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FEDERAL ACQUISITION: WAYS TO STRENGTHEN COMPETITION AND ACCOUNTABILITY

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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CONTENTS

	Page
Opening statements:	
Senator Lieberman	1
Senator Collins	4
Senator Akaka	7
Senator Carper	8

WITNESSES

TUESDAY, JULY 17, 2007

Hon. David M. Walker, Comptroller General of the United States	12
Marcia G. Madsen, Chair, Acquisition Advisory Panel	14
Stan Soloway, President, Professional Services Council	18

ALPHABETICAL LIST OF WITNESSES

Madsen, Marcia G.:	
Testimony	14
Prepared statement with an attachment	71
Soloway, Stan:	
Testimony	18
Prepared statement	91
Walker, Hon. David M.:	
Testimony	12
Prepared statement	45

APPENDIX

Barry M. Cullen, President, Contract Services Association, letter dated July 17, 2007	103
Questions and responses for the Record from:	
Mr. Walker	105
Ms. Madsen	106
Mr. Soloway	109

FEDERAL ACQUISITION: WAYS TO STRENGTHEN COMPETITION AND ACCOUNTABILITY

TUESDAY, JULY 17, 2007

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, Carper, and Collins.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Good morning and welcome to this hearing. This morning the Committee is going to focus on one of the most important parts of our oversight jurisdiction, and that is the acquisition of goods and services by the Federal Government.

The fact is that the U.S. Government is the largest buyer of goods and services in the world by far.

The numbers are stunning and demand our attention. Government spending on contracts has exploded, while the trained workforce that oversees Federal contracting has shrunk. This has already contributed to widely publicized—and I would have to say infuriating—examples of waste, and the problem will only worsen in the years ahead if we do not act together to better protect the expenditure of taxpayer dollars for Federal contracting.

Let me give you some of the numbers. Between 2000 and 2006, spending on government contracts has grown from almost $219 billion a year to $415 billion. That is an astounding 89-percent increase in the past 6 years.

Yet, the number of Federal acquisition specialists who help write and negotiate and oversee these contracts has remained pretty much constant over that same period of time, and that follows a significant downsizing of the acquisition workforce during the 1990s. The numbers are particularly striking at the Department of Defense, where the workforce has declined by almost 50 percent since the mid-1990s. Government-wide, the workforce is about to shrink even further if nothing is done because roughly half the current acquisition workforce is eligible to retire within the next 4 years.

So it is imperative we attract fresh new talent into this critically important public service profession because the work is crucial to the effective and efficient use of taxpayers dollars.

I want to point out something that I have been educated to better understand, which is that a successful system for buying goods and services is more than just selecting the right vendor and signing a contract. Successful purchasing requires, in the Federal Government and the private sector, careful planning and negotiation of the contract before the contract is signed, and then followed by rigorous oversight throughout the life of the contract. It requires that government agencies have the competence to know what they need and understand how to work with the private sector to meet those objectives. And it requires government officials whose only allegiance is clearly to the taxpayer, and not in any way to contractors who might become their future employers.

If you dig into the causes of some of the most dramatic examples of wasteful spending through contracting that we have seen in recent years, you can see a very sad story of a system breaking down with very bad consequences for the taxpayers.

For example, TSA's contract for recruiting airline screeners grew from an original estimate of $104 million to a final settlement with the contractor of $741 million. That contract was for the recruiting of airline screeners. Auditors identified nearly $300 million in questionable costs submitted by the contractor. And TSA itself helped drive up the costs by changing the scope of the contract after it was signed, without sufficient regard to what those changes would cost.

The FBI's Trilogy project is very well known, painfully known. The project to upgrade the FBI's IT systems grew from $380 million to $537 million, due in part to poorly designed contract requirements, unrealistic scheduling, and weak oversight. GAO also identified over $10 million in questionable costs submitted by the contractor. As we know, in 2004 the FBI scaled back the project and determined that key elements were absolutely unfeasible as originally planned.

The U.S. Coast Guard turned too much of its decisionmaking for the Deepwater Project over to its contractors, with very bad results. The costs for the first two National Security Cutters alone are expected to increase by more than $300 million, and that does not include the additional hundreds of millions of dollars required for structural redesigns to those two ships and future cutters. So what we are talking about really matters.

Insufficient competition in awarding government contracts is a trend that is also troubling. Since 2000, the dollar value of contracts awarded without full and open competition has more than tripled, from $67.5 billion to almost $207 billion.

Recently, the Office of Federal Procurement Policy reviewed awards at major contracting agencies and found that 36 percent, more than one-third, of the money spent on contracts last year was awarded without full competition.

The Department of Defense, which is, of course, the largest spender on contracts, averaged about 37 percent awarded without full and open competition. NASA let half of their contracts without full and open competition, and the Department of Homeland Security slightly more than 50 percent.

The Federal Government is also increasingly using contracts not just to buy goods, which is how we think of as contracting conventionally, but to provide services to an array of agencies. Now, I understand that this can provide government with increased flexibility to meet urgent or unforeseen needs, and it also can provide access to expertise that might not be resident within the government agency. But the amount of contracting for services does raise questions as to whether our Federal Government has retained sufficient in-house capacity to effectively manage and oversee contracts and whether the Federal Government is ensuring that contractors do not perform what is inherently, and ought to remain, a government function.

Expanding the role of contractors providing services has created separate management challenges, and there is an irony, at least to me, to the fact that contractors are now being hired to oversee other contractors and to assist agencies with the process of awarding contracts.

We have actually even heard recent examples of contractors being retained to write Federal regulations, which, of course, we think of as an inherently Federal Government responsibility, therefore to be performed by full-time employees.

Looking back, in the 1990s Congress enacted a series of reforms to Federal procurement law to streamline the government's purchasing and to encourage the purchase of goods and services that are readily available in the marketplace. While I would say that these reforms have given our Federal Government greater flexibility as a purchaser, the level of inefficiency and waste definitely is still unacceptable, and for that reason I am pleased to join with Senator Collins who has taken the lead in drafting legislation to address some of these procurement problems. The proposal is known as the Accountability in Government Contracting Act of 2007, S. 680.

I think that the evidence is so strong that there is a lot that ails Federal contracting procedures today that I intend to do everything I can as Chairman of this Committee to make sure that we do not just oversee and investigate, but that we legislate in this area to try to improve the status quo. And I think S. 680 is a good place to start.

Over the past 2 years, the Committee has held numerous hearings that have addressed contracting challenges, for instance, in rebuilding the Gulf Coast, executing reconstruction contracts in Iraq and Afghanistan, and acquiring services to protect the Nation from acts of terror or to facilitate recovery from natural disaster. All of those efforts, unfortunately, have been marred by some wasteful, and occasionally fraudulent, contracting practices.

Contractors are essential to the functioning of our government. No one expects the government, for instance, to produce its own computers or build its own fighter planes or perform services that are better provided by the private sector. But with billions and billions of dollars of taxpayers' money at stake, both the government and contractors have a responsibility to do a better job than we are now at seeing to it that the taxpayers are getting their money's worth. And that will be the focus of this Committee and this hearing and beyond.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman, and thank you for holding this important hearing this morning.

As you have mentioned, the challenge of overseeing Federal contracting has grown over the years. Spending under Federal contracts now exceeds $400 billion a year. As you pointed out, Mr. Chairman, that makes the U.S. Government by far the world's largest purchaser, and the government purchases a huge variety of goods and services, ranging from staplers to studies to satellites.

During the past two decades, Federal purchasing has undergone several waves of reform. As a Senate staffer many years ago, I helped to draft the Competition in Contracting Act of 1984, and I look out at the audience today and I see many of the people who were on the Committee staff at the same time that I was. Who would ever have guessed that I would be here today and that we would be working together once again on contracting reforms? As you mentioned, Mr. Chairman, there were other major procurement reform laws enacted in 1994, 1996, and 2003, on and on.

Unfortunately, many of the problems that we have sought to correct over the years are still with us, like a drug-resistant virus that defies a doctor's best efforts.

This Committee firsthand has heard truly alarming reports on acquisition problems, particularly in the response to Hurricane Katrina and also in the reconstruction efforts in Iraq and Afghanistan. But it is not just the big emergency projects that run into acquisition problems. Oftentimes even routine Federal acquisition projects are rife with troubles. I want to mention just three examples to supplement some of the ones that the Chairman noted.

The Special Inspector General for Iraq Reconstruction found that the Department of Defense's management of $7.3 million in contracts relating to the Babylon Police Academy had numerous deficiencies, including $1.3 million wasted on duplicate construction and unneeded equipment, $2 million in unaccountable spending, and, indeed, examples of outright fraud.

FEMA, in a well-publicized case, spent more than $900 million to buy manufactured homes for the victims of Hurricanes Katrina and Rita that was largely wasted. More than 2,000 of the units did not fit FEMA's size specifications, and FEMA's own floodplain rules prevented the large-scale deployment of these manufactured homes in the most heavily damaged areas of Louisiana and Mississippi. This was an example where literally the left hand did not know what the right hand was doing within the same agency.

The Department of Energy contracted with Bechtel to build a $4.3 billion waste treatment plant at the contaminated Federal nuclear facility in Washington State. GAO has reported this year that the cost estimate now exceeds $12 billion and that completion is likely to be 8 years later than originally scheduled.

Mr. Chairman, I do not cite these examples to question the goals or the importance of these programs and these contracts. Instead, I cite them precisely because they are important for advancing our national interests, for enhancing the capabilities of our armed forces, for protecting our citizens. And that is why, beyond the con-

cern for wasted dollars and delayed deliveries, it is so troubling that the contract management functions at Defense, DHS, and the Department of Energy, are all on the GAO's high-risk list.

We know that just as the problems are varied, so are the causes. They include a severe and growing shortage of qualified acquisition professionals, an overreliance on sole-source contracts, inadequate specification of requirements and delivery dates, too many award fees in the face of poor performance, a lack of transparency in the process, deficient monitoring and evaluation, and, sadly, in some cases decisionmaking corrupted by individuals accepting gifts or seeking future private employment.

That is why you, Mr. Chairman, along with Senators Coleman, Carper, and McCaskill, and I have introduced S. 680, the Accountability in Government Contracting Act of 2007. This is a strong, bipartisan package of reforms that would tackle many of the problems we have seen in the Federal acquisition process. It would help to strengthen the acquisition workforce, improve oversight of contracts, and promote more competition and better transparency.

Mr. Chairman, the rest of my statement goes into many of the provisions of the bill. In the interest of time, I am just going to focus on one, and that is a growing practice of contracting officers awarding what are called "undefinitized contracts," and by that I mean contracts that are actually missing key terms, such as the price or the scope or the schedule. This practice is out of control, and it creates considerable problems. So the legislation that we have introduced would help mitigate the award of those kinds of contracts by requiring the contracting officer to unilaterally determine the missing terms within 180 days if it cannot be worked out. But, obviously, those kinds of contracts, which are missing such key elements, pose great risks.

I also want to just briefly focus on the shortfalls in the rank of Federal acquisition professionals. This may not be the most glamorous of issues, but, arguably, they are the most important provisions of this bill, because no matter how we tighten up the law, if we do not have well-trained professionals in adequate numbers administering these contracts, then all of the legal reforms will be in vain.

I am eager to hear the ideas from our witnesses for making our bill even more comprehensive and effective. You have invited, Mr. Chairman, a superb panel today. This is a vitally important subject for the Committee. Delays and defects in procuring goods and services frustrate our goals and can actually endanger the lives of our citizens and our soldiers. And every dollar that is lost to waste, fraud, abuse, or mismanagement is a dollar denied to some other worthy objective.

Thank you, Mr. Chairman.

[The prepared statement of Senator Collins follows:]

PREPARED STATEMENT OF SENATOR COLLINS

The challenge of overseeing Federal contracting has grown over the years. Spending under Federal contracts now exceeds $400 billion a year, making the U.S. government by far the world's largest purchaser of goods and services, from staplers to studies to satellites.

During the past two decades, Federal purchasing has undergone several waves of reform. As a Senate staffer years ago, I helped draft the Competition in Contracting Act of 1984. More recent reform efforts were enacted in 1994, 1996, and 2003.

Unfortunately, many of the problems we sought to correct over the years are still with us, like a drug-resistant virus that defies a doctor's best efforts.

This Committee has heard truly alarming reports on acquisition problems such as arose in the response to Hurricane Katrina and in the reconstruction efforts in Iraq and Afghanistan. But even routine Federal acquisition projects are often rife with problems.

I will mention three examples from a regrettably long list of candidates:

- The Special Inspector General for Iraq Reconstruction found that the Department of Defense's management of $7.3 million in contracts relating to the Babylon Police Academy had numerous deficiencies, including $1.3 million wasted on duplicate construction and unneeded equipment, $2 million in unaccountable spending, and possible fraud.
- FEMA spent $915 million to buy manufactured homes for victims of Hurricanes Katrina and Rita that was largely wasted. More than 2,000 of the units exceeded FEMA's size specifications, and FEMA's flood-plain rules prevented large-scale deployment in the most heavily damaged areas of Louisiana and Mississippi.
- The Department of Energy contracted with Bechtel to build a $4.3 billion waste-treatment plant at the contaminated Federal nuclear facility in Hanford, Washington. GAO reported this year that the cost estimate now exceeds $12 billion, and that completion will likely be in 2019 or later, 8 years later than originally scheduled. GAO points to contractor performance, DOE management and oversight, and technical issues as problems.

Mr. Chairman, I don't cite these examples to question the goals or importance of the programs. I cite these programs precisely because they are important for advancing our national interests, for enhancing the capabilities of our armed forces, and for protecting our citizens. That is why, beyond the concern for wasted dollars and delayed deliveries, it is so troubling that the contract-management functions at Defense, DHS, and the Department of Energy, are all on GAO's high-risk list.

We know that just as the problems are varied, so are the causes. They include a severe and growing shortage of qualified acquisition professionals, an over-reliance on sole-source contracts, inadequate specification of requirements and delivery dates, too many award fees in the face of poor performance, a lack of transparency in the process, deficient monitoring and evaluation, and even decision-making corrupted by individuals accepting gifts or seeking future private employment.

That is why I, along with Chairman Lieberman and Senators Coleman, Carper and McCaskill, introduced S. 680, the Accountability in Government Contracting Act of 2007, earlier this year.

This strong, bipartisan package of reforms would tackle many of the problems we have seen in Federal acquisition. It would help to strengthen the acquisition workforce, improve oversight of contracts, and promote competition and transparency.

Among other reforms, S. 680 would mandate competition for task or delivery orders that are currently not subject to competition. To increase the quality of competitive bids and bring additional transparency to task or delivery order competitions, the bill establishes the right to post-award debriefings for unsuccessful bidders on orders valued over $5 million. This will help vendors shape better offers for the future and sharpen competition.

S. 680 also lessens the risks inherent in sole-source contracts by requiring prompt, on-line publication of notices of all sole-source task or delivery orders above the Simplified Acquisition Threshold.

The bill would mitigate the practice of awarding contracts missing key terms, such as price, scope or schedule—that is, "undefinitized contracts"—by requiring the contracting officer to unilaterally determine missing terms within 180 days or a specified completion percentage.

Equally important, several measures in S. 680 would address the shortfalls in the ranks of Federal acquisition professionals. Mechanisms include an acquisition internship program and a government-industry exchange program; an Acquisition Fellowship Program offering scholarships in exchange for a commitment to Federal service, requirements for human-capital strategic plans by chief acquisition officers, and a new senior-executive-level position in the Office of Federal Procurement Policy to manage this initiative.

I am eager to hear ideas from our witnesses for making our bill even more comprehensive and effective. As Comptroller General, Mr. Walker has performed a great

service to the country by overseeing GAO's numerous and insightful reports on government programs, and in publicizing the high-risk list. Ms. Madsen's legal background in contracting and her service with the SARA Panel establish her as a particularly acute diagnostician in this area. And Mr. Soloway's government experience in earlier reform programs and his private-sector expertise will give us valuable insights in how we can improve the contracting process while taking into account legitimate business concerns.

This is a vitally important subject for the Committee. Delays and defects in procuring goods and services frustrate our goals, and can endanger the lives of our citizens and our soldiers. And every dollar lost to waste, fraud, or abuse is a dollar denied to some other worthy objective.

Chairman LIEBERMAN. Thank you very much, Senator Collins, for an excellent statement and for your leadership in putting forth legislation on this subject.

Normally we would go to the witnesses now, but I would ask Senator Akaka and Senator Carper if either wants to make a brief opening statement.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Mr. Chairman, I want to thank you very much for holding this hearing. Acquisition management has become a huge challenge for the government, as you pointed out so well in your statement, due in large part to the increasing use of contracting that has gone on. Many of the problems in acquisition management stem from an understaffed acquisition workforce, and that is something that we need to work on.

I have a statement here, and in the interest of time, I will ask that it be placed in the record.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF SENATOR AKAKA

Thank you, Mr. Chairman, for holding this hearing. Government acquisition is a very important subject, which I have followed closely in my role as Chairman of the Subcommittee on Oversight of Government Management.

Over the past 6 years, the use of contracts has ballooned. In 2006, the Federal Government spent over $400 billion taxpayer dollars on procuring goods and services—double what was purchased in 2000. At the Department of Homeland Security alone, procurement spending has tripled since its creation in 2003. Senator Voinovich and I held a hearing on DHS acquisition management just last month where we heard about progress made in contract management and lessons learned from past problems.

One of these problems, which unfortunately illustrates what happens when contracts do not receive enough oversight, is the Coast Guard's Deepwater contract for fleet modernization. Due to inadequate oversight after awarding the contract, costs soared and deliverables did not meet the Coast Guard requirements. The entire contract had to be overhauled, showing that the government cannot always rely on contracted support to oversee major acquisitions.

Many of the problems in acquisition management stem from an understaffed acquisition workforce. While contract spending has doubled, our acquisition workforce has remained steady at around 55,000 government employees. As a result, contractors are being used to supplement the acquisition workforce. Sometimes contractors are even hired to study whether or not certain government activities should be contracted out. One may wonder, are the foxes guarding the henhouse?

The terms and requirements of contracts are also too vague. In some cases, the government issues requests for proposals that are too broad with few specific requirements. Agencies then rely on a contractor to tell them what it is the agency needs to achieve its mission. The SBInet program relied heavily on such broad terms, and this contract must be continually monitored to ensure it is not mismanaged.

The increasing reliance on certain types of contracts is also a serious problem. Cost-plus contracts, in which the government pays for the costs of a good or service, plus a percentage, can lead to abuse and waste. With these terms, there is little

incentive to find the lowest cost solutions. The more an item costs, the bigger the commission for the contractor. These contracts can also include an additional award fee, which is routinely awarded nearly in full, even if there was admittedly poor performance, as we have seen with several contracts in Iraq.

Most troubling is the reliance on no-bid and limited competition contracts. While time is of the essence for many acquisitions, no-bid and limited competition contracts are not always responsible procurement options. Such contracts are only meant to be used sparingly when there is clearly a single provider of the needed service. However, it is more often the case that we ask for so much in umbrella contracts; bloated requests for services so large that only a handful of companies can deliver. Better planning and a bigger workforce could allow government agencies to create manageable contracts that can be opened up for more competition which saves the government money.

Again, thank you Mr. Chairman for holding this hearing. This is a very important issue. I hope to work with you, the Ranking Member, and Members of this Committee to find meaningful solutions that can improve acquisition management. I look forward to hearing from our witnesses today, who will offer their expertise as we move forward.

Chairman LIEBERMAN. Thanks, Senator Akaka.

The record should note that Senator Akaka, in partnership with Senator Voinovich, has been really persistent in pursuit of what Senator Collins quite correctly called the "unglamorous" questions associated with human capital management for the Federal Government, including the workforce and the acquisition workforce. So I thank you.

Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman.

It ought to be clear to anyone who has been paying attention to the news in recent years that our Federal Government has serious problems with the way that we manage our contractors and the way we manage our contracts. The U.S. Government is the biggest buyer in the world. I am told we purchased over the last 7 years or so nearly a half trillion dollars' worth of goods and services. That is an increase of almost 90 percent. This enormous increase has been triggered, I think at least in part, to our support for efforts in Iraq and Afghanistan.

Unfortunately, auditors and investigators have exposed extensive waste, fraud, and abuse involving a number of government agencies and contractors. In fact, many of the contracts involving our government during the past 4 years in Iraq and Afghanistan have resulted in profound waste and mismanagement, some of which we visited 4 weeks ago. Senator McCaskill and I were over there on a mission to look into some of it.

Most of those contracts have been awarded on a no-bid or cost-plus basis. As a result, billions of taxpayers' dollars have unfortunately been wasted. I just want us to consider two examples over the past 2 years alone.

Last year, the Defense Contract Audit Agency identified about $263 million as "potentially excessive or unjustified" costs charged by Kellogg, Brown & Root, known as KBR—the government contracting firm formerly under Halliburton—under a no-bid contract known as "Restore Iraqi Oil." Yet the Department of Defense chose to pay $253 million of the disputed costs, despite the auditors' objections.

This past May, according to an audit by our own Special Inspector General of Iraq, we learned that KBR did not keep accurate records of gasoline distribution, put its employees in living spaces larger than necessary, and served meals that cost $4.5 million more than necessary under its contract to perform work in Iraq.

As I said earlier, Senator McCaskill and I were over there about a month ago, and we learned firsthand, when we visited Iraq, some of this information. The oversight that our congressional delegation performed in both Iraq and Kuwait—over contractors operating there and the contracts they ostensibly oversee—was very constructive.

Mr. Walker, I was briefed, prior to my trip, by a couple of people from your shop, and I think Carole Coffey was one and Bill Solis was the other, and they did really an excellent job. We thank you and them.

According to the Department of Defense, there are more than 127,000 contractors in both countries supporting our war effort. These contractors do everything from doing the laundry, serving meals, driving convoy trucks, repairing trucks and vehicles that have been blown up, and you name it. They protected us while we were there.

The oversight, though, of the contractors who support the deployed forces has been a longstanding problem, which GAO has reported on since, I guess, 1997. Last December, the GAO argued the Department of Defense continues to have inadequate contractor oversight personnel in deployed locations, which makes it nearly impossible for the Department of Defense to receive assurances that contractors are meeting contract requirements efficiently and effectively at each location. Similarly, the GAO noted commanders and other military personnel—integral players in contractor oversight—receive little or no training on the use of contractors as part of their predeployment training or their professional military education.

This week, I am offering an amendment to the Defense Authorization bill to correct that, an amendment that I hope Senator McCaskill will join me in offering. Our amendment will help ensure military personnel understand the scope and the scale of the contractor support they have in contingency operations and prepare them for their roles and responsibilities for oversight and contingency contracting.

Over the past 5 months, Congress has started to pressure the Executive Branch to end bad contracting practices, and not a moment too soon, I might add. However, many problems do persist, and the key is to stay on it. We must remain vigilant in our congressional oversight of Federal taxpayer dollars going to pay contractors, whether it is in Iraq or Afghanistan or some other place around the world.

The questions I hope will be addressed today are these:

One, how do we make the Federal acquisition process more efficient, more effective, transparent, and accountable?

Two, how do we establish a capable acquisition workforce and hold it accountable?

Three, how can the Congress play a constructive role in the path forward?

Federal agencies, particularly the Departments of Homeland Security and Defense, have critically important missions—to protect and secure our homeland. Waste and mismanagement undermine their missions. Anything that weakens our government's quick and effective response to the real threats our country continues to face here and abroad is just too much.

As elected Members of Congress, our greatest stakeholders are the American people. We have an obligation to ensure their dollars are being used as effectively as possible. That is why I am also proud to be an original cosponsor of the legislation Senator Collins has offered, along with Senator Lieberman, to ensure proper oversight and accountability in Federal contracting.

Last, let me just conclude by saying congressional oversight is imperative to make sure that Federal agencies like the Department of Homeland Security and like the Department of Defense step up to the plate, confronting the waste of precious taxpayer dollars and taking immediate, corrective action so we protect Americans and our interests abroad as well as the nearly 300 million Americans at home.

I look forward to hearing from each of you. We welcome our witnesses and we look forward to continuing to work with our colleagues on this Committee and others to provide the oversight that ensures these agencies do not shy away from their duty to forcefully confront waste and mismanagement.

Welcome. Thank you for coming.

PREPARED STATEMENT OF SENATOR CARPER

It should be clear to anyone paying attention to the news in recent years that our Federal Government has serious problems with the way it manages contractors and contracts.

The U.S. government is the biggest buyer in the world, purchasing nearly half a trillion dollars in goods and services over the past 7 years—an increase of almost 89 percent. This enormous increase has been triggered, in part, to support our war efforts in Iraq and Afghanistan.

Unfortunately, auditors and investigators have exposed extensive waste, fraud, and abuse involving a number of government agencies and contractors. In fact, many of the contracts involving our government during the past 4 years in Iraq and Afghanistan have resulted in profound waste and mismanagement. Most of those contracts have been awarded on a no-bid or cost-plus basis. As a result, billions of taxpayers' dollars have been wasted. Consider just a few examples over the past 2 years alone:

- Last year, the Defense Contract Audit Agency (DCAA) identified about $263 million as "potentially excessive or unjustified" costs charged by Kellogg, Brown & Root (KBR)—the government contracting firm formerly under Halliburton—under a no-bid contract known as "Restore Iraqi Oil." Yet the Department of Defense chose to pay $253 million of the disputed costs, despite the auditors' strong objections.
- This past May, according to an audit by our Special Inspector General of Iraq, we learned that KBR did not keep accurate records of gasoline distribution, put its employees in living spaces larger than necessary and served meals that cost $4.5 million more than necessary under its contract to perform work in Iraq.
- We have also learned the California-based Parsons Corporation, which has received $186 million over the past 3 years for a healthcare center project, has completed construction on only 15 of 142 planned health care centers. Of those 15 centers, only six are open to the public.

