

INTERAGENCY CONTRACTS—PART I AND II

HEARINGS

BEFORE THE

AD HOC SUBCOMMITTEE ON CONTRACTING
OVERSIGHT

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

FEBRUARY 25, 2010

OVERVIEW AND RECOMMENDATIONS FOR REFORM—PART I

JUNE 30, 2010

MANAGEMENT AND OVERSIGHT—PART II

Available via the World Wide Web: <http://www.fdsys.gov>

Printed for the use of the Committee on Homeland Security
and Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

56-844 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

JOSEPH I. LIEBERMAN, Connecticut, *Chairman*

CARL LEVIN, Michigan	SUSAN M. COLLINS, Maine
DANIEL K. AKAKA, Hawaii	TOM COBURN, Oklahoma
THOMAS R. CARPER, Delaware	SCOTT P. BROWN, Massachusetts
MARK L. PRYOR, Arkansas	JOHN McCAIN, Arizona
MARY L. LANDRIEU, Louisiana	GEORGE V. VOINOVICH, Ohio
CLAIRE McCASKILL, Missouri	JOHN ENSIGN, Nevada
JON TESTER, Montana	LINDSEY GRAHAM, South Carolina
ROLAND W. BURRIS, Illinois	
PAUL G. KIRK, JR., Massachusetts	

MICHAEL L. ALEXANDER, *Staff Director*
BRANDON L. MILHORN, *Minority Staff Director and Chief Counsel*
TRINA DRIESSNACK TYRER, *Chief Clerk*
PATRICIA R. HOGAN, *Publications Clerk and GPO Detailee*

AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

CLAIRE McCASKILL, Missouri

CARL LEVIN, Michigan	SCOTT P. BROWN, Massachusetts*
THOMAS R. CARPER, Delaware	(*replaced Senator Bennett for June hearing)
MARK L. PRYOR, Arkansas	ROBERT F. BENNETT, Utah*
JON TESTER, Montana	SUSAN M. COLLINS, Maine
PAUL G. KIRK, JR., Massachusetts*	TOM COBURN, Oklahoma
EDWARD E. KAUFMAN, Delaware	JOHN McCAIN, Arizona
(*replaced Senator Kirk for June hearing)	LINDSEY GRAHAM, South Carolina

MARGARET DAUM, *Staff Director*
ALAN KAHN, *Counsel*
MOLLY WILKINSON, *Minority Staff Director for Senator Bennett*
BILL WRIGHT, *Minority Staff Director for Senator Brown*
KELSEY STROUD, *Chief Clerk*

CONTENTS

	Page
Opening statements:	
Senator McCaskill	1, 33
Senator Bennett	2
Senator Brown	34
Prepared statement:	
Senator Bennett	69
Senator Brown	94

WITNESSES

THURSDAY, FEBRUARY 25, 2010

Ralph C. Nash, Jr., Professor Emeritus, Frederick J. Lees, E.K. Gubin Professor Emeritus of Government Contracts Law, The George Washington University Law School	6
Marshall J. Doke, Jr., Partner, Gardere Wynne Sewell, LLP	8
Steven Schooner, Associate Professor of Law and Co-Director of the Government Procurement Law Program at The George Washington University Law School	9
Joshua Schwartz, E.K. Gubin Professor of Government Contracts Law; Co-Director of the Government Procurement Law Program, Faculty Chair of the Presidential Merit Scholars Program, The George Washington University Law School	11

WEDNESDAY, JUNE 30, 2010

John K. Needham, Director, Acquisition and Sourcing Management, U.S. Government Accountability Office	37
Hon. Daniel I. Gordon, Administrator, Office of Federal Procurement Policy, U.S. Office of Management and Budget	40
Steven J. Kempf, Acting Commissioner, Federal Acquisition Service, U.S. General Services Administration	42
Richard K. Gunderson, Deputy Chief Procurement Officer, U.S. Department of Homeland Security	44
Diane J. Frasier, Director, Office of Acquisition and Logistics Management, National Institutes of Health, U.S. Department of Health and Human Services	45

ALPHABETICAL LIST OF WITNESSES

Doke, Marshall, J., Jr.:	
Testimony	8
Prepared statement	74
Frasier, Diane:	
Testimony	45
Prepared statement	136
Gordon, Hon. Daniel I.:	
Testimony	40
Prepared statement	116
Gunderson, Richard K.:	
Testimony	44
Prepared statement	133
Kempf, Steven J.:	
Testimony	42
Prepared statement	127

IV

	Page
Nash, Ralph C., Jr.:	
Testimony	6
Prepared statement	71
Needham, John K.:	
Testimony	37
Prepared statement	96
Schooner, Steven:	
Testimony	9
Prepared statement	80
Schwartz, Joshua:	
Testimony	11
Prepared statement	85

APPENDIX

Questions and responses submitted for the Record from:	
Mr. Needham	141
Mr. Gunderson	143
Mr. Kempf	148
Mr. Gordon	152
Ms. Frasier	154

INTERAGENCY CONTRACTS: OVERVIEW AND RECOMMENDATIONS FOR REFORM—PART I

THURSDAY, FEBRUARY 25, 2010

U.S. SENATE,
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:32 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill and Bennett.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. I want to open this hearing and begin by thanking the incredibly important witnesses we have today. I do not know how many people there are in this town that have great respect for all of you and the work you do, but I am one of them because this is an area that I care deeply about and have tried to really wade in, in this area, since I arrived in the Senate. So I know all of you by reputation, although I do not know you personally, and it is great to be here with you today, and I look forward to being informed by your testimony.

We are here today to examine the rapid growth in interagency contracts. One of the principal functions of this Subcommittee is to ensure that government contracting is as efficient and effective as possible, and hopefully this hearing will help us further that goal.

Interagency contracting refers to the practice where agencies buy goods and services from, or on behalf of, other Federal agencies. They do this through a variety of types of contracts and other arrangements with a bewildering number of acronyms. I am glad that I am on the Armed Services Committee because that is where you go to “Acronym University,” since the Department of Defense cannot speak without at least three acronyms in every sentence. So I have good training to deal with the area of interagency contracting.

Some types of interagency contracting, like General Services Administration’s Federal Schedules program, have existed for decades. Many others were created or developed within the last 15 years. When I first came to Washington, out of the auditor’s office in Missouri, I had no idea that most of these types of contracts even existed. Frankly, most Americans have no idea these contracts exist. And let me go a step further; most Members of Congress do not know that these contracts exist.

(1)

I imagine that the overwhelming majority of people outside of this room have never heard of a MAC or GWAC or a franchise fund, and I imagine that many of them would be as astonished as I was to learn that many agencies are now in the business of making a profit from charging other agencies to use their contracts.

Over the years, interagency contracting has been promoted as a way to streamline contracting, increase efficiency and leverage the massive spending power of the Federal Government. This does have the potential to result in lower prices for the government and savings on behalf of the taxpayer. That is good news for everyone. But from what I can see, interagency contracting does not necessarily seem to have gotten us there.

First, there has been a massive increase in interagency contracting vehicles. I am somewhat troubled that all the discussion and effort at Federal agencies have focused on simply creating more vehicles, not whether the additional vehicles are necessary or whether the existing vehicles are necessary on getting us from Point A to Point B in an efficient and effective manner.

I am also concerned that interagency contracts may not be resulting in lower prices, both because there may not be enough competition and because the negotiated prices are too high.

And I am unaware of any analysis that has been done to demonstrate that these types of contracts are actually improving government contracting. One reason for this is that there is almost no data available that would allow anyone to draw those conclusions. As a result, the government, Congress and the taxpayers are in the dark about these types of contracts, and we remain in the dark despite the recommendations of the Government Accountability Office (GAO), agency inspectors general and the distinguished SARA Panel, that government agencies collect and publish this kind of information. Why is this taking so long?

At a conservative estimate, interagency contracts now represent hundreds of billions in the government's budget, and that is way too much money to lose sight of.

I intend to ask these questions and more at today's hearing. We are joined, as I said before, by a panel of very distinguished legal scholars and practitioners who have studied interagency contracting for decades. I hope that their testimony will help us get a clearer picture of how and why Federal agencies use interagency contracting and what steps we should be taking to make sure that it works the way it should and works in a way that saves the taxpayer dollars.

Later this year, I intend to call officials from the GSA, the Office of Federal Procurement Policy (OFPP) and other responsible agency officials to a subsequent hearing to address what we learn here today.

I want to thank our witnesses, and I look forward to your testimony and to our discussions.

And now I would like to turn it over to my colleague, the Ranking Member of this Committee, Senator Bob Bennett.

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. Thank you very much, Madam Chairman.

As I have mentioned before, when I graduated from college, I began my business career as a purchasing agent. I did not think when I left that particular assignment that I would be here reliving those kinds of experiences as a U.S. Senator, but interesting things happen to us in life.

Let me start out with the macro of what we are talking about. In fiscal 2009, the Federal Government spent over \$536 billion on goods and services. Now that number is thrown around Washington almost to the point of abstraction. That is a little over half a trillion.

Let's put it into perspective. That means that the Federal Government purchasing comprises 3.7 percent of GDP, and if we were an economy all by ourselves, just the government, we would rank 18th in the world, bigger than all the other countries below that number. And to compare our spending to the private sector, to take the largest company in the world, \$536 billion is nearly \$150 billion greater than the total revenue of Wal-Mart. We are the largest consumer in the world.

All right, now let's go from the macro to the micro. We are all familiar with the basic buying and selling of goods, and we know that if you are purchasing at a large scale you usually expect a break in the price from the seller. As the largest purchaser in the world, the Federal Government expects to get these same kinds of wholesale prices. In fact, it should be receiving some of the best prices for goods and services available to anybody in the marketplace, and that is at the core of the hearing today on interagency contracts.

Is the purchasing power of the Federal Government being used efficiently, and are the systems that have been developed and expanded in recent years the most efficient way for the Federal Government to buy stuff?

And, of course, this goes to the fundamental question that we as politicians have to answer: Are these contracts yielding the best cost savings for the American taxpayers who sent us here?

Well, encouraging business to sell to the Federal Government is an essential part of these cost savings, and it is my belief that the greater competition gained through the participation of new companies in the marketplace, who come in saying we can do better than your present supplier, will have a greater effect on the price that the government pays than its aggregated purchasing power. With a greater number of companies competing for the government dollars, the Federal Government should have access to the best goods and services available, at the best price, and the efficiencies of the market yielding significant cost breaks and savings to the American taxpayer.

Unfortunately, having been a businessman who has looked at the issue of selling to the government, I know from firsthand experience and from that of my constituents that many businesses, and small businesses in particular, find the barriers to entering the Federal marketplace simply too large to overcome. I have said it before—I will say it again I am sure—the Federal Government's complicated procurement system is simply too difficult to navigate. It keeps potential vendors out. And, from the perspective of small business, it is too costly, it is too slow, and it is confusing.

And I will confess as a business consultant, on occasion when someone has come to me for advice as to where they can seek new markets, I have told them stay away from the Federal Government. It will cost you too much money and too much grief. It troubles me that I think that was good advice.

Now it also troubles me that when we seek a serious cost-benefit analysis of the interagency contracting, we do not really know quite where we are. Three years ago, the SARA Panel, to use the acronym that the Chairman has used, published a seminal report on interagency contracts, and today we still find the government struggling to implement that panel's most basic recommendations. For example, the panel recommended a comprehensive database that would list the interagency contracts in place and assist agencies in making prudent businesslike decisions, and 3 years later the database is not only not here, it is not even in development.

Now I have said in previous hearings that the serious analysis of acquisitions cannot take place until we replace the anecdotal evidence of the status quo with serious empirical analysis. I hope this panel—you are billed, I think appropriately, as some of the best minds on this topic—will be able to give us some ideas on how we do that.

Now interagency contracts, I have discovered, have existed in various forms for nearly 80 years. The most famous example, of course, is GSA schedules. Today, there is a panoply of large-scale contracts that do a wide range of purchasing, a wide variety of purchasing, and I am sure some of these other large-scale contracts are necessary, especially ones that are tailored to the unique needs of the agencies that have a specific mission.

But I am suspicious that some of these contracting vehicles have grown, both in number and in size, simply because the agencies want to protect their turf—that using them is easy, facile, and that the sponsoring agency believes it can save money through creating their own expertise even when the fees for other programs, like the schedules, are in fact fairly modest.

So we have seen time and again in acquisitions that agencies tend to focus on their own missions and interests, but in doing so subordinate the interest of what is best for the entire Federal Government. Once again, without a full accounting of what interagency contracts are out there and what they do and how much they cost, we are left with merely speculating as to whether or not this wide array of contracts is the most efficient way for the government to make its purchases.

So I am eager to get the panel's perspectives on these points, Madam Chairman. I thank them for being here. I thank you for calling the hearing, and look forward to sharing the panel's perspectives with the agency witnesses at the next hearing that we will have.

Senator MCCASKILL. Thank you, Senator Bennett.

Let me introduce the witnesses. The first witness is Ralph C. Nash, who taught at George Washington University Law School from 1960 to 1993, when he retired to become Professor Emeritus. In 1960, he co-founded the university's government contracts program. Professor Nash now serves as a consultant for government agencies, private corporations and law firms, and is the author and

co-author of numerous foundational case books and articles on government contracting. In the 1990s, he was a member of the DOD Advisory Panel on streamlining and codifying acquisition laws, also known as the Section 800 Panel. Professor Nash is a renowned expert on government contracting, and I am pleased to welcome him here today.

Marshall Doke, Jr. is a partner specializing in government contracts in the Dallas office of Gardere Wynne Sewell, LLP. Mr. Doke previously served on the Acquisition Advisory Panel created by the Services Acquisition Reform Act (SARA), and also is President of the U.S. Court of Federal Claims Bar Association. Mr. Doke has been described by leading legal publications as the Nation's top government contracts lawyer.

Steven Schooner is an Associate Professor of Law and Co-Director of the Government Procurement Law Program. Before joining the faculty, Professor Schooner was the Associate Administrator for Procurement Law and Legislation, a senior executive service position at the Office of Federal Procurement Policy. He is a member of the Board of Advisors of Certified Professional Contracts Managers, and serves on the Board of Directors of the Procurement Roundtable.

Joshua Schwartz is the E.K. Gubin Professor of Government Contracts Law at The George Washington University Law School. Professor Schwartz has been at the law school since 1985 and has been Co-Director of the LL.M. Program in Government Procurement Law since 1992. Professor Schwartz also served as a member of the Acquisition Advisory Panel. He is the author of many articles and book chapters on the subject of procurement law.

