

Testimony of

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“Responsible Contracting: Modernizing the Business of Government”

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Chairman Conrad, Ranking Member Gregg, Task Force Chairman Warner, Senator Bunning, and distinguished Members of the Committee and Task Force on Government Performance, I am grateful for the opportunity to share some thoughts with you here today. It is an honor and a privilege to do so.

The business of Government is increasingly in private hands. And, there is broad consensus that the current federal acquisition system is antiquated, ill equipped to deal with the surging demands placed upon it. As I have argued elsewhere, it makes good sense for the government to harness the energy, efficiency, and bottom-up creativity of the private sector in as many free-wheeling ways as possible--up to the point where market imperatives begin to undermine the public interest.<sup>1</sup> We have reached such a tipping point in 2010.

In 2000, the Department of Defense spent \$133.2 billion on contracts. By 2008, that figure had grown to \$391.9 billion, an almost three-fold increase. In 2000, the State Department spent \$1.3 billion on contracts and \$102.5 million on grants. By 2008, grant spending had grown to \$2.7 billion and contract spending had grown to \$5.6 billion. In 2000, USAID spent \$0 on grants<sup>2</sup> and \$478.6 million on contracts. By 2008, those figures had climbed to \$5.5 billion and \$3.3 billion, respectively<sup>3</sup> (source: USAspending.gov).

While wartime contracting and successive supplemental appropriations have fueled these dramatic trends, it is important to emphasize, right up front, that this is not a partisan issue. Democrats and Republicans alike embraced outsourcing the work of government to the private sector whenever possible, both as a perceived cost-savings measure and as a mechanism for getting things done more efficiently. But the laissez-

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<sup>1</sup> Allison Stanger, *One Nation Under Contract: The Outsourcing of American Power and the Future of Foreign Policy* (New Haven, CT: Yale University Press, 2009).

<sup>2</sup> USAID's problematic past accounting practices are currently on full public display at USAspending.gov. No data on grants are provided for FY2000-2006. All numbers were retrieved from USAspending.gov on December 1, 2009.

<sup>3</sup> Data quality appears extremely variable, but for general trends, it can suffice. I use 2008 numbers for the comparison, since 2009 aggregate numbers are still a moving target.

faire outsourcing—or to use Defense Secretary Gates’ language, the “willy-nilly” contracting—that accompanied the wars in both Iraq and Afghanistan often meant that oversight and management were outsourced as well as implementation, with predictable consequences.

The matter appears to be no different on the domestic front. USAspending.gov’s home page used to show (more on this oblique reference below) that 76 percent of federal spending in 2009 was on contracts and grants. Figures for the Department of Health and Human Services, for example, dramatically illustrate both the explosive growth in contracting and the complete inadequacy of existing federal accounting systems to track government spending in any sort of reasonably transparent and accurate way. In 2000, the Department of Health and Human Services spent \$4.1 billion on contracts. By 2008, the same figure had more than tripled to \$13.1 billion. However, in December 2009, USAspending.gov listed HHS spending at \$405.7 billion on grants in 2000 and just \$264.7 billion in 2008. That 2008 aggregate figure was flagged with a different color, indicating awareness of an obvious problem with data quality.<sup>4</sup>

	Contracts in 2000	Contracts in 2008	Change in Contracts	Grants in 2000	Grants in 2008	Change in Grants
Defense	\$133.2 billion	\$391.9 billion	294%	\$2.3 billion	\$4.6 billion	200%
HHS	\$4.1 billion	\$13.1 billion	320%	\$405.7 billion	\$264.3 billion	-65%
USAID	\$478.6 million	\$3.3 billion	690%	0	\$5.5 billion	N/A
State	\$1.3 billion	\$5.6 billion	431%	\$102.5 million	\$2.7 billion	2634%

Despite this paradigm shift in how government conducts its daily business, contracting continues to be perceived as something peripheral to policy itself rather than wholly comprising it. When contracting and grants comprise 83 percent of the State Department’s requested budget, as they did in 2008, 82 percent of the Pentagon’s budget and a whopping 99 percent of USAID’s net cost of operations, this is clearly no longer the case. In the foreign policy realm, with America’s first two contractors’ wars in full swing, contracting has become a clear strategic issue. It must be treated as such.