I learned this first-hand when I visited Iraq last month. The oversight our congressional delegation performed in Iraq and Kuwait—over contractors operating there and the contracts they ostensibly oversee—was very constructive.

According to the Department of Defense, there are more than 127,000 contractors in both countries supporting our war effort. These contractors do everything—prepare meals, do laundry, drive hundreds of trucks thousands of miles to re-supply U.S. and Iraqi forces, repair damaged vehicles, and, even provide protection to congressional delegations that come to Iraq on an almost weekly basis.

Oversight of contractors who support deployed forces has been a long-standing problem, which the General Accountability Office (GAO) has reported on since 1997. Last December, the GAO argued the Department of Defense continues to have inadequate contractor oversight personnel in deployed locations, which makes it nearly impossible for the Department to receive assurances that contractors are meeting contract requirements efficiently and effectively at each location.

Similarly, the GAO noted commanders and other military personnel—integral players in contractor oversight—receive little or no training on the use of contractors as part of their pre-deployment training or their professional military education.

This week, I am offering an amendment to the Defense Authorization bill to correct this. My amendment will require training for all military personnel outside the acquisition workforce, including operational field commanders and officers performing key staff functions for operational field commanders expected to have acquisition responsibility and oversight of contracts and contractors. My amendment will help ensure military personnel understand the scope and scale of the contractor support they have in contingency operations and prepare them for their roles and responsibilities for oversight and contingency contracting.

Over the past 5 months, Congress has started to pressure the Executive Branch to end bad contracting practices. Slowly, bad contracting practices are disappearing and will, with our continued oversight, be replaced with fixed-price contracts and competitive bidding.

For example, the Defense Department, which spent $151 billion on service contracts in fiscal 2006, has made some effort to increase oversight. However, many problems persist. The key is to stay on it. We must remain vigilant in our congressional oversight of Federal taxpayer dollars going to pay contractors in Iraq and Afghanistan.

The questions I hope will be addressed today are:

- How do we make the Federal acquisition process more efficient, effective, transparent and accountable?
- How do we establish a capable acquisition workforce and hold it accountable?
- What tools do our Federal agencies need to accomplish those objectives?
- How can the Congress play a constructive role in the path forward?

Federal agencies, particularly the Departments of Homeland Security and Defense have critically important missions—to protect and secure our homeland. Waste and mismanagement undermine their missions. Anything that weakens our government's quick and effective response to the real threats our country continues faces here and abroad is too much.

As elected Members of Congress, our greatest stakeholders are the American people. We have an obligation to ensure their dollars are being used as efficiently and effectively as possible. This is why I am also proud to be an original cosponsor of the bipartisan bill—introduced by Senators Lieberman and Collins—ensuring proper oversight and accountability in Federal contracting.

To date, the war in Iraq has cost us just over half a trillion dollars. The deficit this year is forecast at just over $200 billion. This is not a time to be wasteful with our citizen's hard-earned money. In fact, there is never a time to be frivolous with the hard earned money of the American people.

Congressional oversight is imperative to make sure Federal agencies like the Department of Homeland Security and the Department of Defense step up to the plate, confronting the waste of precious taxpayer dollars, and taking immediate, corrective action so we protect Americans and our interests abroad as well as the nearly 300 million Americans at home.

I look forward to hearing from each of you. And I look forward to continuing to work with our witnesses and my colleagues on this Committee to provide the oversight that ensures these agencies do not shy away from their duty to forcefully confront waste and mismanagement.

Chairman LIEBERMAN. Thanks, Senator Carper.

I am very grateful to the three witnesses. This is an excellent panel that brings a lot of expertise and experience to the table that will help us in our desire to legislate effectively here.

We will begin with David Walker, obviously the Comptroller General of the United States since November 1998. GAO's body of work related to government procurement has been invaluable to this Committee and to Congress in helping us understand both the weaknesses in the system and the means of addressing those weaknesses.

Mr. Walker, I thank you for your really exemplary service to our government, to our country, and I welcome your testimony now.

TESTIMONY OF HON. DAVID M. WALKER,[1] COMPTROLLER GENERAL OF THE UNITED STATES

Mr. WALKER. Chairman Lieberman, Senator Collins, other Members of the Senate Homeland Security and Governmental Affairs Committee, first, thank you very much for holding this hearing. It is a very important topic, clearly worthy of your time. And, second, thank you very much for inviting me to testify at this hearing.

The U.S. Federal Government is the single largest buyer in the world, obligating over $400 billion in fiscal year 2006 alone. While acquisitions are made throughout government, the majority are concentrated in just a few agencies: The Department of Defense represents 71 percent, and the top five agencies represent 86 percent of all Federal acquisitions.

GAO's work extending back over many years has demonstrated that agencies face a number of recurring and systemic challenges in their acquisition of goods and services. Let me make it clear. A vast majority of Federal employees do a good job, and a vast majority of Federal contractors do a good job. I think that is important to note. But in examining our defense work in particular, which is where 71 percent of contracting dollars were done last year, we have observed 15 systemic and longstanding acquisition challenges which I have included as Appendix I, and I would commend it to you and your key staff. These have been there for years. Many of these require action by Executive Branch officials. Some might require legislation. All require additional oversight by the Congress.

For example, not only have we identified contract management as a high-risk area for DOD, but also for the Department of Energy and NASA, as has been mentioned. Furthermore, we have identified interagency contracting as a new government-wide high-risk area.

Let me be clear. These systemic challenges and high-risk areas cost the taxpayers billions of dollars every year. In my testimony, I highlight these acquisition challenges, and I categorize them into four areas:

First, the importance of separating unlimited wants from true value and risk-based needs.

Second, establishing and supporting realistic program requirements and sticking with them.

Third, using contractors in appropriate circumstances and contracts as an effective management tool.

And, fourth, creating a capable workforce in the acquisitions area and holding it accountable for results.

[1] The prepared statement of Mr. Walker appears in the Appendix on page 45.

Separating wants from needs in an affordable and sustainable manner will be critical to improving management within our current fiscal environment. No less important is the need for clearly defined program requirements and to stick with those requirements over time. It is also important to use appropriate contract types as well as effective oversight, both by the Executive and Legislative Branch.

Contract management challenges can jeopardize successful acquisition outcomes in normal times, but they take on heightened significance in contingency operations such as Iraq, Afghanistan, and Katrina. A significant part of our challenge relates to the evolving and enlarging role of contractors in acquisitions, particularly through service contracts, which accounted for nearly 60 percent of all government contract obligations for fiscal year 2006. This raises the basic question of which type of work should be done by contractors versus government personnel. This is a major issue that is a growing concern and is in need of serious attention by both the Executive Branch and the Congress.

In addition, an accountable and capable workforce underlies the Federal Government's ability to strategically plan, to effectively manage, and to properly oversee whatever contracting activities are done. Tackling these and other systemic challenges will be fundamental to helping achieve better value for money and reducing but not eliminating waste. Let's face it. The Federal Government is the largest, the most complex, and, arguably, the most important entity on the face of the Earth. We should have zero tolerance for fraud, waste, abuse, and mismanagement. It will never be zero, but we can do a lot better than we are doing now.

And in that regard, let me offer a definition of "waste" because I think we need to keep in mind waste is where the money is.

Waste involves the taxpayers in the aggregate not receiving reasonable value for money in connection with any government-funded activities due to an inappropriate act or omission by players with control over or access to government resources. That is noted in Appendix II of my testimony, and I might note that waste can be caused by either the Executive Branch or the Legislative Branch, and there are specific examples that are noted therein.

In closing, I would like to re-emphasize why it is important, in fact, imperative that we address these longstanding and systemic acquisition and contracting challenges. Given our current and projected financial condition, we should have zero tolerance for waste. We need to make some tough decisions. Some will have to be made by the Executive Branch, others by the Legislative Branch, but it is important that we do it sooner rather than later. The failure to do so will cost American taxpayers billions of dollars each year.

Last, but certainly not least, let me make some comments about the Accountability in Government Contracting Act of 2007, S. 680. Let me commend Chairman Lieberman, Senator Collins, and others who are sponsors of this legislation. The act addresses a number of areas of concern that GAO has had over the years. In the aggregate, we believe that it has a number of meritorious provisions, and we are broadly supportive of this legislation. As I mentioned to Senator Collins, we have a few suggestions for improvement, and she is open to those suggestions. I am sure the other

Members of the Committee are as well, and I promise you that you will have those this week, possibly as early as today, because I think it is important that we try to work together in a constructive fashion. I know you have put a lot of time and effort in the legislation, and I want to thank all of you for your efforts in this regard.

Thank you very much.

Chairman LIEBERMAN. Thanks very much, Mr. Walker, and we do look forward to those suggestions that you have about the legislation. You are a critical participant in this, and we wanted to come at it in a constructive way.

As our second witness today, we are very grateful to have Marcia Madsen appearing before us in her capacity as Chair of the Acquisition Advisory Panel, which was established by the Services Acquisition Reform Act of 2003 to examine this complicated area of law and make recommendations to Congress. Ms. Madsen is a partner and expert in this area in the law firms of Mayer Brown. It is a happy coincidence, I suppose, that the Government Printing Office has just within the past few days produced a hard copy of the panel's report that came out in January. And it is both hard and heavy, I might add, and each of the Members has a copy at their desk before them.

Ms. Madsen, we look forward to hearing your testimony on the panel's recommendations. On behalf of the entire Committee, I want to thank you, the other panel members, and the panel staff for your hard work to produce this report, which will be a real help to us as we go forward with both our oversight responsibility and our desire and commitment to legislate.

Thank you very much. We look forward to your testimony now.

TESTIMONY OF MARCIA G. MADSEN,[1] CHAIR, ACQUISITION ADVISORY PANEL

Ms. MADSEN. Mr. Chairman, Senator Collins, thank you very much for holding the hearing and for inviting me to testify in my capacity as Chair of the Acquisition Advisory Panel. I am very happy to be here to talk about the panel's work product, and as Senator Lieberman mentioned, I am also very happy—and greatly relieved, I might add—to see that GPO has finally printed the document. I am not sure that without the impetus of this hearing we would have gotten it. But we have it, and we are very grateful to have it.

Just so you know, you have some of the first copies of the report. The report has actually been officially transmitted to OFPP, and it is in the process today of being distributed to all Members of Congress and senior government officials by GPO. And we will be posting the report on the Web. It may take a couple of weeks, but it will be on the panel's Web page as well.[2]

I just want to note that accompanying me today are Ty Hughes and Roger Waldron, sitting in back of me, each of whom co-chaired panel working groups and who wrote substantial portions of this report. And also accompanying me is Laura Auletta, the panel's

[1] The prepared statement of Ms. Madsen with an attachment appears in the Appendix on page 71.

[2] The document can be accessed on the Web at https://www.acquisition.gov/comp/aap/24102_GSA.pdf.

Executive Director and solo permanent staff person. She was really the backbone of our efforts, and we are very grateful to her.

I would also like to acknowledge Panel Member David Drabkin, who has changed hats here. He is sitting behind you, Senator Collins. David also co-chaired two panel working groups and contributed to this report.

The Committee's interest in our report is greatly appreciated. We have been following S. 680—I have—and noted the inclusion of many of the panel's ideas and concepts in the legislation.

At this point I would like to request that my full statement be included in the record, and I will just summarize some of the key points.

Chairman LIEBERMAN. Without objection.

Ms. MADSEN. Thank you. There is no way I could talk about the whole thing.

Section 1423 identified key topics for the panel as commercial practices, performance-based contracting, and the use of government-wide contracts, or interagency contracts as we know it. The panel was sworn in February 2005. It consisted of 13 members balanced between government and the private sector.

The panel tried very hard to use an evidence-based policymaking process. We did our best to ground our findings and recommendations in research and in data. We heard testimony from more than 100 witnesses representing government and public interest organizations. We held more than 30 public meetings. We adopted over 100 findings and 80 recommendations. Obviously, they can only be touched on here.

The panel was subject to the Federal Advisory Commission Act (FACA), so this was a very open and transparent process. Congressman Davis, who I was talking to the other day, after he listened to the statistics, said, "That is a lot of Diet Coke." [Laughter.]

And both Comptroller General Walker and my friend Stan Soloway here both testified in front of the panel.

The panel was very well aware that with Federal spending approaching, at the time we were working, $400 billion and serious and competing demands on the taxpayer dollars that an accountable and transparent acquisition system that delivers innovative and high-quality goods and services was absolutely critical to our national interests.

I will talk a little bit about some of the subjects in the panel's work. Because of the emphasis in the legislation regarding appropriate use of commercial practices, and because performance-based acquisition is a commercial practice, the panel spent significant efforts on the subject of commercial practices. One of the first things we did was reach out to large commercial buyers of services, and the private sector consultants who support them. And they talked to the panel about current commercial practices and services acquisition, and I want to note here that the panel focused on services acquisition, but we did not do it to the exclusion of all acquisition.

We also took testimony from many government buyers and users of services, both DOD and civilian agencies, and we heard from many government contractors as well as watchdog groups.

As detailed at length in our report, there is a large and robust private sector market for services, particularly IT and IT-related services. Commercial companies are acquiring billions of dollars in services, and they have well-developed acquisition and contracting procedures, and we set out to find out what those were.

The large commercial buyers who testified before the panel identified requirements development—what are your needs, just as Comptroller General Walker has talked about—and competition as the keys to successful service contracting. These companies told us that they make large up-front investments in defining requirements, typically on an outcome basis. This investment makes vigorous competition possible. It facilitates the use of performance-based contracts as well as fixed-price contracts. Requirements development is to the commercial sector the most basic and fundamental building block of services acquisition.

One of our witnesses told us if you do not know what you are going to buy, perhaps you should not buy anything at all. They were a little astonished, some of our private sector witnesses, at some of the government practices.

Government practice, our observation based on our work, on the other hand, is driven by the need to get to award quickly to meet mission needs and obligate funds. And we recognize that inadequate requirements definition is not a new topic. It has been an issue at least for every group that has looked at these issues for 30 years. But the problem in the services context is that poor requirements definition results in reduced competition, the inability to use performance-based contracts, the inability to make use of fixed-price contracts, and ultimately it results in increased costs.

The panel's commercial practices recommendations focus on improving competition. The recommendations recognize that competition fuels innovation, drives fair prices, and disciplines the responsible and effective use of streamlined acquisition vehicles and improves opportunities for small businesses.

The panel worked hard to develop data using FPDS–NG on the extent to which government acquisition is competitive. We noted, as has been observed here already, that government spending on services accounted for 60 percent of procurement dollars in 2004 and 2005, including at DOD. So DOD is not spending most of its money on weapons systems. It is spending it on services. The details are in our report, but in fiscal year 2004, one-third of the government's procurement dollars were awarded non-competitively. This is based on our analysis of FPDS data. And even when competed, the percent of dollars awarded, when only one offer was received, has more than doubled from about 9 percent in 2000 to 20 percent in 2005. And we fear that the amount of non-competitive awards may be understated. Although we tried for months and months, we could not obtain reliable data on competition for orders under multiple award contracts available for interagency use. We do know that in 2004, $142 billion, or 40 percent of procurement spending in that year, went through interagency vehicles.

Our recommendations, I guess many of which have been picked up in the bill, focus on requirements development through use of Centers of Excellence and requiring that the program manager and

the contracting officer be responsible for requirements regardless of the acquisition vehicle that they use.

With respect to interagency contracts, our recommendations try to achieve a balance between recognizing that these vehicles are necessary to allow for streamlined acquisition of what we call "bite-sized" requirements for repetitive needs and with the fact that a significant proportion of large orders, single transactions in excess of $5 million each is flowing through these vehicles.

For example, we found that in 2004, $66.7 billion of that $142 billion was awarded in orders for single transactions that exceeded $5 million in value. These are single orders. We could not get data that showed what the award with options was, so those are single orders in those years.

For interagency contracts, we recommended making the requirements of Section 803 of the 2002 DOD bill applicable government-wide for orders over $100,000, and we recommended some other things as well, for example, requiring a synopsis post-award for sole-source orders, something that is picked up in the bill. For orders over $5 million, we recommended more formalized competitive procedures that are outlined in the report. We also recommended post-award debriefings, and we recommended, after quite a bit of debate and discussion, allowing protests on orders of over $5 million. And I am happy to talk about that more if the Committee would like later.

On interagency contracting, we recommended that those contracts need to be better managed. Among other things, our findings recognized that the government does not know how many of those contracts it has, so our findings start with identifying where those contracts are, who is using them, and OFPP, I am happy to say, already started down that path early in the panel's work.

On the workforce, the panel determined that there is a significant mismatch between demands placed on the workforce and the personnel and skills available within that workforce to meet the demands. The problem that the panel encountered was that there was just not reliable information about the size, composition, and the competencies of the Federal acquisition workforce.

The procurement panel that was empaneled in 1972 to look at these issues had the same problem, and we did the same thing they did. We commissioned our own study of the Federal acquisition workforce. This is the executive summary of our study. It actually consists of nine volumes. We are happy to provide it to the Committee. I will leave this copy with the staff today of the summary.[1] But the problem that we identified is clearly identifying where the workforce is, what the competencies are. The data just is not available. And based on what we heard from the commercial sector, our perception is that this just is not an issue of numbers, it is an issue of skills, it is an issue of resources, it is an issue of people with the right mix of skills to do the kinds of acquisition that are required in a heavily services-dependent environment.

We also looked at the challenges of the blended workforce. That was a topic that we encountered later, and I think we have scoped those issues. I do not think we have all the answers to those issues.

[1] The copy of the executive summary is retained in the files of the Committee.

But we start, I think, with the premise that with 60 percent of the government's money being based on going to services, that agencies need to have a better sense of what they are buying.

In the A–76 area, where the inherently governmental rules apply, there is some discipline to the acquisition of services and what skills and what activities those workers are performing.

Outside of that environment, where agencies are buying services, there is no definition really of what are the core government competencies that the government needs to maintain. And it is that area that our recommendations focused on.

With that, I will close and am happy to answer any questions that you may have.

Chairman LIEBERMAN. Thank you very much. Excellent testimony. A very interesting point that you conclude that we do not have enough data about the acquisition workforce to make informed judgments about what it lacks. So I will come back to that in the question period. Thank you.

Our final witness is Stan Soloway, who is President of the Professional Services Council (PSC), a leading trade association of companies that provide professional and technical services to the government. Prior to joining PSC, Mr. Soloway served as the Deputy Under Secretary of Defense for Acquisition Reform, and concurrently as Director of the Secretary of Defense's Defense Reform Initiative. The record shows that he, like Senator Collins, is a graduate of the William Cohen School of Public Service, a very fine school with a great mentor, a former member of this Committee.

Mr. Soloway, thanks for being here, and we look forward to your testimony now.

TESTIMONY OF STAN SOLOWAY,[1] PRESIDENT, PROFESSIONAL SERVICES COUNCIL

Mr. SOLOWAY. Thank you, Mr. Chairman, Senator Collins, and Senator Akaka. I want to thank you for the invitation and the opportunity to provide our views on S. 680, and generally the whole area of government procurement. This is a very important discussion, as my colleagues on the panel have suggested. We all recognize that, given the centrality of acquisition to the functioning of government, we have a shared responsibility to most effectively and efficiently utilize taxpayer dollars.

I will note that the other great value and benefit not only of the legislation but of this hearing is the opportunity to have a serious discussion about solutions. In too many other forums we spend an awful lot of time pointing fingers and operating in a somewhat context-free zone, and I really appreciate the opportunity to have that broader substantive discussion.

Whether it is assisting citizens seeking compensation for radiation sickness, providing support to our military men and women stationed at home or abroad, or developing scientific analyses to better protect sensitive wildlife habitats, PSC's members are among the leading small, mid-tier, and large companies providing the full range of professional services to virtually every Federal agency. In fact, our 220 member companies employ hundreds of

[1] The prepared statement of Mr. Soloway appears in the Appendix on page 91.

thousands of people across the country in virtually every region and State.

As you have noted, over the last decade the government's missions have evolved rapidly, increased in complexity, and required new technologies, resulting in both growing challenges for the government itself and its workforce and a substantial increase in the reliance on contractors. The evidence suggests that these challenges and trends will continue well into the future.

In fact, the July 2007 report of the Partnership for Public Service highlighted very clearly that the Federal Government will need nearly 200,000 "mission critical" new hires over just the next 2 years to keep pace with the rising requirements to meet our national security and evolving agency needs and the expected Federal workforce retirements. That does not even begin to account for the thousands of positions across government, including in the acquisition workforce, which are today vacant and which the government is struggling to fill.

S. 680 represents a valuable starting point for discussing how to ensure that the Federal procurement process fully protects how the government spends taxpayer dollars while also enabling the government to acquire the full array of necessary resources and support. When viewed in its totality, and despite its evident problems, the Federal acquisition system actually functions better than it might seem, and in most cases, quite well. As my colleague, the Comptroller General, pointed out, the vast majority of procurements are well constructed and the vast majority of contractors perform well.

At the same time, improvement is clearly needed and we look forward to an ongoing dialogue about solutions that will deliver real value and improvement.

Before I comment on specific aspects of the bill, let me just step back for a minute and offer a little bit of context and in some cases perhaps challenge some common myths that have surrounded this debate that all too often fail to recognize the complexities and nuances of this giant process we are dealing with.

It is true that since September 11, 2001, Federal procurement spending on both goods and services has grown dramatically. But this should not come as a surprise. Among other things, September 11, 2001, significantly changed many of the government's missions and created requirements for new technology and innovative solutions to secure the homeland and fight the global war on terror. Today, more than ever, the government finds itself competing for people and capabilities in the broader economy, in which the availability of those very skills is in short supply.

This contracting growth did not happen in a vacuum. During that same period, the overall discretionary budget of the government has grown nearly two-thirds. Thus, while significant, spending on service contracts has actually increased as a proportion of the government's operations about 15 percent, from 21 to 24 percent of the discretionary budget. This is significant, clearly, but it is hardly the unconstrained rush others have suggested.

Similarly, we continue to see claims that the so-called "shadow" contractor workforce supporting the government now numbers over 8 million—making it more than four times the size of the Federal

workforce. Simply put, by any meaningful measure, that figure is wildly overstated and based on faulty premises and is mathematically impossible.

We also have a lot of confusion around the issue of competition and, Mr. Chairman, I agree with you fully that competition must be a core value of Federal procurement. It is a core value among our members and we strongly support an open and competitive process in every possible way.

However, some suggest that the amount of competition for government work today may, in fact, be less than it used to be. But when looked at proportionally, it is not clear that is the case, that it may, in fact, be relatively consistent. Some of the confusion in this area does come down to the unique terminology in government contracting.

Many contracts are highly competitive even if they are not technically awarded through what we call "full and open competition," which is a term with special meaning in Federal acquisition. For example, current law provides a 23 percent government-wide goal for small business and other preference programs, such as Section 8(a) firms, firms owned by women, service-disabled veterans, HUBZone firms, and so forth. None of these awards are coded in the database as "full and open competition" because they are only available to qualified companies. It is not full and open.

Similarly, with multiple award contracts, where there is typically a competition through which companies vie for a position on the contract—those companies that win a position on the contract, they then compete for incremental, as Ms. Madsen pointed out, bite-sized pieces of performance. Those awards themselves may be competitive, but they are not full and open because they, too, are only available to those who won a position on the initial contract.

This is not to say we should be satisfied with the degree of competition. As Ms. Madsen pointed out, Congress addressed this for the Defense Department in 2003. S. 680 appropriately extends the rules that were applied to the Defense Department at that time across the government and we support doing so in the same manner that was done for DOD. I do think it is important, as we have that discussion, to understand the definitions and the context clearly.

We also need to be very clear that the bipartisan objectives of the acquisition reforms of the 1990s were not about procurement for speed's sake. The goal was to rationalize and modernize an almost comically cumbersome process—a process, for example, through which the government dictated to cookie makers how many chocolate chips could go into a cookie made for the military; a process that was so arcane that large segments of the commercial sector simply refused to participate. The goal was to move from the rigid, rule-based process that was in part responsible for those dysfunctions to one based on critical thinking, business judgment, and smart decisionmaking.

Far from simplifying the life of Federal acquisition professionals, many of those reforms actually made the acquisition process more demanding, and as you have pointed out and the Acquisition Advisory Panel and GAO and others have pointed out, the investment

in that workforce and their training and development has simply not kept pace.

The private sector believes that the best customer is smart and well prepared and that is why 5 years ago PSC recommended to Congress the creation of what is now known as the Federal Acquisition Workforce Training Fund. Although the fund is growing, it is far from adequate.

Which brings me to the legislation before us. Through S. 680, you recognize—and, Senator Collins and Chairman Lieberman, you made clear in your opening comments—that the greatest returns and improvements in the acquisition process will be found in an aggressive focus on the Federal acquisition workforce and the ways in which they are supported, developed, and resourced. That focus is long overdue and has never been more critical.

It is also vital to recognize that the acquisition workforce is not just contracting people. It is a broad range of functional responsibilities, whether it be engineering, program management, financial and cost analysis, and so forth that must be included in any discussion of that workforce.

The legislation contains important provisions that we support that we believe will help and enhance the acquisition workforce. But we also believe that more can be done. In fact, we believe that today we need a kind of workforce Marshall Plan that aggressively addresses the hiring, retention, training, reward, and development of the workforce we are asking to manage 40 percent of the discretionary budget. It is standard commercial practice for companies to develop, reward, and otherwise foster their core workforces differently than they do other elements of the company. Unfortunately, such is not the case in government, and it is time to change that paradigm.

We also believe this initiative should include a special focus on emergency and contingency contracting. As an alternative to further restrictions or rules that could collide with mission realities, we propose that Congress direct the creation of a government-wide Contingency Contracting Corps. This corps would be drawn from across the government contracting workforce, be given special training in emergency and contingency contracting, and be deployable when the need arises.

