recovery and Reinvestment Act) was \$42 billion. DHS's total spending that year was nearly \$49 billion. These figures are calculated from data available on the Federal Procurement Data System (FPDS), at [http://www.fpdsng.com/downloads/agency\\_data\\_submit\\_list.htm](http://www.fpdsng.com/downloads/agency_data_submit_list.htm) (accessed July 12, 2010).

In 2007 DHS spent nearly 40 percent of its annual budget of \$47 billion on contracted goods and services (Statement of James L. Taylor, deputy inspector general, U.S. Department of Homeland Security before Subcommittee On Management, Investigations, And Oversight Committee Oversight Committee On Homeland Security, U.S. House Of Representatives, September 17, 2008, 1, [http://www.dhs.gov/xoig/assets/testimony/OIGtm\\_JLT\\_091708.pdf](http://www.dhs.gov/xoig/assets/testimony/OIGtm_JLT_091708.pdf)).

31 With respect to the percentage of the budget of the U.S. intelligence community that goes to contracts, see Bonnie Goldstein "Spy Central Slip-Up," *Slate*, June 8, 2007, <http://www.slate.com/id/2168032/entry/2168033/>. According to a declassified government document obtained by investigative journalist Tim Shorrock in 2007, some 70 percent of the US intelligence budget is spent on contracts (Shorrock, "Private Spies," *New York Post*, May 11, 2008). More information on the DNI position is at: [http://www.dni.gov/press\\_releases/2010\\_Fact\\_Sheet.pdf](http://www.dni.gov/press_releases/2010_Fact_Sheet.pdf).

With regard to contract employees making up one-quarter of the core intelligence workforce, see Robert O'Harrow Jr., "Contractors Augment Intelligence Agencies," *Washington Post*, August 28, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/27/AR2008082703142.html>.

32 Dempsey became a vice president at Booz Allen in 2005. The quote from her is from: Shorrock, "The Spy Who Billed Me," *Mother Jones*, January/February 2005, [http://www.motherjones.com/news/outfront/2005/01/12\\_400.html](http://www.motherjones.com/news/outfront/2005/01/12_400.html). The figure on total number of workers at Booz Allen is found at: [http://www.boozallen.com/media/file/Booz\\_Allen\\_Annual\\_Report\\_06-07.pdf](http://www.boozallen.com/media/file/Booz_Allen_Annual_Report_06-07.pdf), 4 (accessed March 8, 2009). Other facts, including the 13,000 number, are provided in Zachary A. Goldfarb, "The New Booz & Co.,"

[washingtonpost.com](http://www.washingtonpost.com), May 21, 2008, [http://voices.washingtonpost.com/washbizblog/2008/05/the\\_new\\_booz\\_co.html](http://voices.washingtonpost.com/washbizblog/2008/05/the_new_booz_co.html). The award given to Booz Allen, conferred by the Professional Services Council, the Fairfax County Chamber of Commerce, and *Washington Technology* magazine, "recognizes the firm for its outstanding contributions during the past year to its employees, the government contracting industry, and the U.S. government." See <http://www.boozallen.com/about/article/658795?ipid=825646> (accessed December 1, 2008). For government departments that contract with Booz Allen, see <http://eagle.bah.com/> and [http://www.boozallen.com/media/file/Booz\\_Allen\\_Annual\\_Report\\_06-07.pdf](http://www.boozallen.com/media/file/Booz_Allen_Annual_Report_06-07.pdf), 10, 12, 19. For figures on contracts awarded Booz Allen without open bidding, see <http://www.aclu.org/pdfs/safefree/boozallen20060914.pdf>, 3. See also: Elizabeth Brown, "Outsourcing the Defense Budget," Center for Public Integrity, July 29, 2004, <http://projects.publicintegrity.org/report.aspx?aid=363&sid=200>.

33 In 2008, the figure for NASA was 88 percent. \$15.1 billion in contract spending ([http://www.fpdsng.com/downloads/agency\\_data\\_submit\\_list.htm](http://www.fpdsng.com/downloads/agency_data_submit_list.htm) [accessed 3/12/2009]) divided by total NASA budget—\$17.1 billion (reported in Office of Management and Budget "The Budget for Fiscal Year 2009, Historical Tables," 105, <http://www.gpoaccess.gov/USbudget/fy09/pdf/hist.pdf> [accessed 3/19/2009]).

The 2008 figure for Energy was 88 percent. \$24.6 billion in contract spending ([http://www.fpdsng.com/downloads/agency\\_data\\_submit\\_list.htm](http://www.fpdsng.com/downloads/agency_data_submit_list.htm) [accessed 3/12/2009]) divided by total Energy budget [\$27.8 billion in appropriated funds before offsetting receipts, <http://www.cfo.doe.gov/budget/09budget/Content/AppropStat.pdf> (accessed 3/19/2009)].

34 With regard to insourcing, see, for instance, Elise Castelli, "The Case for Insourcing," *FederalTimes.com*, September 21, 2008, <http://www.afscmeinfocenter.org/privatizationupdate/2008/10/the-case-for-insourcing.htm> (accessed 9/22/2008). The article also states that insourcing, which has been done on a limited basis in the Navy, the Army, the Internal Revenue Service, and the Department of Homeland Security, is "rare."