Until very recently, data on the broadening scope of government-wide procurement were unavailable to the general public. That changed in 2003 with the launch of the General Services Administration’s Federal Data Procurement Service (FPDS), which made data on contract spending (both for-profit and not-for-profit) available to registered users. Since FPDS issued annual reports and made them publicly available on its web site, its launch marked the start of a new era of relative transparency.

<sup>4</sup> The table that follows comes from David Litman and Allison Stanger, “Acquisition in Crisis: Transforming Workforce and Process in the Public Interest,” White Paper for a forum organized by the Partnership for Public Service, January 2010. Numbers have not been adjusted for inflation.

In 2006, the Federal Funding Accountability and Transparency Act (FFATA) took things a step further when it instructed the White House Office of Management and Budget to create and maintain a searchable database that covers all federal spending in a user-friendly way. To public acclaim, USAspending.gov came online one month ahead of schedule, in December 2007. For the first time, the public could see in detail how the federal government spends taxpayer money. The web site crossed all sorts of divides. Not only did Barack Obama, then just the junior Senator from Illinois, and Sen. Tom Coburn, the Republican from Oklahoma, co-sponsor the legislation, but the Office of Management and Budget partnered with OMB Watch, a non-profit organization founded to keep OMB honest, to devise the new web site's software.

The new web site dramatically expanded the scope and quality of information available to the public on contracting and subcontracting. It allowed me, a Vermont-based professor, to get a good understanding of basic issues without a security clearance. The legislation mandated that OMB's database be expanded by January 2009 to include information on subcontracts and subgrants. USAspending.gov relies on FPDS contracting numbers, but corrects for inaccuracies it detects in its by-agency figures before presenting them to the public.<sup>5</sup>

FFATA was long overdue. Despite the tremendous amounts of money involved, government needed a push to launch a concerted effort to track those flows accurately. Putting together a government-wide system for tracking contracts and subcontracts was spurred by FFATA and remains a work in progress.

It should not surprise us to find government accounting in such disarray. Government's increasing reliance on contractors has fed a vicious circle that over time has resulted in a federal government that has been effectively hollowed out. The federal government had the same number of full-time employees in 2008 as it did in 1963, yet the size of the population has doubled and the federal budget in that same period of time has more than tripled in real terms. Every federal contract and grant needs to be managed, yet our government currently lacks the capacity for appropriate oversight.

The underside to this sweeping privatization of government power has become all the more apparent as the gap between the fortunes of Wall Street and of Main Street has widened. Since virtually every contract and grant represents jobs in some representative's district, focused lobbying can deliver bigger and bigger rewards. Special interest campaign contributions make the difference in every reelection campaign, with predictable consequences. The rapidly spinning revolving door between government and business is a standing invitation to corruption. The one interest that goes underrepresented in this mix is the public interest.

Writing in Federalist 10, founder James Madison saw what he called the "mischief of factions" being neutralized as the plethora of special interests in vast colonial America cancelled one another out through both federalism and representative government. In twenty-first century America, however, government by contract instead

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<sup>5</sup> Allison Stanger, "Your Tax Dollars at Work: If You Can Find Them," *Washington Post*, May 18, 2008.

encourages inside the beltway special interests to coalesce and carry the day. Government by contract means that government is entirely dependent on the private sector to conduct its daily business, so effective oversight is too often hostage to a corporate bottom line.<sup>6</sup> Whenever the economy falters, the profit motive encourages businesses to cut safety and security measures unless government insists that they not do so, and our disdain for bureaucracy makes it difficult for government to secure the staffing it needs to ensure that these shortcuts are not taken. Congress and the White House can therefore have the best of intentions yet be unable to escape the quagmire that government itself has in part created through its incessant outsourcing. To be sure that my basic point is not misunderstood, there is no partisan villain in this tale, no conspiracy. We have together constructed a system that no longer functions as the founders intended.

Unfortunately, neither James Madison's proposed extended sphere remedy for the ill effects of factions nor Adam Smith's invisible hand promises any relief from this pernicious laissez faire brew. If Congress and business continue to pursue their own short-term interests unchecked, it can only lead us to financial ruin and the American people's complete loss of faith in our government. Rescuing government by the people from the current government by checkbook is a project for a generation, but we need to get started now. We can begin by distinguishing between wartime and peacetime contracting, recognizing the unique perils that inevitably arise when the profit motive goes to war, as well as the uncharted territory we have entered in Iraq and Afghanistan, where some things that never should have been outsourced have been (such as moving armed security).<sup>7</sup> But above all, the imperative of radical transparency in all government-business transactions has never been more important. Accountability and our cherished value of self-government now completely depend upon it.