It is the custom of the Subcommittee to swear in all witnesses that appear before us. So, if you do not mind, I would ask you to stand and swear that the testimony you give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. NASH. I do.

Mr. DOKE. I do.

Mr. SCHOONER. I do.

Mr. SCHWARTZ. I do.

Senator MCCASKILL. Thank you all very much.

We will be using a timing system today, although I am so grateful to have you all here. I am not going to do what a court reporter did to me one time in the courtroom when, as I kept talking and the time had gone over, she shouted to me, have you looked at your watch? I will not do that to you.

We would ask you to try to keep your testimony to no more than 5 minutes, and your written testimony obviously will be printed in the record in its entirety.

And, Professor Nash, we will begin with you.

**TESTIMONY OF RALPH C. NASH, JR.,¹ PROFESSOR EMERITUS,
FREDERICK J. LEES, E.K. GUBIN PROFESSOR EMERITUS OF
GOVERNMENT CONTRACTS LAW, THE GEORGE WASH-
INGTON UNIVERSITY LAW SCHOOL**

Mr. NASH. Thank you very much. I agree with what I have been hearing so far, almost completely. I am not sure that—you may know more about this than I do.

Let me just point out, one, what I think is a factual thing that is very important, and that is that you talk about going back to 80 years, the Federal Supply Schedule, but that was a Federal Supply Schedule. And if you are going to buy paper or pens or that kind of stuff, presumably you can induce people to give you a pretty good price if it is for the whole Federal Government, in theory.

And remember we used to have mandatory schedules. We used to have schedules where you had to buy, and fill requirements contracts. They are all gone now.

The big thing that has happened that is really important is that what we are buying on these interagency contracts now is primarily services, and the Federal Government does not know how to buy services. I think you could say almost unequivocally that we do not. There is no guidance on services. If you look at Part 37 of the FAR, it is almost totally useless; that is the part on services. It says virtually nothing that is any use to anybody.

So what we have done is to transpose, I think, supply buying ideas to service buying ideas. For example, we say that the prices on the Federal Supply Schedule have been determined by GAO to be fair and reasonable. Well, what price is on a Federal Supply Schedule for services? It is a fixed labor rate, which has virtually nothing to do with whether what the government ultimately is going to pay.

I mean I can pay a \$50 fixed labor rate to somebody who is not very competent, who will spend 10 hours to get a job done, where I could pay \$100 fixed labor rate to somebody who is really competent and could do the same job in 2 hours. So we have transposed our logic from supplies to services, I think, without really thinking through what this is all about.

Now having said that, which just sort of underpins, I think, thinking about this, it seems to me that what we need to do is identify what the goals are for our interagency contracting.

Senator McCaskill, you mentioned one of them which is trying to accumulate government needs, so we get better prices, and I think that perhaps is one of the goals. I have about as much skepticism as you do, I believe, as to whether we have actually gotten any better prices by accumulating those needs, if we have accumulated needs. I am not even sure we have in some cases.

We have had some line of business initiatives which are a little bit outside interagency, where we have tried to do some of that, and people are making efforts in that regard, but I would guess that most interagency contracts do not really accomplish that purpose very well.

Another possible goal would be to set up some agency that is so good at buying a certain class of things, whatever. IT would be the

¹The prepared statement of Mr. Nash appears in the Appendix on page 71.

GWACs IT. It seems to be probably one of the goals of the GWACs in the Clinger-Cohen Act was to somehow get somebody who is competent to buy IT. I am still searching for that somebody.

What we have in lieu of that, we seem to have a lot of people who set up GWACs and various other forms of interagency contracting including Schedule 70 on the Federal Supply Schedule, but I am not sure anybody has shown competence.

So, again, if that is a goal, then we need to pin that down and say, all right, fine, who is it?

And it probably should not be 10 different agencies. If somebody is really good at buying IT, remember the old Brooks Act, that was the theory of Jack Brooks. How many years ago was that? Forty, 50 years ago. It did not work because GSA delegated the procurement right back to all the agencies. They could have picked up the ball and run with it. It would have been fabulous, but they did not do it.

So that is another goal.

The one goal that I think was underlying some of the things that happened in the 1990s was this idea that if we could get contracting officers to compete with each other, that we would make the contracting officers better. And I can guarantee you if that was anybody's idea, that was wrong. It did not make anybody any better. What it created was a lot of requirements people running around their own contracting office, which they should not have been doing. DOD has seen that and remedied that problem, I think.

I do not know about the other agencies. I am not sure about the agencies you are looking at.

But issue No. 1, what are we trying to accomplish? If we do not figure that out, I do not think we will ever make sense of interagency contracting. So that is where I would start.

Then once I had figured that out, then I try to figure out, all right, who can do that? Who can actually do that? Who can get me better prices? Who can create the expertise? Who can build that kind of expert?

One of the franchise funds, if you go back and look at the Web site—and I am probably beyond my time. One of the franchise funds, when their Web site first came out, they basically said, we can buy everything better than anybody else.

Now the government buys a lot of everything, right—construction, services, supplies, weapon systems. Nobody can buy everything better than anybody else, and that is preposterous to even have put that on the Web site. Somebody should have read that Web site and said, you are out of business, because that cannot be.

I agree with you. We need what the panel recommended. Look from the point of view of companies. We have created a hunting license world, right, and the companies have to have a lot of hunting licenses. It is crazy. It does not make any sense.

Senator MCCASKILL. Thank you very much, Professor Nash. Mr. Doke.

**TESTIMONY OF MARSHALL J. DOKE, JR.,¹ PARTNER, GARDERE
WYNNE SEWELL, LLP**

Mr. DOKE. Good afternoon, Chairman McCaskill and Ranking Member Bennett.

I first want to say that I am a past president of the Court of Federal Claims Bar Association. The current president might give me a bad time if I do not correct that on the record.

My written statement discusses the Acquisition Advisory Panel's work on interagency contracts. This afternoon, however, I want to limit my remarks to a brief summary of my supplemental comments on improving competition, which you asked me to address and which are included in the Advisory Panel's Report that is on the Internet.

What is competition? All real or fair competition—whether it is sports, gambling, or contracts—must have rules, and those rules must be disclosed, and then the rules must be enforced. The rules tell you what is required and what you must do to win, how you will be scored.

My view is that we do not have real competition today in the competitive proposal or best value method of government contracting. The fact that we call it competition does not make it competition. As Abraham Lincoln said, you can call a dog's tail a leg, but it is still a tail.

We have had requirements for competition for government contracts for over 200 years in order to prevent fraud, favoritism, and collusion. I believe we have had more reported fraud in government contracts in the last 10 years than we have had in the previous 40 years combined.

And I believe that some of this increase is attributable to the use of, and the deficiencies in, the best value, or competitive proposals, method of procurement. By the way, competition is a subset of interagency contracts. Many of them are required to use the same rules of competition as any other agency is for any contracting.

In the sealed bidding method, price and price-related factors are the sole basis for award of the contract. Bids are publically open, and there is not much chance for fraud unless it is the bidders who are colluding.

In competitive proposals, price is only one factor, and the procurement regulations place no limitation specifying the percentage or weight that must be given to price. It could be 90 percent or it could be 10 percent. The number of other non-price evaluation factors can be 10, 20, or 30 percent, sometimes even more, and each can be highly subjective. These factors often are related to financial strength, years of experience, and management capability.

The relative weights of evaluation factors are disclosed to the competitors, but there is no requirement to disclose the specific percentages the government evaluators will use. The use of non-price factors in evaluation allows agencies to award a contract and pay more money to an offeror more highly rated on non-price factors than other competitors offering lower prices. That difference between the lowest price offered by a technically acceptable proposal and the contract award price for the higher rated proposal is

¹The prepared statement of Mr. Doke appears in the Appendix on page 74.

called a price premium. That is the premium or higher price paid by the government resulting from consideration of these non-price factors and subfactors.

The Federal Acquisition Regulation provides absolutely no guidance on what, which, or how many evaluation factors can be used, the relative importance that should be given to the various factors, even any limitation on the maximum percentage that can be paid for a price premium in selecting the awardee. Price premiums must be justified in the contract file, but there is no requirement, financial, or other management report to anyone above the contracting officer level regarding the amounts of these price premiums that agencies are paying for these non-price evaluation factors.

Supreme Court Justice Brandeis said that sunshine is the best disinfectant. I believe there is something this Subcommittee can do that will save our government more money, sooner, than anything else you possibly could do, and that is recommend legislation requiring that contracting officers report for all contracts, including interagency contracts, the amount of all price premiums paid to the next higher management level, and go up the agency chain to the department level and be made subject to public inspection. I predict that such a requirement would have a dramatic impact on reducing the amounts of these price premiums.

Now I do not mean to imply that paying price premiums is sometimes not appropriate and needed, but there should be some regulatory guidance or limitations on those payments.

I hope you will also consider the discussion in my written statement about how the deficiencies and competition process are adversely affecting our small business concerns.

Senator Bennett, this is one of the biggest obstacles that small business concerns have to overcome in competition, and that is overcoming the inherent advantage that large, giant businesses have because of putting these responsibility type evaluation factors, and this is discussed in my written material.

And I thank you for asking me to be here today.

Senator McCASKILL. Thank you very much. Professor Schooner.

TESTIMONY OF STEVEN SCHOONER,¹ ASSOCIATE PROFESSOR OF LAW AND CO-DIRECTOR OF THE GOVERNMENT PROCUREMENT LAW PROGRAM AT THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Mr. SCHOONER. I appreciate the opportunity to discuss the government's ongoing need to effectively manage interagency contracts. But as I sit here with Mr. Nash to my right, I have to take just a moment to mention that last Thursday evening nearly 500 people joined in the historic Mellon Auditorium while we recognized Mr. Nash and celebrated 50 years of government contract law at the George Washington University. It was a great event.

Most of what I am going to do in starting will actually echo some of the things Mr. Nash said anyway. Centralized purchasing, particularly of commodities and certain types of nonpersonal services, is a globally accepted practice, particularly when governments can achieve economies of scale. Governments also routinely employ cen-

¹The prepared statement of Mr. Schooner appears in the Appendix on page 80.

tralized purchasing where one agency's unique experience can benefit other agencies. But as we sit here today, there is no experience that suggests that competition between agencies to provide these services, particularly for a fee, is going to help anything, and in fact we know that it introduces externalities—unanticipated incentives and disincentives—into the procurement process.

Fee-based purchasing offices need revenue to survive. The pursuit of fees, rather than any congressionally mandated mission of serving the public, therefore drives these purchasing organizations. As a result, these vehicles routinely produce insufficient competition and poorly justified sole-source awards.

In theory, there was supposed to be competition to get into the umbrella contract. Unfortunately, that never materialized. In effect, firms are granted a hunting license, as Mr. Nash pointed out, and similarly no competition or real competition is also absent at the task order stage. Because all of the contract holders can market their services directly to individual agencies, those agencies frequently will obtain those services on a sole-source or noncompetitive basis because it gives them greater speed, more convenience, personal preference or, simply, human nature basically says why deal with the bureaucracy if I can bypass it.

This has created a race to the bottom. The fee-based purchasing instrumentalities lack a sufficient stake in the outcome of the contracts they award. A program manager at the purchasing agency will willingly pay a franchise fee to a servicing agency to avoid bureaucratic constraints, like competition, that might slow down the process.

In turn, the servicing agency has no vested interest in the purpose of the procurement, will gladly streamline the process, and are often more than willing to permit personal services contracts for employee augmentation.

Once the contract is awarded, the servicing agency has no interest in administering, nor does it have sufficient resources to manage those contracts. The post-award contract management vacuum that we have seen created may be the most pernicious effect of the proliferation of these vehicles.

Finally on this, the vehicles simply lack or fail to meet the high standards for transparency that we aspire to in our procurement system.

Now we have Mr. Doke and Mr. Schwartz here. Since 2005, GAO added the interagency contracts to the high-risk list—step in the right direction. The AAP, the 1423 panel, their recommendations moved the ball in the right direction as well, but there is plenty of room left for improvement.

In my written statement, I summarized a couple of anecdotes. In the interest of time, I will skip them, but I do want to just mention the anecdote from the Abu Ghraib prison, where the military ended up relying on one of these vehicles that was managed by the Department of Interior's National Business Center. They used contractor personnel to assist in interrogations in Iraq and Guantanamo Bay.

The inspector general basically just hit the nail on the head, indicating that the pursuit of fees distorted the moral compass that we would otherwise hope would animate our procurement officials,

and here is what he said: “The inherent conflict in a fee-for-service operation, where government procurement personnel, in the eagerness to enhance organization revenues, have found shortcuts to Federal procurement procedures and procured services for clients whose own agencies might not do so.”

I mean it seems to me this is a fundamental problem.

Before I close, however, I do want to indicate that, as has been suggested and I think you will hear more of this from Mr. Schwartz, much of the problem that underlies why we have relied on these vehicles so much is that we have huge problems in the acquisition workforce. And on that regard, I want to applaud both of you for S. 2901, the Acquisition Workforce Improvement Act of 2009. Obviously, that will not fix any of these problems today, but if we can have legislation like that, forward-looking legislation where we can invest in the acquisition workforce and do better, maybe we will not be having the same discussion a generation from now.

Thanks for the opportunity to be here.

Senator McCASKILL. Thank you, Professor. Mr. Schwartz.

TESTIMONY OF JOSHUA SCHWARTZ,¹ E.K. GUBIN PROFESSOR OF GOVERNMENT CONTRACTS LAW, CO-DIRECTOR OF THE GOVERNMENT PROCUREMENT LAW PROGRAM, FACULTY CHAIR OF THE PRESIDENTIAL MERIT SCHOLARS PROGRAM, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Mr. SCHWARTZ. Thank you, Chairman McCaskill and Senator Bennett, for this opportunity to share my thoughts about the challenges and opportunities associated with interagency contracting by the U.S. Government.

I have had the opportunity to think about the potential for interagency contracting and its problems, both in my research and writing, as Co-Director of the Government Procurement Law Program at George Washington University and for 2 years, along with my friend Marshall Doke, as a member of the Government’s Acquisition Advisory Panel. There are several key points I would like to make, and like my friend, Steve Schooner, I agree with the things you have said, so I am focusing my attention elsewhere.