35 The quote is from: Executive Office of the President, Office of Management and Budget, *Circular No. A-76 (Revised) to the Heads of Executive Departments and*

*Establishments” on the “Performance of Commercial Activities*, May 29, 2003, “B - Categorizing Activities Performed by Government Personnel as Inherently Governmental or Commercial,” A-2, [http://www.whitehouse.gov/omb/circulars/a076/a76\\_rev2003.pdf](http://www.whitehouse.gov/omb/circulars/a076/a76_rev2003.pdf) (accessed July 9, 2010).

With respect to revisions of guidelines: In 1955, the Eisenhower administration released the Bureau of the Budget Bulletin 55-4; in 1966 the Bureau of the Budget put out the policy as Circular No. A-76 (Office of Management and Budget, Office of Federal Procurement Policy, *Enhancing Governmental Productivity through Competition: A New Way of Doing Business Within The Government, To Provide Quality Government at Least Cost: A Progress Report on OMB Circular No. A-76, Performance of Commercial Activities*, Washington, D.C.: Office of Management and Budget, Office of Federal Procurement Policy, 1988). The most recent updates are provided in: Executive Office of the President, Office of Management and Budget, *Circular No. A-76 (Revised) to the Heads of Executive Departments and Establishments on the Performance of Commercial Activities*, May 29, 2003, [http://www.whitehouse.gov/omb/circulars/a076/a76\\_rev2003.pdf](http://www.whitehouse.gov/omb/circulars/a076/a76_rev2003.pdf) (accessed December 12, 2007), and Congressional Research Service, *OMB Circular A-76: Explanation and Discussion of the Recently Revised Federal Outsourcing Policy*, Library of Congress, Washington, D.C., September 10, 2003, 1, <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-7717:1>. See also *FAR Subpart 7.5—Inherently Governmental Functions*, (c)—functions considered inherently governmental, and (d)—functions “generally not considered to be inherently governmental.” Federal Acquisition Regulation, March 2005, 7.503, <http://www.acquisition.gov/far/reissue/FARvol1ForPaperOnly.pdf>.

For a summary of these revisions, see: Valerie Bailey Grasso, *Office of Management and Budget Circular A-76 and the Proposed Moratorium on Future DOD Competitions: Background and Issues for Congress*, Congressional Research Service, Washington, D.C., October 9, 2009, [http://assets.opencrs.com/rpts/R40854\\_20091009.pdf](http://assets.opencrs.com/rpts/R40854_20091009.pdf), Summary.

36 The definition of inherently governmental functions is from the FAR, *Subpart 7.5—Inherently Governmental Functions*, at: [https://www.acquisition.gov/far/current/html/Subpart%207\\_5.html](https://www.acquisition.gov/far/current/html/Subpart%207_5.html).

Verkuil discusses the implications of outsourcing government functions in *Outsourcing Sovereignty*.

The list of eight inherently governmental functions is contained in: Office of Management and Budget, Office of Federal Procurement Policy, *Policy Letter 92-1 to the Heads of Executive Agencies and Departments*, Washington, D.C., September 23, 1992, [http://www.whitehouse.gov/omb/procurement/policy\\_letters/92-1\\_092392.html](http://www.whitehouse.gov/omb/procurement/policy_letters/92-1_092392.html) (accessed 7/06/2007); and the FAR, 7.503, March 2005, <http://www.acquisition.gov/far/reissue/FARvol1ForPaperOnly.pdf> (accessed March 17, 2009). According to the Foreword to the FAR, “The FAR is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. It became effective on April 1, 1984, and is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget” (Federal Acquisition Regulation Vol. I; Foreword; Reissued March 2005, <https://www.acquisition.gov/far/reissue/FARvol1ForPaperOnly.pdf>).

37 Executive Office of the President, Office of Management and Budget. *The President’s Management Agenda*, Fiscal Year 2002, 17, <http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf>. See also, for instance, <http://fairact.doi.gov/index.cfm?fuseaction=home>.

38 The quote is from the 1999 version of the circular, OMB, *Circular No. A-76, Revised 1999*, <http://www.whitehouse.gov/omb/circulars/a076/a076.html> (accessed 7/06/2007). The 2003 version can be found as follows: Executive Office of the President, Office of Management and Budget, *Circular No. A-76 (Revised) to the Heads of Executive Departments and Establishments on the “Performance of Commercial Activities,”* May 29, 2003, [http://www.whitehouse.gov/omb/circulars/a076/a76\\_rev2003.pdf](http://www.whitehouse.gov/omb/circulars/a076/a76_rev2003.pdf) (accessed December 12, 2007), or: [http://www.whitehouse.gov/omb/circulars/a076/a76\\_incl\\_tech\\_correction.pdf](http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf) (accessed November 24, 2008).

39 The Acquisition Advisory Panel citations are at: *Report of the Acquisition Advisory Panel*, 391-392, 417.

40 Government Accountability Office, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990, September 17, 2007, Summary and 10, <http://www.gao.gov/new.items/do7990.pdf>.