My written testimony contains more detailed comments on a number of other key provisions, and in some cases, while we recognize and support the underlying concerns that drove the recommendations in the bill, we also believe those provisions could be modified or improved upon. This would include the sections on limits on task orders, the use of fixed-price versus cost-type contracts, the tiering of subcontracts and debarment. Each of these is important, and I will be happy at any time to discuss our perspectives in more detail.

We also share your belief, as reflected in Section 123, that interagency contracting remains an area worthy of further study and we support the intent of the provision. I will add that among our members, 65 percent of which are small or mid-tier firms, the mix and structure of the Federal contract landscape has enormous implications for the long-term competitiveness and diversity of the services industry. Thus, we recommend that Section 123 require a broader

analysis of the relative role and balance of interagency and enterprise contracting and how best to ensure that whatever we do fosters continued diversity and competitiveness in the marketplace.

We do have particular concerns, which we can discuss in a few moments, with Section 114 that would allow the filing of protests on task order awards. This might be one area in which the views of industry are perhaps the most relevant, because if there is concern about the government adherence to the rules of fair play, it is the companies that will be the first to call for more opportunities for redress. Yet, across industry, there is a resounding consensus that adding protests to task order awards is unnecessarily costly and time-consuming.

There are also other bills before this Committee and in other committees about which we have very grave concerns and which we believe will have a very deleterious effect on the environment, do little or nothing to improve actual acquisition or mission performance, and potentially have a significant negative effect on the long-term competitiveness of the marketplace. Given your leadership and your jurisdiction, we hope you will not hesitate to engage on those other bills and demand of them the same kind of rigor you are applying to your own legislation.

Let me once again thank you for your leadership on these crucial issues and for your nonpartisan approach and openness to dialogue. This concludes my opening statement. I would be happy to answer any questions you might have.

Chairman LIEBERMAN. Thanks very much, Mr. Soloway. Normally, it is the Committee Members that give the witnesses static. [Laughter.]

I apologize that we are all going to have to put up with that static, but we are trying to stop it. Thanks for excellent testimony. We are going to do 8-minute rounds of questions for each of the Senators.

Ms. Madsen, I wanted to start with you. I thought that you had a very interesting comparison of private sector acquisition practices as compared to the governmental sector, and the differences are really striking, particularly in terms of the planning going into the contract as well as the negotiation. The government seems to do too little planning. The private sector does a lot of it and also monitors the carrying out of the contract better than the government does.

I wonder if you have any thoughts about the causes of that difference in what might be called acquisition cultures.

Ms. MADSEN. I do have some thoughts. The panel, I think, heard quite a bit of testimony from the private sector because they are buying—private companies are buying services at a phenomenal pace, and they are buying them because they see the ability, particularly where they are technology-related services, to reduce their costs. So we were very interested in the techniques that they were using and the kinds of skills that they involved.

The things that they told us, the first place they start is really aggressive and rigorous requirements development. They get the user, the vice president or the executive vice president whose substantive area of responsibility that is, and the acquisition people in

the same room, and they have to agree. They have to buy in. They have to agree.

Our acquisition system in the government is a little stovepiped. We do not necessarily view acquisition in those terms, in terms of getting sign-off from particularly the user at the program community. So that is one of the things that struck us. It is also the investment they make. They will bring in—private sector companies will bring in, if they need to, a consulting firm, and they will spend some time and resources actually getting their requirements rounded up and defined on an outcomes basis, typically on a performance basis. And they do it with very complex services and with very complex missions. So we know it can be done, but it takes a lot of planning on the front end.

I think the other piece probably—and this is a tougher issue for the government—is funding. The private companies are not worrying about spending their money in 12 months or 9 months or 8 months, as the case may be. So they have a little more luxury in terms of knowing the funds are going to be available, but at the same time, I think the planning things that they do are a valuable lesson because those can be done regardless of when you know you are going to get your funding.

Chairman LIEBERMAN. How much of it is because of the current shortage of acquisition specialists in the government? Or does that shortage merely exacerbate the existing difference in cultures?

Ms. MADSEN. The private companies we talked to—and I think many of them would be happy to come and talk to you, if you wanted them to—told us that they just have a different model. They use typically a smaller group of people who are very sophisticated in doing large sourcing transactions. Folks who not only have acquisition expertise, but who understand what it is that they are buying, and they put those skills together. I think what we are lacking in the government side maybe is putting those skills together. We are asking—and Mr. Soloway mentioned this—government acquisition people to be good commercial buyers, to know that market, to know the government's rules, and to know the government's special missions. And that is a lot to put on their plate, and they are not really necessarily being given the tools and the training to do that all at one time.

So part of it, I think, goes to the acquisition people, but part of it goes to the skill set and the way the function is organized.

The commercial firms told us that they conduct extensive market research up front, so they do not just run a competition and they do not just define their needs. They also do market research, and they pinpoint who are the best potential competitors for this work. And that is something else government is not doing a very rigorous job of.

One of our recommendations—and it looks, I think, to some people a little soft, but we think it is very important—is to actually establish a market research function in the GSA to do this kind of work. The government has a lot of data about what it buys, what it paid for it last year, what it paid for it last month. But the data is not pulled together in a way that is meaningful for conducting market research.

Chairman LIEBERMAN. I thank you for that. That is a helpful answer. I want to, before my time is up, ask Mr. Walker a question.

You have noted your concern that Federal acquisition employees rotate too frequently between government and industry, and I know that GAO has ongoing work in this area. We have pending before our Committee a bill authored by Congressman Waxman, H.R. 1362, which comes to us from the House, which would enact new restrictions on former and current procurement officials.

I wonder if you are prepared to offer us, first, a description of the extent to which you think this is a problem, and then, second, if you have any recommendations to make about how we might fairly and constructively legislate in this area.

Mr. WALKER. Two things, Chairman Lieberman. First, with regard to the question you asked previously, the items in Appendix I are based on commercial best practices. So if we look at the items in Appendix I, they are based on our commercial best practices work.

Second, there are two issues with regard to rotations. One issue is the rotation of government personnel too frequently such that you do not have appropriate, clearly defined responsibility and accountability.

Chairman LIEBERMAN. Within the acquisition——

Mr. WALKER. Within the government.

Chairman LIEBERMAN. So they stay in the Federal Government but just keep moving around.

Mr. WALKER. For example, where the Defense Department may have a policy that you are assigned to serve as a senior program official for 2 years and then you rotate off rather than until you hit a major milestone. Waiting until a major milestone would facilitate a more effective and accountable transition. So that is the first type.

The second type is what you touched on, which is a rotation between government and the private sector, the so-called revolving door. We do have concerns there. There are issues there. What I would like to do is look at that specific provision and then provide you something for the record, if that is possible.

Chairman LIEBERMAN. OK. Ms. Madsen, did the Advisory Panel examine the revolving-door issue or would you care at this time to offer any views on it?

Ms. MADSEN. Mr. Chairman, we did not really look at the revolving-door issue per se. We did try to get a sense of the number of people working in the Federal workforce. We just did not have good data on the number of contractors supporting the Federal workforce. The data is just not available. It is among our recommendations that we get data, but we did not look specifically at people rotating in and out.

Chairman LIEBERMAN. Mr. Soloway, how about your reaction to this? I believe that the current law is that for one year after leaving government service, Federal procurement officials are prohibited from working for contractors to whom they awarded contracts. Is this a problem and one we should legislate on?

Mr. SOLOWAY. The answer is we have a very clear standard out there. When I left government, although I did not have responsibility for specific procurements, all of us leaving the last adminis-

tration had very clear guidance from our ethics officers of what we were allowed and not allowed to do, who we could talk to and who we could not talk to and so forth.

I do not think the problem is the need to change the law as it is making certain that everybody who is affected by it has the clarity of guidance that they need. Unfortunately—and I do not use this in any way as an excuse—in the few cases that we have seen the people admitted they knew exactly what they were doing when they did it. And I am not sure adding another year of restrictions would have changed their behavior.

The other issue is the so-called blended workforce, and how you are now getting lots of closer, different kinds of relationships, is something we have been working on, looking at with the National Academy of Public Administration and others, because this is the new face of government and we do have some management issues we need to look at in this area.

Chairman LIEBERMAN. Take a moment—and I am over my time—just to say for the record what is a blended workforce and what are the problems we are worried about?

Mr. SOLOWAY. You very often now will look in a government agency, and you have much more of an integrated workforce than you used to have, where there are contractors and government employees working side by side in offices. It is a much greater preponderance today than it was in the past. As I said, although it is not massive to the extent that some people might think, it is clearly a growing trend. And that raises interesting questions about how you manage that workforce and how you incentivize. For companies, frankly, it is a big challenge: How do I drive any institutional loyalty amongst my own employees? What are the incentive and pay and other performance challenges when I have people doing effectively this same job?

It is the new face of government. It is an area that we have been looking at and talking about internally and with external groups like the National Academy and others to think about what are all of those issues.

As Ms. Madsen said, there are a number of them, and they have solutions, but we have not thought about this new face of government. I believe the Volcker Commission at one point said that we have a 21st Century challenge and a 19th or 20th Century government structure. In many ways, I think that applies to this as well.

Chairman LIEBERMAN. Well said. That was helpful. You are absolutely right. People not involved in contracting, when they hear about contracting with the Federal Government, will naturally assume that the work is contracted out to a business that does it somewhere else. But there is increasingly a very blended workforce, including as all of us who have been to Iraq and Afghanistan know, a quite remarkable blending of full-time Federal employees, including, most importantly, the military, and a lot of contract employees. And how they work together raises important questions.

Mr. SOLOWAY. Would it be appropriate to add—I am sorry to interrupt you, Mr. Chairman.

Chairman LIEBERMAN. No. Go ahead.

Mr. SOLOWAY. I would add one thing to Ms. Madsen's answer to your first question, which I thought was a very important one. As

I listened to her comments and the Comptroller General's, when you think about the difference in cultures between the commercial side and the government side, there are two things that we hear a lot. One is that the commercial side operates very much at a partnership level. They get very closely engaged with their contractors. Years ago, when we had the hearings about the Federal Acquisition Streamlining Act, one of the witnesses said that in the private sector the mark of excellence is the degree of communications and close cooperation between customer and supplier, and in the government that gets you thrown in jail. So we have cultural differences there in terms of how much we communicate, but it also gets to the investment in the people.

So when we talk about the elements of commercial practice that Marcia set forth, those are absolutely consistent with what we tried to do in the Federal Acquisition Streamlining Act or the Clinger-Cohen Act, or I suppose here I should call it the Cohen-Clinger Act of 1996, and other reforms. But where we have really fallen down is in that investment in people that she spoke to, the recognition that they are a core, vital element of the management and leadership team, not just a support workforce.

Chairman LIEBERMAN. Thank you. Time is up. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

One of the purposes of S. 680 is to decrease the reliance on sole-source contracts to strengthen the competitive process. When this Committee investigated the contracts awarded in the wake of Hurricane Katrina, we saw that contracting officers frequently invoked the exception to competition, that is, the urgent and compelling exception. And, clearly, in many cases that was warranted in order to get the contract awarded very quickly. The problem, however, was then the follow-on contract for the same kind of service or goods—debris removal comes to mind—also became a sole-source contract.

So one of the provisions of our bill says, fine, there are times when you have to use the urgent and compelling exception, but when you are doing the follow-on contract, it should be competitive, and there should be a limit for how long the initial sole-source contract can be in place.

Now we chose 150 days, which may be too short. It may not be long enough. Perhaps it is too long. I am not certain. I would like to get the views of each of you on the concept that I have outlined of requiring the follow-on contract to be competitive and to limit the amount of time that a sole-source contract using the urgent and compelling justification can be in place.

I will start with you, Mr. Soloway, and then just work down the panel.

Mr. SOLOWAY. Senator, we fully agree with you that the emergency contracting provisions need to be used only in the correct circumstances, and there clearly have been some cases where they at least apparently have been used beyond the time or size intended by law, and in Hurricane Katrina there certainly appear to be some cases. I would make two quick comments.

I believe that the Contingency Contracting Corps concept that is in our testimony would greatly help to alleviate the problem be-

cause you would have a corps of people who were specially trained in emergency contracting.

One of the things we saw—and I was down in the Gulf Coast 4 days after the storm—there was nobody home, as we know. There was a complete infrastructure meltdown because of this storm. Two weeks later it was a different story, 4 weeks, 6 weeks, as things began to come to life. But what we did know is FEMA had very few contracting folks available, and people—some being deployed or to support it—had no experience in emergency contracting.

So I believe the Contingency Contracting Corps will help go a long way towards alleviating further cases in which the contracting authorities may be used incorrectly.

The only caution I would add to your question: Is 150 days the right time or the wrong time? Is it 180? Is it 240? Is it 30 days?

As a general proposition, our concern with putting a firm timeline like that into statute is it could collide with certain mission realities. Again, generally 150 or 180 days may be more than enough time, but I can imagine in some cases it might not be. For instance, in Iraq today we are still in many areas still engaged in very heavy warfare, a great deal of uncertainty. Emergencies arise.

So I don't know that putting in statute a time definite limit makes the most sense, but we certainly agree with you that we want to make sure that these contracts are used appropriately.

Senator COLLINS. Thank you. Ms. Madsen.

Ms. MADSEN. Senator Collins, we did not speak directly to follow-ons to non-competitive contracts, but our recommendations do emphasize the importance and the recognition that on occasion agencies may need to do something on a sole-source or non-competitive basis. But I think where we come out, the panel report comes out, is do what you need to do, but then behind that get the people involved who can help you define your requirements in such a way that the next time you can do competition.

One of the things that your bill would do by putting a time frame, even if you do not make it mandatory—and I share some of Mr. Soloway's concerns in terms of making it, a hard stop. But if there is a time frame in there where people need to be attentive to, OK, it is time to look at doing something else, then they have got the incentive to begin right away looking at what their requirements are, because they will learn from that experience that they have with the sole-source contract that will inform them about how to get competition the next time and how to set their requirements so that they can get competition.

So I would agree. I do not know that you need a hard stop in the statute, but I think you need an incentive in the statute for people to focus on how to do it competitively the next time.

Senator COLLINS. Thank you. Mr. Walker.

Mr. WALKER. Three things. Yes, first, I agree that follow-on contracts should be competitive.

Second, I think there is a concern with regard to the duration of the initial non-competitive contract. We have some concerns about whether 150 days is realistic in some circumstances.

And, third, I think there is another issue that we need to focus on. Contingencies happen. Wars happen. Natural disasters happen. And, quite frankly, in addition to these very worthwhile things that

you are addressing through your legislation, I think there needs to be more advanced planning, whereas FEMA, for example, recognizes that hurricanes are going to happen, earthquakes are going to happen, and floods are going to happen. We ought to anticipate what type of needs we might have in the event of such events. We ought to be entering into contingency contracts that we can draw upon if and when those events happen. We need to have competition and we need to be able to draw on task orders in an appropriate circumstances. But there may need to be some changes in law because of how the obligation rules work. So we would like to work with you on that.

So it is not just the issue of making sure that follow-ons are competitive. They should be. It is not just an issue of having some limitation on the initial award. It is also making sure that these departments and agencies are doing appropriate planning, entering into appropriate contingency contracts so that they can draw upon them when and if that event happens.

Senator COLLINS. Thank you. I look forward to hearing from all of your specific recommendations on that.

Let me turn to another issue, Ms. Madsen. Mr. Soloway in his comments expressed some concerns about the expansion of bid protest rights for unsuccessful bidders on large task orders under multiple-award contracts that are included in this bill. And I want to give you an opportunity to talk about this provision because we took it from the SARA panel's recommendations.

I am a little surprised that Mr. Soloway has concerns about that because our goal is to help smaller businesses, and medium-sized businesses who feel that they could have competed and were shut out, and to give them an affordable, fast, reliable remedy at GAO.

So I would like to ask you to give us a little more background on why the panel recommended these provisions.

Ms. MADSEN. Thank you, Senator. The first thing I would say to you, although not of the stature of this body, our panel was a very deliberative process, a very deliberative body, and this is an issue we talked about a lot. As it was adopted, it was adopted, I think, only with one dissenting vote despite the balanced nature of the panel.

The things that the panel found to be of concern were the amount of dollars flowing through interagency contracts—$142 billion in 2004; the size of the orders. We found, looking at FPDS data, almost $67 billion of that was in single orders over $5 million. And we know that number is low because it only reflects the single order; it does not reflect the base year plus options.

We looked at agencies using—when they get above about $5 million, they are using evaluation criteria, they provide a statement of work evaluate criteria. They do best value trade-off. In other words, it looks very much like a standard best value negotiated procurement, but it is in a regime where it is not transparent and people cannot object to the way the evaluation process worked.

We recognized, we think, in our recommendation that there needs to be some flexibility for the government to get bite-sized repetitive needs satisfied in an environment that has lesser constraints posed on it, and we thought $5 million was the right number based on the data we saw.

I think one of the things that became apparent to the panel is nobody expected these task—at the time the legislation was enacted in the mid-1990s—people just did not expect these task orders to get as big as they have. We are seeing task orders that—I mean, we are talking about $5 and $10 million task orders, but we are seeing task orders that are $50, $60, $100 million and that last for 4 or 5 years. And it is when you get to that size and they start to look like traditional negotiated procurements, you wonder why they are under the task order regime and they are not under a more traditional procurement regime.

Senator COLLINS. Thank you.

Ms. MADSEN. I just have one more point, Senator Collins. I apologize. I do not want to leave out that under the GSA schedule, any order of any size can be protested, and that is something that the panel also noted.

Senator COLLINS. I am going to ask both of our other panelists to come back to this issue in our second round.

Chairman LIEBERMAN. Do you want to do it now?

Senator COLLINS. Is it all right?

Chairman LIEBERMAN. You can do it now.

Senator COLLINS. OK. Mr. Walker, since it is GAO that would be doing the work, do you have the ability to take this on? And what is your view of the merits of this approach?

Mr. WALKER. We support expanding the bid protest in this regard. We think for cost/benefit reasons there needs to be some threshold. We do not believe it should be any lower than $5 million. Our preliminary analysis says $5 million seems reasonable. We clearly do not think it should be lower than that, potentially higher than that. We are continuing to do analysis.

The reason we believe it is for transparency and accountability purposes. We have not seen a big clamor of a problem here, but there is clearly a movement for more of this type of activity to occur, and for transparency and accountability reasons, we believe it ought to be there.

We do have some concerns about the express option provision as to what type of burdens that might end up imposing, not on us because we already have an expedited process but on the departments and agencies. And that would be an area that we would like to work with your staff of.

Senator COLLINS. Thank you. Mr. Soloway.

Mr. SOLOWAY. Senator, I think there is a certain irony here that in some ways people view protests as a redress for the companies, and it is the company side that is saying, well, we do not want that redress as if we do not care.

Senator COLLINS. That is why it surprises me.

Mr. SOLOWAY. I think you have to recognize a couple of things. First of all, for the multiple-award contract under which these task orders are awarded, that multiple-award contract award is fully protestable. In addition, there are aspects of task order awards, particularly regarding scope of the contract, if it is not consistent with the original formation of the multiple-award contract, it is protestable. So it is not as if there are no means for redress in some areas.

We support other elements of this bill that we think actually would do more to help transparency and the process and the protests, such as the debriefing provisions where you require debriefings, such as publicly posting—I believe the panel recommended publicly posting task order awards so that everybody, especially on that contract or outside, knows what is going on.

But there is a huge difference between a multiple-award contract such as we are talking about here and in the schedules—the schedules do not have a competitive construct up front that is a protestable process.

Transparency is important. We support it. The greatest concern from smaller and mid-tier firms is that $5 million is not a small amount of money; it is a very significant amount of money. In the pantheon of Federal contracting, it is a fairly routine amount, and you could be adding costly litigation that is very burdensome on smaller and mid-tier firms especially, a burden that they do not particularly savor taking on.

So if we wanted to have a discussion about higher thresholds where we get to that point, as Ms. Madsen said, of $75 million, we are really talking about large contracts that, if they are going to be under a task order, really look a lot like the old negotiated one-off procurement, that is a separate discussion. But $5 million, as much money as it is, is a relatively routine procurement, and this is, in fact, not necessarily a fast process and it is a very expensive litigative process. That is a lot of the concern that the companies have.

Senator COLLINS. Thank you. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Collins. Important questions. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Ms. Madsen, and to all of the panel, I would like to focus on the workforce. Many of the recommendations in the Acquisition Advisory Panel's report focus on enhancing the acquisition workforce. Acquisition management is a very specialized function in the Federal Government.

What kind of skill sets should the government be looking for in recruiting Federal acquisition personnel?

Ms. MADSEN. Thank you, Senator. I think we talked about this a little bit when we were in front of your Subcommittee. I think the panel's view and concern actually was that the skill sets that one needs to acquire services are different. They are skill sets that involve knowledge of the market, the relevant market, access to market data, the ability to understand how the services work, not just buying labor hours but really understanding how complex IT projects are structured, and how that marketplace works. And part of that is understanding what the requirements are.

So while our traditional model is you have the acquisition people here and you have the program people here, it may be that traditional model in the services context does not work the way we need it to for the 21st Century, where we have such a focus on services acquisition.

The private sector buyers told us that they combine those skill sets. They have people who understand what the buyer needs at a substantive level, what the requirements are. They help define

them themselves. And they do the acquisition work. So they do it all together.

Senator AKAKA. Comptroller General Walker, as I mentioned earlier, many of the problems in acquisition management stem from an understaffed acquisition workforce. As a result, contractors are being used to supplement the acquisition workforce, and sometimes contractors are even hired to study whether or not certain government activities should be contracted out. One may wonder are the foxes guarding the henhouse?

I am concerned, Comptroller General Walker, about the increasing reliance on contractors to manage and oversee acquisitions at the agencies. Should we rely so heavily on contract personnel to manage agency procurement?

Mr. WALKER. Well, Senator Akaka, this comes to a point that I made earlier. I think that to a great extent we need to be relying upon contractors in certain circumstances, but we are relying upon contractors in other circumstances that may not make sense and may not be in the government's, as well as the taxpayers', overall interest.

Let me give you some examples. In my view, we should never contract in the determination of government policy, in the exercise of enforcement or adjudicatory power, or in conducting certain critical oversight responsibilities that need to be done.

On the other hand, we surely should contract for non-core support services, non-recurring surge and contingency needs, and critical skills and knowledge where the government, because of its hiring practices or because of its classification and compensation systems, we cannot hire the people.

My concern is we have defaulted to the contracting option with recurring frequency in circumstances where it may not be appropriate, where there may be conflicts, where we may be asking for contractors to do things that civil servants ought to be doing. And one of the things that we need to do is we need to do a much better job on workforce planning, on understanding what kind of skills and knowledge are necessary. We need to understand what are the problems with the Federal recruiting classification and compensation systems. And we need to solve the root-cause problems rather than defaulting to a contracting option because it is the easy and quick thing to do.

Senator AKAKA. Thank you very much for your response, Comptroller General Walker.

I would like to ask this to both Ms. Madsen and Mr. Soloway. Congress has provided funding, most recently at DHS, to increase their acquisition workforce. DHS recently testified before my Subcommittee that these positions have not been filled.

Do we need to implement more programs to attract, recruit, and retain the workforce? Do agencies need additional hiring flexibilities? Or is there just a lack of individuals with necessary skills? Ms. Madsen.

Ms. MADSEN. Senator, I think it may be all of those things. I know that in our work we find—and even in working with the panel, getting enough people who have the right understanding of all of the rules was difficult. So I think there is definitely something to that point.

We make a number of recommendations for more flexibility in recruiting and training in our report. We make recommendations for a government-wide internship program. We make recommendations for training. And a number of our recommendations go to enhanced human capital planning so that agencies, I think, have a better understanding—not only do they just need contracting people, but what kinds of skills do they need so that the training matches the people.

Mr. SOLOWAY. Senator, I think you have touched on a number of problem areas on which we all agree. If I could just harken back a little bit to my experience at the Defense Department where I had responsibility for the acquisition workforce. We did at that time, at Congress' direction, try to implement a program with special hiring authorities, pay flexibilities, and so forth, as part of our effort to bring in more people. Many thanks to this Committee and the Armed Services Committee in those days. We were also doing battle with your colleagues across the Hill who were trying to reduce the number of so-called shoppers at DOD and recognizing that not everybody was a shopper.

The challenge, I think, is not just do we have enough money or do we have the positions. This is an area the government should compete well for. There are people out there who do procurement. Government procurement is not only the largest but it is also the most complicated type of procurement and it includes acquisition management, not just contracting. This should be a relatively competitive area for the government, so you pose the right question: Why are we not getting them in? Given my experience in the Defense Department, it comes back to our basic personnel structure. Both Ms. Madsen and Mr. Walker have spoken to the fact that we really need to focus on this and think about what it is going to take to get the right people in, because it is not going to go away. We may make modifications and some mid-course corrections, but this challenge exists.

But it does raise all these questions about basic personnel policies, the ability to focus, as I said earlier, kind of a Marshall-like focus on this workforce, and do what the best commercial companies do. The reason they get the people is because they identify those folks who are core to their mission, and they develop, resource, pay, incentivize, and otherwise support those folks differently, perhaps, than other elements of their workforce, which I realize is in many ways anathema to our structure of the civil service. I think that is not a small part of the issue.

The last point I will make is we cannot underestimate today—and this has been building for a number of years—the morale of the current acquisition workforce and in many ways the disincentive to people coming into government procurement despite the complexity and challenge of the work.

In the late 1990s, when we were facing some challenges from the House side around cutting the acquisition workforce. We had people who did not want to be defined as being a member of that workforce because they were under the axe, if you will.

Today, given the tenor of the discussion and our relative intolerance for mistakes and for error—I think the Comptroller General spoke to this when he said these things are going to happen. Those

may be the toughest times, but the most important times to stand up and support our civil servants who are out there by and large trying to do good work, often with inadequate tools and training. They do feel, as I said in my written submission, somewhat assaulted and unsupported. And if we want to incentivize people to come into that workforce, we collectively need to support them more visibly as well as substantively.