First, interagency contracting is simply a tool. It is neither inherently abusive as critics have sometimes suggested, nor is it a panacea for all the ills of government procurement as its fans have sometimes suggested.

I would rather think of it as like the proverbial miner’s canary. The mushrooming growth of interagency procurement shines a sharp spotlight on underlying weaknesses and problems in our procurement system. So the challenge for the Congress and for the Executive Branch is to guide the use of this procurement device so as to reduce abuse, increase competition, enhance accountability, all in the use and management of interagency contracts.

The rapid growth that we have already acknowledged, of interagency contracting in the last 15 years, certainly justifies the attention that these hearings are giving to this sector of Federal procurement activity.

¹The prepared statement of Mr. Schwartz appears in the Appendix on page 85.

That said, it is my view that the most important things to be done about interagency contracting, from where we now stand, are not actually measures uniquely addressed to interagency contracts. The key problem areas in my judgment relate to the inadequacy of the Federal acquisition workforce and the need for competition in contracting and to the need for sustained attention to effective contract management. You have heard something about each of these points from the other panel members.

Although I strongly believe that we can significantly improve the performance of the Federal acquisition system, I think we can do so most effectively by investing in the Federal acquisition workforce. It is a cliché, but I think an apt one in this situation, to remember that an ounce of prevention is worth a pound of cure. If we were as zealous going forward about properly staffing the Federal acquisition function as we have been in recent years in investigating what has gone wrong with the government's contracting response to Hurricane Katrina, to procuring the needs for our military in Afghanistan and in Iraq, I think we would see better outcomes.

It may seem to you that I am trying to change the subject here, from a focus on a particular acquisition technique to a focus on the human infrastructure of Federal acquisition. But, candidly, that is exactly where I think the focus needs to be.

If you look back at the last 30 or 40 years of the evolution of the Federal Government's procurement process, I think what you will see is that we have swung back and forth like a pendulum between an emphasis on abuses that called for additional regulation and an emphasis, particularly in the 1990s, on the excessive rigidities that called for more flexibility in the operation of our system. And I think there was in fact a time and a role for each of these policy responses. But I think we have reached a point at which we would be better served, and the taxpayers would be better served, if we could damp down this oscillation and that the challenges that face us today primarily require better implementation of existing procurement mechanisms and do not call for radical new solutions.

Let me offer three illustrations of how problems that appear to be about the use of interagency contracts can be ameliorated by solutions that appear to be about the acquisition workforce.

First, agencies with adequate acquisition personnel will not find themselves driven to use interagency contracts simply because they lack the resources to do the procurement themselves.

Second, if agencies receive adequate funding for their procurement operations, they will not see the incentives that Professor Schooner has referred to, that are far too common today, to host interagency contracts simply as a means of sustaining their own procurement operations and in effect supporting other activities at their own agencies.

Third, agencies with adequate acquisition personnel should be able to devote the resources necessary to the sustained and careful management of the contracts that they enter.

I do not believe that contractors, as a class, are either better or worse, more competent or more honest, or less competent or less honest than the rest of the human race, but I think it is completely unreasonable to expect that government contractors will deliver

sustained excellent performance unless they know that the government is seriously committed to monitoring their performance.

Last point, improvement to our Federal acquisition operations really should not be a subject for partisan debate or ideological division. This is not about whether markets or government action are better means of fulfilling important public needs.

Public procurement, by definition, is about the interface of markets and public management. To an impressive degree, I think, we have actually reached a consensus in the last generation that important public needs can be well served by securing goods and services from private enterprise and from the market. But to make effective use of the productive capacity and the problem-solving abilities of the private sector, we need to invest in consistently effective public management of our government contracts, and I do not think we have done that adequately.

Thank you.

Senator McCASKILL. Well, thank you all.

There is a lot here that I would like to get into, but let me start with kind of a broad question. As I sit here thinking about how to fix some of these things, the typical response in government is, well, who is in charge of it? Where do I go to get this fixed? What agency head do I call to talk to them about this?

Now I know we have the Federal procuring policy office. But should there be someone in charge of all this overseeing that has not been done?

First of all, let's be honest. I mean you all are very knowledgeable and interested in this. We are pretty interested in it. I did not worry about every seat being full today in the hearing. [Laughter.]

I did not worry about TV cameras knocking me over as I walked in the door. This is a place that has the attention span of a kindergartener. This is not some place that people spend a lot of time trying to really get their teeth into something that is this complex, this stovepiped, this disparate. It is really hard for us to fix this thing.

So you all have years of experience in studying this and understanding it. Where? Who? Other than us just doing legislation, which sometimes is a little bit like spitting in the wind, how do we find the right overseers, or do we have to do this agency by agency and bust up the current system in terms of some of these schedules and fee-for-service operations?

Mr. SCHOONER. If we distinguish, beginning with just the GSA schedule, I mean the obvious starting place here is at the Office of Management and Budget. Now you mentioned the Office of Federal Procurement Policy, but keep in mind if we take the step forward after the economy act, a lot of this proliferation comes from the Clinger-Cohen Act. And the bottom line is if we again take it apart and go back to ITMRA, this is authority that was vested at the Office of Management and Budget. They were supposed to manage it.

And frankly, what happened was the OMB thought it was a great idea. They expected this to be a hyper-competitive environment, with competition to get onto the vehicles and then competition at the task and delivery order level. It did not materialize in the 1990s. And when Steven Kelman was still the OFPP administrator he came forward and asked the people who were managing

these vehicles to enter into what he called at the time a Mayflower Compact in which they would commit to at least having fundamental competition, and it failed miserably.

But at the end of the day, the short answer to your question is OMB can be tasked with managing this, and frankly there is no reason why OMB should not be put in a position where they ought to be shutting these vehicles down.

Senator MCCASKILL. And do you believe they can shut these vehicles down without any kind of action on our part?

Mr. SCHOONER. Oh, yes.

Senator MCCASKILL. OK, that is good to know.

Mr. NASH. Well, are you saying they will?

Mr. SCHOONER. No, of course not.

Mr. NASH. I mean they will if somebody forces them.

I think we have tried chaos for 20 years, and I would say that chaos has not worked all that well. We can probably all agree on that. So the answer to your question is, yes, we need leadership, absolutely.

In my written remarks, one thing that I recommended was that if we establish an interagency, if we let somebody set up an interagency contract to buy and they become a specialist, let's say, that we ought to, somebody ought to certify them as being a specialist.

One of the problems—I teach a lot of contracting officers. I just came back last night, or this morning—I should have come back last night—from teaching 30 contracting people, Navy people. If you look at it from their point of view, and they asked me to talk about task orders, it is bewildering for them to know which vehicle to use. There is no catalogue out there.

I looked. I found an IG report, just stumbled on it a year or so ago. I write a monthly newsletter, and I wrote it up because at one interagency vehicle, the labor rates, the fixed labor rates are nationwide. Right next door is another interagency vehicle where the labor rates are regional.

Well, that makes a big difference if you are buying. In New York City, you ought to buy off the nationwide.

Senator MCCASKILL. Right.

Mr. NASH. If you are buying out where Senator Bennett is, I assume his rates are lower. You are probably better off buying from the regional.

Senator BENNETT. More efficient too.

Mr. NASH. But the normal contracting officer does not have a clue that is the way it operates. So we have created—I mean we really do have chaos. I do not know how you make somebody manage something, but we need leadership, absolutely.

Senator MCCASKILL. It is fascinating to me that government does not have to make it work at the bottom line. You cannot add employees in a business until you have the revenue to add employees, but we can add employees around here if somebody thinks they have a good idea. And what a lot of these things were someone's good ideas that have not, as they have been executed, turned out to deliver what people thought they could deliver.

Now what is fascinating to me is you have these agencies that see getting more money for their agency as the end goal. They com-

pletely lost sight that it has anything to do about value of the contract.

Is there any place that you all think that we can go to get a handle on which agencies have done the best job at (A) marketing themselves to get more money for their agency, or—well, let's just take that at this point.

Mr. DOKE. Let me preface that by responding to your previous question, and Mr. Nash said leadership is the problem, and I think that is largely it. I think there is power that can be used in the Office of Federal Procurement Policy.

The problem you have is that when the administrator tries to exert that power, the reaction coming back from the other agencies overwhelms him. He does not have the political stroke to make it work. He issues a memorandum to the agencies, and then the bigger agencies—you know there is an old saying, that no person with a straight flush ever asks for a new deal. Well, that is what happens. The agencies are happy with what they have, so they overwhelm proposals for change.

Now you can go to the OMB, which can do that, but then politics all over enters in. So it is largely exercising leadership that is there and is necessary to straighten it out. OMB or the administrator has the power to call for the information necessary to make a judgment on, those issues, but it has to be exercised.

Mr. SCHWARTZ. And what you need is sustained attention to these things. The reason I singled out the response to Hurricane Katrina or Iraq/Afghanistan addresses the point you raised about lack of attention span around here.

One of the great things of the last decade was that for a brief time people outside the Beltway could understand that it really made a big difference in the quality of their lives and sometimes as to whether people lived or died, whether the government was competently spending the money it had to spend. We have seen some very disappointing results.

The problem is that you can engage people's attention for a short time, but management, or legislation for that matter, in reaction to the last scandal, is not going to do it.

So it seems to me I agree with the leadership argument. I agree that the OMB and the Office of Federal Procurement Policy need to focus attention, and they need to have backing at the highest levels in the Executive Branch and from the Congress to understand that this is attention that will continue to be paid. It will not be shifted away when that headline is off the front page.

But you also have to build from the bottom-up, and this is where my acquisition workforce focuses in. You need leadership on the top to insist on a higher level of performance and sustained attention, and you need to hire and promote and pay people who can master the very complicated procurement systems that we have now built in this country. Essentially, what we have done is keep adding, and we never subtract, so that to master the procurement system today is just a very demanding task, as Mr. Nash has insisted.

Mr. SCHOONER. Your question fundamentally begins with a success metric, and the problem is we have totally polarized metrics here. For the servicing agency, the only metric is the generation of fees. For the purchasing agency, the attraction of these vehicles is

the ability to bypass bureaucracy and the entire world of congressional and regulatory mandates.

Senator MCCASKILL. Right.

Mr. SCHOONER. And I think that the best example that your Committee has familiarity with is what happened at the Homeland Security Department. They did not have an acquisition workforce. They had a tremendous reliance on these vehicles, and this Committee eventually reined them in.

But if we were to look at the other side, and again I go back to the point that Mr. Nash made about how we get into this in the first place, economies of scale is a wonderful reason to buy product in bulk or in volume. But there is no empirical research that suggests that purchasing services generates economies of scale, which begs the question, how did GSA grow so dramatically in the last generation?

GSA has been marketing what they call commercial services. So, in effect, rather than having people make good business-based, value type assessments as to how to purchase services, they go through the GSA filter, they pay the fee and they do not have to do any thinking. They get whatever employee augmentation they need, so they can have their personal services contractor. That cannot be the way that we need to do business in the long run.

Senator MCCASKILL. Senator Bennett.

Senator BENNETT. Well, thank you, Madam Chairman.

This has been a fascinating discussion, and I have been making notes and would like to get into virtually all of it. Let me just share off the top of my head a few comments and reactions, again out of my own experience. That is always dangerous because it gets you into anecdotal stuff.

But one of the things I learned, you talked about buying primarily services. I ran businesses that were entirely services and learned very quickly and told my potential customers a very fundamental truth: You want to go where your account is important.

Now if you are Ford Motor Company, and you are looking for an ad agency, you want to hire J. Walter Thompson, one of the biggest in the world. I am using ancient circumstances here rather than getting to where we are because Ford Motor and J. Walter Thompson were an item for a long period of time.

If you are a relatively small operation in Salt lake City, you do not want to hire J. Walter Thompson.

Mr. NASH. That is right.

Senator BENNETT. The criteria you were talking about, Mr. Doke, you might say, well, you have to take into consideration the management, the experience and so on, and J. Walter Thompson would always appear as the first choice. But you would be far better off in a much smaller ad agency that could not possibly handle Ford but where your account was very important, and you would get the attention of the head of that agency, who would probably be better than the very junior person J. Walter Thompson might apply.

Of course, that is presumably the philosophy behind best value, that you do not want to say, OK, we are going to create a sufficient regulatory strait jacket that says you can only buy this.

You are depending on—to your point, Mr. Schwartz—that the person doing the purchasing has a little bit of ability, has a little

bit of capacity to make a judgment that says this is the best one. Even though it may not be the best price, I am going to an agency where my account is important. And how you do that in the personnel pool that makes up the Federal purchasing group becomes an enormous training problem.

I also felt when I was CEO of the company, my biggest challenge was training my own people to do the right thing rather than directing them to do the right thing because it was a whole lot more efficient if they were trained and they made the decision closer to the problem than if every decision had to come up to me, and I would clearly, my obvious brilliance to the contrary notwithstanding, make a whole lot more dumb decisions than they would if they were properly trained.

All right, the conversation about OMB. I am one of the few Senators who has worked in the Executive Branch, and I have dealt with OMB, and I have learned that the law of inertia is not just a law of physics—and not only the inertia at rest, but far more pernicious is the inertia of motion. A body in motion tends to stay in motion and in the same direction, and this is the way we have always done it, and so this is the way we are going to do it.

My own hobby horse is that in spite of the fact that the M was put in OMB during the Nixon Administration, or during the time I was in the Nixon Administration, it has never really showed up.

Mr. NASH. That is right.

Senator BENNETT. OMB is still Harry Truman's Bureau of the Budget, and just putting another name in it and another initial to its acronym does not mean that they spend very much time on management.

The solution I have tried to peddle within the Congress, Madam Chairman, has been to switch us to a 2-year budget instead of a 1-year budget, so that they can spend 1 year developing the budget and the other year on the M of OMB.

I give you the anecdote of the commandant of the Coast Guard who was a good friend of mine. I was in the Department of Transportation. The Coast Guard used to be there. The Coast Guard gets kicked around more than any other agency. It starts out in Treasury, goes to Transportation and ends up at Homeland Security. Where are they going next?

When he became the commandant of the Coast Guard, he said, now I can finally do the kinds of things the Coast Guard needs to have done. And when I retired as the commandant of the Coast Guard, I had accomplished none of them because I spent my entire time preparing budgets.

Every year, there had to be a new budget. It had to be prepared, and then it had to be defended. Then the year was over, and a new budget had to be prepared and had to be defended. I never got around to all of this.

Those are my reactions to the conversation that you have had.