Which brings me to the reason I have been using the past tense in referring to agency contracting and grants figures, and my data come from December 2009, not 2010. Why, the careful reader might wonder, does this expert witness use data from December 2009 rather than 2010? If USAspending.gov was the source of the 2009 data, why not utilize it again to provide more up to date information?

The answer is that some time in early 2010, USAspending.gov's platform and interface were totally redesigned. The makeover is supposed to endow USAspending.gov "with greater capacity for fulfilling FFATA requirements."<sup>8</sup> However, the site's FAQs do not include any references to this revamping or the reasons for it. Unless one, like me, had done extensive work with the previous web site, the user would indeed have no idea that anything at all had changed.

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<sup>6</sup> The term "government by contract" comes from Jody Freeman and Martha Minow, ed., *Government by Contract: Outsourcing and American Democracy* (Cambridge: Harvard University Press, 2009).

<sup>7</sup> Allison Stanger, Testimony before the Commission on Wartime Contracting in Iraq and Afghanistan, June 18, 2010. [http://www.wartimecontracting.gov/docs/hearing2010-06-18\\_testimony-Stanger.pdf](http://www.wartimecontracting.gov/docs/hearing2010-06-18_testimony-Stanger.pdf)

<sup>8</sup> Office of Management and Budget, "Open Government Plan," April 7, 2010, pp. 10-11. <http://www.whitehouse.gov/sites/default/files/microsites/100407-omb-opengov-plan.pdf>

What has changed? I am still in the process of answering this question, but one significant change caught my immediate attention and deserves mention here. The old version of USAspending.gov used to have a page entirely dedicated to subcontracts and linked to the home page. The FAQ section told the user that FFATA mandated that information on subcontracts be provided to the public by January 1, 2009. The subcontracts page reported that the site was “under development;” it provided a clear place-holder for important forthcoming information. Today, there is no subcontracts or subgrants page linked to the home page. The category does not even exist in the menu of choices. The extensive references to FFATA and what it by law requires have completely vanished. In short, the old site made it clear that important data were missing and soon to be forthcoming; the new site’s architecture makes no explicit reference to aspects of FFATA that have yet to be fulfilled.

Given recent revelations that US taxpayer money has been flowing through subcontracts into the pockets of the Taliban<sup>9</sup>, the evaporation of the subcontracts page is troubling. Without transparency in subcontracts, we are effectively pouring taxpayer money into a black hole in Afghanistan, with no real means of knowing how well that money is likely to be spent or even who is receiving it.<sup>10</sup> FFATA required that information on subcontracts be made available to the public by January 1, 2009 and the old web site made that clear. The new web site effectively camouflages that shortcoming. The irony here, at least at the level of appearances, is that a web site designed to show American taxpayers where their money is going, whose very existence is owed to legislation spearheaded by then Senator Obama, has grown less rather than more transparent under President Obama’s administration. Perhaps this is mere coincidence or an unintended consequence of reforms aimed at another set of problems. But it is precisely the opposite of what we need at a time when our fiscal imprudence has become a national security issue and is perceived as such by many distinguished members of this body.

Why has the quest for transparency in government spending proven so difficult to date? For starters, the explosion of government outsourcing was not originally accompanied by the development of appropriate accounting systems for monitoring these flows. Getting the work done took precedence over ensuring that the right systems were in place to ensure that the work would be done well. Responding to the requirements of FFATA often meant being asked for data that one had not made a habit of collecting. All of this is in the process of changing, and dramatic improvements have been made. But data quality was and is a persistent concern, because the government’s accounting systems have not yet fully adapted to the new normal, where the majority of the government’s work is in private hands. Here Congress could be enormously helpful in providing incentives to get us where we need to go sooner rather than later.