Senator AKAKA. Thank you so much for all of your valuable responses. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Akaka, for your good questions. Let's do a second round of 6 minutes each, if the Members would like to ask questions.

I wanted to go for a moment to something that Mr. Walker mentioned before, which is, how do we try to develop a workable definition of what services the Federal Government ought appropriately to be able to contract for and those that they should not? I find using a phrase, "inherently governmental work," I think that may come at some level from existing Federal Acquisition Regulations. But is there a workable definition of it?

For instance, we have heard recently that both the IRS and the Department of Homeland Security have contracted out for assistance in writing regulations. Now, my first reaction to that is, hey, wait a second, that is really inherently governmental work. Maybe not. Maybe they do not have an ongoing pool of people who are skilled at doing that. Maybe it is better that they hire somebody from outside.

Is there a workable definition of what is open to contracting and what is not? And I am thinking about services here. Mr. Walker.

Mr. WALKER. Well, the term that you use, "inherently governmental," is a term that has some legal significance now. I want to suggest for the record—the need to dust off the 2002 Commercial Activities Panel report, of which Stan was a member and I had the opportunity to chair. I would ask you to take a look at this again, and your capable staff, to take a look at the recommendations we made.

I think we need to relook at when and under what circumstances is it appropriate to be contracting out and when is it not, because we are in a very different situation today, and we are likely to continue to have to rely on contractors of the so-called total force in order to accomplish government's mission. But I think that a lot has happened since those definitions were determined, and I think they need to be relooked at.

Let me mention one other thing that I wanted to get on the record. It is one thing to talk about economy, efficiency, effectiveness, ethics, and equity. Those are all important things. There is another dimension that you need to be aware of that I am concerned about with the total force. With increasing frequency, you can go to meetings, whether it is the Pentagon or elsewhere in government, and you do not have any idea which one is a civil servant and which one is a contractor. With increasing frequency, we are relying upon contractors to perform various functions. In some cases it makes sense. In other cases it does not.

But we have started to see circumstances in which we at GAO, and potentially the Congress and others, may be denied or re-

stricted access to certain information where we actually have contractors doing the work. To me, that is an oxymoron. If you have a contractor doing work, then GAO, Inspectors General, and the Congress should have an automatic right to that information, subject to appropriate security clearances, if you will.

So this is a new dimension that I am starting to see emerge that I think is going to be an increasing issue that we all need to be concerned about.

Chairman LIEBERMAN. Good point.

Ms. Madsen, are there certain kinds of governmental activities that ought never to be contracted out that are definable?

Ms. MADSEN. Senator, I think that the panel would agree with the definition of "inherently governmental," and I think there is something called the "Inherently Governmental A List" that we talked about.

Chairman LIEBERMAN. What is the definition?

Ms. MADSEN. "Inherently governmental," it is necessary to be performed by a Federal employee and in the interests of the government. But the piece that is missing—and I probably did not phrase this very articulately earlier—is when you are operating in this environment under A–76, people look at those definitions. Otherwise, when agencies are just buying services every day, they are not looking at those definitions.

So our very first recommendation when we talk about the blended workforce is that the agencies, consistent with their mission, need to define what their core needs are for government employees in their agency. And we believe that the definitions under A–76 of "inherently governmental" are the right place for them to start, but they may be different for an agency depending on its mission. And the agencies should think about that, not just when it does an outsourcing under A–76, but when it buys services, because they are buying services in such large quantities.

Chairman LIEBERMAN. Right.

Mr. Soloway, this is an odd question to ask you since you are representing contractors, but is there any category of services that the Federal Government should never contract out?

Mr. SOLOWAY. Absolutely. And I think I agree with the Comptroller General, having served on the Commercial Activities Panel under his leadership, that we do have a definition in regulation that talks to the commitment of government funds, adjudication, law enforcement, and so forth. You asked a very important question, and that is, if I understand, that somebody is involved in the writing of regulations, is that or is that not inherently governmental. What is their role? Are they doing a kind of economic analysis to support a regulatory process? Are they doing scientific analysis? Is that analysis really inherently governmental, or is it the decision and the policymaking that is actually the inherently governmental focus?

I think you would find relative unanimity on this panel about it. How to go about the periodic reviews of the current regulation is probably always appropriate. Ultimately it does get down to a very specific agency mission focus and agency need that will sometimes vary from agency to agency.

The other piece to recognize is not only, as the Comptroller General said, have we seen a growth in service contracting in the last number of years, much of it in the post-September 11 environment for obvious reasons in terms of skill sets and requirements, but we have, in fact, seen the government challenged more and more in trying to hire, even for positions it has open, getting those skills in and the agencies having to have certain kinds of information and expertise. That has not created questions about crossing the line, but it caused us to step back and say, OK, what part of regulation development is or is not inherently governmental.

The last point I would make—and Ms. Madsen referenced the A–76 process—which is all about how the government outsources services that are currently being performed by a civil servant. Under the law that has been in place for a number of years, every agency of the government publishes an annual inventory of every position within that agency being performed, and it identifies the position as either inherently governmental or commercial, or commercial but not available for contracting. It is that third category where the discussion always is relevant. We know if it is clearly inherently governmental; we also probably can identify what is clearly commercial. But there is that in-between area, and that is where the change has taken place.

Chairman LIEBERMAN. Thank you. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

In fiscal year 2005, more than half of all dollars obligated were for task and delivery orders issued under IDIQ contracts. A provision of our legislation—and, again, this is our attempt to decrease the amount of non-competitive contracting—would prohibit the award of IDIQ contracts over $100 million on a sole-source basis. Instead, it says that agencies would be required to award contracts valued over $100 million to a minimum of two contractors, who would then compete for the various task orders under the contract.

Now, there is a waiver provision in extraordinary circumstances when a sole-source contract is the only feasible option. But I would like to get the views of the panel on this provision given the fact that increasingly we are using this kind of contract. Mr. Soloway.

Mr. SOLOWAY. Senator, again the concern that we have here is not with the intent, which I know is to drive greater competition. After all, I may have one member company that benefits and 220 that do not benefit, so their interest is in a competitive marketplace because that is how they grow and access new customers. Again, thresholds in statute, what is the right number and what are the circumstances?

I recall the Chairman very eloquently, in the aftermath of Hurricane Katrina, talking about his disappointment that FEMA did not have in place enough prepositioned contracts to deal with a natural disaster. In many cases, those prepositioned contracts by definition of the work being requested, which is—I need someone who is capable of doing certain functions in the entire Southeast Region. Given almost any circumstance, the contracts are going to be IDIQ by definition because we do not know when the disaster will hit, and they may well be single-award because I need instant response. I need to be able to pick up a phone and then the next day the water is going, or whatever it might be.

So there are circumstances in which that is actually the smartest way for the government to contract because, otherwise, you may not have capability.

Again, the real issue here is whether the $100 million is the right threshold, and I come back to—as we looked at this and recognized that there are concerns about too much—in your eyes, your concern that there are too many large individual task orders, that a lot of that could be dealt with through our concept of the Contingency Contracting Corps, that folks who have the training to create and then implement in an emergency environment, which is where you see this kind of dynamic most often. In our view that might help achieve the same goal without putting into statute some hard and fast stops.

Senator COLLINS. Ms. Madsen.

Ms. MADSEN. Senator Collins, I agree with Mr. Soloway, I think periodically you need some flexibility in a disaster or wartime context. But I think the way you have drafted the bill with the waiver provision may well provide that flexibility.

But setting aside the disaster context, certainly both our panel's focus on competition and your focus on competition would suggest that a sole-source award of that magnitude on an IDIQ where the requirements are really not defined is really kind of out of the basket.

It is kind of perverse in a sense, and it is one of the things we noticed with the IDIQ contracts, and it is one of the reasons for our recommendations about heightened attention to the competitive process for the orders—is that in many ways that kind of vehicle is antithetical to good requirements definition.

So I think your sense of putting some restraints on it are proper, as long as there is room for an emergency. But I do not think we should approach the problem with the assumption that we are starting with the emergency.

Senator COLLINS. Thank you. Mr. Walker.

Mr. WALKER. I think it is reasonable; I think it is appropriate. I think you need to have an exception for extraordinary circumstances, which you are trying to do. But I come back to what I said before. I think we need to understand that certain types of contingencies will happen, and we should be doing more to plan for those, anticipate those, and to engage in competitive contracting that one can be able to draw task orders on when the contingency occurs, not if the contingency occurs.

Mr. SOLOWAY. Senator, may I mention just one last thought for your consideration as you are thinking about the provision further?

Senator COLLINS. Yes.

Mr. SOLOWAY. I think it would be very helpful—and I have not seen this, and your staff or the Chairman's staff may have this data—to pull some data to look at from a trend perspective how many single-award IDIQ contracts—in other words, an IDIQ contract awarded to one company, which then gets the sole-source task orders—and how much volume is flowing through competitive multiple-award contracts. There are two different kinds of IDIQ vehicles. I do not know and I have not seen any data that tells me that we have actually seen a substantial growth outside of the emergency environment—we certainly had a couple of major contin-

gency events in the last few years—outside of that environment, if that contract type has actually grown, the so-called sole source. I think we ought to look at some of that data.

Senator COLLINS. I think the data is pretty clear that it has.

Mr. WALKER. I think one of the things you need to be concerned about as well, Senator Collins, is whatever threshold you set, what types of mechanisms will be in place to prevent unbundling to get under the threshold?

Senator COLLINS. Good point. Thank you. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Collins. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Soloway, at a hearing last month in my Subcommittee, we heard that contract award fees are often awarded almost in full. Even those with poor performance, such as Lockheed and Northrop, which ran the Deepwater program, received over 80 percent of available award fees.

Do service providers generally expect to receive most available award fees regardless of their performance?

Mr. SOLOWAY. The question is very fair, Senator Akaka, and I am not in any way trying to be cute about this. It really depends on the contract itself. Sometimes award fees are structured by the government as a reward for performance. Other times it is a mix. An 80-percent award fee in many contracts actually reflects relatively poor performance. There is very little consistency in their application very often.

The issue here is to understand—and I do not have the visibility into those individual contracts, and sometimes for all of us it is difficult to get—what is it that led the government to determine that the contractor deserved some, all, or most of their award fee. Were the problems on the program driven by government, whether it is requirement stability, funding issues, or what have you? There are a variety of factors there, and it is certainly an area worth discussing. But I would not accept at face value that an 80-percent award fee from a company perspective is a victory. Very often there is very little relationship between the percentage and how it works. It is a stepping process.

So an area definitely worth discussion. There is a lot of confusion about it, often, and something that we would be more than happy to talk to you about more in the future.

Senator AKAKA. Comptroller General Walker, can you share your thoughts?

Mr. WALKER. Senator Akaka, as you know, GAO has done a fair amount of work in this area. Like in most of the problems in acquisition and contracting, it is a shared responsibility between the government and the contractor, but the relative allocation of responsibility varies.

My personal view is that one of the reasons that we have seen so many incentive and award fees paid in circumstances which do not pass the straight-faced test—meaning taxpayers are not getting value for money and we are not paying for positive outcomes, therefore, I think by definition it meets the definition of "waste" that I talked about before. Part of it is because of the systemic

problems that I mentioned earlier. The government many times does not do a very good job of being very clear about what we are asking the contractor to do. It is not very clear with regard to the requirements, or it keeps on changing the requirements and, therefore, you are moving the bar; and, therefore, we have seen circumstances in which, because the contractor is doing their best, they have a positive attitude, they are doing the best that they can, trying to hit a moving target that many times the government will award an incentive and award fee because of their attitude and effort and recognition of the fact that the government keeps moving the bar.

So I think many of these challenges are interrelated, and we need to address them in a comprehensive and integrated fashion.

Senator AKAKA. Ms. Madsen, would you also comment on this issue?

Ms. MADSEN. I would agree with Comptroller General Walker. We did not look at the award fee issue in particular in the panel, but the issue we saw with requirements development we believe is persuasive. That is why we made such a focus on it.

Award fee is a sort of performance-based contract, and if you cannot define the baseline such that people understand what they are performing to, then it is very hard to deal with the performance measures on the back end and do it in a way that is fair. And I agree, I think in many instances where there are changes, where the requirements were not properly defined in the first place, and the contractor is kind of caught in the middle, the contractor and the agency try to do the best they can with where they find themselves, despite the fact that they did not have a good baseline to start with.

That is why we emphasized—that is our first recommendation—get your requirements right first.

Senator AKAKA. Thank you all for your responses.

Mr. Soloway, contract employees work side-by-side with Federal employees, though they are not subject to all government ethics rules, such as the Ethics in Government Act. Does your organization try to promote ethical practices among contractors working for Federal agencies?

Mr. SOLOWAY. Senator, we try to do a lot. First of all, as a term of membership, companies must validate or certify that they have an ethics program in place. We have, in fact, conducted training, particularly for smaller and mid-tier firms. I think you will find—I believe it was GAO, but I do not want to put words in the Comptroller General's mouth—that most of the large companies have very formal, well-developed ethics and compliance programs. We try to help our smaller and mid-tier firms figure out how they can also do that to make sure that they have the right culture in place. We are strong believers that when you are dealing with the public dollar and public trust, you have to have an ethical culture and an appropriate culture in place.

With regard to the issues that do arise relative to different ethical standards, let's not make a mistake. Contract employees are subject to a variety of ethics requirements. They may not be entirely the same as the government employees, but they themselves also have legal requirements they have to meet. So we, as an orga-

nization, ask our companies—as a term of membership, they must adhere to a basic code of conduct. And we have also done a number of programs to help them review or reflect on or make sure they have the right ethics program in place.

Senator AKAKA. Again, I want to thank the panelists very much for your excellent responses. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Akaka.

And the wind-up now. Senator Carper.

Senator CARPER. Thank you, sir. I have been referred to in less complimentary terms than the "wind-up," even today. Thank you for this.

Chairman LIEBERMAN. I hope things get better.

Senator CARPER. It has actually been a pretty good day.

Chairman LIEBERMAN. Good.

Senator CARPER. To our witnesses, thank you for joining us and for your testimony and for your willingness to respond to our questions and comments here.

Let me just start off by asking, When might sole-source contracts, no-bid contracts, cost-plus contracts be appropriate? There are instances when they are, but what might those instances be?

Mr. WALKER. I think there is a difference between no-bid and cost-plus. In no-bid, where you are doing a sole source contract, if you have an emergency situation, you have a critical need that could not have reasonably been anticipated, then there may be circumstances in which it may be appropriate, at least for the initial contract award. Coming back to what Senator Collins and Senator Lieberman, you and others are trying to address through legislation, that does not mean indefinitely. It may mean you need to do another contract award that should be competitively bid after the initial award.

As to cost-plus, it really is a circumstance where you are trying to contract for something where it is virtually impossible to define with any degree of specificity the related requirements. But, quite frankly, there are not that many that are——

Senator CARPER. Could you give us an example of that?

Mr. WALKER. If you are trying to—maybe when we were deciding that we were going to go to the Moon and John F. Kennedy set the goal for the United States to land a man on the Moon and return him in the 1960s, there were probably aspects of that that we needed to do some type of cost-plus. But as things moved along and we got more definitive, what we were looking for and as technology started to be developed or whatever, then we should have been able to move potentially past that in certain circumstances. But that would just be a thought.

Senator CARPER. The next time we have on the drawing boards proposals to send another mission to the Moon, it will be interesting to see, first of all, how we bid that one out and what it cost compared to what we spent the last time.

Ms. MADSEN. Senator, could I comment, sir?

Senator CARPER. Please.

Ms. MADSEN. I think there is a tendency to sort of lump both terms together, and I agree with Comptroller General Walker, there is a big difference between what kind of competitive process you use and what kind of contract you award.

Certainly for sophisticated technology-type procurements, very often a cost-type contract on the front end where the government and the contractor are trying to figure out what is this—it has got a research component to it, it has got a development component to it. You see this all the time in weapons system development where the first stage is frequently—they are usually competitive, almost always competitive, but they are for cost-type contracts.

The second stage is for production. There may be a down-select, and those contracts may——

Senator CARPER. When you say a "down-select," what does that mean?

Ms. MADSEN. A competition between two or three solutions for who will do the next stage and make that next stage fixed-price because now everybody knows what the requirements are, they have been developed.

There seems to be a tendency in the discussion lately to talk about cost-type contracts as though they are some sort of evil. I think they certainly have their place. There are a lot of controls in terms of rules and regulations that govern what kinds of costs can be charged. The trick is to use them appropriately and, when you do not need them anymore, to move onto the next stage.

I think part of the problem here is when people start to talk about acquisition of things that are more commercial and maybe services are more in the commercial marketplace, that is where requirements definition makes such a difference, because if you have something that is definable that you do not define, you end up with a cost-type contract maybe where you did not need it because you did not get your requirements right in the first place. That is why our panel report emphasizes requirements development so significantly because it is hard to do a competition if you did not do your requirements on the front end.

Senator CARPER. Mr. Soloway.

Mr. SOLOWAY. Thank you, sir. A couple of quick comments. Philosophically, most businesses, certainly most of our members, would prefer a firm fixed-price contract over a cost-type contract. It is a preferred way of doing business. I believe Ms. Madsen would probably agree that in the commercial world, in the investigations that the panel did, that is the preferred method of doing business.

What it often comes back to is, with all due respect to the Comptroller General, not just something as elegant as going to the Moon, but the difficulty the government has not only in defining requirements but providing adequate insight and information into its own processes, its own systems, the entire breadth and scope of networks and so forth, so that a contractor with some confidence can develop a fixed-price bid, because, of course, that is a high-risk proposal for the contractor. So it is not just philosophically. Philosophically we agree where you would want to have cost-type versus fixed-price. It is also the practical implementation and the government's ability to be able to answer those critical questions.

On the sole-source question, there are in regulations a whole set of circumstances under which sole-source contracts would be appropriate, not just in emergency circumstances but for logical follow-on to existing work.

One of the big issues that GAO and others have identified that has been interpreted as assuming we are doing too much sole-sourcing is that the government, frankly, is not doing a very good job or does not have a very good system for keeping track of the paperwork to determine when a sole-source determination was made and why. So the Comptroller General's team or an IG team or an audit team comes in, and they do not even have access to records, because they do not exist, to say, well, why did you do this as a sole source. So part of it is also a recordkeeping issue.

But we have pretty clear guidance in law and regulation as to when a sole-source contract is appropriate.

Senator CARPER. Thanks.

Mr. Chairman, my time has expired. I just want to mention two questions. I am not asking necessarily for answers now.

Senator Collins has left, but I suspect there was some discussion about the legislation that she has introduced and that Senator Lieberman and I and others have cosponsored. I have been off to other hearings, but did you talk about some improvements that might be made to that legislation? So those are on the record? Good.

Mr. WALKER. We did, Senator Carper. But the other thing is that I committed to provide this week some specific recommendations from GAO to try to improve the bill.

Mr. SOLOWAY. We also have been working with both Senator Collins' and Senator Lieberman's staffs on some additional details, and some of it is contained in my testimony.

Senator CARPER. Thanks. The last one is Senator McCaskill and I were over in Kuwait and Iraq about 4 weeks ago, and we had a chance to talk to Mr. Walker a little bit about it. We will have hopefully a chance to talk some more later today.

One of the things that we heard when we were over there is that we learned a lesson about procurement in Kosovo 10 years ago, and we forgot those lessons, and we have to relearn them again in Iraq and Kuwait. Somewhere down the line, unfortunately, there will be another Kosovo, another Iraq, and the question is: Are we going to have to relearn those same lessons again and go through 2, 3, 4, or 5 years of just wasting money in too many instances before we finally say, oh, didn't we already learn this 10, 20, or 30 years ago?

What are some thoughts that you might have? When I was in the Navy, we used to have a pass-down log. Our squadron would be deployed for a half a year, and we would come home, and we would have a pass-down log, and we would give it to the squadron that was relieving us on duty wherever we were around the world.

But how do we provide for a pass-down log in this particular arena?

Mr. SOLOWAY. Senator, your reference to Kosovo made me smile only because I remember going to the Balkans in 1999 when I was in the Administration, and so many of the issues—not as much with the contractor, but just the deployment of the force and how this all was working, it was so evident then on a much smaller scale than they are in Iraq. And at the Professional Services Council, we did a "lessons learned" study in partnership with the Army in 2004, and when we presented the results to the Army leadership, the General said, "This is terrific, but let's not call it 'lessons learned' because we have not learned a darn thing."

There are certainly a lot of lessons, and our ability to share knowledge and share history and also maintain a focus on something that, when it gets out of the limelight, tends not to get the continued leadership focus it needs. It is really the biggest challenge here. Whether it was contingency contracting in 1999 and again in this century, or the acquisition workforce, which is a focus for all of us now, but 3 years from now will we have maintained that focus is really one of the biggest challenges we have.

Senator CARPER. Mr. Walker.

Mr. WALKER. I will give you one example, and that has to do with LOGCAP, for example, where you might enter into an IDIQ under a cost-plus arrangement, where you have not really defined what you are looking for, where you are putting the contractor in a situation where they can decide what you need, they can decide what quantities you need, they can decide a lot of things, and in many circumstances they may be doing it in good faith and best efforts, but in some circumstances they may be providing you more than you really need. And the incentives are to do that.

So I come back to what I said before. There are a number of recurring systemic challenges that exist that get repeated over and over again. And most of it has to do with execution in the Executive Branch. Some of it may require legislation, but most of it is just execution, and most of it is just institutionalizing that knowledge, providing the right type of processes, having the right type of people, and making sure that the lessons learned or whatever you want to call them get passed down to people who have the responsibility and the authority down the road.

The other thing is that people need to be held accountable when they make the same mistakes over and over again. If there are no consequences, then why change? And all too frequently, there have been no consequences.

Senator CARPER. Last word, Ms. Madsen.

Ms. MADSEN. I hope not the last word, but just really a comment. I think as we looked at the workforce issues sometime in the next 5 to 10 years, basically almost all of the current expertise in terms of agent experience and the acquisition workforce and the rest of it is going to retire. So there is a huge challenge here for people in acquisition to move down a generation in terms of the kinds of knowledge that you are talking about, and we think our recommendations address that, but it may need to be done in a way that is different than has been done in the past.

Senator CARPER. Good. Thanks. Thank you all very much.

Thanks, Mr. Chairman, for being so generous with the time.

Chairman LIEBERMAN. Thanks, Senator Carper. Thanks for those goods questions.

My thanks to the witnesses. It has been a very thoughtful, I would say constructive exchange here. I repeat what I believe most people think, which is that we have a problem. The scope of contracting is growing dramatically, it is costly, and not all of it is being well managed. And I suppose it is fair to say, as you said at the beginning, Mr. Walker, that most of it is being well managed, and we also ought to say that. But the part that is not being well managed is costing taxpayers a lot of money that they should not have to spend.

So we are going to legislate here, and we invite your help in assisting us to do that in a way that is informed and constructive. The testimony today has been extremely helpful, and I thank you for it.

We are going to keep the hearing record open for 15 days if you want to submit any statements for the record afterward, and we may have some questions that we want to direct to you. But in the meantime, I thank you again, and the hearing is adjourned.

[Whereupon, at 12:12 p.m., the Committee was adjourned.]

APPENDIX

United States Government Accountability Office

GAO

Testimony
Before the Committee on Homeland Security and Governmental Affairs, U.S. Senate

For Release on Delivery
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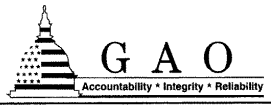
FEDERAL ACQUISITIONS AND CONTRACTING

Systemic Challenges Need Attention

Statement of David M. Walker
Comptroller General of the United States



GAO-07-1098T

July 17, 2007

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Highlights

Highlights of GAO-07-1098T, a testimony before the Committee on Homeland Security and Governmental Affairs, United States Senate

FEDERAL ACQUISITIONS AND CONTRACTING

Systemic Challenges Need Attention

Why GAO Did This Study

In fiscal year 2006, the federal government spent over $400 billion for a wide variety of goods and services, with the Department of Defense (DOD) being the largest purchaser. Given the large and growing structural deficit, the government must get the best return it can on its investment in goods and services.

For decades, GAO has reported on a number of systemic challenges in agencies' acquisition of goods and services. These challenges are so significant and wide-ranging that GAO has designated four areas of contract management across the government to be high-risk.

This testimony highlights four key acquisition challenges agencies face: (1) separating wants from needs, (2) establishing and supporting realistic program requirements, (3) using contractors in appropriate circumstances and contracts as a management tool, and (4) creating a capable workforce and holding it accountable.

What GAO Recommends

While GAO is making no new recommendations in this testimony, GAO has made numerous recommendations through the years to improve government acquisitions, many of which have not been implemented. Where agencies have responded to our recommendations, we have seen some improvements in their acquisition management.

www.gao.gov/cgi-bin/getrpt?GAO-07-1098T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact John Hutton at (202) 512-4841 or huttonj@gao.gov.

What GAO Found

Given the current fiscal environment, agencies must separate wants from needs to ensure that programs provide the best return on investments. Our work has shown that some agencies budget and allocate resources incrementally, largely based on historical precedents, rather than conducting bottom-up reviews and allocating resources based on agencywide goals. We have also seen examples of agencies using fragmented decision-making processes for acquisition investments. Agency spending actions that would not otherwise be taken based on an objective value and risk assessment and considering available resources, work against good strategic planning. Such spending can circumvent careful planning and divert resources from more critical needs, and can serve to exacerbate our serious long-range fiscal imbalance.

Agencies also need to translate their true needs into executable programs by setting realistic and stable requirements, acquiring requisite knowledge as acquisitions proceed through development, and funding programs adequately. However, agencies too often promise capabilities they cannot deliver and proceed to development without adequate knowledge. As a result, programs take significantly longer, cost more than planned, and deliver fewer quantities and different capabilities than promised. Even if more funding were provided, it would not be a solution because wants will always exceed the funding available.