41 Ibid., and GAO, *Department of Homeland Security: Risk Assessment and Enhanced Oversight Needed* 9, The GAO elaborated: “The level of oversight DHS provided did not always ensure accountability for decisions or the ability to judge whether the contractor was performing as required. Federal acquisition policy requires enhanced oversight of contracts for services that can affect government decision making, policy development, or program management. While contracting officers and program officials acknowledged their professional and management support services contracts closely supported inherently governmental functions, they did not see a need for increased oversight.”

42 Government Accountability Office, *Defense Acquisitions: DOD Needs to Exert Management and Oversight to Better Control Acquisition of Services*, Statement of Katherine V. Schinasi, managing director, acquisitions and sourcing management, January 17, 2007, GAO-07-359T, 3, <http://www.gao.gov/new.items/do7359t.pdf>.

43 Government Accountability Office, *Defense Acquisitions: DOD’s Increased Reliance on Service Contractors Exacerbates Long-standing Challenges*, Statement of David M. Walker, comptroller general of the United States, GAO-08-621T, January 23, 2008, 1, <http://www.gao.gov/new.items/do8621t.pdf>, p. 3; and GAO., *Defense Acquisitions: DOD Needs to Exert Management and Oversight*, Schinasi statement, 3.

44 GAO, *Defense Acquisitions: DOD Needs to Exert Management and Oversight*, Schinasi statement, 3

45 Government Accountability Office, *Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees*, March 2008, GAO-08-169, 8, <http://www.gao.gov/new.items/do8169.pdf>.

46 Government Accountability Office, *Defense Contracting: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists*, March 2008, GAO-08-360, 7-8, <http://www.gao.gov/new.items/do8360.pdf>.

47 Ibid., 3, 4

48 Ibid., 4.

49 Ibid, executive summary.

50 See: Grasso, “Office of Management and Budget Circular A-76 and the Proposed Moratorium,” Summary.

51 Government Accountability Office, *Defense Acquisitions: Further Actions Needed to Address Weaknesses in DoD’s Management of Professional and Management Support Contracts*, GAO-10-39, November 20, 2009, 7, <http://www.gao.gov/new.items/d1039.pdf>.

52 GAO, *Defense Acquisitions: DOD’s Increased Reliance*, Walker statement, 3.

53 The size of the federal civilian workforce fell by 426,200 positions between January 1993 and September 2000. (See “History of the National Partnership for Reinventing Government Accomplishments, 1993–2000,” <http://gov-info.library.unt.edu/npr/howeare/appendix.html#1>.)

With regard to the Department of Defense, the Pentagon reduced its civilian and military workforce after the end of the Cold War, resulting in a disproportionate reduction of defense employees overseeing contractors. In 2001, a Defense Department Inspector General Audit reported that the Department had decreased its acquisition workforce by about 50 percent from 460,516 employees at the end of FY 1990 to 230,556 at the end of FY 1999, while the workload had not shrunk proportionately. The dollar value of Defense procurement underwent a marginal decline (approximately 3 percent) during the period, while procurement actions rose by approximately 12 percent, from about 13.2 million to about 14.8 million. (Office of the Inspector General, Department of Defense, *Closing Overage Contracts Prior to Fielding a New DOD Contractor Payment System*, Report No. D-2002-027, December 19, 2001, 10, <http://www.dodig.mil/Audit/reports/fy02/02-027.pdf> (accessed August 8, 2007).)

For data on the Bush administration, see Light, “The New True Size of Government,” August 2006, p. 11, [http://wagner.nyu.edu/performance/files/True\\_Size.pdf](http://wagner.nyu.edu/performance/files/True_Size.pdf). In 2000 there were 57,835 federal officials in five job classifications related to acquisition and contracting, according to a database maintained by the Office of Personnel Management (Office of Personnel Management, *Central Personnel Data File: Status File*, September 2000). In 2006, the number was 58,723. (Federal Acquisition Institute, *Annual Report on the Federal Acquisition Workforce Fiscal Year 2006*, May 2007). Please note that these data include not only federal officials managing contracting but also officials working in related fields.

The figures for 2006 and 2008 are based on data from the Federal Acquisition Institute, “FY 2008 Annual Report on the Federal Acquisition Workforce, [http://www.fai.gov/pdfs/FAI%20Annual%20Report\\_Final\\_29%20Jul%202009\\_v2.pdf](http://www.fai.gov/pdfs/FAI%20Annual%20Report_Final_29%20Jul%202009_v2.pdf)).

On the expansion of the workload, see United States House of Representatives, Committee on Oversight and Government Reform, Majority Staff, June 2007, *More Dollars, Less Sense: Worsening Contracting Trends under the Bush Administration*, 10. For details about the increased skills required on the job, see *Report of the Acquisition Advisory Panel*, for instance, 104.

54 GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed* 9,

The GAO elaborated: “The level of oversight DHS provided did not always ensure accountability for decisions or the ability to judge whether the contractor was performing as required. Federal acquisition policy requires enhanced oversight of contracts for services that can affect government decision making, policy development, or program management. While contracting officers and program officials acknowledged their professional and management support services contracts closely supported inherently governmental functions, they did not see a need for increased oversight.”

55 This is due, according to the GAO, to “growth in overall contracting workload; pending retirement of experienced government contracting personnel; and a greater demand for contracting surveillance because of DOD’s increasing reliance on contractors for services.” GAO, *Defense Acquisitions: DOD’s Increased Reliance on Service Contractors*, Walker statement, 6, <http://www.gao.gov/new.items/do862it.pdf>.