Now let me get to a specific question. I think this is probably aimed at you, Professor Schooner. Let's talk about another regulation that will go in, that in my opinion will interfere with management, intelligent management. I am letting my prejudice here advance the question. But are you familiar with the high road labor preference?

Mr. SCHOONER. Alas, yes.

Senator BENNETT. Alas, yes. All right. I think maybe we are on the same page. Would you give us your understanding of it and how you think that would impact this quality I have been talking about of having intelligent people properly trained to make the right kind of decision, or does it put a strait jacket on circumstances that will make the procurement process worse?

Mr. SCHOONER. So, in a nutshell, the underlying theory behind high road contracting as it has been articulated, is that the Federal Government would give an evaluation preference, would give a leg up to firms that paid their employees higher than the minimally required wages under the relevant labor minimum standard for that type of contract. So, in effect, the theory is that the firms that paid their employees the most would be competitively advantaged when they competed for government contracts.

Again, I may have signaled this, but I find this terribly frustrated. The Administration has been in office now for a year. They have spent a disproportionate amount of their energy in the public procurement space, focused on using the public procurement process to benefit union members and other special interests, and it simply does not make any sense.

On the one hand, it is simply inconceivable that the government would incentivize a contractor to pay its workers more, particularly in this economy. I mean the bottom line is the government should be getting bargains because we have excess capacity out in the workplace.

But I think that the real issue here that is the most frustrating is if you were to ask what the government should be focused on, the government should be focusing on getting the greatest value for its money in everything that it purchases. And the secondary consideration for that, which is actually the same, is the government should be trying to maximize the customer satisfaction of the agencies that are spending that money. The bottom line is the redistribution of wealth, rather the generation of value, is simply the wrong path to take in public procurement.

Senator BENNETT. Mr. Doke.

Mr. DOKE. Let me comment on what I will call the elephant in the room in best value procurement. What people do not think about is that no government contract can be awarded anywhere, by anybody, unless the contracting officer makes an affirmative finding of responsibility. Now the regulations cover a number of factors in responsibility, but what it boils down to is the contracting officer must decide that this person can perform the contract satisfactorily.

Now if that is true, if offerors can do that, then if you are paying more money to someone who has a higher rating on management capability, on financial strength, on experience, more years of experience, what you are doing is saying this person can perform the contract more than satisfactorily.

If you do that, you are paying for more than you need. It means that the government has not described what "satisfactory" is, if it is higher than you need, and the minimum needs doctrine has almost been forgotten in government procurement. That doctrine

says that the government cannot buy what it wants; it can only buy what it needs.

It is limited to what it needs. Why? Because, in 99 percent of the cases, the only authority to contract comes from Congress, and it is from your appropriation of money. It is implied authority, and you cannot imply that Congress intended for the government to buy more than it needs.

But we forget it when you pay the price premiums, when you pay the very large businesses more because they have more experience than the small business concern, and so forth. In best value procurement, you even can give added points for exceeding the specification. Now, if you give more money to somebody for exceeding the specification, and you do not even have to disclose it in RFP, then you are paying money for things you do not need, and that is just part of this problem that is causing some of the dilemma we see today.

Senator BENNETT. Anyone want to comment on that?

Mr. SCHWARTZ. I guess I have a somewhat different view. I have learned to disagree with my friend, with diffidence, but I guess I think I am coming out in the middle on the spectrum here. That is, as I tell my introductory classes, if it is your brother or sister jumping out of the airplane, you do not want the government to buy the cheapest parachute it can get.

And yes, there is a role for specifications, and there is a role for responsibility, but I just do not accept the view that there is nothing to be measured and that in the private sector we would not take into account things that are not always wholly tangible, that enter into quality and value for the taxpayer.

The high road program takes this a step further, and it does not say you can exercise some judgment. It mandates the way you are going to exercise that judgment, and that is what I take to be controversial. So I do think there is a role for contracting officers, and I am not looking to write a lot more regulations to constrain that judgment.

The other thing that I think is important to say is if you give people judgment, it is not true that they will never make mistakes. But if you do not give them any discretion, they will always make mistakes.

Mr. NASH. Let me comment on Marshall's thought. I do not agree with the way Marshall said it, but he did a look at GAO decisions in 1996, I think it was, and he could not figure out what the government was getting for the additional dollars that they paid on these individual procurement decisions. And it is hard to figure out from a GAO decision because they do not give you an absolutely full description of the procurement.

I did the same thing in 1997, because I wanted to see what he saw, and I looked at 44 decisions where the government had paid more in that particular year, and I agreed with him. I could not figure it out either.

His recommendation that people—I have no problem with paying more for something, but my perception is that an awful lot of contracting officers think that best value means we should pay more, and in a lot of cases it is wrong.

If you read the GAO decisions, it is fascinating. For example, in the newsletter, I took the last nine decisions where the tradeoff was between past performance and price. Past performance is a way to evaluate the risk of nonperformance, right. If somebody has not done well in the past, there is a risk that they might not do your job well.

In eight of the nine decisions, the agency had paid more for better past performance. In a few of the cases, they had paid 15 or 20 percent more for very small differences in past performance—the difference between very good and excellent, for example. It makes you wonder.

I agree that we ought to have a bunch of wonderfully competent contracting people out there, but it is going to take a long time to get there.

I think Marshall's suggestion is an excellent one, that if we just use transparency and put that data out there in the open—how much more did you pay and what did you get for it—I think that would do a great deal to cast light on this system of how we are buying things, just what kind of decisions. It is great to have a lot of discretion, but we ought to take a look every once in a while and see how that discretion is being exercised.

Senator BENNETT. Right.

Mr. DOKE. Let me mention that I am certainly not against best value procurement. That term was introduced into our world as a marketing tool by a former OFFP administrator. We have had that type of procurement for 50 years. It started as cost-technical tradeoffs, but we have had the method for a long time.

You had to have best value procurements in some cases because, sometimes, the government cannot describe its needs adequately. Research and development contracts, many other things, they just cannot describe it adequately. So the technical aspect of it was extremely important.

Certainly, when you have that, sometimes the government needs to buy more than what is satisfactory. You need the best, the very best, and a technical evaluation is necessary. And price premium certainly was appropriate in those cases, where you need the best—health, safety, security, and so forth.

But it is in these other areas where these evaluation factors are placed that really exclude small businesses, put them out of the game totally because they really relate to responsibility. The government can set its own standard for what is required to perform satisfactorily, and that is "responsibility." And if it does that, you do not need those factors to do it comparatively.

Senator BENNETT. Anyone on this one? I have more, but we will go back to you, Madam Chairman.

Senator MCCASKILL. OK. I will take one. We will go every other one, how is that, until we get worn out.

Parking of funds, that is one of the unintended consequences of what we have, the chaos that we are living through as it relates to interagency contracting, that and the notion that they are supposed to be giving back to the Treasury Department whatever they are collecting that is over and above what they are due, based on direct and indirect costs of what they are executing. Any comments on this phenomenon?

One of the things that is scary about this is we have a couple of GAO reports where they found this, but we do not have anything that is overarching as to how common this is. Do you all have a sense that we are having anti-deficiency violations on an annual basis as the end of the fiscal year rolls around and everybody looks for some place to park money?

Mr. SCHOONER. Yes, but they are not really Anti-Deficiency Act violations because the way the system has been set up, it is a tolerated practice. It was never intended. I mean I think that my written testimony has all the cites in there. But the bottom line is there is supposed to be a bona fide need in the fiscal year.

But because of the nature of the revolving funds, one of the things that the servicing agencies are offering to the other agencies is do not let your money expire. Just tell me what you think you want next year. Park it with me, and we will figure out what you want to spend it on next year.

I mean there is plenty of GAO reports on this. And once again, if you decided that you wanted OMB to actually manage this, they could manage it.

Another way to deal with it is to simply have, and again there is plenty of audits going on, on a million different things, but you could simply shut down the agencies that do it. Just shut them down. There is no reason for it whatsoever. It is just one more pernicious effect of a vehicle. It is a race to the bottom.

Senator MCCASKILL. Well, I think it would be kind of hard to shut down. For example, when they did that on the Border Patrol, I do not think we could.

Mr. SCHOONER. No. I am not telling you to shut down the agency, but you can really shut their procuring off.

Senator MCCASKILL. Shut down their services and their fee-for-service. I see, yes, their franchisement.

Mr. SCHOONER. Right. Again, look, there are many revolving funds that the government uses that make a lot of sense. For example, I gave you the anecdote of the government printing office, and I believe that when I talked about that, there is a difference between saying, for example, that members of the public should not be able to mail their holiday cards if they are not going to buy stamps from the Postal Service, and we know that the Postal Service is constantly generating income to deal with their future requirements and that we adjust the price of stamps periodically because we expect them to basically be playing at a zero-sum game.

This is a completely different animal. This is all Federal appropriated money that is being passed around. It is a shell game.

Senator MCCASKILL. Right.

Mr. SCHOONER. And if anybody tells you that the fees are not a shell game, they are simply coming up with a highfalutin theory for what is going on. There is no need for this to happen whatsoever.

Mr. NASH. I went back and looked at the franchise fund legislation, and it looked to me like the theory was quite sound. As I understood the way it came out, the theory was that this is six different agencies—

Senator MCCASKILL. Right.

Mr. NASH [continuing]. That could buy things, could in effect be providers of some category of services, OK. In effect, they were sellers, not buyers, and that to the extent that they could have been sellers. And I guess that gets us back to the special expertise, but to the extent that they could have been sellers accumulating, sort of like warehousers in a way. We can provide this kind of service, economies of scale and all the rest. Parking funds probably makes sense, right, because then they are selling you something.

But it turned out all they were selling was buying services. They were not accumulating anything. They were not becoming great at something, and of course that eventually said that is sort of scandalous because it is all phony.

But I sort of think the original idea was probably an OK idea. It was the implementation that got it. This 4 percent fee became the goal.

Senator MCCASKILL. Right.

Mr. SCHOONER. Just very briefly on this, if you go back to this original vision that Mr. Nash describes, the theory was that OMB would manage it, and they did not.

Senator MCCASKILL. Right.

Mr. SCHOONER. And they could have.

Mr. NASH. One of the curious things in the franchise funds is when the Treasury Department decided they did not want theirs anymore, they tried to peddle it, and nobody would buy it. I guess it is gone. Is that right?

Mr. DOKE. It is. It dissolved in October of last year.

Mr. NASH. They went around to the whole Federal Government and said, would anybody like to have this thing? We do not want it anymore.

Nobody would buy it, which I think tells you what its value was.

Senator MCCASKILL. Yes.

Mr. DOKE. Which brings up another point. I think Mr. Schwartz may agree with me on this. In observing the witnesses, and we had a lot of witnesses at the Advisory Panel, two things that stuck with me: One, we have talked about, the problems associated with the charging fees and how much and setting the fees and the problems, but another problem is the turf battles that you saw, that came out of the testimony. Once you have an agency, it is their turf, and they are very protective of it. That almost precludes any cooperation in trying to solve some of these problems.

Senator MCCASKILL. Senator Bennett.

Senator BENNETT. All right, let's go back to a specific proposal that is before us, and we are back to high road for just a minute.

I would anticipate that this would have a very chilling effect on small business trying to compete for Federal purchases. I said in my opening statement I have had the experience of small businesses running into far too much difficulty in trying to penetrate the Byzantine labyrinth of Federal procurement procedures, and one of the additional problems now is a requirement that you not only go through all of the procedures, but you change your competitive position in your nongovernmental marketplace by increasing your labor costs or other activities.

I do not think it is specifically tied to labor. The Federal Government could say, well, if you are going to compete for Federal

money, you have to have this kind of carbon footprint. You have to have fill in the blank, whatever the flavor of the month for either a Republican or a Democratic Administration, of the kinds of things they would like to see happen. And if you will not do this, you cannot compete.

Maybe I am overreacting from my own background as a small businessman, but I see this as a pretty bad slope to start to slip down in terms of the way you use the contracting, the opportunity to sell to the government, as a club to beat people up to get them to do other things that they would not otherwise do. And if they do decide to take that, it puts them at a competitive disadvantage in a free marketplace.

Mr. NASH. Well, a normal company, the big company, one thing they have learned is that you do not sell to the Federal Government out of the same unit that you do commercial work with because of the additional costs. They are mostly overhead costs, mostly indirect costs, but they are huge. We do not know exactly how much.

The only study we have ever had of that was the one that was done by the Analytical Sciences, TASC, the Analytical Sciences Company, when Jacques Gansler was running it, and they did. It is not a precise study, but they did do a fairly detailed study, and they came up with an 18 percent premium that it costs to do business with the Department of Defense, mostly in indirect costs.

Senator BENNETT. So Boeing has two divisions: One that produces airliners for American airlines and one that produces—

Mr. NASH. Sure.

Senator BENNETT. I was not aware of.

Mr. NASH. There is a wonderful example in Scottsdale. Motorola had a commercial division and a government division about a mile apart in Scottsdale, and the commercial people were so scared of the government virus they would not deal with the government division. Finally, the Motorola company decided to sell the government division to General Dynamics because they already had the virus, and it could not hurt them any.

Mr. DOKE. But before they decided to sell it, the government contract division, who could not afford to take their own division's electronics from a competitor because that would not look good, they took, they bought from their Federal source—I mean from their electronics microchip company—and they gave it to the government. They put it on their proposal as zero cost, so the government could not come in and audit it. They had to do that because they just would not let the Federal Government in the door.

Mr. NASH. That is very common. I mean that is across the board, and you have to.

My advice to small companies has always been you can sell to the government if you have a product that they will not touch. They will not make you change it any. They will just buy your product, firm fixed price, and that is it. But if you begin to get into modifying your product—

Senator BENNETT. Or services.

Mr. NASH [continuing]. All that kind of stuff, government specs, you are in trouble. It is going to cost a lot more money. It is going to raise your whole cost of doing business.

Mr. SCHOONER. Just going back to the original question, though, the issue is far broader than high road. Keep in mind that right after the inauguration, the Administration immediately pumped out three Executive orders that fundamentally gave union contractors a competitive advantage in the marketplace.

Now you may, or any individual member of Congress or the President may, conclude that the single best purpose of your public procurement regime is to redistribute wealth, and you may be in favor of unions, you may be opposed to them. But as we sit here today, I believe that most of us speak for the public procurement process, which is focused on value for money for the government and customer satisfaction, so that government agencies can actually achieve their missions.