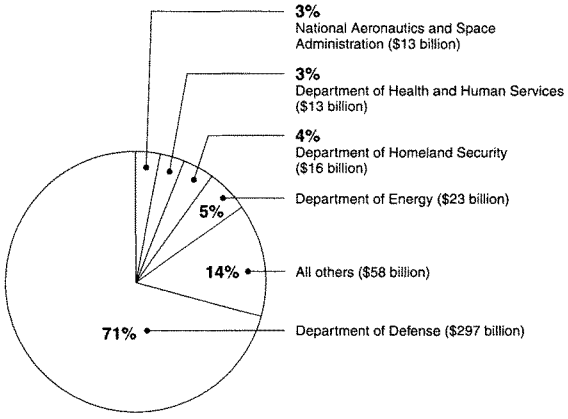
No less important is the need to examine the appropriate circumstances for using contractors and address contract management challenges. Agencies continue to experience poor acquisition outcomes in buying goods and services in part because of challenges in setting contract requirements, using the appropriate contract with the right incentives, and ensuring sufficient oversight. Exacerbating these challenges is the evolving and enlarging role of contractors in performing functions previously carried out by government personnel. Further, while contract management challenges can jeopardize successful acquisition outcomes in normal times, they also take on heightened importance and significantly increased risks in the context of contingency operations such as Afghanistan, Iraq, or Hurricane Katrina.

Finally, it is imperative that the federal government develop an accountable and capable workforce, because the workforce is ultimately responsible for strategic planning and management of individual programs and contracts. Yet much of the acquisition workforce's workload and complexity of responsibilities have been increasing without adequate attention to the workforce's size, skills and knowledge, and succession planning. Sustained high-level leadership is needed to set the right tone at the top in order to address acquisition challenges and ultimately, prevent fraud, waste, and abuse.

Mr. Chairman and Members of the Committee:

Thank you for inviting me here today to discuss systemic challenges facing the federal government in its acquisition of goods and services. The U.S. federal government is the single largest buyer in the world, obligating over $400 billion in fiscal year 2006 for a wide variety of goods and services, including complex projects that often involve unproven technologies. While acquisitions are made throughout government, the majority of them are concentrated in a few agencies, particularly the Department of Defense (DOD)—as shown in figure 1.

Figure 1: Fiscal Year 2006 Federal Government Acquisitions Obligations



Total: $419 billion

Source: GAO analysis of data from the Federal Procurement Data System.

Note: Due to rounding, dollar values do not add up to the specified total value.

Recently, I have been quite vocal about the large and growing long-range structural deficits the federal government faces. These are driven primarily by known demographic trends and rising health care costs. These structural deficits will mean escalating and ultimately unsustainable federal deficits and debt levels. Given this fiscal reality, it is imperative

that the federal government gets the best return it can on its investment in goods and services; the American people have the right to expect no less. Table 1 shows the size of the federal government's total fiscal exposure, how it has grown since the end of fiscal year 2000, and the burden it would place on the American people.

Table 1: Understanding the Size of Major Reported Fiscal Exposures

	2000	2006	Percentage increase
Major fiscal exposures	$20.4 trillion	$50.5 trillion	147%
Total household net worth	$42.0 trillion	$53.3 trillion	27%
Ratio of fiscal exposures to net worth	49 percent	95 percent	94%
Burden			
Per person	$70,000	$170,000	132%
Per full-time worker	$165,000	$400,000	143%
Per household	$190,000	$440,000	134%
Income			
Median household income	$41,990	$46,326	10%
Disposable personal income per capita	$25,127	$31,519	25%
Ratio of household burden to median income	4.5	9.5	112%

Sources: GAO analysis of data from the Department of the Treasury, Federal Reserve Board, U.S. Census Bureau, and Bureau of Economic Analysis.

Note: Percentage increases reflect actual data and may differ from calculation of rounded numbers presented in table.

However, our work extending back decades has demonstrated that agencies face a number of systemic challenges in their acquisition of goods and services. In examining our defense work, I have observed 15 systemic acquisition challenges facing DOD—which I have included in appendix I. GAO's work examining acquisitions in other federal agencies indicates that they often face similar challenges. For example, not only have we identified contract management as a high-risk area for DOD, but also for the Department of Energy (DOE) and the National Aeronautics and Space Administration (NASA). Further, interagency contracting—a process in which one agency uses another agency's contracts or contracting services to acquire goods or services—was designated a high-risk area as well.

In my testimony today, I will highlight these acquisition challenges categorized in four key areas:

- separating wants from needs,
- establishing and supporting realistic program requirements,
- using contractors in appropriate circumstances and contracts as a management tool, and
- creating a capable workforce and holding it accountable.

Separating wants from needs in an affordable and sustainable fashion will be critical to improving management within the current fiscal environment. No less important is the need for clearly defining program requirements and sticking with them while also using the appropriate contract type with sufficient oversight. Contract management challenges can jeopardize successful acquisition outcomes in normal times, but also take on heightened importance and significantly increase risks in the context of contingency operations such as Iraq, Afghanistan, or Hurricane Katrina. A significant part of this challenge relates to the evolving and enlarging role of contractors in acquisitions, particularly through the use of service contracts—which accounted for nearly 60 percent of fiscal year 2006 government acquisition obligations. This raises the question of what work should be performed by contractors versus government personnel. This is a major issue that is of growing concern and is in need of serious attention by both the executive branch and Congress. In addition, an accountable and capable workforce underlies the federal government's ability to strategically plan and effectively manage individual programs and contracts as the workforce includes the people needed to carry out these functions, as well as the higher-level accountability needed to address recurring and systemic problems. Tackling each of these systemic challenges requires a fundamental and comprehensive re-examination of the federal government's overall approach to contracting: what we buy, who we buy from, and how we buy it. We also need to target waste in government spending. Government waste is growing and far exceeds the cost of fraud and abuse. Several of my colleagues in the accountability community and I have developed a definition of waste, which is contained in appendix II.

My comments today are based on our wide-ranging work examining federal acquisition efforts, often going back decades. We list relevant GAO reports at the end of this statement. We conducted our work in accordance with generally accepted government auditing standards.

Separating Wants from Needs

Given the current fiscal environment, agencies need to learn to separate wants from needs to ensure that programs and investments provide the best return within fiscal constraints. My first four observations on systemic acquisition challenges relate to this need. They are that:

- Agency budgets may not be fully linked to strategic goals and may not adequately consider likely agencywide resource limitations.
- Agencies too often pursue their individual needs rather than collective needs.
- Individual program and funding decisions may undercut sound policies.
- Congressional direction sometimes requires agencies to buy items and provide services that have not been planned for and may not be needed.

Our work has shown that agencies sometimes budget and allocate resources incrementally, largely based on historical precedents, rather than conduct bottom-up reviews and allocate resources based on the broader goals and objectives of agency strategic plans. For example, in March we reported that DOD does not allocate resources on a strategic basis and that it could improve its acquisition outcomes by adopting an integrated portfolio management approach for allocating weapon system investments. We found that military service allocations as a percentage of the department's overall investment budget have remained essentially the same for the last 25 years, despite the dramatic changes that have occurred in the strategic environment and warfighting needs during that time. Similarly, in July 2005 we reported that the Environmental Protection Agency budgeted and allocated resources incrementally, largely based on historical precedents, and that its process did not reflect a bottom-up review of the nature or distribution of its current workload—either based on specific environmental laws or the broader goals and objectives in the agency's strategic plan.

Similarly, in our Information Technology Investment Management Model (ITIM)[1] we point out that information technology (IT) portfolio selection criteria support an agency's mission, organizational strategies, and business priorities and provide a link to the organization's strategic plans and budget processes. However, in 2004 we reported that a

[1]The ITIM framework is a maturity model composed of five progressive stages of maturity that an agency can achieve in its IT investment management capabilities. The framework can be used both to assess the maturity of an agency's investment management processes and as a tool for organizational improvement.

governmentwide survey of investment management processes found that only 6 of 26 agencies had fully implemented portfolio selection criteria—16 had partially implemented them and 4 had not implemented them at all. This remains an issue. For example, we reported just this year that the Department of Homeland Security (DHS) is missing key elements of effective investment management, such as procedures for implementing project-specific investment management policies, as well as policies and procedures for portfolio-based investment management. Further, it has yet to fully implement either project- or portfolio-level investment control practices. We noted that all told, this means DHS lacks the complete institutional capability needed to ensure that it is investing in IT projects that best support its strategic mission needs. In contrast, successful commercial companies use portfolio management to adjust their resource allocations across business areas based on changes in the marketplace and the competitive environment. The government's failure to successfully implement such an approach significantly risks wasting investments on wants versus true needs in a time when resources are limited.

We have also seen examples of agencies having fragmented decision-making processes for acquisition investments, failing to consider agencywide needs and resource limitations. Successful commercial companies make investment decisions that benefit the organization as a whole within resource constraints. However, DOD continues to allow individual organizational units to assess needs under separate processes, failing to implement a departmental approach to investment decision-making. Consequently, DOD has less assurance that its investment decisions address the right mix of warfighting needs and it starts more programs than current and likely future resources can support. Operationally, there can be real consequences in agencies' pursuit of individual over collective interests. For example, in December 2005 we reported that on the basis of its experience with unmanned aircraft systems (UAS) in Persian Gulf Operations, U.S. Central Command believed that communications interoperability and payload commonality problems occurred because the military services' UAS development programs had been service-specific and insufficiently attentive to joint needs.

Some agencies have successfully considered wider needs. For example, in March 2005 we reported that DHS had opened communication among its acquisition organizations through its strategic sourcing and small business programs. With strategic sourcing, DHS's organizations quickly collaborated to leverage spending for various goods and services—such as office supplies, boats, energy, and weapons—without losing focus on small businesses, thus leveraging its buying power and increasing savings.

Individual program and funding decisions may also undercut sound policies. We have noted that at some agencies, individual program units may make investments in capabilities that can undercut agencywide goals. This can occur when a disconnect exists between requirements and resources and can lead to unnecessary duplication of effort and costs. For example, we reported in 2006 that NASA's Deep Space Network and Ground Network programs made investment decisions that were leading to the development of separate array technologies to support overlapping requirements for the same lunar missions.

Additionally, while congressional spending directions to agencies sometimes facilitate accomplishment of agency goals, at other times they may require agencies to buy items and provide services for which they had not planned and which may not be needed. Agency spending actions which otherwise would not be taken based on an objective value and risk assessment with consideration of available resources work against good strategic planning. Such spending can circumvent careful planning and divert resources from more critical needs. This can also serve to exacerbate our serious long-range fiscal imbalance.

Establishing and Supporting Realistic Program Requirements

After differentiating their unlimited wants from their true needs, agencies need to translate their needs into appropriate, executable programs. They need to set and communicate realistic system requirements and better maintain stability in those requirements. They also need to ensure that programs proceed through the acquisition process based on having requisite knowledge and that programs are funded adequately. However, too often we see failure in one or more of these key dimensions. Specifically, I have observed that:

- Agencies too often overpromise and underdeliver in the acquisition of major systems.
- Programs too often experience requirements instability that causes delays and cost growth in fielding capabilities.
- Programs too often proceed through the development and demonstration of systems without having achieved needed knowledge.
- Agencies sometimes budget for less than is needed and put Congress in a position of having to decide whether to provide additional funding.

Agencies too often overpromise and underdeliver in the acquisition of major systems as a consequence of programs competing with each other for funding in a fiscally constrained environment. In examining defense programs, we have reported that competition for funding had incentivized

programs to produce optimistic cost and schedule estimates, overpromise on capability, suppress bad news, and forsake the opportunity to identify better alternatives. In addition, because DOD starts more weapons programs than it can afford, it invariably finds itself in the position of having to shift funds to sustain programs—often to the point of undermining well-performing programs to pay for poorly performing ones. I believe that even if more funding were provided, it would not be a solution because wants will usually exceed the funding available. Rather, we have to live within our means, which requires us to make difficult choices between wants and needs.

Once programs are under way, they often experience requirements instability during major systems development, thereby lengthening the duration of the program. As a result, the problem the program was seeking to address changes or the user and acquisition communities may simply change their minds about a program. The resulting program instability can cause cost escalation, schedule delays, and fewer end items, and can make it harder for the government to hold contractors accountable. For example, in 2005 the Department of Justice inspector general found that the Federal Bureau of Investigation's Trilogy project experienced significant cost increases and schedule delays due to various factors including evolving design requirements.

Acquisition programs that involve development and demonstration often face another challenge—developing the requisite knowledge indicated by best practices before proceeding through key knowledge points in the system acquisition process. In examining DOD's operations, we have assessed weapon acquisitions as a high-risk area since 1990. Although U.S. weapon systems are the best in the world, the programs to acquire them often take significantly longer and cost significantly more than promised and often deliver smaller quantities and different capabilities than planned. In fact, it is not unusual for estimates of time and money to be off by 20 to 50 percent. It does not, however, have to be so. Our best practices work has shown that it is possible to get better outcomes if decisions are based on high levels of knowledge.

Similarly, we have reported that other agencies do not ensure that major acquisition programs have adequate knowledge before proceeding with development. For example, the National Polar-orbiting Operational Environmental Satellite System (NPOESS) project—a tri-agency (National Oceanic and Atmospheric Administration, DOD, and NASA) effort—proceeded into development before the design was proven and before the technologies had properly matured, knowledge that is needed based on

our best practices work. In 2004 we reported that the contractor for the project was not meeting expected cost and schedule targets on the new baseline because of technical issues in the development of key sensors. Again, in November 2005, we reported that NPOESS continued to experience problems in the development of a key sensor, resulting in schedule delays and anticipated cost increases. Also, earlier this year we found that DOE lacks a systematic process for ensuring that critical technologies have been adequately demonstrated to work as intended before committing to major construction projects to help maintain the nuclear weapons stockpile, conduct research and development, and process nuclear waste for disposal. In another example, we reported in March 2005 that DHS has adopted a number of acquisition best practices in establishing an investment review process. However, we also noted that this process did not include two critical management reviews that would help ensure that (1) resources match customer needs prior to beginning a major acquisition and (2) program designs perform as expected before moving to production.

Our work has also shown that it is not uncommon to find an acquisition program underfunded. In our review of defense programs, we often see cases where the cost of a system in development grows and where, as a result, the return on the defense dollar is reduced. While such cost growth may be accommodated within an agency's budget through reductions in the number of units to be acquired or by cutting other programs, it may also put Congress in a position of having to decide to provide additional funding if it finds accepting fewer units undesirable. As a consequence, other needed programs may not be fully funded or overall government spending may be increased, thereby adding to the federal deficit.

Using Contractors in Appropriate Circumstances and Contracts as a Management Tool

The next set of systemic acquisition challenges relate to those faced at the contract management level. First and foremost, I believe that we must engage in a fundamental re-examination of when and under what circumstances we should use contractors versus civil servants or military personnel. This is a major and growing concern that needs immediate attention. Once the decision to contract has been made, we have observed challenges in setting contract requirements, using the appropriate contract with the right incentives given the circumstances, and ensuring proper oversight of these arrangements—especially considering the evolving and enlarging role of contractors in federal acquisitions. The failure to adequately address these challenges explains, in part, why agencies continue to experience poor acquisition outcomes in buying major systems, goods, and services. My observations are that:

- Contracts, especially service contracts, often do not have definitive or realistic requirements at the outset to control costs and facilitate accountability.
- Contracts typically do not accurately reflect the complexity of projects, or appropriately allocate risk between the contractor and the taxpayer.
- Incentive and award fees are often paid based on contractor attitudes and efforts versus positive results.

Contracts, especially service contracts, often don't have definitive requirements at the outset which are needed to control and facilitate accountability. For example, in January we reported that many reconstruction projects in Iraq have fallen short, in part because DOD had not clearly defined its needs before it entered into contract arrangements. The absence of well-defined requirements and clearly understood objectives complicated efforts to hold DOD and contractors accountable for poor acquisition outcomes in Iraq reconstruction.

Given the range of federal projects and circumstances, agencies' contracting approaches vary widely, and with them, the level of risk. We have found that agencies may not always use the most appropriate contracting approach for the circumstance or effectively oversee their use.

For example:

- *Time-and-materials contracts.* Time-and-materials contracts—agreements where contractors are paid based on the number of labor hours and materials—pose such risk to the government that federal regulations require contracting officers to make a determination and findings in writing that no other contract type is suitable before using such an arrangement. In a recent review of DOD's use of such contracts, we found that DOD contracting and program officials frequently did not justify why time-and-materials contracts were the only contract type suitable for the procurement. Further, with a few exceptions, we found that little effort had been made to convert follow-on work to a less risky contract type when historical pricing data existed, despite guidance to do so. We also found that oversight of time-and-materials contracts was lacking as contracting officers generally relied on contractor-provided monthly status reports to conduct oversight.

- *Interagency contracting.* We added management of interagency contracting—the use of one agency's contract by another agency or the provision of contracting assistance and support by another agency—to our high-risk list in 2005. Interagency contracts can leverage the

government's buying power and provide a simplified and expedited method of procurement. However, the rapid growth in use of such contracts, combined with the limited expertise of some agencies in their use and recent problems related to their management, causes some concern. For example, in July 2005, we reported that the use of franchise funds—government-run, fee-for-service organizations providing a portfolio of services, including contracting services—at the Departments of the Interior and the Treasury have not always resulted in fair and reasonable prices for the government. We have also found that agencies often do not have visibility into and effective oversight of their interagency contracts. Last year, for instance, we reported that while DHS spending through interagency contracting totaled billions of dollars annually, and increased by 73 percent in the past year, the department did not systematically monitor its use of these contracts to ensure desired outcomes.

- *Undefinitized contract actions.* DOD's use of undefinitized contract actions can also carry risk to the government and potentially waste taxpayer dollars. These agreements allow contractors to begin work before reaching final agreement on contract terms and are sometimes used by agencies to rapidly fill urgent needs. In June 2007, we reported that DOD did not meet the definitization time frame requirement of 180 days after award on 60 percent of the 77 undefinitized contract actions we reviewed. In June 2004, we found that during Iraqi reconstruction efforts, when requirements were not clear, DOD often entered into contract arrangements that introduced risks. We reported that DOD authorized contractors to begin work before key terms and conditions, such as the projected costs of the work to be performed, were fully defined. In September 2006, we reported that, under this approach, DOD contracting officials were less likely to remove costs questioned by the Defense Contract Audit Agency auditors if the contractor had incurred these costs before reaching agreement on the work's scope and price. In one case, the Defense Contract Audit Agency questioned $84 million in an audit of a task order for an oil mission. In that case, the contractor did not submit a proposal until a year after the work was authorized, and DOD and the contractor did not negotiate the final terms of the contract until more than a year after the contractor had completed the work. As a result, the DOD contracting officer paid the contractor for all questioned costs but reduced the base used to calculate contractor profit by $45 million. As a result, the contractor was paid about $3 million less in fees.

- *Lead systems integrators.* The use of lead systems integrators—prime contractors with increased responsibilities, such as collaborating with

the government on system specifications—puts the government at additional risk because it complicates the relationship between the contractor and the government. We have found that agencies may use a lead systems integrator when they believe they do not have the capacity to manage a program, which is a risk in and of itself. This arrangement creates an inherent risk, as the contractor is given more discretion to make certain program decisions. Along with this greater discretion comes the need for more government oversight and an even greater need to develop well-defined outcomes at the outset. For example, since the program's inception, we have raised concerns about the Coast Guard's acquisition approach for its Deepwater program—including oversight of its lead systems integrator. For instance, we observed that the Coast Guard had not held its lead systems integrator accountable for taking steps to achieve competition among the suppliers of Deepwater assets. In June of this year, we reported that the Coast Guard has recently taken steps to hold the lead systems integrator accountable for problems that have arisen with the design and construction of certain Deepwater assets that will affect the lead systems integrator's roles and responsibilities in executing the program moving forward. On the other hand, a close partner-like relationship such as the one the Army has with its Future Combat Systems integrator can also pose risks. Specifically, the government can become increasingly invested in the results of shared decisions and runs the risk of being less able to provide oversight compared with an arms-length relationship.

A lack of oversight contributes to the risks of these contracting approaches and can contribute to poor outcomes for critical government projects. Compounding this risk is the growing reliance on contractors to perform functions previously carried out by government personnel. Emergency situations can further exacerbate this risk, providing additional oversight challenges. For example, although U.S. military forces in Iraq have used contractors to a far greater extent than in prior operations, DOD lacks sufficient numbers of contractor oversight personnel at deployed locations to oversee them. Similarly, in work examining contracts undertaken in support of response and recovery efforts for Hurricanes Katrina and Rita, we found that while monitoring was occurring on the contracts we reviewed, the number of monitoring staff available was not always sufficient or effectively deployed to provide oversight.

Contractors have an important role to play in the discharge of the government's responsibilities, and in some cases the use of contractors can result in improved economy, efficiency, and effectiveness. At the same

time, there may be occasions when contractors are used to provide certain services because the government lacks another viable and timely option, or due to the preferences of some government officials. In such cases, the government may actually be paying more and incurring higher risk than if such services were provided by federal employees. In this environment of increased reliance on contractors, sound planning and contract execution are critical for success. We have previously identified the need to examine the appropriate role for contractors to be among the challenges in meeting the nation's defense and other needs in the 21st century.

The proper role of contractors in providing services to the government is currently the topic of some debate. In general, I believe there is a need to focus greater attention on what type of functions and activities should be contracted out and which ones should not, to review and reconsider the current independence and conflict-of-interest rules relating to contractors, and to identify the factors that prompt the government to use contractors in circumstances where the proper choice might be the use of civil servants or military personnel. Possible factors could include inadequate force structure, outdated or inadequate hiring policies, classification and compensation approaches, and inadequate numbers of full-time equivalent slots.

We also have found that agencies sometimes pay contractors incentive and award fees—financial bonuses or profit intended to motivate excellent contractor performance—without a clear link to desired program outcomes. We have reported that DOD, DOE, and NASA have not fared well at using award and incentive-fee contracts to improve cost control behavior and performance. For example, in 2005, we reported that DOD paid award and incentive fees even when programs failed. About half of the 27 incentive fee contracts that we reviewed failed or were projected to fail to meet a key measure of program success, which was to complete the acquisition at or below the target price. In March 2005, we reviewed 33 DOE contracts using a performance incentive. Of those 33, we found that DOE had awarded 15 such contracts without an associate cost incentive or constraint, as required by regulations. Thus, the contractor could receive full fees by meeting all schedule baselines while substantially overrunning costs. Earlier this year, we reported that NASA paid significant amounts of available fee on all of the 10 contracts we reviewed, including those end item contracts that did not deliver a capability within initial cost, schedule, and performance parameters. In one case, NASA paid the contractor 97 percent of the available award fee despite a delay in the completion of the contract by over 2 years and an increase in the cost of the contract of more than 50 percent. However,

when properly tied to program outcomes, incentive and award fees may have their desired effect. Last year, we reported that DOE's use of an incentive fee contributed to the early completion of the cleanup of a former nuclear weapons production facility.

Creating a Capable Workforce and Holding It Accountable

The last set of challenges I will discuss relate to having a capable acquisition workforce and holding it accountable. These challenges underlie the federal government's ability to strategically plan and effectively manage individual programs and contracts as they involve the people needed to carry out these functions. My observations are that:

- The government faces serious acquisition workforce challenges (e.g., size, skills and knowledge, and succession planning).
- Key program staff rotate too frequently, thus promoting myopia and reducing accountability (i.e., tours based on time versus key milestones). Additionally, the revolving door between industry and agencies presents potential conflicts of interest.
- Inadequate oversight has resulted in little or no accountability for recurring and systemic problems.
- Lack of high-level attention reduces the chances of success in the acquisition, contracting, and other key business areas.

The acquisition workforce's workload and complexity of responsibilities have been increasing without adequate agency attention to the workforce's size, skills and knowledge, and succession planning. This situation is made all the more challenging by the increasing use of contractors to support program operations because of the additional oversight needed.

Though many agencies lack good data on their workforces, it is clear that the size of the workforce has declined, while the size of government expenditures for goods and services has risen significantly. These trends represent a major challenge to the current workforce—dealing with a significantly increased workload.

At the same time that the federal acquisition workforce has decreased in numbers and the size of its investments in goods and services has increased significantly, the nature of the role of the acquisition workforce has been changing and, as a result, so have the skills and knowledge needed in that workforce to manage more complex contracting approaches. One way agencies have dealt with this situation is to rely more heavily on contractor support. For example, DOD is relying on contractors in new ways to manage and deliver weapon systems. On the

basis of our work looking at various major weapon systems, we have observed that DOD has given contractors increased program management responsibilities to develop requirements, design products, and select major system and subsystem contractors. In part, this increased reliance has occurred because DOD is experiencing a critical shortage of certain acquisition professionals with technical skills related to systems engineering, program management, and cost estimation. Without adequate oversight by and training of federal employees overseeing contracting activities, reliance on contractors to perform functions that once would have been performed by members of the federal workforce carries risk. As I noted earlier, the use of lead system integrators is being undertaken by agencies when they believe they lack the expertise needed to manage complex acquisitions.

Our concern over the skills and knowledge of the workforce extends beyond DOD. At times skills may be in short supply in both government and the private sector. For example, in December 2006 we reported that employees with certain information technology skills are in short supply in both the federal and private sectors—particularly in enterprise architecture, project management, and information security.

Demographic changes promise to further exacerbate agencies' acquisition workforce problems. In 2006, Office of Personnel Management reported that approximately 60 percent of the government's 1.6 million white collar employees and 90 percent of about 6,000 federal executives will be eligible for retirement over the next 10 years. The situation facing DOD exemplifies this problem as more than half of DOD's workforce will be eligible for early or regular retirement in the next 5 years. In fact, Navy officials recently told us that they are already seeing a "hemorrhaging" of senior contracting officers as large numbers have started to retire. Agencies facing workforce challenges have used strategic human capital planning to develop long-term strategies for acquiring, developing, motivating, and retaining staff to achieve programmatic goals. Additionally, agencies should engage in broad, integrated succession planning and management efforts that focus on strengthening their current and future organizational capacity to obtain or develop the knowledge, skill, and abilities they need to meet their missions. Without proper strategic human capital planning, the government will not be a good position to adjust to this challenge.