56 *Ibid.*, 7. See also: <http://motherjones.com/politics/2004/05/are-we-better-contracts-america>.

57 Government Accountability Office, *Federal Acquisition and Contracting: Systemic Challenges Need Attention*, Statement of David M. Walker, comptroller general of the United States,” GAO-07-1098T, July 17, 2007, 19, <http://www.gao.gov/new.items/do71098t.pdf>. <http://motherjones.com/politics/2004/05/are-we-better-contracts-america>.

58 Government Accountability Office, *Military Operations: High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces*, GAO-07-148, December 2006, <http://www.gao.gov/new.items/do7145.pdf>, 35.

59 For example, see *Government Accountability Office, Department of Homeland Security: Ongoing Challenges in Creating an Effective Acquisition Organization*, GAO-07-984T, June 8, 2007, <http://www.gao.gov/new.items/do7948t.pdf>; and Statement of James L. Taylor, deputy inspector general, Department of Homeland Security before Subcommittee On Management, Investigations, and Oversight Committee On Homeland Security, U.S. House Of Representatives, September 17, 2008, 5, [http://www.dhs.gov/xoig/assets/testimony/OIGtm\\_JLT\\_091708.pdf](http://www.dhs.gov/xoig/assets/testimony/OIGtm_JLT_091708.pdf).

60 In addition, the chief procurement officer has inadequate capacity for department-wide acquisition oversight, and staffing shortages in the Office of Procurement Operations (which handles a large portion of DHS’s contracting activity) have prompted the office to depend on outside agencies for contracting support—often in return for payment. The GAO found that this office lacked the capacity oversee the interagency contracting activity. Government Accountability Office, *Homeland Security: Challenges in Creating an Effective Acquisition Organization*, GAO-06-1012T July 27, 2006, Executive Summary, 2, 5, <http://www.gao.gov/cgi-bin/getrpt?GAO-06-1012T>. See also: Government Accountability Office, *Homeland Security: Successes and Challenges in DHS’s Efforts to Create an Effective Acquisition Organization*, GAO-05-179, March 29, 2005,” Executive Summary, <http://www.gao.gov/new.items/do5179.pdf>.

61 A 2006 GAO report reiterated the challenge of DHS not having an integrated acquisition program (Executive Summary).

Despite GAO’s recommendations, a 2007 GAO report concluded that “DHS has not yet accomplished its goal of integrating the acquisition function across the department. The structure of DHS’s acquisition function creates ambiguity about who is accountable for acquisition decisions because it depends on a system of dual accountability.” The chief procurement officer, according to the GAO, lacks the authority and capacity to effectively oversee department-wide acquisitions. GAO, *Department of Homeland Security: Ongoing Challenges*, 1-2.

In 2008, GAO acknowledged improvements, but a full integration has yet to take place. The GAO concluded that “more needs to be done to develop clear and transparent policies and processes for all acquisitions and to develop an acquisition workforce to implement and monitor acquisitions.” GOVERNMENT Accountability Office, *Department of Homeland Security: Progress and Continuing Concerns with Acquisition Management*, September 17, 2008,” Executive Summary, <http://www.gao.gov/new.items/do81164t.pdf>.

For 2010 data, see: [http://www.gao.gov/highrisk/risks/safety-security/homeland\\_security.php](http://www.gao.gov/highrisk/risks/safety-security/homeland_security.php).

62 GAO, *Department of Homeland Security: Risk Assessment and Enhanced Oversight Needed*, 2.

63 Richard L. Skinner, “Statement Of Richard L. Skinner, Inspector General, U.S. Department Of Homeland Security, Before The Subcommittee On Management, Integration, And Oversight Committee On Homeland Security, U.S. House Of Representatives,” November 15, 2006, 4, [http://www.dhs.gov/zoig/assets/testimony/OIGtm\\_RLS\\_11506.pdf](http://www.dhs.gov/zoig/assets/testimony/OIGtm_RLS_11506.pdf).

64 GAO, *Defense Acquisitions: DOD’s Increased Reliance*, Walker statement, 7. For the list of high risk areas including the Departments of Defense and Energy, as well as NASA, see: Government Accountability Office, High Risk Series: An Update GAO-07-310, January 2007, available at <http://www.gao.gov/new.items/do7310.pdf> (accessed August 8, 2007), 6, 7; and GAO, High Risk Series: An Update, GAO-09-271, January 2009, <http://www.gao.gov/new.items/do9271.pdf> (accessed July 16, 2010).

For the DHS as high risk, see: <http://www.gao.gov/docsearch/featured/highrisk.html>. [http://www.gao.gov/highrisk/risks/safety-security/homeland\\_security.php](http://www.gao.gov/highrisk/risks/safety-security/homeland_security.php).

The Walker quote is from: Comptroller General David Walker, Remarks at the George Washington University Law School Symposium on the Future of Competitive Sourcing, September 15, 2003, (transcript on file with the Public Contract Law Journal). The GAO quote is from: GAO, “Military Operations: High-Level DOD Action Needed,” 35. The assessment from the DHS inspector general can be found at: Department of Homeland Security Inspector General, *Department of Homeland Security’s Procurement and Program Management Operations*, OIG-

0-53, Sept. 2005, 8, [http://www.dhs.gov/zoig/assets/mgmtrpts/OIG\\_05-53\\_Sep05.pdf](http://www.dhs.gov/zoig/assets/mgmtrpts/OIG_05-53_Sep05.pdf).