All of these social policies, whether it is pro-union or anything else, at the end of the day, what they do is they increase barriers to entry. They increase the complexity of the process. They add to the work that the acquisition workforce actually needs to do. Therefore, they reduce competition. So, in the long run, they are not intended to maximize the ability of the public procurement system to be efficient and to serve its ultimate purpose.

Now again, countries all over the planet use the public procurement system to redistribute wealth, but at some point it seems to be me we ought to start with value and customer satisfaction, and then worry about redistributing the spoils.

Mr. NASH. Incidentally, it is the 30th anniversary of GAO's recommendation that you repeal the Davis-Bacon Act. They made that recommendation in 1980, and that was a sound recommendation then, and it is still a sound recommendation.

Mr. SCHOONER. Could we at least raise the threshold? I am sorry.

Mr. SCHWARTZ. Dual regulation, I think this is something you will get an unusual degree of agreement on, is a bad idea. I mean I think that we ought to restrict carbon output, but those obligations should not be different for government contractors. Whatever they should be, they should be. So the idea that you have a back-door channel of regulating your economy, or any subsector of it, because you want to be a government contractor is inherently a bad idea. That we agree on.

But as the Davis-Bacon Act example suggests, it is relatively hard to get people to agree across the board that we are going to focus singlemindedly on value, that we are not only not going to introduce new distractions from value, but that we are going to go back and reconsider all the old ones.

Again, I will start with an introductory class, and I say, I bet you I can find some collateral social and economic policy where you are willing to say, I do not want my government spending my taxpayer dollars that way even if it is not best value. So we all have our soft underbellies on this.

And if somehow you could get an agreement to comprehensively devote yourself to value in the procurement system and not to do other things, but that would, among other things, involve some things that maybe some folks in the room will not be happy with, including the things that we do to prefer small businesses. So, if we took the gloves off entirely and said, we are going back to value

and nothing but, I think people on both sides of the aisle would find the places where they are unhappy, and there has not been a willingness to do that across the board.

Mr. NASH. Yes, I agree with that.

The big breakthrough we made on the 800 Panel back in 1991 and 1992 and came into FAS in 1994 was we said we cannot get rid of all these policies. Most of them, people agree with.

Let's try to simplify. Let's raise what used to be the Small Purchase Threshold; it is now called the Simplified Acquisition Threshold. We raised that to \$100,000, and we also put rules in that said let's write a commercial buying set of rules that does not have to comply with all these policies, and we did that. That is in Part 12 of the FAR.

So, in buying commercial products and services, and in procurements under the Simplified Acquisition Threshold, I think we made great strides in cutting a lot of that mess out. So your small business can probably do OK selling a commercial product or selling under \$100,000.

Senator BENNETT. All right. Yes, sir.

Mr. DOKE. When I get a new client, the first thing I ask when they want to get their first government contract or their first big government contract, I request the opportunity to talk to their top management, board of directors if possible. I sometimes get it, sometimes I do not.

The whole point of it is to ask to discuss with them the difference between commercial contracting and government contracting, and the point I try to make is that the government is not just another customer. It is a different business. And if you are not willing to understand that it is a different business, and either have the experience and expertise or be willing to invest in it to get it, you should not take that government contract.

After I spend about 1½ to 2 hours with them in answering questions, most of them go forward, but I say I have done my job.

I am not trying to say it is a bad business. I make my living in this business, so I am not trying to talk you out of it, although you think I am. What I am trying to tell you is as a matter of ethical obligation, that if you are not willing to do these things, you better stay away from it. Some of them stop right there and do not go forward.

Senator BENNETT. OK. Well, I think I am hearing implementation of high road would make many companies less competitive for government contracts, that most small businesses could not absorb the additional costs, and it would, for those that try, push them into unionization where they otherwise would not go. Is that a fair summary?

Mr. SCHOONER. I think the only quibble I would have with that is the absorption of the costs. I mean it is a pass-through.

Senator BENNETT. Oh, I see.

Mr. SCHOONER. So the bottom line is it is not going to have any impact to the corporate bottom line, but the government arguably would pay more for labor than it otherwise would.

Senator BENNETT. The pass-through would be government.

Mr. SCHOONER. Right.

Senator BENNETT. Yes, which is not necessarily something we want.

Mr. SCHOONER. It does seem somewhat inconsistent with many of the goals for our public procurement system—paying more for the same service.

Senator BENNETT. Yes. Thank you.

Senator MCCASKILL. Let me talk about some of the other issues here, and I want to wrap this up with transparency, all of them, because it appears to me that what we did not have 20 or 30 years ago was the ability to put these things out for everyone to see real-time in a fast and efficient way. Have any of you given any thought or can you direct us to any written works that you are aware of?

I get your point that you made, Mr. Doke, about just making them reveal price premium. Just that alone would have an amazing impact. Really, what is really going on here is all of this stuff, you all know about it, but this is really a little like the Wild West in that nobody really is watching. Nobody is paying attention. Nobody knows.

Now Hurricane Katrina, Iraq, and Afghanistan, I mean we figured out. I was reminded of that when you talked about better past performance. I would like to meet the contracting officials that are evaluating that better past performance since I have watched award fees being handed out for contractors who have been miserable at the execution of their contracts.

But this transparency issue is fascinating because it seems like to me if we could do something as simple as after the fact you have to show all the laundry. You have to show exactly what the price premium was. You have to show exactly what the differentials were. Maybe we could even figure out how many Alaska Native corporations are fronting for major corporations in major contracting all over this government. It seems to me that transparency piece, with what we have now with the Internet, could really be a game-changer.

Mr. DOKE. There is just one line item, on a report that has to be made now, that could be added, that would solve that problem on price premiums. There are wonderful reports that go up, that are required all the time through the budgeting allocation and so forth, and every contract is recorded. But that information is not it, and it would be very simple to require it.

Mr. SCHOONER. But we can do much better. I mean we can take these steps. If we just take a simple example, look how far we have come just in the last few years with regard to the Federal Procurement Data System. It used to be you could only get these reports in print. Finally, we have the FPDS online, then the FPDS next generation, but we did not get the leapfrog forward until we went to USASpending.gov—

Senator MCCASKILL. Right.

Mr. SCHOONER [continuing]. Which frankly was piggybacked on a private sector initiative, but again a big step forward.

Take the next step. It was not so long ago where the Commerce Business Daily came out in print. We moved to FedBizOpps. Now you can get the solicitations online. So we are making progress.

It has frustrated me for years that the public and the media seem to have no interest whatsoever in the number of contractor

personnel that are dying in Iraq and Afghanistan instead of our military personnel every year. You read in the newspapers about the military personnel that die. You do not read anything about the contractors who are driving the truck dying all the time. We are talking one out of every four bodies that came home in a bag or a box since 2007, and the public will not even talk about it.

But we just saw serious improvements on that because the Department of Labor recently started publishing the contractor fatality data from the Defense Base Act insurance claims on the Web. They just did this recently. It is very easy.

But I want to go to Marshall's point and take it the next step forward. We have consistently collected and published data on the awards of government contracts. What we have no insight into whatsoever is what value the government actually gets for their money. Let's focus on outcomes of contracts, not just the beginning, because it is a night and day difference. We could do that.

Senator MCCASKILL. OK. Talk about what that would look like.

Mr. SCHOONER. Well, the bottom line is one thing that we could do is correlate, at a minimum. We already have the entry when the contract is awarded. Why do we not have an entry for what the final delivered price of it was?

And again, Marshall talked about premiums. We have PPIRS. We have this past performance database.

Senator MCCASKILL. Right.

Mr. SCHOONER. There are many ways that we can—

Senator MCCASKILL. Which has its flaws.

Mr. SCHOONER. Oh, just a few, but at least, but again they are working on that, and it shows you how far we have come and how much progress we can make.

But we can literally demand anything we want in terms of information on outcomes, and it seems to me that the information is easily available, but at some point we need to take the step forward, saying this is valuable to us as consumers.

Last point on this, on the defense side of things, we constantly talk about major systems acquisitions and all of the terrible things about major systems acquisitions, but we only track three metrics. We track the original price of the contract, we track the original schedule for deliveries, and we track the original performance criteria. But those are irrelevant by the time the system gets delivered 5, 10, or 15 years later. It has evolved.

What we need to be thinking about are meaningful metrics that track the value the government gets for the money they spend, and we are talking about the kinds of things that private businesses do every single day. They teach it in the business schools. Successful executives know how to do it. The government can do it too.

Mr. NASH. Let me give you an example that I just wrote up. GAO has put cost-type contracts on the high-risk list. Cost-type contracts are a big thing up here on the Hill. They are bad contracts, terrible contracts, everybody is saying.

In the last GAO report, they went through all the stuff about they do not motivate anybody and all this theory. But the one question they never asked was: How many of the cost-type contracts that are awarded get fully performed at the original cost?

When I ask industry people that, they say most of our cost-type contracts, we perform at the cost. We do not come in and ask for more money.

But we do not, and that is the outcome issue. We do not know that. So we say, theoretically, cost-type contracts are a bad form of contract.

Senator MCCASKILL. I think you are right. I think we have not analyzed. But I would tell you in some of the contracts I have really waded around in significantly, they did not deliver at the price. The original LOGCAP contract was estimated to be \$700 million a year, and the first year it came in at \$20 billion.

Mr. SCHOONER. With all due respect, keep in mind the value of the contract is that it is all about surge capacity.

Mr. NASH. Yes.

Mr. SCHOONER. The contract is an unlimited vehicle that permits the U.S. Military to send an unlimited number of troops anywhere on the planet and sustain them indefinitely, regardless of the requirement.

Senator MCCASKILL. No. I am telling you the original estimate in theater by the contingency operation was \$700 million.

Mr. SCHOONER. I will not dispute that there are warts in the LOGCAP contract. But I believe a generation from now at the National Defense University, at the War College, at the military academies, we will look back and say despite the problems at the margin, that it may be that the LOGCAP contract is the single most significant advance in military history. Never before has a military been able to project such potency, modality, and sustainability anywhere on the planet. We can send our military anywhere in any numbers and keep them there indefinitely, and we can fight and have our troops well rested, well fed, clean, and effective.

I am not saying that there cannot be better cost control, but the vehicle itself is a remarkable achievement that military historians will be talking about for generations.

Senator MCCASKILL. I absolutely could not agree with you more, that logistical support on a contractual basis is a breakthrough, but we could spend 4 hours debating how they did LOGCAP and the way it was executed.

You talk about, and some of you had some really good testimony, about oversight of the management of the contract. When I have somebody look at me in the eye, in theater, and I ask them, why did that contract go from \$20 billion to \$15 billion in 1 year, and the person in charge of the contract looked at me and said, it was a fluke. This is not a contract management that we need to be putting down in the history books as well managed.

Mr. SCHOONER. And we come back to personnel once again which is the one thing you have heard from all of us.

Senator MCCASKILL. Exactly. So, hopefully, by the time we have refined our logistical support contracts that began with LOGCAP I and now we have the evolution of LOGCAP IV, we will have something that we can be very proud of. But I would say LOGCAP I and II is not something that any of you would want to teach.

Mr. NASH. Let me suggest that if it had been a fixed-price contract, it would have been equally badly mismanaged.

Senator MCCASKILL. I am sure it would have.

Mr. NASH. The type of contract would not have impacted how it was managed.

Senator MCCASKILL. I am sure it would.

Mr. NASH. But I will tell you one thing it would have done. It would have made Marshall Doke rich. [Laughter.]

Because if it had been fixed-price, there would have been change orders—

Senator MCCASKILL. Right.

Mr. NASH [continuing]. To process probably 20 a day in the history of the contract.

Senator MCCASKILL. You are exactly right. You could not be more right about that. There would have been a new history-making change order operation.

Mr. DOKE. Let me disagree with that. I was fortunately broken into this business as counsel to the Army Contract Adjustment Board. And you remember when the missile crisis came, and we were building those silos. There were claims before that board where they were having 2,000 change orders a day on that effort.

Mr. NASH. That is right. I was working for one of the companies, and we converted our contract to a cost reimbursement contract because it did not make any sense.

Senator MCCASKILL. Right.

Mr. DOKE. I want to toss Mr. Schwartz the softball because the data, having the system for the data is one thing. But as we found on the Advisory Panel, there is a great reporting requirement, but we could not rely on the data because the people who were entering the data did not know what they were doing. So it was totally unreliable.

Senator MCCASKILL. So we get back to acquisition personnel again.

Mr. DOKE. Acquisition workforce.

Mr. NASH. I have to comment on that. Regarding increasing the acquisition workforce, a group of these contracting people yesterday asked me this: Who would you hire?

What I said to them, if you are going to increase your staff in the contracting office, do not hire any more 1102s. You have plenty of 1102s. Hire clerical people because the contracting people are doing clerical work 30 percent, 40 percent of their time.

Senator MCCASKILL. Right.

Mr. NASH. And I say to them, not only are they underutilizing your skills, but you are all lousy clerks. You are overskilled, and that is why the data is no good, because they are not good clerks. If you just hired a good high school graduate who wanted to be a clerk and had the competence to be a clerk, you would get a lot better data.

Mr. SCHWARTZ. I think there are other reasons, and one of them is that what we heard on the panel was that it is easy to issue mandates to collect this data or that data. But a contracting officer faced with a choice of getting the contract out and acquiring the goods and services you need, the last thing at the end of the day is to fill in some data report. And so if you want good data, you have to pay for it. It is not free.

It is certainly true that we found that the government's data were unreliable, and because we had a variety of expertise within

the panel sometimes you could do a special query, and you would come back with numbers that we all knew could not be right.

Senator MCCASKILL. Right.

Mr. SCHWARTZ. So we have come a long way, but there is a long way to go to getting reliable data.

And take Marshall's example. I happen to think the middle ground between us is disclosure of data on things like price premiums. That is a good idea. But if you tell a contracting officer, do everything you are doing and do this too, something is going to break.

Mr. NASH. Yes.

Senator MCCASKILL. Senator Bennett.

Senator BENNETT. I think we have plowed most of the ground we need to plow. I want to thank the panel for your expertise and your willingness to mix it up between yourselves, and thank you, Madam Chairman, for calling the hearing.

Senator MCCASKILL. Let me see if I cannot, for the record, summarize some of the high points, so that we can tee off on these areas as we go forward and as we begin to prepare for the hearing with the OMB personnel and with procurement policy folks.

Transparency is important, particularly as it relates to price premium.