We also have concerns that acquisition employees rotate too frequently—both between programs and between government and industry. In a recent assessment of selected DOD weapon systems, we found that many of the

programs had multiple program managers within the same development phase, reducing accountability for poor program outcomes. We also reported that the Coast Guard experienced high turnover of key Deepwater program staff, resulting in the loss of knowledge on the teams responsible for managing the program and overseeing the system integrator. Also, the revolving door between industry and government may present potential conflicts of interest. Federal ethics rules and standards have been put in place to help safeguard the integrity of the procurement process by mitigating the risk that employees will use their positions to influence the outcomes of contract awards for future gain and that companies will exploit this possibility. We currently have reviews under way examining issues relating to the revolving door between federal employment and contractors working for the government including DOD actions to assess contractor hiring controls to address revolving door issues.

Our work at DOD and other agencies has shown that there have been persistent acquisition problems, particularly for complex developmental systems, but also for the increasingly complex contracting arrangements being used by the government to purchase goods and services. For example, we reported on DOE's weaknesses in managing its acquisitions and found that DOE is only meeting its cost and schedule goals for its ongoing construction projects about one-third of the time. We also found that DOE's National Nuclear Security Administration has not developed a project management policy, implemented a plan for improving its project management practices, or fully shared project management lessons learned among its sites. Similarly, we also have reported on weaknesses in the Federal Aviation Administration's (FAA) management of its acquisition process as the primary causes of its cost, schedule, and performance problems in developing systems for air traffic control. Because of these weaknesses, we continue to designate FAA's modernization program as a high-risk area.

A key part of addressing challenges to the acquisition workforce is having mechanisms to hold the workforce accountable and ensure sufficient high-level attention to systemic acquisition problems. We have noted the importance of sustained leadership to ensure accountability for results and addressing key deficiencies when faced with complex and long-term challenges. In July 2006, we reported that DOD continues to face vulnerabilities in contracting fraud, waste, and abuse, in part because it lacks sustained senior leadership in providing direction and vision, as well as in maintaining the culture of the organization. By not setting the right tone at the top, DOD allows a certain level of vulnerability into the

acquisition process and problems to persist. Holding the workforce accountable has certain prerequisites. For example, we have reported that senior leaders have to provide program managers an executable business case, empower them, support them, and align managers' tenures with delivery dates.

We also have identified the need for similar high-level management attention at other agencies. For example, we have raised concerns in the past that DHS's Chief Procurement Officer (CPO) did not have clear enforcement authority to ensure that acquisition initiatives are carried out. DHS recently stated that the Under Secretary for Management has authority as the Chief Acquisition Officer to monitor acquisition performance, establish clear lines of authority for making acquisition decisions, and manage the direction of acquisition policy for the department, and that those authorities also devolve to the CPO. A formal designation of a Chief Acquisition Officer and corresponding modifications to existing management directives should help address our earlier concerns. Similarly, after creating a Chief Operating Officer to head its air traffic modernization program, FAA was able to adopt more leading practices of private sector businesses to address cost, schedule, and performance shortfalls that have plagued air traffic control acquisitions. Also, our work looking at leading company practices used to acquire services found that companies elevated their procurement organizations from mission support to a more strategically important business unit that exercises more control over the acquisition of services.

Further, on the basis of on our defense work, we have noted that an essential ingredient for better ensuring that overall DOD business transformation is implemented and sustained is to create a full-time and separate Chief Management Officer (CMO) position to address key business transformation challenges and stewardship responsibilities. Such a position could institutionalize accountability for DOD's efforts to improve its business operations, including prioritizing investments across the department.

Conclusions

In closing, I would like to reemphasize why it is imperative that we correct these systemic governmentwide acquisition challenges. The U.S. government's current financial condition and long-term fiscal outlook require it to seek the best return it can on its investment in goods and services and make some difficult, but necessary, strategic choices between unlimited wants and real, affordable, and sustainable needs. The federal government needs to engage in a fundamental and comprehensive re-

examination of the federal government's overall approach to contracting. This includes when and on what basis the government should contract. In the day-to-day management and oversight of major projects and purchases of goods and services, agencies will need to be realistic in their requirements and technologies before they invest significant funds in programs and strike a better balance among expediency, best value, and oversight when entering into contracts for goods and services. Agencies must also assess the skills, knowledge, and appropriate size of their acquisition workforce, and must also have key leadership positions to set the right tone at the top and have high-level accountability to fix recurring acquisition issues. We should have zero tolerance for waste and mismanagement in times of surplus or deficit, but it will never be zero. Much, however, can and should be done to minimize it.

We have made numerous specific recommendations to DOD and other agencies on how to address these systemic acquisition challenges, many of which have not been implemented. Where agencies are responding to our recommendations, we are seeing some improvements in their acquisition management. I appreciate this committee's attention to this important and timely issue and look forward to working with you to see that agencies continue to take actions to address these challenges.

Mr. Chairman and members of the committee, this concludes my testimony. I would be happy to answer any questions you might have.

Contact and Staff Acknowledgments

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Appendix I: Systemic Acquisition Challenges at the Department of Defense

1. Service budgets are allocated largely according to top line historical percentages rather than Defense-wide strategic assessments and current and likely resource limitations.

2. Capabilities and requirements are based primarily on individual service wants versus collective Defense needs (i.e., based on current and expected future threats) that are both affordable and sustainable over time.

3. Defense consistently overpromises and underdelivers in connection with major weapons, information, and other systems (i.e., capabilities, costs, quantities, and schedule).

4. Defense often employs a "plug and pray approach" when costs escalate (i.e., divide total funding dollars by cost per copy, plug in the number that can be purchased, then pray that Congress will provide more funding to buy more quantities).

5. Congress sometimes forces the department to buy items (e.g., weapon systems) and provide services (e.g., additional health care for non-active beneficiaries, such as active duty members' dependents and military retirees and their dependents) that the department does not want and we cannot afford.

6. DOD tries to develop high-risk technologies after programs start instead of setting up funding, organizations, and processes to conduct high-risk technology development activities in low-cost environments, (i.e., technology development is not separated from product development). Program decisions to move into design and production are made without adequate standards or knowledge.

7. Program requirements are often set at unrealistic levels, then changed frequently as recognition sets in that they cannot be achieved. As a result, too much time passes, threats may change, or members of the user and acquisition communities may simply change their mind. The resulting program instability causes cost escalation, schedule delays, smaller quantities and reduced contractor accountability.

8. Contracts, especially service contracts, often do not have definitive or realistic requirements at the outset in order to control costs and facilitate accountability.

9. Contracts typically do not accurately reflect the complexity of projects or appropriately allocate risk between the contractors and the taxpayers (e.g., cost plus, cancellation charges).

10. Key program staff rotate too frequently, thus promoting myopia and reducing accountability (i.e., tours based on time versus key milestones). Additionally, the revolving door between industry and the department presents potential conflicts of interest.

11. The acquisition workforce faces serious challenges (e.g., size, skills, knowledge, and succession planning).

12. Incentive and award fees are often paid based on contractor attitudes and efforts versus positive results (i.e., cost, quality, and schedule).

13. Inadequate oversight is being conducted by both the department and Congress, which results in little to no accountability for recurring and systemic problems.

14. Some individual program and funding decisions made within the department and by Congress serve to undercut sound policies.

15. Lack of a professional, term-based Chief Management Officer at the department serves to slow progress on defense transformation and reduce the chance of success in the acquisitions/contracting and other key business areas.

Appendix II: Definition of Waste

Several of my colleagues in the accountability community and I have developed a definition of waste. As we see it, waste involves the taxpayers in the aggregate not receiving reasonable value for money in connection with any government-funded activities due to an inappropriate act or omission by players with control over or access to government resources (e.g., executive, judicial or legislative branch employees; contractors; grantees; or other recipients). Importantly, waste involves a transgression that is less than fraud and abuse. Further, most waste does not involve a violation of law, but rather relates primarily to mismanagement, inappropriate actions, or inadequate oversight. Illustrative examples of waste could include the following:

- unreasonable, unrealistic, inadequate, or frequently changing requirements;
- proceeding with development or production of systems without achieving an adequate maturity of related technologies in situations where there is no compelling national security interest to do so;
- the failure to use competitive bidding in appropriate circumstances;
- an over-reliance on cost-plus contracting arrangements where reasonable alternatives are available;
- the payment of incentive and award fees in circumstances where the contractor's performance, in terms of costs, schedule, and quality outcomes, does not justify such fees;
- the failure to engage in selected pre-contracting activities for contingent events; and
- congressional directions (e.g., earmarks) and agency spending actions where the action would not otherwise be taken based on an objective value and risk assessment and considering available resources.

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STATEMENT OF MARCIA G. MADSEN

CHAIR OF THE ACQUISITION ADVISORY PANEL

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

JULY 17, 2007

INTRODUCTION

Mr. Chairman, Senator Collins, and Members of the Committee, I appreciate the opportunity to appear before you to address the Acquisition Advisory Panel's findings and recommendations. Two Panel members have joined me today, Mr. James "Ty" Hughes, Deputy General Counsel (Acquisition), Department of the Air Force, and Mr. Roger D. Waldron, formerly of the U.S. General Services Administration (GSA). In addition to chairing this Panel, I am a Partner in the law firm of Mayer Brown Rowe & Maw LLP and I have twenty years of experience in government procurement law.

You have asked for an overview of the Panel's Report regarding: competition and adoption of commercial practices; the management and use of interagency contracts; acquisition workforce deficiencies; and the appropriate role of contractors supporting the government – the "blended workforce" issues. I also will talk briefly about the Panel's data recommendations. I am very pleased to tell you that the Panel's Report has been published – you should have copies before you today. A copy of the Report has been provided formally to the Office of Federal Procurement Policy (OFPP). Additional copies are being sent to all Members of Congress and to the Executive Branch this week.

The Panel was established pursuant to Section 1423 of the Services Acquisition Reform Act (SARA) (§ 1423 of the National Defense Authorization Act For FY 2004). Its members were appointed in February 2005, balanced between the public and private sector. (The Panel's duration was extended in § 843 of the National Defense Authorization Act for FY 2006.) The Panel held 31 public meetings and heard the testimony of 108 witnesses representing 86 entities or groups from industry, government, and public interest organizations. The Panel's public deliberations produced approximately 7,500 pages of transcript. In addition, we received written public statements from over 50 sources, including associations, individual companies, and members of the public.

My testimony could not possibly cover the Panel's 100 findings and 80 recommendations in their entirety, but is intended to provide a good overview. I would like to personally thank the 13 Panel members for their dedication over the course of our deliberations. As you know, each of them was a volunteer with a full-time and highly responsible position in "regular" life. The Panel conducted its work under significant constraints with respect to staff and money. We had only one full-time staff member, the Executive Director. We are grateful to GSA and to the Director of Defense Acquisition and Policy for making staff available on a temporary basis to the Panel. The level of participation by the members in the hearings, in developing findings and recommendations, and in writing the Report, was substantial.

The Panel is grateful to the many witnesses and members of the public who helped shape the Panel's Report through their active participation and interaction with the Panel. (There is a complete list of the witnesses in the appendices to the Report.) The insight gained from the exchange with witnesses was invaluable. In many instances, approaches under consideration by the Panel were revised or adjusted based on input from the witnesses who helped the Panel see

many different perspectives. I would like to especially thank those commercial companies that addressed the Panel. We invited large commercial buyers of services to address the Panel in an effort to determine their current best practices for services acquisition. These companies generously shared their expertise with the Panel even though many of them do little or no business with the government. We are grateful for this rare opportunity to learn how they buy services and where they invest in the services acquisition process.

The testimony before the Panel and the research and analysis by its Working Groups helped the Panel formulate what we believe to be a well-balanced set of recommendations that take into account the government's needs for access to the commercial marketplace, the growth in acquisition of services by the private sector and government alike, and the pivotal role of competition in the acquisition process.

SUMMARY

Enhance Competition by Investing in Planning

- Commercial buyers invest heavily in planning and requirements analysis to obtain meaningful competition
- Government practice focuses on rapid awards at the expense of planning
- Recommendations to enhance the government's ability to develop/maintain market expertise and define requirements

Encourage Competition to Produce Fair and Reasonable Prices

- Commercial practice relies on competition for innovation and pricing
- Government practice
  - Interagency Contracting
    - -Incentives to compete lacking
    - -Recommendations to insert incentives

Removing Other Obstacles to Achieving Fair and Reasonable Prices

- Current regulatory definition of "commercial services" does not require an efficient market as statutorily intended
- Regulatory guidance unclear about obtaining contractor information to support government determination of fair and reasonable prices
- Recommendations to restore statutory definition of commercial services and clarify regulations on obtaining price information and "other than cost or pricing data"

Accountability and Transparency Inadequate for Interagency Contracting

- No consistent, government-wide policy for agencies who manage or use interagency contracts
- Accountability and transparency lacking in interagency contracting
- Recommendations to require formal business cases to support interagency contracts, greater accountability in their management, and more transparent use

The Acquisition Workforce Requires Immediate Attention

- Demands on the acquisition workforce have outstripped its capacity, but assessment not possible
- Recommendations to move toward an expedited assessment of the workforce in order to improve capacity

Appropriate Role of Contractors Supporting the Workforce

- Management challenges of a "blended" workforce
  - Blurring the distinctions between
    - -Inherently governmental and commercial functions
    - -Personal and Non-Personal Services
  - Rising concerns about
    - -Organizational and personal conflicts of interest
    - -Protection of contractor proprietary/confidential data
  - Recommendations to promote ethical/efficient use of "blended" workforce

Enhance Competition by Investing in Planning

If there is one fundamental lesson to be learned from the Panel's review of commercial practices, it is the critical role requirements development plays in the successful acquisition of commercial services.

The common thread connecting commercial buyers and government buyers is the criticality of sound requirements definition and acquisition planning. Sound requirements development increases competition, reduces costs, eliminates time-and-materials contracts, and increases the likelihood of successful contract performance. Commercial buyers do it well. Government buyers need to improve.

Commercial Practice: Meaningful competition, pricing, contract type, and terms and conditions all are dependent on the time and effort commercial firms invest in the preliminary requirements development stage. The commercial buyers described a rigorous requirements definition and acquisition planning process. To them, requirements definition is of equal importance to the selection of the right contractor. These companies invest the time and resources necessary to clearly define requirements up-front in order to achieve the benefits of competition. They perform on-going rigorous market research and are thus able to provide well-defined, performance-based requirements conducive to innovative fixed-price solutions. They obtain a commitment on their requirements from all appropriate levels in the corporation.

Government Practice: The Panel's work shows that the government fails to invest in this phase of procurement, focusing instead on rapid awards. While at the conceptual level, buyers appear to understand the importance of requirements definition to successful, cost-effective contracts, culture and the metrics focus on "getting to award" rather than contract

results. In testimony, public sector officials and representatives of government contractors expressed frustration that the government is frequently unable to define its requirements sufficiently to allow for fixed-price solutions, head-to-head competition, or performance-based contracts. Defining requirements is critical to establishing evaluation criteria for a competitive procurement – it tells the prospective offerors what requirements will be evaluated in making a selection. Failure to define requirements compromises the competitive process and handicaps the government's ability to get the best solutions.

Ill-defined requirements fail to produce meaningful competition for services solutions. Instead, agencies often rely on time-and-materials contracts with fixed hourly rates that lack incentives for innovative solutions. The testimony was consistent that the major contributors to this problem are the cultural and budgetary pressures to quickly award contracts or orders, combined with a lack of market expertise in an already-strained acquisition workforce. The government's lack of investment in acquisition planning is well-documented beyond the testimony heard by the Panel. For instance, two recent audits from the Department of Defense Inspector General (DoD IG) found that of the $217 million spent under 117 awards reviewed, 116 lacked acquisition planning or market research.[1]

Recommendations: The Panel recommendations are based on current commercial sector practices. For instance, to develop and maintain market expertise, the Panel recommended that agencies establish "centers of expertise" to protect their high-dollar investments in recurring or strategic requirements. The Panel also saw a need for a central source of market research information comparable to that maintained by private companies. We recommended that GSA establish such a capability to monitor services acquisitions by government and commercial

[1] DoD IG Report No. D-2007-007, "FY 2005 Purchases Made Through the General Services Administration," Oct. 30, 2006, at 1-4 (general discussion of the issue); DoD IG Report No. D-2007-032, "Report on FY 2005 DoD Purchases Made Through the Department of Treasury," Dec. 8, 2006, at 32 (specific statistics cited).

buyers, collect information on private sector transactions that is publicly available, as well as obtain information on government transactions, and make this information available government-wide. Under our recommendations for improving Performance-Based Acquisition (PBA), the Panel recommended that OFPP provide more guidance to agencies regarding how to define requirements in terms of desired outcomes, how to measure those outcomes, and how to develop appropriate incentives for contractors to achieve those outcomes. Because defining needs/requirements up-front is one of the most important aspects of a PBA, the Panel recommended that the Federal Acquisition Regulation (FAR) require the government to develop and provide to contractors a "baseline performance case." The Panel's Report contains details about what this baseline performance case would entail, but it is essentially a framework to provide discipline in the government's requirements definition process. We also recommended an educational certification program for contracting officer representatives to help them become effective planners and monitors of PBAs. With respect to the concerns expressed by the Government Accountability Office (GAO) and Inspectors General (IGs) regarding ill-defined requirements for orders under interagency contracts, the Panel recommended criteria for requirements planning by ordering agencies ***before*** access to an interagency contract is granted. OFPP has begun to implement these recommendations and, for example, in its May 31, 2007 Competition Memorandum has tasked GSA to implement the Panel's recommendation regarding market research.

Encourage Competition to Produce Fair and Reasonable Prices

Commercial Practice: In addition to learning that basic commercial practice involves substantial investment in requirements analysis, the Panel also was advised that commercial buyers rely extensively on competition to produce innovation and fair and reasonable prices. In

fact, competition is fundamental to producing innovation and to determining fair and reasonable prices. Because there is no substitute for competition, commercial companies rarely buy on a sole-source basis. In those rare cases where they do not seek or cannot achieve competition, commercial buyers rely on their own market research and benchmarking, and often seek data on similar commercial sales to establish fair and reasonable pricing. In some cases, they may even obtain certain cost-related data, such as wages or subcontract costs, from the seller to determine a price range. But they generally find these methods far inferior to competition for arriving at the best price. As a result, they monitor non-competitive contracts closely, and eliminate such arrangements as soon as the requirement can be moved to a competitive solution.

Government Practice: It is instructive to compare the strong commercial preference for competition to the government's competition statistics. In fiscal year 2004, the government awarded $107 billion, or over one-third of its total procurement dollars, non-competitively. Over one-fourth, or $100 billion, was awarded non-competitively in 2005.[2] The number of competitions that result in the government only receiving one offer doubled between 2000 and 2005. Spending on services in both 2004 and 2005 accounted for 60% of procurement dollars with 20% and 24% awarded without competition, respectively.[3]

Interagency Contracting. The Panel believes the amount of non-competitive awards may, in fact, be underreported for orders under multiple award contracts available for interagency use, generally known as "interagency contracts." The Panel's repeated attempts over several months to obtain information about the extent of competition for orders under these types of contracts were frustrated. The government's database on federal procurement spending, the Federal

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[2] Standard Competition Report from FPDS-NG, available on-line at https://www.fpds.gov under Standard Reports (last visited Jan. 29, 2007). The competitive/non-competitive base (against which the percentage is derived) is $338 billion for fiscal year 2004 and $371.7 billion for fiscal year 2005.

[3] FPDS-NG special reports for the Panel.

Procurement Data System-Next Generation (FPDS-NG) only began to collect data on interagency contracts in 2004. Due to a number of factors, including poor reporting instructions and faulty validations, the "extent competed" field in FPDS-NG for these orders overwhelmingly reflects the competitive nature of the master contract, rather than the actual level of competition for orders. This reporting problem skews the data such that it is unreliable. The lack of transparency into the nature of these orders is a significant weakness. FPDS-NG reports spending under contracts available for multi-agency use at as much as $142 billion, or 40% of procurement spending, in fiscal year 2004.[4]

Despite the Panel's overarching concern with data reliability[5] and transparency, there certainly appears to be sufficient cause for concern in addition to these statistics. The Panel was well aware that GAO put management of interagency contracting on its High Risk Series in 2005. Since the GAO high risk designation in 2005, more data regarding orders under these contracts has become available. In fact, in a recent audit, the DoD IG found that 62% of reviewed orders, totaling nearly $50 million, failed to provide a fair opportunity to compete as required by law. In addition, 98 of 111 orders valued at $85.9 million were either improperly executed, improperly funded, or both.[6]

The Panel's Report sets forth the history and efforts by Congress to improve competition. The intent of interagency contracts, most of which are assumed to be multiple award contracts, was to lower administrative costs, leverage buying power and provide a streamlined acquisition

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[4] *Id.*

[5] OFPP has begun to address the issue of unreliable data. In its March 9, 2007 Memorandum to Chief Acquisition Officers, OFPP directed them to establish, among other things, requirements for independent validation and verification of FPDS data and to certify data entered into FPDS for accuracy and completeness. Note that the Panel recommended Congress require by statute that Agency Heads be responsible for accurate data.

[6] DoD IG Report No. D-2007-023, "FY 2005 Purchases Made Through the National Aeronautics and Space Administration," Nov. 13, 2006, at ii.

process -- all well-meaning goals. Such contract vehicles were never intended to permit requirements definition to be short circuited.

Interagency contracts generally are indefinite-delivery/indefinite-quantity type contracts with very broad scopes of work, most of which provide for multiple awardees that will compete with one another for specific orders at a later point when an agency identifies a requirement. Therefore, where services are concerned, the initial competition is based on loosely defined statements of the functional requirements resulting in proposals for hourly rates for various labor categories. The expectation is that once an agency identifies a specific need, a more clearly defined requirement will be provided at the order level allowing the multiple awardees to submit task-specific solutions and pricing. Because this process narrows the number of eligible contractors at the order level, Congress has insisted that these multiple awardees be given a "fair opportunity" to compete for the task orders.

So why do interagency contracts seem to be drawing so much non-competitive activity? There appears to be a number of checks and balances missing that would otherwise contribute to healthier incentives for competition.

Incentives to Compete Lacking. There is no government-wide requirement that all interagency contracts provide notification that a task order is available for competition. There is no visibility into sole-source orders, as there is no requirement for a synopsis or public notification for orders under multiple award contracts, regardless of the size of the order. Even where a best value selection is made at the order level, there is no requirement for a detailed debriefing, regardless of the amount of the order or the amount of bid and proposal costs expended by the eligible contractor, thus denying the contractor information that might enable it to be more competitive on future orders/contracts. Further, without regard to size of the order,

there is no option for contractors to protest the selection process under multiple award contracts, reducing the pressure on the government to clearly define requirements, specify its evaluation criteria, and make reasonable trade-off decisions among those criteria. For example, even issues that affect the integrity of the competitive process such as organizational or personal conflicts of interest cannot be protested.

Balance incentives with need for "bite-sized" orders. However, the Panel also took testimony from agency officials who told us they could not meet their missions without the use of interagency contracts. Therefore, the Panel sought to achieve a balance in its recommendations that will introduce incentives to encourage more competition while not unduly burdening these tools for streamlined buying. For instance, some of our recommendations only apply to orders over $5 million. Why this threshold? We found that of the $142 billion spent on orders under these interagency contracts in fiscal year 2004, $66.7 billion, nearly half, was awarded in single transactions (at the order level) exceeding $5 million. The fiscal year 2005 statistics show total spending on these contracts at $132 billion with $63.7 billion in single transactions over $5 million.[7]

Nearly half of the dollars are spent on single transactions over this threshold, but the majority of transactions are actually below it. By using this threshold, we were able to impact a significant dollar volume, but not the majority of transactions. "Bite-sized" orders for repetitive needs can be placed using the current methods under this threshold, while large transactions involving the need for requirements in a Statement of Work, evaluation criteria, and best value selection procedures would be subject to a higher level of competitive rigor.

Recommendations: The Panel recommended expanding government-wide the current DoD Section 803 requirements that include notifying all eligible contractors under multiple

[7] FPDS-NG special reports for the Panel.

award contracts of order opportunities. We also recommended that the 803 procedures apply to supplies and services. And while we agreed that a pre-award notification of sole-source orders might unduly burden the ordering process, the Panel recommended post-award public notification of sole-source orders finding that it would improve transparency. For single orders exceeding $5 million, the Panel recommended that agencies adhere to a higher competitive standard by: 1) providing a clear statement of requirements; 2) disclosing the significant evaluation factors and subfactors and their relative importance; 3) providing a reasonable response time for proposal submissions; and 4) documenting the award decision and the trade-off of price/cost to quality in best value awards. We also recommended post-award debriefings for disappointed offerors for orders over $5 million when Statements of Work and evaluation criteria are used. Concerned that the government is buying complex, high-dollar services without a commensurate level of competitive rigor, transparency, or review, we recommended limiting the statutory restriction on protests of orders under multiple award contracts to orders valued at $5 million or less. Of course, it should be noted that under existing law, any order under the GSA Schedules may be protested.

Specific to the GSA Federal Supply Schedules program, the Panel recommended a new services schedule for information technology that would ***require*** competition at the task order level and reduce the burden on contractors to negotiate up-front hourly labor rates with GSA. The Panel sees the exercise of negotiating (and auditing) labor rates as producing little in the way of meaningful competition given that solutions are project-specific and the price depends on the actual labor mix applied. In such cases, analyzing labor rates contributes little to understanding the price that the government will pay for the project. Much time and effort are wasted by GSA

and contractors in providing, monitoring, and auditing labor rates that do not provide useful information about the costs of a project.