65 Government Accountability Office, *Department of Homeland Security: Contract Management and Oversight for Visitor and Immigrant Status Program Need to Be Strengthened*, GAO-06-404, June 2006, 2, <http://www.gao.gov/new.items/do6404.pdf>. See also Government Accountability Office, *HOMELAND SECURITY: U.S. Visitor and Immigrant Status Program’s Long-standing Lack of Strategic Direction and Management Controls Needs to Be Addressed*, GAO-07-1065, August 2007, <http://www.gao.gov/new.items/do71065.pdf>.

66 Schinasi is cited in Daniel Zwerdling, “Obama To Tackle Explosion In Federal Contracts,” National Public Radio, December 1, 2008, <http://www.npr.org/templates/story/story.php?storyId=97322339>. The army’s guess is reported in Guttman, “The Shadow Pentagon.”

67 Government Accountability Office, *Defense Acquisitions: Improved Management and Oversight Needed to Better Control DOD’s Acquisition of Services*, Statement of John P. Hutton, director, acquisition and sourcing management, GAO-07-832T, May 10, 2007, executive summary, <http://www.gao.gov/new.items/do7832t.pdf>.

68 For Defense’s difficulty in monitoring contractors, see: GAO, *High Risk Series: An Update*, January 2007, 67. GAO’s report on industrial security is: Government Accountability Office, *Industrial Security: DOD Cannot Ensure Its Oversight of Contractors under Foreign Influence Is Sufficient*, GAO-05-681, July 2005, 3, 5, 9, <http://www.gao.gov/new.items/do5681.pdf>. For GAO’s new high-risk category, see: GAO, High Risk Series: An Update, January 2007, 6, 20.

69 “Booz Allen’s Extensive Ties to Government Raise More Questions About SWIFT Surveillance Program,” ACLU, press release, September 26, 2006, <http://www.aclu.org/safefree/spying/26808prs20060926.html>. For further information about this case, see Josh Meyer and Greg Miller, “U.S. Secretly Tracks Global Bank Data,” *Los Angeles Times*, June 23, 2006, <http://articles.latimes.com/2006/jun/23/nation/na-swift23>; Eric Lichtblau and James Risen, “Bank Data Is Sifted by U.S. in Secret to Block Terror,” *New York Times*, June 23, 2006, <http://www.nytimes.com/2006/06/23/washington/23intel>.

html; and Eric Lichtblau, "Europe Panel Faults Sifting of Bank Data," *New York Times*, September 26, 2006, <http://www.nytimes.com/2006/09/26/us/26swift.html>.

70 Schinasi interviewed in Zwerdling, "Obama To Tackle."

71 For details about the biosurveillance shop SAIC suggested, see: O'Harrow, "Biosurveillance, Intelligence and Bugs," *Government Inc.*, August 13, 2007, [http://voices.washingtonpost.com/government-inc/2007/08/biosurveillance\\_intelligence\\_a\\_1.html](http://voices.washingtonpost.com/government-inc/2007/08/biosurveillance_intelligence_a_1.html). Some contractors have helped draft rules that could benefit their companies. A federal jury cited SAIC in one such instance. For details about SAIC writing the rules, see O'Harrow, "Potential for Conflict Grows With Government Use of Contractors," *Washington Post*, August 18, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/17/AR2008081702013.html>.

72 Quote is from: <http://www.nrc.gov/reading-rm/doc-collections/news/2008/08-142.html>.

73 Interview with Alfonzo Diaz, principal security specialist, TSA, Washington, D.C., October 27, 2008, by Carmen Apaza, draft PhD dissertation, Chapter 1. Cited with permission.

74 The three-quarters estimate was made by the market research firm INPUT in Chantilly, Virginia, and reported in Nancy Ferris, "Experiences Give and Take," *Government Executive*, June 15, 2003, <http://www.govexec.com/feature/0603/ots03s4.htm> [accessed 8/7/2007].

The Acquisition Advisory Panel similarly assesses that "Most, if not all, agencies have contracted out major portions of their information technology and communications functions" (Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel* 399, [http://acquisition.gov/comp/aap/24102\\_GSA.pdf](http://acquisition.gov/comp/aap/24102_GSA.pdf)). A notable exception to governmental dependence on privately executed IT is government's underwriting of technological advancement, which often is achieved in government laboratories. However, even in this case, government often lacks in-house expertise and capacity and has little choice but to turn to the private sector. Burlin is cited in Ferris, "Experiences Give and Take."

The Guttman quote is from Guttman, "The Shadow Pentagon."

75 Figures on employees in Homeland Security are from: Government Accountability Office, *DHS's Actions to Recruit and Retain Staff and Comply with the Vacancies Reform Act*, July 16, 2007, pp. 15–16, at <http://www.gao.gov/new.items/do7758.pdf> (accessed December 20, 2007).