We need to look at whether or not we are developing competency in an area that is providing these services to other agencies instead of it being a free-for-all with every agency thinking they can provide every type of service with competency.

More guidance in the FAR about what competition really is, since we have not really defined that. We all use the word, but it does not mean that it is. I will remember Abraham Lincoln and his tail.

Contract management by agencies is lacking because many times the people who are entering into the contracts are not the people using the services, and therefore you have a disconnect in the system in terms of overseeing the contracts and managing them appropriately in terms of getting value because the folks who are using the services have nothing to do with executing the contracts.

And overall, we have the acquisition workforce. Senator Collins, who normally sits in your chair, Senator Bennett, would be glad that we are ending with that because obviously she has worked on this for a while, and I have joined her in that effort. And I know Senator Bennett agrees that you do get what you pay for, and we will not fix most of these problems until we get to the point that we have an acquisition workforce that is the right size and the right competence, to administer these contracts in a way that taxpayers will get value.

There is an awful lot of work to do in this area. Frankly, there are some questions that I had that we did not get to. But we may prevail upon you, a couple of you or maybe all of you, and will not give all of you all of the questions but divide them up, because I think all four of you could speak with authority on any of the questions we would have in this area, in a way that is very reliable and that frankly I would take to the bank.

Senator BENNETT. I agree with your summary, Madam Chairman, but let the record show the Ranking Member also summarizes that he does not like high road. [Laughter.]

Senator MCCASKILL. I think we figured that out. I think we figured out the high road part.

Once again, you all generously gave a significant part of your time this afternoon. This is something I actually enjoy, this area of government policy. I actually read IG and GAO reports as recreational reading. I know I am weird, but I do, and I am going to continue down this path with hopefully some tenacity and see if we cannot prevail upon OMB.

As I tell the White House how you feel about high road, Senator Bennett, I am going to also prevail upon them to see if we cannot get OMB and maybe Jeff Zients, who is supposed to be performing a government-wide performance function. This would be a perfect area for this performance officer to dive into because it is government-wide and there could be real impact with a little bit of effort from OMB.

So, thank you all very much.

The hearing is adjourned.

[Whereupon, at 4:12 p.m., the Subcommittee was adjourned.]

INTERAGENCY CONTRACTS: MANAGEMENT AND OVERSIGHT—PART II

WEDNESDAY, JUNE 30, 2010

U.S. SENATE,
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:32 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill and Brown.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. We have plenty to talk about today, so we will go ahead and get started. I think that Senator Brown will be joining us and hopefully we will find Mr. Gordon somewhere before too long so he has an opportunity to speak today. He is an important part of this subject matter.

We are here today for the Subcommittee's second hearing on interagency contracts. At the first hearing on this subject, I told our distinguished witnesses, four of the leading experts on government contracting, that I really enjoy this area of government policy. That certifies that I am a weirdo, because most people don't enjoy the world of government contracting, and especially interagency contracting, because, frankly, even within the purview of government contracting, this is very inside baseball. To really get into the kind of arcane and acronym-laden world of interagency contracting, you have to have tenacity, perseverance, and maybe a screw loose.

But I think it is incredibly important that we begin to take a much closer look at interagency contracting, what it is trying to be, what it is, and what it has dramatically failed to be, and I think as we look at interagency contracting and really try to understand it, we can improve it, particularly if we get people from the various agencies that are represented here all talking amongst ourselves and figuring out what works and what doesn't work.

Thank you, Senator Brown, for being here.

It is intended, interagency contracting, to provide a benefit to the government. Among those benefits, it should streamline contracting. It should increase efficiency. It should leverage the massive spending power of the government in order to get better value for the taxpayer dollar.

At our hearing in February, I asked our witnesses whether interagency contracting was getting those kinds of results. I heard from them that it wasn't, that the government had too many contract vehicles, that it wasn't getting the best prices, that nobody knew whether these vehicles were actually improving government contracting because nobody was in charge or even trying to collect accurate data as it relates to interagency contracting.

Last month, the GAO reported many of the same problems. According to the GAO, there is duplication among interagency contracts. It is unclear whether or not these vehicles are saving any money. And the government doesn't have enough information about interagency contracts to even know if they are saving money.

This isn't the first time that GAO has reached such conclusions, and GAO's recommendations echo prior recommendations of the Special Panel on Government Contracting, called the SARA Panel, and agencies' Inspectors General that were never implemented. I plan to ask our witnesses today, who together have decades of distinguished service as leaders in Federal acquisition, why these recommendations to improve interagency transparency and accountability have been ignored for so long. I will also ask our witnesses how and why interagency contracting works the way it does today and what steps we should use to make it work better.

I also plan to continue the Subcommittee's oversight of interagency contracts. This is not something we are going to fix overnight. But, frankly, we are never going to fix it unless we improve our attention span as it relates to oversight. A GAO report every 4 or 5 years repeating the same recommendations, the same failed policies of not collecting the data, of not requiring the kind of documentation to prove that we are getting a better value, if we do not continue to shine a bright light of attention on this problem, it is going to languish where it is right now for decades to come, and I think all of us, if we are brutally honest, know that. We are going to keep on this until we can get some real change in the area of interagency contracting.

I want to thank all of our witnesses for being here today and I look forward to our discussion, and I would let Senator Brown make an opening statement, but he disappeared on me. See if he would like to. He can always do it after the witnesses testify, if he would rather.

Senator BROWN. Just my wife calling. Sorry.

Senator McCASKILL. And you are welcome to make an opening statement if you so choose.

OPENING STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you. I will get the old glasses, too. Thank you, Madam Chairman. It is good to be back at this hearing with you, and as the Ranking Member of this Subcommittee, it is an honor to join with you in exploring the important issues of this Subcommittee that go to the core of how government conducts business.

Unfortunately, I was not a Member of the Subcommittee at the time of the Part I hearing, where the subject matter experts from academia and industry provided key insights into what is working and what is not with regard to interagency contracting. Taking

these lessons learned and applying them to the way the U.S. Government traditionally does business is vital to getting the best value for the American taxpayer and the best value for our dollars, I think is really what concerns me most, and we have had these conversations before.

As the largest single consumer on the planet, our Federal Government has spent over \$537 billion on goods and services last year alone. That is \$130 billion more than the annual revenue of Wal-Mart. We are all familiar with the buying and selling of goods, and we know that if you are purchasing on a large scale, you expect to get a break. You expect to get the best bang for your dollar. As the largest purchaser in the world, the Federal Government should receive these same wholesale prices. In fact, it should be receiving the best prices for goods and services in the marketplace, in the United States or throughout the world, quite frankly.

Unfortunately, that is rarely the case, and the premise of harnessing this purchase power is at the core of our hearing today, Madam Chairman, and how we can efficiently and effectively use interagency contracts to leverage the purchasing power of the Federal Government to achieve maximum savings for the taxpayers.

Let me be clear up front. The use of interagency contracting has significant benefits when used properly, as we all know. It allows the government to leverage its aggregate buying power and reduce acquisition costs through simplified and expedited methods for procuring goods and services. However, more needs to be done. We need to think outside the box. We need to do it better. The people expect us to do just that.

And just as every successful business does, the U.S. Government should be strategically assessing its requirements and capabilities, using the most efficient mechanism to achieve the best value for the American taxpayer. Interagency contracting can achieve these goals, but as the GAO's recent report indicates, the government is falling short of these objectives. The GAO report raises the same troubling questions on interagency contracting that have continued for over a decade. How can we expect the government to leverage its buying power to get the best prices when we continue to create multiple contracts to purchase the same kinds of goods and services from the same vendors?

As you know, Madam Chairman, the President in December 2009 implemented a requirement that the government save \$40 billion annually by fiscal year 2011. An important component of his initiative is the strategic sourcing and the kinds of tough problems we are taking on here today, and even as the Administration concedes that the benefits of strategic sourcing and smarter contracting have not yet been fully utilized.

So the GAO report also identified significant obstacles that prevent government buyers from realizing the advantages of interagency contracts. A key problem identified by the GAO is the government buyers lacked the necessary data on the available contracts to make fully informed decisions. They also identified the lack of a cohesive policy for agencies to follow on interagency contracting. This lack of a clear plan creates a leadership void that pushes agencies to establish their own contracts with their own vendors rather than using existing contracts and saving money.

And this duplication of effort exacerbates the strain on an already stressed acquisition workforce.

In the report, the GAO also questioned whether the GSA, who manages the Multiple Award Schedules (MAS) program, the largest interagency government contracting program, is achieving the best prices for the taxpayer. Once again, are we getting the best bang for the dollar? The key problem GAO identified in the MAS program was the lack of available transactional data that could be assessed by GSA to negotiate better prices for the government, and with you, Madam Chairman, I am interested in exploring the actionable solutions in today's hearing to address these longstanding issues.

And I would like to leave here knowing who in the Administration is accountable for ensuring that the government delivers on its promised acquisition savings. What policies and guidance are necessary to achieve the benefits of interagency contracting? I look forward to hearing the witnesses perspectives on these critical issues. Thank you.

Senator McCASKILL. Thank you, Senator Brown.

Let me introduce the witnesses. John Needham is Director in the Government Accountability Office's Office of Acquisition and Sourcing Management. He is also the lead GAO for the State of Mississippi for GAO's ongoing evaluation of American Reinvestment and Recovery Act program in Mississippi.

Dan Gordon is the Administrator for the Office of Federal Procurement Policy. Welcome, Mr. Gordon. I know this is your first time in front of the Subcommittee and we welcome you. In that capacity, he is responsible for developing and implementing acquisition policies for the Federal Government. Prior to his current position, Mr. Gordon served 17 years at the Government Accountability Office, and was also a member of the adjunct faculty at George Washington University Law School, one of the finest law schools in the country, I think. A good law school. Well, not as good as Mizzou, but I was just trying to be nice. He is a new witness in front of the Subcommittee. I am trying to give him a break here. [Laughter.]

Steve Kempf is the Acting Commissioner for the General Services Administration's Federal Acquisition Service. In that capacity, he sets strategic direction and oversees the delivery of over \$50 billion worth of products, services, and solutions to the Federal customers. Mr. Kempf also has held numerous other positions within the GSA throughout his government career.

Rick Gunderson is the Acting Chief Procurement Officer for the Department of Homeland Security (DHS). In that capacity, he is the lead executive responsible for the management, administration, and oversight of the Department's acquisition programs. He previously served as the Assistant Administrator for Acquisition and Chief Procurement Executive for the Transportation Security Administration (TSA).

Diane Frasier is the Director of the Office of Acquisition and Logistics Management and the Head of Contracting Activity at the National Institutes of Health (NIH), where she oversees all acquisition, property, supply, and transportation programs. Prior to join-

ing NIH, Ms. Frasier had a long career with the Department of Defense (DOD).

Welcome to all of you. It is the custom of this Subcommittee to swear in all witnesses that appear before us, so if you don't mind, I would ask you to stand.

Do you swear that the testimony you give before the Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. NEEDHAM. I do.

Mr. GORDON. I do.

Mr. KEMPF. I do.

Mr. GUNDERSON. I do.

Ms. FRASIER. I do.

Senator MCCASKILL. Thank you very much, and we will begin with Mr. Needham from GAO.

TESTIMONY OF JOHN K. NEEDHAM,¹ DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. NEEDHAM. Madam Chairman and Senator Brown, I am pleased to be here to discuss the Subcommittee's interest in improving the management and oversight of interagency and enterprise-wide contracts.

There are four types of contracts that agencies use to leverage their buying power. As you can see from the chart here,² we have the Multi-Award Schedules, which is run by GSA and the Veterans Administration. We have the Multi-Agency Contracts (MACs) and the Government-Wide Acquisition Contracts (GWACs). Those are the interagency contracts. These, along with the GSA Schedule contracts, are also enterprise-wide contracts, which agencies just use within one department, but they also provide that ability to leverage an agency's buying power, as well.

In addressing the Subcommittee's interest, I will draw on our recently completed work at 10 Federal agencies to discuss transparency issues and the need for a framework for managing GWACs, MACs, and enterprise-wide contracts, as well as management and pricing issues specifically associated with the Multiple Award Schedules program.

In recent years, sales under the MAS program have been relatively flat and obligations on the GWACs have declined slightly. Importantly, the total amount of money spent in 2008, using the three enterprise-wide contracting programs that we reviewed, is approaching the amount spent for all GWACs during the same period. Collectively, Federal agencies use these types of contracts to buy at least \$60 billion in goods and services during fiscal year 2008, with the bulk of the spending, about \$47 billion, being spent on the mass program within GSA and the VA.

Senator MCCASKILL. Could I interrupt your testimony just for a minute?

Mr. NEEDHAM. Sure.

¹The prepared statement of Mr. Needham appears in the Appendix on page 96.

²The chart referenced in Mr. Needham prepared statement appears in the Appendix on page 106.

Senator MCCASKILL. Would you go back through, Mr. Needham, and explain clearly what the difference is between these different programs, just so that we have it very clear on the record—

Mr. NEEDHAM. Sure.

Senator MCCASKILL [continuing]. The difference between a GWAC and a Schedule and so forth.

Mr. NEEDHAM. We will start with the Multiple Award Schedules, which is probably the oldest, and that is run by GSA and through delegation by VA for the medical area. Essentially, these are indefinite delivery, indefinite quantity (IDIQ) contracts. They basically open up and they have a certain amount of dollars that they allow that agencies can then basically buy off of. They don't have to go through the procedures of doing an independent procurement. And so they basically get task and delivery orders, depending if it is a service or some goods. And that has been around since early, I guess, really since before 1950, they have been using that.

The second is what is called the Multi-Agency Contract, which is also an IDIQ contract, and that is within the particular agency. Now, they can open it up for access by other agencies, and that is where it becomes an interagency contract, but it functions very much like the Award Schedules at GSA or the VA.

And then third is the GWACs. Now, the GWACs was created back in the 1990s through the Clinger-Cohen Act and it was essentially designed to facilitate the procurement of information systems (IT).

The last contract, which is not an interagency contract, is enterprise-wide. These are essentially like a MAC, but they are for a department as a whole. So instead of having multiple small contracts, they have one large contract where they—it works somewhat like with the GSA, where you have a large number of vendors available and the terms and prices have been pre-negotiated. The Department of Navy has SeaPort, and Homeland Security has the EAGLE program. So those programs are relatively recent. They were given that name by the SARA Panel. The SARA Panel called for kind of a creation of these types where you have these large agency-type programs.