I am pleased to note that S.680 includes almost all of the Panel's recommendations regarding enhancements to competition.

Removing Other Obstacles to Achieving Fair and Reasonable Prices

Definition of Commercial Services: The Federal Acquisition Streamlining Act (FASA) defined commercial services as those offered and sold competitively in substantial quantities in the commercial marketplace. When commercial services are sold competitively in substantial quantities, commercial market forces determine both the price and the nature of the services offered. The statutory definition was designed to allow such services to be purchased using the more streamlined commercial buying procedures of FAR Part 12. Unfortunately, the regulatory implementation of the statutory definition allowed services not offered and sold in substantial quantities in the commercial marketplace, or those "of a type," to nonetheless be classified as commercial and, therefore, eligible for the streamlined procedures of FAR Part 12. These streamlined buying procedures, while effective in an efficient market, become problematic in circumstances where the services are not offered and sold in substantial quantities. In that situation, the government is placed at a significant disadvantage with respect to pricing when there is limited or no competition, leaving it with too few tools to determine fair and reasonable prices.

Recommendations: The Panel recommended revising the FAR to be consistent with the statutory definition of commercial services. This recommendation has been inaccurately portrayed by some who claim it will prevent the purchase of cutting-edge technology. However, restoring the statutory definition in the FAR would not preclude the government from purchasing

services that are not offered and sold in substantial quantities in the commercial marketplace. Rather, it would require that such services be purchased using FAR Part 15 procedures, giving the government tools for determining fair and reasonable prices absent an efficient market.

The Panel also recommended specific regulatory revisions that would clarify and provide a more commercial-like approach to determining price reasonableness for commercial items in cases where a competitive acquisition is not used. These revisions, which apply to commercial items generally, clarify the contracting officer's right to ask for information "other than cost or pricing data," and provide an order of precedence for the type of information a contracting officer should seek. This recommendation is based on testimony received by the Panel from government and contractor representatives. Both groups complained that the current regulatory treatment of "other than cost or pricing data" was confusing. On the one hand, government representatives complained that they cannot obtain necessary information because contractors argue that it is not required. On the other hand, contractor representatives complained that the government presses for inappropriate information. The Panel's proposed regulatory change is consistent with the testimony we received from commercial buyers regarding the types of pricing information that they receive and the circumstances under which they ask for limited types of cost data such as wages and subcontractor costs. On April 23, 2007, the FAR Councils issued a proposed rule also intended to address the types of data the government may require as "other than cost or pricing data" to determine whether prices, including prices for commercial services, are fair and reasonable. (FAR Case 2005-036.) This proposal takes the opposite approach to the Panel's recommendations by expanding dramatically the types of data than can be required as "other than cost or pricing data," to include even judgmental information.

Accountability and Transparency Inadequate for Interagency Contracting

While I have already discussed interagency contracting with respect to requirements analysis and competition, the Panel also separately addressed the issues of management of, accountability for, and transparency of interagency contracts. We included in our review the practice of using assisting entities that buy from interagency contracts. The Panel found that while some competition among interagency contracts is desirable, there is no coordination regarding the creation or continuation of these contract vehicles to determine whether their use is effective in leveraging the government's buying power or whether they have proliferated to the point of burdening the acquisition system. The Panel also was concerned that recent focus on the problems of interagency contracting would result in an increase of so-called "enterprise-wide contracts." Such contracts are operationally the same as interagency contracts, except they are restricted for use by one agency. The Panel found the trend toward such contracts to result in costly duplication if the existing problems with interagency contracts can be addressed through better management discipline and a more transparent competitive process.

Recommendations: Specifically, the Panel found that the lack of government-wide policy regarding the management of interagency contracts is a key weakness that can be addressed by OFPP. Currently, OFPP is in the process of developing just such a policy and has had an interagency working group in place for some time to deal with these issues. (As the Panel was developing its findings and recommendations in this area, Panel Members met with OFPP to provide input regarding the Panel's work). The Panel also recommended that agencies, under policy guidance issued by OFPP, formally approve the creation, continuation, or expansion of interagency contracts using a formal business case. Agencies managing these contracts would, among other things, be required to identify and apply the appropriate resources to manage the

contract, clearly identify the roles and responsibilities of the participants, and measure sound contracting procedures. As discussed above, there is little visibility into the numbers and use of interagency contracts. The data must be derived from FPDS-NG and is not, as discussed earlier, completely reliable. Therefore, the Panel made a number of recommendations to improve the transparency and reliability of data on interagency contracts.

Again, I was pleased to note that S.680 includes Panel recommendations regarding management of interagency contracts.

The Acquisition Workforce Requires Immediate Attention

The Panel determined that a quantitatively and qualitatively adequate workforce is essential to the successful operation of the acquisition system. But the demands on the acquisition workforce have outstripped its capacity. Just since 9/11, the dollar volume of procurement has increased by 63 percent. While the current workforce has remained stable since 2000, there were substantial reductions in the 1990s accompanied by relatively little new hiring. Compounding the problem, while a variety of simplified acquisition techniques was introduced by the 1990's acquisition reforms for low dollar value procurements, higher dollar procurements require greater sophistication by the government buyer due to the growth in best value procurement, the emphasis on past performance, and the use of commercial contracting. Accompanying these trends is the structural change in what the government is purchasing, with an emphasis on high-dollar, complex technology-related solutions. However, due to the lack of a consistent definition of the workforce and lack of ability to measure the workforce, as well as the lack of competency assessments and systematic human capital strategic planning, determining the needs of this workforce is difficult. The Panel was very frustrated by the lack of useful and meaningful data regarding the federal acquisition workforce and undertook its own study –

dating back to the 1960s in an effort to obtain information on the size, composition and skills of the workforce.

The Panel was struck by the difference from commercial practice. Private sector buyers of services invest in extremely well-qualified employees and consultants to define their requirements, and to design and carry out their acquisition of services. Larger acquisitions - $10 million and up – are subject to a tightly controlled and carefully structured process overseen by highly credentialed and experienced buyers. The Committee needs only to look at the presentations to the Panel by the private sector buyers and the consulting firms that support them for comparison.

Recommendations: An accurate understanding of the key trends about the size and composition of the federal acquisition workforce cannot be obtained without using a consistent benchmark, and none is currently available for such an assessment. The Panel recommended that OFPP prescribe a consistent definition and methodology for measuring the workforce. The urgency of this task is reflected in another recommendation that OFPP collect data using this definition and measuring methodology ***within one year*** of the Panel's final Report. Consistent with this, OFPP should be responsible for creating and maintaining a mandatory government-wide database for members of this workforce. The Panel noted that the Commission on Government Procurement recommended just such a system over 30 years ago -- in 1972. While there are a great many recommendations for workforce improvement in the Panel's Report, one of the key recommendations is that each agency must engage in systematic assessment and human capital strategic planning for its acquisition workforce. Without such plans, it is impossible to know how and to what extent a given agency's workforce is deficient. It is also difficult to know to what extent and how efficiently agencies are using contractors to support the

acquisition function. In support of this recommendation, the Panel has also suggested that these plans be reviewed by OFPP for trends, best practices, and shortcomings as part of an agency's overall human capital planning requirements. Finally, the Panel recommended a government-wide intern program, as well as the reauthorization of the SARA training fund. In this area as well, S.680 has picked up significant portions of the Panel's recommendations.

Appropriate Role of Contractors Supporting the Workforce

Management challenges of a "blended" workforce: The Panel heard testimony regarding the use of and management of the "blended" workforce, where contractors work side-by-side with government employees, often performing the same or similar functions.

Blurring the Distinctions. During the 1990s, the federal acquisition workforce was reduced substantially. For example, DoD's acquisition workforce was reduced by nearly 50 percent during that time. The structural changes in what and how much the government is buying since 9/11 have left agencies with no alternative to using contractors to deal with the pressures of meeting mission needs and staying within hiring ceilings. Agencies have contracted for this capability and contractors are increasingly performing the functions previously performed by federal employees. To a significant degree, this has occurred outside of the discipline of OMB Circular A-76, with the result that there is no clear and consistent government-wide information about the number of people and the functions performed by this growing cadre of service providers.

While the A-76 outsourcing process provides a certain discipline in distinguishing between "inherently governmental" and commercial functions, it is less clear if and how agencies apply these concepts to the blended or multi-sector workforce that has arisen outside of the A-76 process. The challenge is determining when the government's reliance on contractor

support impacts the decision-making process such that the integrity of that process may be questionable. A second challenge that arises is how the government effectively manages a blended workforce given the prohibition on personal services.

Rising Concerns. The Panel identified the increased potential for conflicts of interest, both organizational and personal, as a significant challenge that arises from the blended workforce and from the consolidation in many sectors of the contractor community. Alongside this issue is the need to protect contractor proprietary and confidential data in such an environment when a contractor supporting one agency in a procurement function may be competing against other contractors for work that is in the subject area of its support contract at another agency.

Recommendations: The Panel recommended that OFPP update the principles for agencies to apply in determining which functions must be performed by federal employees, so that agencies understand that such principles apply even outside the A-76 process.

The Panel also recommended lifting the prohibition on personal services contracts. The Panel heard a great deal of testimony about how this prohibition is either effectively ignored or how agencies use awkward and inefficient work-arounds to ensure they do not direct the work of contractor employees. The GAO has acknowledged the need to rely on contractors to meet government missions. Panel witnesses have confirmed the necessity of contractors in the workplace. Therefore, the Panel finds the prohibition to be akin to a "myth." OFPP should develop new policy guidance on the appropriate and ethical use of service contractors that would allow appropriate government employees to direct the substance of their work, but not perform supervisory functions such as hiring, firing, disciplinary actions, etc.

With respect to the growing potential for conflicts of interest, the Panel did not see a need for new statutes. Instead, it viewed the issues as contract-specific and suggested that the better approach would be policy guidance and new solicitation and contract clauses. Therefore, the Panel recommended that in its unique role as developer of government-wide acquisition regulations, the FAR Council review existing conflict of interest rules and regulations, and to the extent necessary, create new, uniform, government-wide policy and clauses regarding conflicts of interest, as well as clauses protecting contractor proprietary and confidential data. In particular, the rules regarding organizational conflicts of interest need to be updated to address situations involving impaired objectivity. The Panel also recommended that the FAR Council work with the Defense Acquisition University and the Federal Acquisition Institute to devise improved training for contracting officers to assist in identifying and addressing potential conflicts and to develop better tools for the protection of contractor proprietary and confidential data.

Finally, a general comment about the Panel's recommendations: while most of them can be implemented through policy or regulation, some will require legislation.

Conclusion

Mr. Chairman, Senator Collins and Members of the Committee, thank you for your interest in the Panel's efforts. We are available to provide any additional information or assistance that the Committee or the staff may need.

This concludes my prepared remarks. I am happy to answer any questions you might have.

STATEMENT OF

STAN SOLOWAY
PRESIDENT
PROFESSIONAL SERVICES COUNCIL

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS

HEARING ON

"FEDERAL ACQUISITION: WAYS TO STRENGTHEN COMPETITION AND ACCOUNTABILITY"

JULY 17, 2007

Introduction

Mr. Chairman, Senator Collins, members of the committee. I am Stan Soloway, President of the Professional Services Council (PSC); PSC is the principal national trade association for companies providing services of virtually every kind to virtually every agency of the federal government. On behalf of our more than 220 member companies, I want to thank you for your invitation and the opportunity to provide our views on S.680, specifically Title I, and the state of government procurement generally.

Whether assisting citizens seeking compensation for radiation sickness, providing support to military men and women stationed at home and abroad, or developing scientific analyses to better protect sensitive wildlife habitats, PSC's members are among the leading small, mid-tier, and large companies providing the full range of professional services to every federal agency. PSC member companies employ tens of thousands of individuals in every region of the country. These dedicated employees provide government customers and taxpayers with good value, specialized expertise, and innovative solutions. Our members believe strongly in the mutual benefit that is derived when the government and its private sector suppliers work closely together to ensure the delivery of better outcomes for America's citizens.

Over the last decade, the government's missions have evolved rapidly, increased in complexity and required new technologies, thus resulting in both growing challenges for the government itself and its workforce and a substantial increase in the government's reliance on contractors. The evidence suggests that these challenges and trends will continue well into the future.

The July 2007 report of the Partnership for Public Service highlighted that the Federal government will need nearly 200,000 "mission critical" new hires over just the next two years to keep pace with the rising need for national security, evolving agency needs, and expected federal workforce retirements. That doesn't even begin to account for the thousands of positions, across government, including in the acquisition workforce, which are today vacant and which the government is struggling to fill. On July 9, the *Washington Post* reported that there are scores of positions unfilled at the Department of Homeland Security, including FEMA, thus raising questions about the agency's preparedness. As the government's workforce demographic problems grow and its need for advanced skills and capabilities increases, fostering meaningful and productive partnerships between the public and private sectors will be critical to ensuring that government functions effectively.

Today, spending on federal procurement exceeds $400 billion, representing nearly 40% of the total discretionary budget of the federal government and more than 30 million transactions. Spending on services contracts, the primary focus of S.680 and this hearing, represents nearly 60% of that federal spending. Thus, federal procurement must be a core competency of the federal government and prioritized as such.

Moreover, given the centrality of acquisition to the proper functioning of our government, it is important that Congress, as part of exercising its vital oversight role, continually assess federal acquisition policies and explore changes to policy or practice that might be needed. As such, we are grateful to you for your thoughtful leadership and continued vigilance in this complicated

field and greatly appreciate the openness with which you have approached the dialogue about ways in which it can be strengthened.

S.680 represents a valuable starting point for discussing how to ensure that the federal procurement process fully protects how the government spends taxpayer dollars while also enabling the government to acquire the full array of necessary resources and support. When viewed in its totality, and despite its evident problems, the federal acquisition system functions quite well. But clearly improvement is needed. And we look forward to an ongoing dialogue about solutions that will deliver real value and improvement.

Debunking the Myths

Before I comment on a select group of specific provisions in the bill, I would like to step back just a little. Unfortunately, all too often the complexities and nuances of federal procurement have either been misstated or misinterpreted and led to the creation of several myths about federal contracting. Words and terms matter and as we examine avenues to enhance the quality of the federal acquisition process, it is important that we proceed based on appropriate and well-understood definitions, on sound data and on an accurate assessments of the current environment.

Differentiating Between Challenges and Fraud

There can be no doubt in anyone's mind that the government faces many difficult challenges in the acquisition arena; we also all recognize that the government's human capital crisis is real and impacts the federal acquisition workforce as much as, if not more than, it does the rest of the federal workforce.

This human capital crisis is not a new matter that arose in the last few years. It was a problem when I served at the Defense Department during the Clinton Administration and had a significant amount of responsibility for the department's acquisition workforce, and we continue to see it today. It is a problem not just of sheer numbers but also of workforce development, support and leadership. Despite what some have suggested, however, it is not, in the main, a problem of rampant fraud and abuse.

As the Special Inspector General for Iraq Reconstruction (SIGIR) stated in his January 2007 testimony to the House Committee on Oversight and Government Reform, with all of the problems surrounding Iraq contracting, there has been "little evidence" of widespread fraud. The SIGIR's "lessons learned" reports on contracting, human capital and program management have instead cited workforce challenges, security, coordination, and planning as far more central to the problems that have emerged than the fraud some have suggested. Likewise, the head of the Federal Procurement Fraud Task Force for the Eastern District of Virginia said just three weeks ago that, when looked at proportionally, which is the only fair way to assess such things, he believes criminal fraud is likely less prevalent today than it was ten or fifteen years ago.

While I will address the workforce issues in more detail later in my testimony, it is important to recognize at the outset, as the SIGIR and others have recognized, that workforce challenges, honest mistakes, or other structural problems do not equate to massive fraud or abuse. As such,

the policy framework governing federal acquisition must recognize and be based on that foundation.

Understanding the Growth in Procurement
It is, of course, true that since 9/11 federal procurement spending on both goods and services has grown dramatically. This should not come as a surprise. Among other things, 9/11 significantly changed many of the government's missions and created requirements for new technology and innovative solutions to improve our domestic security and fight the war on terror. Needless to say, the wars in Iraq and Afghanistan have also contributed significantly to this growth. As well, today, more than ever, because the technologies and skills the government seeks are in the private sector, the government finds itself competing for people and capabilities in the broader economy, in which the availability of those very skills is in short supply.

However, this contracting growth did not happen in a vacuum. During that same post 9/11 period, the overall discretionary budget has grown nearly 65%. Thus, while significant and clearly growing, when looked at proportionally, spending on service contracts has actually increased about 15% as a proportion of the government's operations, from 21% to 24% of the discretionary budget. Significant, yes; but hardly the unconstrained, headlong rush some have suggested.

The "Shadow Workforce"
Moreover, we continue to see claims that the so-called "shadow" contractor workforce supporting the government now numbers over 8 million – making it more than four times the size of the federal workforce. Simply put, by any meaningful measure, that figure is wildly overstated, founded on the wrong baseline and mathematically impossible. In our view, any rational and rigorous analysis would suggest that this so-called "shadow workforce," while undeniably significant, is actually a fraction of what is claimed and is almost certainly less than the total number of federal employees. Understanding that basic fact is essential to the broader discussion.

Competition
Proportionality also explains some of the apparently dramatic data that some suggest show a decline in competition, and growth in sole source contracting, particularly for services. Competition is a core value in the private sector and we fully share your belief that competition is the engine that drives efficiency and performance. We understand concerns that arise when it is reported that competition has decreased. But context is important: with federal procurement spending having roughly doubled over the last five years, it only follows that when measured in dollars, the use of other than "full and open competition" techniques has also increased. However, when looked at as a percentage of total federal procurement spending, the data are far less compelling. In fact, the data indicate that competition in federal contracting is at about the same level as it was ten years ago.

Moreover, misunderstanding about and misrepresentation of the use of terms relating to different types of contracts and contract strategies has led to erroneous interpretations of the data and conclusions about the acquisition system.

I know this committee has concerns about the apparent increase in contracts awarded without full and open competition. However, "full and open competition" has a very specific meaning in government contracting, and many contract types that are not coded as "full and open" are, nonetheless, highly and sufficiently competitive. For example, current law provides a 23% government-wide goal for small business and/or other preference programs, such as 8(a) firms, firms owned by women, service disabled veterans, and HUBZone firms. None of these awards are coded in the database as "full and open" because, by their very definition, the competition is limited solely to those companies that qualify under the socio-economic or preference categories involved.

A similar situation exists with multiple award contracts. In those cases, there is typically a full and open competition through which companies vie for a position on the contract. The specific work is then competed for and awarded incrementally through individual task orders. However, those task orders are properly not coded in the Federal Procurement Data System as being awarded through "full and open competition" since they are only available to the companies that succeeded in winning a position on the overarching contract.

This is not to say that we should be satisfied with the degree of competition in government contracting. Indeed, we should be vigilant in our commitment to enhancing competition wherever possible. Our member companies, whose ability to grow and thrive depends upon an open, competitive marketplace, fully support efforts to increase competition.

Congress addressed this issue in the 2003 defense authorization bill by requiring that all task orders under multiple award contracts awarded by the DoD be competed openly among all holders of the overarching contract. Section 111 of S.680 would extend this requirement across the government, and we strongly support doing so on the same basis as was applied to DoD. However, it should be clear that even then, those competitive task orders will not appear as having been awarded through "full and open competition."

Misapplication of the Term "No Bid" Contract

There is similar confusion created with the use of the term "no bid contracts," particularly when referring to indefinite delivery/indefinite quantity contracts, otherwise known as IDIQs, awarded to a single winner. The government often faces uncertain mission needs such as those experienced in a war or emergency, or in the development of complex technology solutions for the government's everyday needs, particularly in the very early mission stages. And in those circumstance these types of contracts are sometimes the smartest means by which the government can meet its mission.

For example, Mr. Chairman, you were most eloquent in the aftermath of Hurricane Katrina when you expressed deep concern that FEMA did not have in place an adequate array of pre-positioned, emergency relief contracts to meet the disaster relief requirements. Such contracts are essential in those kinds of circumstances. Yet almost invariably, while those contracts are usually competitively awarded, they are structured as IDIQ vehicles under which the individual task orders are awarded solely to the company that won the initial contract, simply because it is impossible to know in advance precisely what the needs will be and because circumstances dictate exceptionally rapid response and action. There have been some examples of agencies

utilizing these contracts more than was intended by statute or regulations and we should insist on sound management and vigilant oversight to ensure the process is as open and competitive as possible. But it would be a mistake to arbitrarily limit this contract type or to assume that all such contract vehicles are the same as "no bid" contracts.

S.680: Focus on the Workforce

This brings me to S.680. One of the great strengths of S.680 is its recognition that the heart of the issues that have emerged in recent years can be largely traced to the human capital dimension. Through S.680, you have recognized that the greatest returns and improvements in the acquisition process will be found through a laser beam focus on the federal acquisition workforce and how they are supported, developed and resourced. Never has that focus been more important.

In 1998, the Defense Logistics Agency faced controversy over pricing of major spare parts. In the midst of it, at a department-wide event being broadcast to bases around the world, then-Secretary of Defense Cohen said that people should recognize that in a system as complex as ours, there will be problems and people will make mistakes. He then said "I want you to be far more concerned about pursuing innovation than being punished for making an error." Those words resonated across the defense acquisition workforce, some 200,000 strong, for it told them that as long as they were acting in good conscience and in what they genuinely believed to be the best interests of our military men and women and the taxpayer, the department would stand by them when times got tough, even as we worked together to understand how and why mistakes were made and to ensure that they were not repeated.

There is today a growing consensus throughout the government acquisition community that the commitment to our federal acquisition professionals has disappeared. I have many opportunities to interact with that community and it is clear that they feel more assaulted than supported and more questioned than resourced. Indeed, last year, PSC conducted its biannual survey of the federal acquisition leadership and almost every interviewee told us that their greatest concern is the degree to which their workforces felt undervalued and under-supported. As one respondent remarked, people are increasingly afraid not only of making a mistake, but of even making a decision.

Further, we need to be very clear that the objective of the acquisition reforms of the 1990s was not about speed of procurement for speed's sake. The goal of the reforms was to rationalize and modernize what was an almost comically cumbersome process—a process through which the government dictated to cookie makers how many chocolate chips could go into a cookie made for the military; a process that, as then-Vice President Gore demonstrated on the David Letterman Show, required dozens of pages of detailed specifications to govern the manufacture of a standard glass ashtray; and a process marked by a supply chain for military logistics that was generations behind commercial capabilities. The goal was also to move from the rigid, rule based process that was in part responsible for the dysfunctions in the system, to one based more on critical thinking, business judgment, and smart decision making. In simple terms, the technology and business process explosion surrounding the government mandated that the government move its age old system into the modern era.

As such, far from simplifying the life of federal acquisition professionals, many of the reforms actually made the acquisition process more demanding of the people charged with its execution. "Check the box" procedures are far easier – but also far less effective. Unfortunately, despite the demands created by these many factors, the investment in acquisition training and overall development of the workforce has simply not kept pace. The Defense Acquisition University (DAU) budget is at about the same level today that it was seven years ago when DAU was part of my organization at DoD. There is little evidence that any of the military departments have substantially increased their investment in continuous learning and other developmental opportunities for the workforce. The situation is even worse across the civilian agencies, where the availability of adequate funds to train and continually improve the acquisition workforce has been woefully inadequate.

The private sector believes strongly that a smart, well prepared customer makes the best kind of customer. That is why five years ago PSC recommended to Congress the creation of what is now known as the Federal Acquisition Workforce Training Fund. Although the fund is growing and the resources are being put to use to benefit the federal acquisition workforce, it is far from adequate. And just this year, PSC collaborated with DAU on the development and delivery of a training module on business risk awareness and management for its new course on performance based services acquisition.

Nonetheless, across the board, workforce development is a glaring weakness in the government and has been for a long time. Nowhere is the old adage truer that when budgets get tight the first thing cut is training than throughout the federal government.

An Acquisition "Marshall Plan"

S.680 contains important provisions that we fully support to address this enormous challenge, including those that would create a governmentwide acquisition intern program, an acquisition fellowship, and a government-industry exchange program to help acquisition professionals gain invaluable exposure and experience.

But more must be done. Overall, it is our belief that if we want to improve the quality of federal acquisition, we shouldn't start by layering an already beleaguered workforce with more regulations and process demands. Instead, we need a kind of workforce "Marshall Plan" that aggressively addresses the hiring, retention, training, reward and development of the workforce we are asking to manage 40% of the discretionary budget of the federal government.

It is time to recognize, as virtually every high performing company recognizes, that sometimes it is necessary to create special authorities and flexibilities to manage that portion of the workforce that is most central to the organization's success. It is standard commercial practice for companies to develop, reward and otherwise foster their core workforces differently, and even more aggressively, than they do other elements of the company. For those workforces, per capita expenditures on training, rotational assignments, performance rewards and more are very significant. Unfortunately, such is not the case in government. The time has come to rethink that paradigm.

We also believe this initiative should also include a special focus on emergency and contingency contracting, since so many of the concerns that have emerged in recent years have emanated from experiences in Iraq and with Hurricane Katrina.

Our work on a detailed "lessons learned" review of Iraq contracting, conducted in partnership with the Army Materiel Command, as well as the numerous reports of the Special Inspector General for Iraq Reconstruction and GAO, have all clearly identified the shortfall in numbers and skills of government contracting personnel as being central to many of the issues that have emerged. The issue is not whether the government has good people; the issue is whether the government adequately prepares and resources them.

For example, we have heard over and again from government and company personnel who have served in Iraq about the constant turnover of contracting personnel—some of which was driven by existing federal personnel policies that conflict with the mission needs—and about the number of dedicated acquisition personnel who deployed voluntarily but simply did not have the knowledge or experience for the job they were tasked to perform. Likewise, when Hurricane Katrina hit, FEMA had only 40 contracting officers in the entire agency and was wholly understaffed to respond to that major disaster.