Information about the demoralized FEMA professionals is from the nonprofit Partnership for Public Service, whose mission involves the promotion of federal government careers. The professionals were displaced by or did not want to work for the inexperienced political appointees installed under the George W. Bush administration. The Partnership for Public Service ranked FEMA last among the 28 agencies it studied in 2003. The American Federation of Government Employees, which surveys employees and lists the best places to work in government, found in 2004 that of 84 career FEMA professionals who responded, only 10 ranked their agency leaders as excellent or good. Twenty-eight of 28 employees called their leadership fair, while 33 said it was poor. More than 50 employees responded that they would go to another agency if they could stay at the same pay level, while 67 said the agency had become poorer since it merged into DHS. Spencer S. Hsu, "Leaders Lacking Disaster Experience: 'Brain Drain' At Agency Cited," *Washington Post*, September 9, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/08/AR2005090802165.html>. Hayden is quoted in: Katherine Shrader, "CIA Reviewing Use of Contractors," Associated Press, September 18, 2006. Response of agency officials from: Shorrock, "Private Spies," *New York Post*, May 11, 2008, [http://www.nypost.com/seven/05112008/postopinion/postopbooks/private\\_spies\\_110301.htm](http://www.nypost.com/seven/05112008/postopinion/postopbooks/private_spies_110301.htm).

76 The DHS employee who brought the case is Bogdan Dzakovic. Phone interview with Dzakovic, Washington, D.C.-Virginia. October 28, 2008, by Carmen Apaza, draft PhD dissertation, Chapter 1. Cited with permission.

77 With regard to rules addressing the revolving-door syndrome, see, for instance, [http://www.blm.gov/wo/st/en/info/newsroom/2009/january/nr\\_01\\_29\\_2009.html](http://www.blm.gov/wo/st/en/info/newsroom/2009/january/nr_01_29_2009.html).

With regard to government officials going to industry: For instance, David Kay moved from being a United Nations weapons inspector to a vice president at SAIC (1993 to 2002) to being hired by the CIA to head the effort in search of weapons of mass destruction in Iraq (2003). Likewise, William B. Black Jr. retired from the NSA in 1997, worked

at SAIC for three years, and then went back to the NSA as deputy director in 2000. SAIC subsequently was awarded \$282 million to oversee the latest phase of the agency's overhaul of its eavesdropping systems. Scott Shane, "US: Uncle Sam Keeps SAIC On Call For Top Tasks," *Baltimore Sun*, October 26, 2003. See also André Verlöy and Daniel Politi, "Advisors of Influence: Nine Members of the Defense Policy Board Have Ties to Defense Contractors," Center for Public Integrity, May 28, 2003, <http://www.publicintegrity.org/articles/entry/374/>, accessed August 16, 2008.

The Project On Government Oversight provides excellent analysis of the problem of service contractor personal conflicts of interest (see, for example, The Project On Government Oversight, "Strong, Consistent Federal Contractor Conflict of Interest Regulations Needed," July 17, 2008, <http://www.pogo.org/pogo-files/letters/contract-oversight/co-fcm-20080717.html> (accessed March 15, 2009)).

78 For William Studerman and Booz Allen vice presidents, see Shorrock, "The Spy Who Billed Me," *Mother Jones*, January/February 2005, <http://www.motherjones.com/politics/2005/01/spy-who-billed-me>. See also Booz Allen's Web site, <http://www.boozallen.com/about/people>. For SAIC board members, see: Scott Shane, "US: Uncle Sam Keeps SAIC On Call For Top Tasks," *Baltimore Sun*, October 26, 2003, and Siobhan Gorman, "Little-known Contractor Has Close Ties with Staff of NSA," *Baltimore Sun*, January 29, 2006.

79 Intelligence expert Steven Aftergood, quoted in Shorrock, "Former high-ranking Bush officials enjoy war profits," *Salon.com*, May 29, 2008, [http://www.salon.com/news/excerpt/2008/05/29/spies\\_for\\_hire/index1.html](http://www.salon.com/news/excerpt/2008/05/29/spies_for_hire/index1.html).

80 Ibid.

81 For contract oversight investigations under Bush I, see Office of Management and Budget, *Summary Report of the SWAT Team on Civilian Agency Contracting: Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts*, (Washington, DC: Office of Management and Budget,) December 3, 1992, <http://www1.law.nyu.edu/journals/envtllaw/issues/vol2/1/2nyuelj34.html>.

82 Project On Government Oversight, *Pick Pocketing The Taxpayer*.

The 1996 FARA is also called the Clinger-Cohen Act.

83 The 40 percent figure (for 2005) is provided by the Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel* 106, [http://acquisition.gov/comp/aap/24102\\_GSA.pdf](http://acquisition.gov/comp/aap/24102_GSA.pdf). Description of IDIQ contracts can be found in the same report on 67–72.

Some 68 percent of contracts in Iraq are IDIQ ones. See: <http://www.dodig.mil/Audit/reports/fy09/09-115.pdf>, 2.

84 The Acquisition Advisory Panel citations are at: Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel*, 405.

85 The government Web site where task orders are posted is: <http://fedbizopps.gov>. On the billions that can be collected in task orders, see, for instance: Bob Brewin's blog on nextgov.com, "Obama's Transparency Lost on Defense," February 10, 2009, [http://whatsbrewin.nextgov.com/2009/02/obamas\\_transparency\\_lost\\_on\\_de.php](http://whatsbrewin.nextgov.com/2009/02/obamas_transparency_lost_on_de.php).