But those are the four types. Three of them are interagency and one is not. The growth of the enterprise-wide contracts has been pretty significant in recent years.

Senator MCCASKILL. But other agencies can't buy from the enterprise-wide?

Mr. NEEDHAM. No. Only agencies within that department or—

Senator MCCASKILL. So the only people that can buy from Eagle are people in DHS?

Mr. NEEDHAM. Exactly.

Senator MCCASKILL. OK. Got it. Sorry to interrupt.

Mr. NEEDHAM. That is OK.

Senator MCCASKILL. I will give you extra time. [Laughter.]

Mr. NEEDHAM. Thank you. Leveraging the government's buying power and providing a simplified and faster procurement method are benefits that these vehicles promise. However, because the Federal Government does not have a clear and comprehensive view of who is using these contracts and if their use maximizes the govern-

ment's buying power, their benefits can only be assumed, not assured.

The most basic problem is one of data and governance. No one knows the universe of contracts available, and when there is information, there are inaccuracies in the data. Also problematic is the lack of consistent government-wide policy on the creation, use, and cost of awarding and administering some of these contracts. I would point out that it is the least problem with the GWACs.

While recent legislation and OMB initiatives are expected to strengthen oversight and management of MACs, there are no initiatives underway to strengthen approval and oversight of the growing use of enterprise-wide contracts. This can lead to a situation where agencies unknowingly contract for the same goods and services across a myriad of contracts, with many of the same vendors providing similar products and services on multiple contracts. This only increases cost to both the vendor and the government.

As you can see on this new chart here, the top 10 GWAC vendors offered their goods and services in a variety of government contracts that all provide information technology, goods, and services. Of the 13 different contract vehicles, five of the 10 vendors were on 10 or more of these. You might ask, why are there so many contracting vehicles? Basically, when we talked with the departments and agencies we visited with, they told us that they want to avoid paying fees for the use of another agency's contract. They want to gain more control over procurements within their own particular organization. And they want to allow for the use of cost reimbursement contracts, which can't be done under IDIQ contracts, which is like the General Services Multiple Award Schedules program, for instance.

To get a better handle on these contracts, we have recommended that OMB improve the transparency of and the data available on these contracts, building on earlier work that they had done. And also to develop a framework that provides a more coordinated approach in awarding MACs and enterprise-wide award contracts, especially since it is the vehicle for the Administration's Strategic Sourcing Initiative. And last, we recommended to OMB that they ensure that agencies do a business case analysis in which they address potential duplication with existing contracts before new MACs and enterprise-wide contracts are established.

Now, I would like to turn to GSA's MAS program—which is the largest provider of interagency contracts—needs to focus on being a provider of choice for government agencies. To do so, it needs to address key challenges in effectively managing the mass program and offer the best prices to its customers. When we recommended to GSA they need to collect transactional data on the mass task and delivery orders and prices paid and then provide this information to the people who are negotiating the contracts in the agencies so they have actual data they can work with so they can negotiate on their own.

To make use of its pricing tools, such as pre-award audits, and between 2004 and 2008, they saved \$4 billion in cost avoidance by using these pre-award audits. Also to use greater use of their pre-negotiation clearance panels—it is kind of a quality control device

they have within that—to get the best price and obtain insight into the marketplace.

And furthermore, GSA needs to strengthen its Program Office's authority, clarify roles and responsibilities, and realign its structure to facilitate consistent implementation of the policies and the sharing of the information across the multiple units within the business portfolios.

And it also needs to improve its measurement of the program performance through more consistent metrics across the GSA units that manage the interagency program, including metrics for pricing, and I will give you an example on this. We found that they look at the competitiveness of their prices with the private sector. They need to look at the competitiveness of their prices with other agency contracts. That would be one area in terms of pricing where they need to focus.

And finally, GSA needs to put a greater emphasis on customer satisfaction and outreach, starting with improving their customer surveys, so that they can get the kind of insights they need to evaluate program performance. Perhaps, Madam Chairman, a more responsive GSA would lead to agencies looking to GSA for goods and services rather than creating their own vehicles to meet their own needs.

In agreeing with our recommendations, both OMB and GSA recognize the importance of addressing these problems and the need to resolve them so as to take advantage of the government's buying power for more efficient and more strategic contracting.

Madam Chairman, this concludes my prepared statement. I will be happy to answer any questions you or Senator Brown may have. Thank you.

Senator MCCASKILL. Thank you, Mr. Needham. Welcome, Mr. Gordon.

**TESTIMONY OF HON. DANIEL I. GORDON,¹ ADMINISTRATOR,
OFFICE OF FEDERAL PROCUREMENT POLICY, U.S. OFFICE
OF MANAGEMENT AND BUDGET**

Mr. GORDON. Thank you, Chairman McCaskill, Ranking Member Brown. I am very appreciative of the invitation to be here and to speak with you about this important topic. Let me begin by commending the Subcommittee for focusing attention on this very important subject.

Interagency contracting, as you said, can be a way for the government to leverage its buying power, and as Senator Brown pointed out, to make better use of its overstretched acquisition workforce. But there are serious risks when management has been deficient, and I believe that GAO was right to include interagency contracting on its High-Risk List in 2005.

I believe, though, that there have, in fact, been improvements, and today, notwithstanding the ongoing challenges that I will be talking about, the facts are better than they are often portrayed to be and better than they were just a few years ago, partly due to the efforts of you, Madam Chairman, and other Members of Congress.

¹The prepared statement of Mr. Gordon appears in the Appendix on page 116.

We have succeeded in addressing the abuses that raised justifiable concerns just a few years ago: Out-of-scope work, inadequate competition, improper parking of funds, and unclear responsibilities of the various agencies. Those were issues that caused GAO to put interagency contracting on its High-Risk List in 2005, and I think it is notable that they are not issues in GAO's most recent report. But we have much more work to do, especially in leveraging the government's buying power.

Let me say a couple of words about the improvements to the management of the process, because management has not been adequate in the past. GAO, as well as the SARA Panel, the Acquisition Advisory Panel, have praised the management improvements put in place over the past few years, especially with regard to OMB's role in considering business cases by any agency that wants to serve as the executive agent for a GWAC.

Second, we have put management controls in place with respect to assisted acquisitions, situations where one agency helps another one conduct a procurement. Again, the lack of clarity about the two agencies' respective responsibilities was cited by GAO in 2005 as one reason that interagency contracting was added to the High-Risk List. OFPP issued guidance on interagency acquisitions in 2008 that addressed this management responsibility, and I think with some success in terms of implementation by the agencies. Notably, DOD and the Department of Interior did an assisted acquisition together recently in a way that can serve as a model for interagency contracting. The result was increased competition, lower cost, and the services that are being purchased will provide better support for our service members and their families.

But we need to do more to improve management, especially with respect to what are called Multi-Agency Contracts. This is the area where I think there has been the greatest concern about the problems with data and with proliferation, and we have shared that concern. OFPP will be issuing guidance this summer requiring that agencies do a business case before they award a contract with the intent of having it widely used by other agencies.

I should note, though, as I explain in my written testimony, that the review we have conducted over the past several months has persuaded me, at least, that the MACs, as they are called, are not used as much as is often thought. Some have suggested that agencies are placing more than \$100 billion worth of orders on other agencies' contracts, and in fact, I think the accurate figure is probably below \$5 billion. Notwithstanding that, we need to improve management in this area and we, in OFPP, will continue to focus on it.

I would like to spend a moment talking about our efforts to leverage the government's buying power. In this regard, schedules probably represent the greatest opportunity for strategic sourcing, and we have only begun to tap that potential. Recently, at the beginning of this month, GSA awarded a set of Blanket Purchase Agreements (BPAs), that offer real potential for substantial government-wide savings on office supplies, of which the government buys over \$1 billion worth a year. The bottom line is that these BPAs were negotiated government-wide and they will be open to every Federal

employee at every Federal agency government-wide, with expected savings of something like \$200 million over the next 4 years.

In conclusion, progress has been made, but we recognize that we in OMB have much more work to do with our agencies in the Executive Branch. We will continue to focus on improving management and on leveraging the government's buying power.

This concludes my opening statement. I would welcome any questions. Thank you.

Senator MCCASKILL. Thank you very much, Mr. Gordon. Mr. Kempf.

**TESTIMONY OF STEVEN J. KEMPF,¹ ACTING COMMISSIONER,
FEDERAL ACQUISITION SERVICE, U.S. GENERAL SERVICES
ADMINISTRATION**

Mr. KEMPF. Good afternoon, Chairman McCaskill and Ranking Member Brown. My name is Steven Kempf and I am the Acting Commissioner of the Federal Acquisition Service within the U.S. General Services Administration. Thank you for inviting me to appear before you today to discuss the Government Accountability Office's report findings and to speak about the benefits of interagency contracting.

GSA's Administrator, Martha Johnson, has focused on three specific goals in our agency: Operational excellence, customer intimacy, and innovation in all that we do at GSA. The Federal Acquisition Service, FAS, seeks to instill these three principles in how we support our customers and conduct our operations. FAS offers a wide array of products and services, including our fleet of over 215,000 vehicles, the government's largest telecommunications program, Networx, and the issuance and management of over three million purchase and travel cards, to name just a few. We also manage five Government-Wide Acquisition Contracts, and the Multiple Award Schedules program, which provides a vast selection of over 22 million professional services, equipment, and supplies on over 18,000 contracts with the private sector.

With respect to the GAO report, I would like to state that GSA agrees with the recommendations made and actions were already underway to address each one of them identified in the report. Furthermore, we have been working with our Office of the Inspector General (OIG) to target mass contracts for pre-award audits. We have asked our IG to perform more audits, but with shorter durations and with a focus on delivering actionable information to our contracting officers.

The Schedules program had nearly \$50 billion in sales last fiscal year. Given the breadth and scope of the program, we take the stewardship of the Schedules very seriously. We strive for operational excellence in all we do, and here is what we are doing to improve our performance.

GSA is investing in its acquisition processes to develop a more agile, modular system which will drive process improvements and deliver better quality contracts. Our Enterprise Acquisition Solution is a long-term multi-year effort that will support the creation of an electronic end-to-end contracting system. When we embarked

¹The prepared statement of Mr. Kempf appears in the Appendix on page 127.

on this endeavor, our very first priority was the pricing module. This module is currently in user testing and will be piloted on three schedules this fall. This new tool will greatly enhance our contracting officers' capability to negotiate better prices under the Schedules.

GSA is also enhancing our customer-facing systems. One of these systems is GSA Advantage. GSA Advantage was actually launched before Amazon and is the government's online shopping tool. Each day, GSA Advantage records 500,000 hits from its pool of 600,000 registered users. This fall, the upgrade to GSA Advantage will include using Web tool features such as enhanced search capabilities, product recommendations, price comparisons, commercial pictures and description of offerings, and direct links to companies' shipping and tracking Web sites. The enhancement of Advantage will also allow for easier price comparison for all of our users, whether they are purchasing from GSA or not.

GSA's eBuy is yet another e-tool available to our customers to support acquisitions. This is an online tool used to compete procurements. This fiscal year alone, GSA eBuy has already seen agencies post almost 30,000 requests for quotations, an increase of over 14 percent from last year. Industry has responded with almost 90,000 quotes, resulting in contracting officers making an estimated \$3.4 billion in awards this year using the eBuy system. eBuy is a convenient tool for conducting competitions under both the Schedules program and our GWACs.

GSA is currently in the second generation of its GWAC offerings. The Office of Management and Budget has designated GSA to manage GWACs for information technology services. Ours are Alliant, Alliant Small Business, VETS, COMMITS, and 8(a) STARS. Four of the five managed GWACs are devoted solely to small businesses.

GSA has a special commitment to support service-disabled veteran owned businesses through its VETS GWAC. The statutory government-wide procurement goal for these businesses is 3 percent. In 2008, agencies did not even reach half of that goal. The VETS GWAC program is ideally suited to help close the gap.

Alliant, GSA'S only enterprise GWAC, provides agencies access to highly qualified industry partners. This past week, Alliant exceeded over \$1 billion in awards in just its first 14 months of operation. Alliant generates robust competition among our industry partners, with an average of four bids per task order, and Alliant Small Business, also in its first year, is providing strong competition, receiving an average of five bids per task order.

GSA has an obligation to assure that we work with contracting officers to ensure that they understand how best to utilize our acquisition vehicles. To this end, FAS has partnered with the Federal Acquisition Institute (FAI) to develop training, which we expect to be available early this fall. This first course will be GSA's internal use, focusing on the proper award of mass contracts. A second course will be a Schedules 101 course for our customers, and finally, an advanced use of Schedules course. Future plans include courses on GWACs, sustainable acquisition practices. This year at the GSA Training Conference and Expo, we delivered over 20,000

hours of training on 152 different courses, free of charge for our customers.

GSA's programs offer enormous cost and time savings to our Federal customers. We continue to strive to deliver operational excellence in all that we do at GSA and support to assist other agencies in the delivery of their mission. The value in consolidating requirements and leveraging the buying power of agencies across the government is a role uniquely managed by GSA.

Thank you for allowing me to appear before you today, and I am happy to answer any questions you might have.

Senator McCASKILL. Thank you, Mr. Kempf. Mr. Gunderson.

TESTIMONY OF RICHARD K. GUNDERSON,¹ DEPUTY CHIEF PROCUREMENT OFFICER, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. GUNDERSON. Madam Chairman and Ranking Member Brown, thank you for this opportunity to appear before you to discuss the Department of Homeland Security's contracting program, and in particular, its use of interagency contracts. As the Acting Chief Procurement Officer for DHS, I am the lead executive responsible for the management, administration, and oversight of the DHS acquisition program. In that capacity, I oversee and support nine procurement offices within DHS. The mission of my office, in conjunction with the component contracting offices, is to provide the needed products and services to meet the DHS mission and to do so in a way that represents sound business and demonstrates that we are good stewards of taxpayer dollars.

The threats we face are variable, and as a result, the acquisition program must be flexible and provide alternatives to deliver effective solutions. Similarly, the contracting officers and program managers must assess each requirement and determine the optimal acquisition and procurement strategy to meet the given need. This strategy includes the examination of existing contracts, both internal and external to DHS, as well as the award of new contracts.