Of course, FEMA's needs for responding to a disaster are significantly greater than its needs for quieter times. Maintaining a full time "bench" to respond to unknown and unpredictable needs is almost certainly impractical. Further, emergency or contingency acquisition environments present a range of unique challenges and demands.

A Contingency Contracting Corps
As an alternative to further restrictions or more detailed rules which could collide with mission realities, and in keeping with other models for emergency relief, we propose that Congress direct the creation of a government-wide Contingency Contracting Corps. This corps would be drawn from across the government contracting workforce, be given special training in emergency and contingency contracting, and be deployable when the need arises. When not deployed, the individuals populating this vital cadre would continue to perform their regular functions at their home agencies. Creation of such a capability would go a long way to substantially improving the effectiveness and efficiency of government contracting in these especially challenging environments; but it will only happen if Congress gets directly involved.

Limits on Task Orders
There are provisions of S.680, as currently written, with which we have concerns. Section 116 would impose definitive time limits for performance of task orders awarded in emergency or contingency situations and Section 117 would arbitrarily limit the size of task orders that can be awarded under multiple award or single award IDIQ contracts. There are already clear rules regarding the use of limited competition in emergency or similar situations. Both titles 10 and 41 of the United States Code contain provisions, which are further elaborated on in the Federal Acquisition Regulations. There are also clear requirements for submitting written Justifications and Approvals (J and A's), when exceptions to full and open competition rules are used.

We recognize and appreciate your concern that there have been cases in which either the proper

procedures were not followed or, more commonly, the requisite J and A's were not prepared. In fact, a substantial portion of the cases identified by the Inspectors General and the GAO in this area have involved cases in which the J and A was not written or not documented, thereby depriving the oversight community of the information needed to assess whether the exception to full and open competition was appropriate. We thus cannot say with certainty whether a problem truly exists.

We also recognize and appreciate your concern about some isolated contracts, particularly in Iraq and Katrina, which appear to be for larger amounts or of longer duration than what would normally be expected or would be considered appropriate. At the same time, there will always be cases in which mission needs dictate unusual actions—to put these actions in context, Iraq is the largest single sustained military operation since Vietnam, and Katrina is one of the largest natural disasters in our nation's history.

In this regard, we would ask that you reconsider the language in these provisions. To the extent there is reason to believe the workforce is inadequately trained in or aware of their responsibilities when utilizing these exceptions, we believe that problem can best be solved by focusing our efforts there, rather than by legislating limits that could actually impair the effective response to as yet unknown future mission needs. As well, we believe many of the concerns that these sections seek to address will be avoided in the future through the creation of the Contingency Contracting Corps I previously mentioned.

We have similar concerns with Section 126, which would limit the so-called "tiering" of subcontractors. There too, while we recognize and appreciate the impetus behind the provision, we are concerned that it limits the government's appropriate flexibilities to respond to mission needs.

Opposition to Bid Protests on Task Orders

We also respectfully oppose that portion of Section 114 that would allow protests to be filed on task order awards under multiple award contracts. Current law prohibits such protests, except in limited circumstances, although protests are fully allowed when the initial, master contract is awarded.

Protests are designed to ensure the government gets the right answer by providing unsuccessful offerors a quasi-judicial process, overseen by the GAO, through which they can seek redress for what they believe are process fouls. We recognize that task order buying now accounts for nearly half of all acquisition in the services marketplace and that fact alone has driven some to suggest that task orders should be subject to the same post award processes as more traditional, stand alone contracts.

But this is one area in which the views of industry are perhaps most relevant. After all, if there is growing concern about the government's adherence to the rules of fair play contained in the Federal Acquisition Regulation and administered during the acquisition process, it is the companies that would be the first to call for more opportunities for redress. After all, it is their ability to succeed in the marketplace that is at stake. Yet, across industry, there is a resounding consensus that adding protests to task order awards is unnecessary and would be costly and time

consuming. In fact, we support the provisions in Section 113 requiring post-award debriefings to unsuccessful bidders on task orders, much as is the case today on most other federal procurements. While we have some specific recommendations as to the details of that provision, there is a strong consensus in the private sector that focusing on the debriefing process, as well as improving front end communication, will largely obviate the need for additional legal challenges.

Furthermore, because task orders are awarded as part of an already awarded overarching contract, problematic actions involving those task orders are more appropriately dealt with through the existing contract administration and contract disputes procedures.

Therefore, our recommendation is to strike the protest provision in Section 114 in its entirety. Better communication between the government and its suppliers and higher quality debriefings will do far more to assist the process than the addition of further unnecessary, time consuming and very expensive litigation.

Fixed Price vs. Cost Type Contracting
Section 119 encourages the greater use of fixed price contracting rather than cost reimbursement contracts. We believe this provision is unnecessary. The Federal Acquisition Regulation already contains significant guidance and rules surrounding the selection of the contract type that is most appropriate for a given circumstance.

Moreover, from an industry perspective, fixed price contracts are actually the preferred method of doing business IF there is adequate awareness of the risks involved and an opportunity to address them, the requirements are stable, the customer's needs and expectations are clear and mutually understood, as spelled out in its requirements and the contract. Needless to say, certain environments naturally inhibit either party's ability to meet those basic criteria. This would include a significant amount of contracting in an active war zone, emergency relief, the development of complex technologies and weapons systems and similar environments. Where the risks and unknowns are unavoidably high, fixed price contracts are impractical and often more expensive; bidding companies either have to price into their bids any and all possible contingencies that could affect their ability to perform under the contract at that fixed price, or not bid at all.

Here, too, we fully recognize and appreciate your concern that cost type contracts appear to contain inadequate incentives and mechanisms to constrain cost growth. At the same time, companies operating under cost reimbursement contracts are not without significant risk. Although they may be eligible for reimbursement of their basic and approved costs, any profit they might earn is generally limited and tied directly to their performance. And while reimbursement for out of pocket costs is important, it is obviously profitability that drives the value of a commercial enterprise.

As such, we recommend that the provision be modified to focus more on agency reviews of their existing guidance and training to ensure their acquisition personnel are fully aware of and knowledgeable about the use of different contract types, particularly under FAR Part 16. Further, as the GAO and the Special Inspector General for Iraq Reconstruction, among others, have recommended, Congress and the agencies should also focus on tools to improve program

funding and requirements stability —which, in the development of weapons systems, technology solutions and wartime and emergency contracting, have all too often proven to be the most significant causes for program cost and schedule issues.

Interagency Contracting and the Services Industrial Base
Section 123 of the bill requires further analysis and study of the role and quality of interagency contracting. We share your belief that interagency contracting remains an area worthy of further study and support the intent of this provision. However, we would suggest a slightly different tack to broaden the provision's focus.

In the last few years, there has been significant administrative attention to and progress made in addressing the management, financial and fiscal control issues surrounding some interagency vehicles. While work continues, that progress is real.

Nonetheless, more recently many agencies have moved to greater use of "enterprise-wide" contract vehicles which are often as large and as complex as the major interagency contracts, but are generally only available for use by a single agency or a limited customer base. This trend is creating real concern and substantial challenges for both government and industry. Companies, particularly small and mid-tier firms, that wish to compete and grow across the marketplace, now face rapidly growing bid and proposal costs and as a result, significantly higher barriers to market access.

The magnitude of some of these dynamics was made clear in the 2006 Center for Strategic and International Studies' report on the structure and dynamics of the federal professional services industry. That study documented a significant fall off in the market share going to mid-tier firms—those companies that have exceeded the minimal size standards defining "small business" for the purpose of federal procurement, but remain too small to compete for the very large contracts. For our members, 65% of which are small and mid-tier firms, this growing market imbalance is the number one long term issue they face. Interagency contracting, and the shifts taking place in the federal contract landscape, is clearly one of the dynamics affecting that imbalance.

As this issue has become a major focus of concern and discussion within industry, so too should it become a significant focus of the government customer. Maintaining a diverse, competitive marketplace is not only good for the companies seeking to compete in that marketplace; it is of real value and importance to the government as well.

As such, we recommend that the interagency provisions in the bill be modified to require a broader analysis of the relative role and balance of interagency and enterprise contracts, how best to ensure the protection of individual agency interests, and, equally significantly, how to ensure that the ever evolving federal contract landscape not be a threat to the long term competitiveness of the supplier base on which the government relies. Interagency contracting is not a solution whose time has passed; it remains a vital component of the broader federal marketplace. And now is the right time to take a broader, more strategic look at that marketplace and how best to ensure that it will continue to serve the government customer most effectively for years to come.

Finally, let me share some thoughts regarding Section 128, which speaks to the debarment of contractors that are considered threats to national security. We certainly agree that no contractor that is such a threat should be allowed to receive government contracts. But the provision as written is too broad and non-specific and we would appreciate the opportunity to work with you to ensure it achieves its stated goals in a manner consistent with the important standards of due process under acquisition law.

Before I conclude I would like to point out that there are other bills, before this committee and arising in other committees, about which we have very grave concerns and which, we believe, will have a very deleterious effect on the environment, do little or nothing to improve actual acquisition or mission performance, and potentially have a significant negative effect on the long-term competitiveness of the marketplace. In many cases, these bills involve solutions seeking a problem or proposals that have not been subject to the kind of thoughtful review and analysis about their real world implications that you have given, and continue to give, to S.680. We therefore hope that this committee, as the principal committee of jurisdiction over procurement matters, will not hesitate to engage on these other bills and demand of them the same kind of rigor you are applying to your own legislation.

Let me once again thank you for your leadership on these crucial issues and for your nonpartisan approach and openness to dialogue about the perceived and real problems as well as possible solutions and their effects. And as I noted earlier, S.680 is an important, positive foundation for those ongoing discussions. We appreciate the opportunity to share some of our views with you today and look forward to continuing to do so. The issues are complex, often very nuanced, and central to the long term effectiveness of our government. As such, this is a dialogue that must continue.

This concludes my statement and I would be happy to answer any questions you might have.

July 17, 2007

The Honorable Joseph I. Lieberman
Chairman
U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Susan M. Collins
Ranking Member
U.S. Senate Committee on Homeland Security and Governmental Affairs

340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Lieberman and Senator Collins:

I write today on behalf of the Contract Services Association (CSA), the nation's oldest association representing government service contractors. I respectfully request that this letter be included in the record for the hearing entitled, "Federal Acquisition: Ways to Strengthen Competition and Accountability."

By way of background, CSA is the nation's oldest and largest association of service contractors representing over 200 companies that provide a wide array of services to federal, state, and local governments. CSA members perform over $40 billion in federal government contracts annually and employ nearly 500,000 workers, with nearly two-thirds of CSA companies using private sector union labor. CSA members represent the diversity of the government services industry and include small businesses, 8(a)-certified companies, small disadvantaged businesses, women-owned, HubZone, Native American owned firms and global multi-billion dollar corporations. CSA promotes 'Excellence in Contracting' by offering significant professional development and training opportunities for government contractors and government employees, including the only program manager certification program for service contractors.

First, we would like to thank you for holding this hearing and for your efforts to improve federal contracting, and we share the committee's goal of creating a world-class acquisition system. As such, S.680, the Accountability in Contracting Act, deserves our utmost attention. We would like to take this opportunity to share with you some of our thoughts on the bill.

The federal acquisition workforce is at a critical point in its history. According to some reports, the federal acquisition workforce has been dramatically reduced, just as the amount of annual contracting dollars has doubled. We share the committee's desire to see an improvement in the federal acquisition workforce, as addressed by section 101 of the bill. We fully support these efforts, including the creation of a workforce that is right-sized and appropriately skilled.

However, there are some sections of the bill which concerns CSA. Section 116 would limit the length of urgent noncompetitive contracts. While we continue to support a competitive

contracting environment, we believe that this section and its arbitrary timeline of contract length could possibly exacerbate the problems facing the already over-worked federal contracting workforce. Additionally, it could increase contracting costs or disrupt services during a critical emergency. Moreover, Federal Acquisition Regulation (FAR) subpart 6.3 already provides for significant limits to the use of non-competitive contracts and requires justification for the use of contracts with other than full and open competition. Creating an arbitrary contract length for these situations would only worsen an already difficult contracting environment.

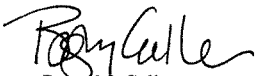
We are also concerned about the inflexibility of section 117, which would prohibit the award of certain task or delivery orders for services based on the amount of the contract award. We believe that this provision would create unnecessary administrative burdens to government and industry based on an arbitrary amount of an award. The section also calls for the public release of justification and approval documents. The release of these items could inappropriately reveal a contractor's proprietary information, which could drastically restrict a contractor's ability to compete.

Finally, it is our belief that section 126 would again limit the flexibility of the acquisition system. Under this section, a contractor would be prohibited from subcontracting more than 65 percent of the cost of the contract. We believe that a contractor should be able to subcontract in ways that benefit the performance and efficiency of the contracted action, which may or may not include subcontracting significant portions of the contract. This is another arbitrary limitation that could be detrimental to the contracting community, especially small businesses who often depend on large amounts of subcontracted work. Furthermore, it is our position that the contracting officer already has significant oversight and approval responsibilities over the ability of a company to subcontract, per FAR Part 44.

However, we realize that more can and should be done to improve the federal acquisition system. As a leading voice in the government services industry, we are actively working to overcome the current challenges present in the system. We stand ready to work with you on this important endeavor.

Thank you for holding this hearing and highlighting areas where industry and government can work together to improve the federal acquisition system. Should you have any questions, please do not hesitate to contact me or Kent Sholars in our public policy department at 703-243-2020.

Sincerely,



Barry M. Cullen
President

Post-Hearing Questions for the Record
Submitted to the Honorable David M. Walker
From Senator Susan M. Collins

"Federal Acquisition: Ways to Strengthen Competition and Accountability"
July 17, 2007

Question: You have indicated that interagency contracts are a valuable tool for efficient and effective government contracting. Yet, when they are not used effectively, they may bring harm to both the government and certain segments of the business community—for example small and medium sized businesses. What specific steps do you recommend that this committee take to improve the effectiveness of interagency contracts?

Answer: The risks associated with interagency contracting are not new and require sustained attention, which led GAO to add management of interagency contracting to its high-risk list in 2005. In January 2007, we reported that the use of these types of contracts continues to increase government-wide, and our work and the work of the Inspectors General has found cases in which users and administrators have not properly used these contracts. In addition, adequate oversight is lacking.

To address the weaknesses found in the use of this contracting method, agencies need to develop and implement clear, consistent, and enforceable policies and processes, including internal controls and appropriate performance measures, to balance the need for customer service with the requirements of contract regulations. Achieving these goals includes defining roles and responsibilities of the customer agency and the assisting agency for key aspects of the interagency contracting process, such as describing requirements, negotiating terms, and conducting oversight.

Some agencies have taken steps to address these issues. For example, the DOD Comptroller issued an October 2006 memo requiring evidence of market research and acquisition planning, and a statement of work that is specific, definite, and certain for non-Economy Act orders above the simplified acquisition threshold. The memo also included a checklist and responsibilities to be used as guidance when placing orders through interagency contracts. In December 2006, DOD and GSA established a Memorandum of Agreement stating expectations for the parties involved in an interagency contracting transaction. For example, it includes ensuring that statements of work are complete, interagency agreements describe the work to be performed, and surveillance and oversight requirements are defined and implemented.

The Committee can support improvements in the management of interagency contracting through continuing oversight and by reinforcing the need for policies, processes, and controls, as well as defining who is responsible for what in the interagency contracting process.

9/7/2007

Post-Hearing Questions for the Record
Submitted to Marcia G. Madsen
From Senator Susan M. Collins

"Federal Acquisition: Ways to Strengthen Competition and Accountability"
July 17, 2007

1. QUESTION:

You have indicated that interagency contracts are a valuable tool for efficient and effective government contracting. Yet, when they are not used effectively, they may bring harm to both the government and certain segments of the business community - for example, small and medium size businesses. What specific steps do you recommend that this committee take to improve the effectiveness of interagency contracts?

ANSWER:

Interagency contracts include vehicles such as multi-agency contracts, Government-wide Acquisition Contracts (GWAC), the Federal Supply Schedule (FSS) Program (also known as the GSA Schedules Program), Interagency Assisting Entities and enterprise-wide contracts. The Acquisition Advisory Panel (the Panel) was tasked by Section 1423 to review and make recommendations regarding interagency contracts. The Panel found that Government agencies increasingly rely on interagency contracting to meet their procurement needs. For example, agencies spent 40% of their procurement funds, $142 billion, in Fiscal Year 2004 through interagency contracts. The popularity of Interagency contracts stems from their perceived flexible, streamlined competitive ordering process. Agencies believe that these vehicles save time and money by reducing administrative procurement tasks and providing a more efficient acquisition process.

The Panel's biggest challenge in reviewing these contracts was the lack of information about the number, nature, and characteristics of existing interagency contracts. The current governmentwide databases have little, or no, sound data on the creation and use of interagency contracts. Beyond the lack of sound data, the Panel was concerned both about (i) the lack of coordination within and among the agencies in the creation, management, and maintenance of these vehicles; and (ii) the circumstances surrounding their use, e.g., size of orders, lack of transparency, lack of competition, and disincentives for procurement planning.

First, the lack of coordination among agencies increases costs and confusion for both government and industry. It results in duplicative contracts and contracting programs. It also increases confusion within the contracting community as to the roles

and responsibilities governing the use of various contract vehicles. Moreover, the lack of coordination reduces the government's ability to leverage its requirements and effectively monitor contract performance. The Panel was concerned that there appeared to be a disconnect between the owners of the contract vehicle, the requiring agency, and the user of the vehicle. These concerns continued to be borne out in a series of IG Reports issued in the Fall and Winter of 2006 - all of which are cited in the Panel's Report.

The Panel's recommendations recognize that interagency contracts are an important procurement tool, but also recognize that the government has significant internal controls deficiencies in establishment and use of these contracts. The Panel's recommendations focused on improving transparency and management of interagency contracts. Among other things, the Panel recommended creating an interagency contracting database with information gathered in a manner modeled after the interagency contracting survey recently used by the Office of Federal Procurement Policy (OFPP) regarding existing interagency contracting vehicles. The database should identify: 1) the number, scope, and primary users of interagency contracts, 2) the level of activity conduced by intergovernmental funds on behalf of other agencies, and 3) the number of, and rationale for, enterprise-wide contracts that otherwise could be satisfied through existing interagency programs. As this recommendation was developed, the Panel was in touch with OFPP. OFPP established an interagency working group early on to look at these issues. I am pleased that S.680 includes a requirement that OFPP conduct a survey of and report on interagency contracts. I also am pleased that S.680 includes an annual reporting requirement for interagency contracts. These mandates will reinforce OFPP's current efforts in identifying and reporting on interagency contracts. S.680 also appropriately included a mandate for improve interagency transactional ordering data in FPDS-NG.

Ultimately, the Office of Management and Budget (OMB) should create an institutional database focused on interagency contracts. Timely updates to an OMB-managed database would provide current information to an agency, allowing it to better administer the vehicles and agencies under its jurisdiction as well as allow the agency to develop acquisition strategies that better target its acquisition needs. The information contained in the database should be structured to provide direct comparison of each vehicle's or entity's benefits and fees. The database also could be used to monitor trends in the use of interagency contracts. Finally, this information could be used by the agencies in justification analysis for the creation and continuation of vehicles.

The Panel recommended that OMB review, or oversee a review of, the current procedures for the creation and continuation of GWACs, FSS, and Franchise Funds. The review should examine how these types of agreements meet specific agency needs as well as how the contracts perform, e.g., do they meet competition standards, do they use good procurement planning and management, and do they meet fiscal law

requirements? The review should help avoid the creation or continuation of duplicative, unnecessary, or ineffective GWACs and Franchise Fund contracts. I am pleased to see that the S.680 includes an requirement that OFPP publish regulations requiring acquisition plans for interagency contracts to include a business case analysis.

For other types of interagency contracts such as multi-agency contracts, enterprise-wide contracts and assisting entities, the Panel recommended that each agency should formally authorize their creation or expansion under OMB-issued guidelines and procedures. An important first step in the reviewing of these other multiple award contracts is the requirement in S.680 that each agency head, in consultation with OFPP, conduct a review of all indefinite-quantity/indefinite-delivery contracts awarded by the agency. One of the Panel's biggest concerns was the explosion in agency wide or enterprise wide contract vehicles that duplicate existing governmentwide contracts. The focus should be on limiting the number of duplicative agency wide contracts when pre-existing interagency contracts can meet the agency's needs. For example, the FSS program is the backbone of interagency contracting providing billions in goods and services. The FSS program is generally more transparent and more competitive than standard multi-agency contract programs. The FSS program also includes thousands of small business concerns; over one third of the annual dollar volume under this program goes to small business concerns. I would note that rather than review the FSS program for duplication with existing agency contracts, the reverse probably should be done. Agencies, as part of their business case analysis, should address whether an existing interagency contract such as the FSS program can meet their needs.

Second, as discussed at length in my testimony, the effectiveness of interagency contracts also would improve with increased competition. The Panel could not obtain accurate data about the level of competition under interagency contracts, but was concerned (as stated in the Report) with the competitiveness of the orders. The Panel also was concerned about the size of orders and the use of best value type practices to award complex work without the protection of FAR Part 15 procedures. In addition, the perceived "streamlined" nature of the ordering process actually may have the perverse effect of allowing agencies to avoid requirements development and effective advance planning. The Panel's Commercial Practices recommendations for enhancing competition under multiple award contracts address this challenge. S.680 includes the key Panel recommendations regarding requirements development and competition under these contract vehicles. S.680 is a vital first step to providing a critical foundation for improved competition, transparency, and management discipline of interagency contracting.

Post-Hearing Questions for the Record
Submitted to Stan Z. Soloway
From Senator Susan M. Collins

"Federal Acquisition: Ways to Strengthen Competition and Accountability"
July 17, 2007

Question 1: What specific steps do you recommend that this committee take to improve the effectiveness of interagency contracts?

Answer: The proposals contained in your legislation, S.680, "The Accountability in Contracting Act" represent important first steps. In addition, I recommend that two additional elements be added to the review required under your legislation:

1) An assessment of the cost and personnel impacts of the current trend AWAY from interagency contracting and toward agency-specific or "enterprise" contracting. Among the concerns of the private sector with regard to this trend is the belief that agencies that already face significant human capital challenges in their acquisition corps may be exacerbating the workload issues by inhibiting, limiting, or even prohibiting the appropriate use of other agencies' multi-agency contract vehicles. While there has been a good deal of attention paid to the amount of fees paid by agencies (DoD in particular) to other agencies for use of their contracts, there does not appear to have been a concomitant assessment of the costs and personnel requirements associated with increasing the agency's organic acquisition workload to undertake new work that has been or that could be properly executed under another agency's contract. For example, the payment of a 3% fee from a DoD activity to the agency responsible for a given government-wide contract may seem on the surface to represent a significant transfer of agency funds. However, the real issue is the value derived for that payment and whether that value—or service—could be provided organically by skilled professionals, in a timely manner, for less money. Therefore, the review and assessment already required under S.680 should also include this type of cost and personnel analysis.
2) The assessment should also include a review and analysis of the transactional/market access costs of the trend to more enterprise vs. interagency contracts. As elaborated in Question 2 below, this trend has a real and increasing impact on the companies involved and is increasingly affecting the short and long term competitiveness and structure of the market serving the government. "Industrial base" analyses are currently required at DoD for any acquisition strategy for a major weapons system; we believe the same should be true in the government services sector, including reviews such as that required under S.680.

Question 2: You have indicated that some businesses, particularly small and midsize companies, have complained that the redundancy of enterprise and interagency contracts is actually serving as a barrier to their ability to compete in the government marketplace. Could you explain this concern?

Answer: At the individual company level, the rise of enterprise contracts within specific agencies can be as much of a market opportunity as it is a market barrier. It is at a macro level that the concern arises.

By way of background, in 2005, the Center For Strategic and International Studies released a report titled "Structure and Dynamics of the Federal Professional Services Industry," the first ever industrial base analysis of this market. Among other things, that report concluded that the mid-tier of the market had lost 20% of market share over the years 1995-2004; in information technology services, the market share loss was nearly 40%. While there are a number of reasons for this significant shift in market dynamics, including some small business policies which appear to be negatively affecting high performing small businesses and overall market diversity, one key factor has been the growth in task order level buying, particularly through multiple award (often GWAC) contracts. Based on the then current data, CSIS concluded that nearly 50% of all new work (services) procured by the federal government was being procured at the task order level—an increase of more than 250% over ten years.

That trend has been one of the principal drivers of industry consolidation, primarily because of the reduction in the number of large, "one off," contracts in favor of more incremental buying. While the rise in task order buying at the GWAC level increased transaction costs associated with competing to win a spot on the GWAC and then competing again to win the task order, for companies of all sizes the investment was justified because a "win" on a GWAC opened essentially an entire market to them.

Since 2004, as some agencies have trended away from government-wide contracts and towards agency-specific, enterprise-wide contracts, those transaction costs have risen precipitously. It is no longer possible for a company to grow organically with only a spot on a handful of government-wide contracts; to serve many key customers, a company must compete for and win positions on each of that customer's unique enterprise-wide contracts. Hence, companies may now need to be on five, ten, or even more contracts just to have access to certain key customers. Needless to say, particularly for smaller and mid-tier companies, the bid and proposal and related cost pressures associated with that trend are enormous. We see the impact on these firms' ability to grow across a range of customer markets within the government space.

As a result, and as noted in the answer to Question 1, PSC recommends that the industrial base impacts of this trend be a key part of every OMB review and analysis required by S.680. The government is best served by a diverse, competitive marketplace and it is in the government's best interests to carefully assess, understand, and, where appropriate, address this issue.

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