For information about the telecommunications IDIQ contract, see, for instance, Elizabeth Newell, "GSA lets 29 firms in on massive tech services contract," *Government Executive.com*, July 31, 2007, [http://www.govexec.com/story\\_page.cfm?filepath=/dailyfed/0707/073107e1.htm](http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0707/073107e1.htm) (accessed December 20, 2007).

Some attempts in the Department of Defense have been made to require competition on IDIQ contracts. Congress enacted Section 803 of the National Defense Authorization Act for Fiscal Year 2002. This provision, which applies only to Defense orders exceeding \$100,000 for services under IDIQ contracts, requires "fair notice" to contractors holding an IDIQ award before placing an order. The provision is seen by some contract specialists as weak because "fair notice" is defined in the implementing regulations as being satisfied when only three offers are received (see Defense Federal Acquisition Regulation Supplement, § 208.405–70, <http://www.dod.mil/dodgc/olc/docs/2002NDAA.pdf>). As noted by the GAO (Government Accountability Office Report, *Guidance Needed to Promote Competition for Defense Task Orders*, GAO-04-874, July 30, 2004, Executive Summary, <http://www.gao.gov/new.items/do4874.pdf>), even these "enhanced" competition requirements were waived by DOD in approximately 50 percent of cases. Ralph C. Nash and John Cibinic report that "There are numerous indications that Contracting Officers are diligent in finding ways to avoid competition. In the traditional tug-of-war between

'customer satisfaction' (honoring the desire of program and technical personnel to obtain services from knowledgeable and high performance incumbents) and obtaining competition, customer satisfaction appears to be winning by a large margin" ("Competition for Task Orders: The Exception or the Rule?" 18 Nash & Cibinic Rep., 42, October 2004).

*Washington Technology*, *Federal Computer Week*, and *Government Computer News* have either arisen or shaped themselves to fill the government-contractor networking niche.

86 Reporting of task orders on the FPDS is at: [http://www.fpdsng.com/downloads/agency\\_data\\_submit\\_list.htm](http://www.fpdsng.com/downloads/agency_data_submit_list.htm). The link to the 2006 report is at [http://www.fpdsng.com/fpr\\_reports\\_fy\\_06.html](http://www.fpdsng.com/fpr_reports_fy_06.html). Data posting runs a full fiscal year behind and the GAO has complained about this. See GAO, *Improvements Needed to the Federal Procurement Data System-Next Generation*, GAO-05-960R, September 27, 2005, 2-3, <http://www.gao.gov/new.items/d05960r.pdf>.

87 Like many such consulting firms, CACI has high-powered connections; its board of directors, for instance, has included such bigwigs as Richard Armitage, who went on to become deputy secretary of state under George W. Bush. Armitage became a CACI director in 1999, when he was a member of the Defense Policy Board. David Isenberg, "A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq," *Research Report 2004.4*, Washington, DC: British American Security Information Council, September 2004, 39 <http://www.basicint.org/pubs/Research/2004PMC.pdf>. For information about high-powered individuals associated with CACI, see Ellen McCarthy, "Intelligence Work Comes to CACI Via Acquisitions," *Washington Post*, July 8, 2004, E01, <http://www.washingtonpost.com/wp-dyn/articles/A35630-2004Jul7.html>.

The CACI quote is from: Government Accountability Office, *Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations*, GAO-05-201, April 2005, 14, [www.gao.gov/cgi-bin/getrpt?GAO-05-201](http://www.gao.gov/cgi-bin/getrpt?GAO-05-201) (accessed June 2, 2009).

The GAO found that the task orders issued were "beyond the scope of the underlying contract," while the Inspector General of the Department of the Interior and the General Services Administration similarly determined that 11 of 12

procurements reviewed were "outside the scope" of the contract. See: GAO, *Interagency Contracting: Problems with DOD's and Interior's Orders* Highlights and 7-8,; and Department of the Interior, Office of Inspector General, *Memorandum to: Assistant Secretary for Policy, Management and Budget; From: Earl E. Devaney, Inspector General Subject: Review of 12 Procurements Placed Under General Services Administration Federal Supply Schedules 70 and 871 by the National Business Center* ssignment No. W-EV-OSS-0075-2004), July 16, 2004, <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=interior&docid=f:2004-i-0049.pdf>.

See also findings from the investigation by the Center for Public Integrity, at: <http://projects.publicintegrity.org/wow/report.aspx?aid=361>. The Army's report is at: [http://kbonline.typepad.com/random/torture\\_inc/2004%20Aug%2023%20Fay%20Jones%20Report.pdf](http://kbonline.typepad.com/random/torture_inc/2004%20Aug%2023%20Fay%20Jones%20Report.pdf).

88 See: GAO, *Interagency Contracting: Problems with DOD's and Interior's* 2, See also: <http://www.acquisition.gov/comp/aap/documents/Chapter3.pdf>, especially 243.

89 GAO, *Interagency Contracting: Problems with DOD's and Interior's Orders* 3, 14.

90 For documentation that IDIQ contracts are the primary form of interagency contracts, see: Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel* 247.