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<sup>9</sup> “Warlord, Inc.: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan,” Report of the Majority Staff (Rep. John Tierney, Chair), Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, U.S. House of Representatives, June 2010. [http://oversight.house.gov/images/stories/subcommittees/NS\\_Subcommittee/6.22.10\\_HNT\\_HEARING/Warlord\\_Inc\\_compress.pdf](http://oversight.house.gov/images/stories/subcommittees/NS_Subcommittee/6.22.10_HNT_HEARING/Warlord_Inc_compress.pdf)

<sup>10</sup> Allison Stanger, “Addicted to Contractors,” *Foreign Policy*, December 1, 2009. [http://www.foreignpolicy.com/articles/2009/12/01/addicted\\_to\\_contractors](http://www.foreignpolicy.com/articles/2009/12/01/addicted_to_contractors)

There is a connection between our penchant for outsourcing and what Senator Whitehouse has called regulatory capture in reference to the ongoing oil spill in the Gulf and government's failure to react in timely fashion to the mounting crisis. You don't need corporate malevolence to get regulatory capture. It can follow directly from hollowed out government. If a public servant has had a distinguished career in government interacting with the private sector, it is natural to think beyond retirement to the next challenge, which often coincides with the heavy burden of shouldering tuition payments for children attending college. Regulators who might one day be employed by companies they have been tasked to regulate present a serious moral hazard. Regulatory capture occurs when the regulators focus on these points of shared interest and their own narrow self-interest, forgetting those things that only government can do well.

Noting how easily regulatory capture can occur is not the same thing as arguing that insourcing to right the contractor/government employee imbalance will automatically solve this problem. For example, I had a reporter call me up and cite figures that showed that contractors were doing the majority of the cleanup in the Gulf. He wanted me to express outrage at this fact. I disappointed him by saying that the relationship is entirely acceptable; if those doing the cleanup in emergencies were regular government employees, they would be doing a whole lot of sitting around during non-crisis situations, which would be a waste of taxpayer money. This was not what he wanted to hear, and the story didn't run. But the point is still worth emphasizing. Contractors can provide vital surge capacity for emergency situations. It is also far too easy, with the ever present terrorism threat, to see the United States as in some sort of permanent state of emergency, sanctioning measures that over time undermine self-government.

But that is precisely why radical transparency has become so critical to the health of American democracy. If we are going to rely in unprecedented fashion on outsourcing the work of government to the private sector, both in wartime and peacetime, and both to for-profit and not-for-profit organizations, congressional oversight becomes infinitely more complex and challenging. This spending must take place in the full light of day. Americans need to be able to see where their tax dollars are going, and radical transparency promotes the right sort of incentive structure for Wall Street and Washington elites who together wield extraordinary power—at least from the perspective of the average American.

Lest I be misunderstood, I am well aware that the demands of national security must sometimes trump the public's right to know. When our enemy was the Soviet Union, there were many instances where this imperative rightfully prevailed. But the Cold War is long over, and our enemy today is not another state but a network of order-subverting terrorists who threaten our most cherished values. Fighting that new threat demands unprecedented cooperation, collaboration, and information-sharing between the public-private sectors, between federal, state, and local government, and with our NATO allies. Transparency serves each of those ends rather than undermining them. Thus, when our national security interests are properly understood, transparency does not threaten the national interest but instead upholds it. In the simplest of terms, transparency

is communication, and communication fosters the cooperation and teamwork on which our homeland security depends. The new counterinsurgency doctrine acknowledges this proposition overseas; why can't we do so at home?

I stand ready to be persuaded otherwise, but to date, I have found most concerns about the costs of transparency to be misplaced, excessively focused on the short term at the expense of the sustainable. I understand why these concerns exist; the world has changed dramatically in a short period of time, and human behavior always lags profound socioeconomic change. But to find it understandable is no reason to accept the status quo as an immovable object. We can and must do better.

In conclusion, when so much of the work of government is in private hands, standard approaches to transparency will no longer suffice. The American people need to be able to see where and how their tax dollars are spent—right through to the sub-award level. Companies as well as governments can operate with the purest of intentions, but if their most important transactions are opaque to the public, they will lose trust and effectiveness. President Obama's March 4, 2009 Presidential Memorandum ordering a government-wide review of our contracting practices was a bold step in the right direction. The next step is to ensure that the spirit and letter of FFATA are upheld.

Thank you for your attention and I welcome your questions.