For documentation that GAP brought the case forward, see: Sylvia Hsieh, "Attorneys create niche in representing nuclear weapons workers," *Lawyers USA*, October 23, 2006, <http://www.allbusiness.com/public-administration/administration-economic-programs/4092301-1.html>. Regarding hearings after Miller brought the case to light: On March 30, 2004, the Senate Committee on Energy and Natural Resources concluded three hearings on the implementation of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEIOCPA), [http://energy.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=5f9bif9d-cdie-4c11-a107-23a85836298a](http://energy.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=5f9bif9d-cdie-4c11-a107-23a85836298a). On October 8, 2004, an amendment to the FY2005 Defense Authorization Act removed most responsibility for EEIOCPA from the Department of Energy and gave it to the Department of Labor. Government Accountability Project, "GAP – EEIOCPA," January 9, 2007, <https://www1067.sslldomain.com/whistleblower/program/domestic.cfm>. See Charles

Pope, "Sick DOE Worker's Claims Languish," *Seattle Post Intelligencer*, March 29, 2004, [http://www.seattlepi.com/local/166744\\_doecomp29.html](http://www.seattlepi.com/local/166744_doecomp29.html). For details and documentation of the case, see Government Accountability Office, Department of Energy, Office of Worker Advocacy, *Deficient Controls Led to Millions of Dollars in Improper and Questionable Payments to Contractors*, GAO-06-547, May 31, 2006, <http://www.gao.gov/new.items/do6547.pdf>.

For risk in interagency contracting, see: GAO, *High Risk Series: An Update*, January 2007.

91 For CACI retaining lobbyists, see: Isenberg, "A Fistful of Contractors," 40, ; for CACI being cleared, see: McCarthy, "Government Clears CACI for Contracts," *Washington Post*, July 8, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A35432-2004Jul7.html>; and for CACI's award of an interrogation contract: McCarthy, "CACI Gets New Interrogation Contract," *Washington Post*, August 5, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A41215-2004Aug4.html>). CACI has subsequently received additional government intelligence and national security contracts (see, for instance, O'Harrow, "Intelligence Spending: CACI Gets More," *washingtonpost.com*, January 28, 2009, [http://voices.washingtonpost.com/government-inc/2009/01/intelligence\\_spending\\_caci\\_get.html](http://voices.washingtonpost.com/government-inc/2009/01/intelligence_spending_caci_get.html)).

92 Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel 405-406*.

93 With regard to Defense companies linked to senior members of the Bush administration's inner circles as the beneficiaries of awards, see, for example, Walter F. Roche Jr., "Nominee's Business Ties Raise Concerns: Defense chief appointee Robert Gates has some watchdogs worried about a revolving door between the private sector and government," *Los Angeles Times*, December 2, 2006, <http://articles.latimes.com/2006/dec/02/nation/na-gates2>.

With respect to FEMA's noncompetitive procedures, see: O'Harrow and Scott Higham, "Interior, Pentagon Faulted In Audits: Effort to Speed Defense Contracts Wasted Millions," *Washington Post*, December 25, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/24/AR2006122400916.html>; and Government Accountability Office, *Hurricane Katrina: Ineffective FEMA Oversight of Housing Maintenance Contracts in Mississippi Resulted in Millions of Dollars of*

*Waste and Potential Fraud*, November 2007, GAO-08-106, 2, [www.gao.gov/new.items/do8106.pdf](http://www.gao.gov/new.items/do8106.pdf).

With regard to government contracting officials not getting good deals for their agencies, see Project On Government Oversight, *Pick Pocketing The Taxpayer*.

With respect to insourcing motivated by cost savings, see Castelli, "The Case for Insourcing." The article states that insourcing has been done on a limited basis in the Navy, the Army, the Internal Revenue Service, and the Department of Homeland Security. With regard to money (not) saved through competitive sourcing, see GAO, *Department of Labor: Better Cost Assessments and Departmentwide Performance Tracing Are Needed to Effectively Manage Competitive Sourcing Program*, GAO-09-14, November 21, 2008, Executive Summary, <http://www.gao.gov/new.items/do914.pdf>. See also Castelli, "GAO: Agencies Overstate Savings of Competitive Sourcing," *FederalTimes.com*, November 24, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/24/AR2008112402796.html>.

94 Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies — Subject: Government Contracting," The White House Press Office, March 4, 2009, [http://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/).

The Project On Government Oversight has assessed that "limited competition or sole source contract awards can result in fewer proposals or bids, higher prices, poor performance, the increased likelihood that the incumbent will go uncontested when the contract is subject to full and open competition, and an unfair competitive advantage for the incumbent on future contract awards." See: <http://www.pogo.org/pogo-files/letters/contract-oversight/co-cfc-20080401.html>.

95 See: "Cutting Waste and Saving Money Through Contracting Reform," July 7, 2010, [http://www.whitehouse.gov/omb/assets/blog/Update\\_on\\_Contracting\\_Reforms.pdf](http://www.whitehouse.gov/omb/assets/blog/Update_on_Contracting_Reforms.pdf).

96 For a thorough analysis of this issue, see Wedel, *Shadow Elite* especially chapters 2 and 4.

97 See: <http://washingtontechnology.com/articles/2010/01/11/cover-story-insourcing-main-bar.aspx>.



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