Determining the procurement strategy is an important part of the pre-award process and is critical to the execution of the program and delivery of needed capability in a timely and cost-effective manner. In accordance with the Federal Acquisition Regulation, the contracting officer first considers required sources for particular supplies and services. They also consider existing available contracts, including the General Services Administration's GWACs, Multiple Award, and Federal Supply Schedules. Additionally, if a particular need is covered by a Federal Strategic Sourcing Initiative, the contracting officer will leverage the vehicle to achieve demonstrated savings as well as to limit the resources necessary to execute a new procurement.

While these different contracting alternatives are utilized regularly, given the unique scope of the DHS mission, there is often a need to conduct a new procurement. In situations where there are like needs across the Department, an enterprise-wide contract may be determined to be the best strategy. An enterprise-wide contract can provide a combination of benefits, including, one, support of

¹The prepared statement of Mr. Gunderson appears in the Appendix on page 133.

specific mission needs; two, support of strategic sourcing initiative; three, a vehicle to be used by various contracting activities in lieu of conducting multiple new procurements; and four, assisting in achieving socio-economic objectives, such as small and small disadvantaged business goals.

As noted in a GAO report, DHS regularly leverages its EAGLE and First Source contracts, enterprise-wide vehicles for IT services and products, respectively. Shortly after DHS was formed, the Chief Information Officer recognized a need to establish an enterprise architecture for DHS and to develop a strategy for an IT infrastructure that both integrated systems and eliminated inefficiencies. Given the preexisting IT environments, we recognized that this would be a challenging undertaking and would not be completed in a short time frame. As a result, we determined that a cadre of contractors that were familiar with the DHS IT infrastructure would be best positioned to deliver the needed capability in the most cost effective and timely manner possible. While the products and services available under these contracts are similar to those found under GSA programs, this rationale justified the award and use of the contracts.

Another example when an enterprise-wide contract is the best strategy is our Professional, Administrative, Clerical, and Technical Services (PACTS) program. This service-disabled veteran owned small business set-aside was established to increase opportunities for SDVOBs and better position DHS to meet the Federal-wide goal of 3 percent. Since the award of these contracts, DHS has increased its awards and we are currently on target to meet the Federal goal this year.

While enterprise-wide contracts have been integral to our contracting program, contracting officers and program managers have effectively utilized GSA contracts where appropriate. Over the past 3½ fiscal years, DHS has awarded approximately \$9.6 billion on its EAGLE and First Source contracts, but also awarded \$7 billion on GSA contracts, including nearly \$1.4 billion on IT efforts. Having the flexibility afforded by alternative contracting vehicles has proven both effective and beneficial to the contracting and program offices in their efforts to deliver mission capability.

Thank you for your continued support of the DHS acquisition program and for the opportunity to testify today, and I look forward to your questions.

Senator McCASKILL. Thank you, Mr. Gunderson. Ms. Frasier.

TESTIMONY OF DIANE J. FRASIER,¹ DIRECTOR, OFFICE OF ACQUISITION AND LOGISTICS MANAGEMENT, NATIONAL INSTITUTES OF HEALTH, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. FRASIER. Good afternoon, Chairman McCaskill and Ranking Member Brown. Thank you for the invitation to appear before you today to discuss efforts by the NIH to ensure competition, efficiency, and transparency in its interagency contracting program.

In response to the Clinger-Cohen Act, NIH established the NIH Information Technology Acquisition Assessment Center (NITAAC),

¹The prepared statement of Ms. Frasier appears in the Appendix on page 136.

program to provide technical and acquisition subject matter expertise in the area of technology management to the NIH. NITAAC established several indefinite delivery contracts with the goal of providing a means for the NIH acquisition community to acquire in the most efficient manner the most up-to-date information technology solutions and products for its laboratories and programs. News of the value and effectiveness of using the acquisition vehicles established by NITAAC quickly spread and other components within HHS, as well as other Federal agencies, began using these vehicles in order to meet their information technology needs.

In September 2000, NIH was designated as an Executive Agent by the Office of Management and Budget to establish and administer Government-Wide Acquisition Contracts. Three contract programs were established with 128 prequalified and well-recognized prime contractors, offering a full array of IT expertise and solutions in the form of customized IT support services, maintenance, and computer products.

Since the inception of NIH GWACs, 14 Federal departments and more than 21 agencies have utilized them to fulfill critical information technology needs. During fiscal years 2001 through 2009, departments and agencies have placed task and delivery orders against these NIH contracts, resulting in obligations ranging from \$68 million to \$1.1 billion for a given fiscal year, totaling \$6.7 billion.

Currently, NIH is not managing any multi-agency contracts. NIH does take advantage of the GSA Multiple Award Schedules to obtain supplies and services that it cannot acquire either through its internal inventories or through other NIH contracts.

With each iteration of its GWACs, NIH strives to enhance competition, efficiencies, and transparencies. These GWACs give Federal agencies access to the most progressive and innovative technologies and solutions available from contractors that are expert in both IT and health-related fields. Further, within the advent of the Affordable Care Act, solutions made available through these vehicles will go far in assisting Federal agencies in executing reform initiatives and aligning with the Federal health architecture.

NIH continually strives to ensure that small and small disadvantaged businesses receive a fair proportion of the total dollars awarded under the NIH's GWACs. In fact, 70 percent of our GWAC awards were made to small businesses.

NIH has streamlined the task order process under the GWACs through the development of agile Web-based tools that enable Federal agencies to ensure fair opportunity and obtain the highest level of service at fair and reasonable prices. NIH also provides its customers with acquisition and technical expertise to assist them in defining the requirements in a manner that promotes high-quality solutions.

NIH's GWACs offer competitive pricing. In fact, HHS designated one of these GWACs as a strategic source as it offers pricing at rates lower than established catalog or market prices.

Pursuant to its Executive Agent designation, NIH is required to maintain transparency with respect to its overall management of the GWAC program. In this regard, NIH regularly reports to OMB on its performance metrics and its ongoing efforts to improve con-

tracting practices, competition, and financial management. Transparency is further achieved through outreach to customer and contractor communities, active involvement in NIH's Industry Advisory Committee, which is utilized to enhance communications between NIH acquisition management personnel and the GWAC holders, and a Web site containing a wealth of useful information.

As an Executive Agent, NIH provides an alternative to Federal Government agencies in meeting their IT requirements through a value proposition that best supports health care reform initiatives, efficiency, competition, and transparency through acquisition process and meaningful small business participation.

Thank you for the opportunity to testify before you today. I am happy to answer any questions you may have.

Senator MCCASKILL. Thank you, Ms. Frasier.

Let us get started with the overall problem that we don't really know if these contracts are saving money, and if so, how much, because of the lack of reliable data that we can compare across these various contracting vehicles. I am always hesitant to start talking about databases because we have already had so many hearings about flawed databases in this room that I have a headache from it. Creating a database doesn't do you much good if it is not gathering accurate information consistently, if it is not reliable, and just creating another database doesn't work.

For example, flat-screen TVs. The Federal Government probably buys thousands and thousands of them every month. Is there any place I could go right now if I wanted to know what the average price of a flat-screen TV that we are paying for in the government? Is there anyplace I could go and find that information? Anyone?

Mr. KEMPF. I think there are some places you could go and get some prices on it. I think GSA Advantage is one place that would list some prices that we have negotiated under the schedules for prices for those kinds of products.

Senator MCCASKILL. And, Mr. Gunderson, before you buy a flat-screen TV at DHS, do you look at those schedules?

Mr. GUNDERSON. The buying activity would examine—for that type of item, they definitely—

Senator MCCASKILL. You need to hit your microphone, sir.

Mr. GUNDERSON. Oh, I did. I am sorry. Definitely, the contracting officer would utilize the GSA opportunities for those types of items and go there and they would do a competitive buy off of there.

Senator MCCASKILL. OK. So are you saying with confidence, and I know, Ms. Frasier, you escaped DOD. I hate to take you back there, because that is a contracting morass, a special kind of contracting morass that I am fairly familiar with. Are you all confident that anywhere you go in the Federal Government that they are checking the GSA Schedule and they are getting at or near the lowest price on the GSA Schedule for a 47-inch flat-screen TV?

Ms. FRASIER. The community is taught that they should be reviewing all the prices and selecting the best price available. However, in practice, whether they are or not, that is debatable. But they have been instructed that it is the rules under the Federal Acquisition Regulation that is what they should be doing, seeking the best prices, making the price analysis.

Senator MCCASKILL. And who is in charge of trying to figure out if we are doing that? This is so fragmented. That is why there is no accountability. And I know Mr. Needham could probably talk all day about that. But they are supposed to, right? And I am talking about something really simple, a flat-screen TV. But is there any confidence that people are actually doing that? I don't sense that there is.

Mr. GORDON. Chairman McCaskill, if I could—

Senator MCCASKILL. Sure.

Mr. GORDON. Your example of a flat-screen TV is actually a particularly good one because the approach we are taking as we are moving forward with strategic sourcing is to focus on lines of business, if you will. In IT, as I am sure you have heard, we in OMB are taking initiatives to rethink the way the government is doing its IT projects with my colleague, Vivek Kundra. We are rethinking how that works.

I will give you an example of another line of business, overnight delivery services. We discovered, and this is consistent with your question, all sorts of agencies had all sorts of arrangements with the companies that do overnight delivery. We were paying a whole range of prices. So what we have now done is a Government-wide Strategic Sourcing Initiative, and we now have good prices for overnight delivery.

One of the challenges, though, for us at OMB is ensuring that the entire government uses that contract. Once we have those good prices, we need to get the word out and be sure that the agencies are taking advantage of those good prices rather than, as is implicit in your question, not checking and perhaps paying more than we should.

Similarly, with our new Blanket Purchase Agreements (BPAs), for office supplies, one of our responsibilities at OMB, working with our partners at GSA, of course, is to get the word out so that a contracting office, whether it is someone sitting in a national park in Wyoming or a military base overseas, knows we have these BPAs. That is where we should be buying.

Senator MCCASKILL. Well, it would be nice if they could call them something other than BPAs, because that is part of the problem here. In preparing for this hearing, I felt like I was in the Armed Services Committee. You guys have as many acronyms as they do. BPAs is our version of Costco, right?

Mr. GORDON. Actually, I am not a member of Costco, so I am not positive. [Laughter.]

Senator MCCASKILL. Well, it is an attempt—a BPA is a Blanket Purchase Agreement where you know there is a widget that everyone uses and you get a best price possible for that widget. Then everybody can buy the widget for that price.

Mr. GORDON. Yes, but the problem is, too often, we have had single-agency BPAs, which in my view defeats the purpose.

Senator MCCASKILL. Right.

Mr. GORDON. That is why in office supplies we said, we are not doing single-agency BPAs. These BPAs are going to be available not only to every Federal employee, but the Federal employee doesn't need to know the name BPA. They don't need to know the acronym. They don't need to know a number. They don't need to

say, "Hello, I would like the BPA price." If they walk up to one of these 11 small businesses and one large business—that large business is Office Depot—if they walk into an Office Depot with their government charge card, they will get those prices. They don't need to ask for them. They don't need to come up with acronyms and numbers.

Senator MCCASKILL. And can they click and get those prices and have them delivered?

Mr. GORDON. You bet. They will get them automatically.

Senator MCCASKILL. OK. So why don't we just require everybody to do that?

Mr. GORDON. We are moving out right now on that front. But this is the beginning of a process. Office supplies are our first success story. We need to do more. IT is one of the areas where, in my opinion, we have the richest areas of opportunity for more strategic sourcing.

Senator MCCASKILL. Well, if we have one big vendor and 11 small ones and we have Internet capability, I guess I don't get why don't you just say you have to? Why don't you just say, everybody in the Federal Government, you can no longer buy office supplies except through this vehicle. I mean, if this were a business, we would have done this decades ago because we would have cared how much money we spent.

Mr. GORDON. I appreciate the point, and let me tell you, when we met with industry, and I was there in the meetings with industry in December and January, they said, if you want to get good prices on these BPAs, you are going to need written commitments from the agencies that their people will have to use them. So we heard, we went to the agencies—and GSA was very helpful on this—we came with letters of commitment of a quarter-of-a-billion dollars a year, where agencies said, we will tell our people to use these BPAs. We are right in line with your question.

Senator MCCASKILL. Well, I guess I am curious, why do we have to get it in writing from them? Why don't we just say they have to? I mean, can't the President just say to the Executive Branch, you guys have to buy office supplies through this purchasing mechanism?

Mr. GORDON. We certainly want them to, but there could be reasons—there can be all sorts of specialized reasons, unique circumstances. I am not sure that it is helpful to make—

Senator MCCASKILL. For office supplies?

Mr. GORDON. I am not sure that we need to make it illegal to buy elsewhere, but we certainly want this to be their—this should be the default. This is where they go. They buy from these BPAs.

Senator MCCASKILL. I think you are going to be disappointed unless you make it illegal.

Mr. Needham, yes?

Mr. NEEDHAM. We looked at BPAs last year and what we found is that of 320 cases, they didn't go for discounts in 47 percent of the cases that we looked at. And it is often incumbent—it is like with task orders on these interagency contracts. You need to have some initiative at the contracting officer level to do this. They have to have some incentive. Right now, they are held accountable for—when I have talked to contracting officers, they are held account-

able for playing by the rules. They want to make sure they follow the rules and they want to make sure they do it well and quickly. But in terms of getting a discount, there is no incentive for—

Senator MCCASKILL. There is no incentive for a lower price. There is incentive for getting it there on time, because the people who they are serving are—that is the squeakiest wheel that they have got.

Mr. NEEDHAM. Right. Another point on BPAs, when we looked at them, of the 320, they are required every year under the FAR to go back and review whether or not the prices they negotiated originally are good. In only 19 of the 320 cases, or about 6 percent, did they actually do that.

Senator MCCASKILL. Oh, Lord.

Mr. NEEDHAM. So there is that issue that there has to be initiative at the contracting officer level to make sure—

Mr. KEMPF. Chairman McCaskill, that is one of the things that we have started to do at GSA, and I talked a little bit in my testimony about some of the training. And one of the things that we recognize, and I think it was apparent in the first panel, is that we have an acquisition corps that needs a little bit of training.

One of the things that I always hear when I go out and talk about the Schedules program is they are difficult. They don't understand how to use them. We run into some of the things that Mr. Needham spoke about with respect to how do you do a BPA? How do I get the right prices? How do I manage it?

So that is one of the things we were working with FAI in developing a couple of courses—

Senator MCCASKILL. What is FAI?

Mr. KEMPF. The Federal Acquisition Institute.

Senator MCCASKILL. Thank you.

Mr. KEMPF. To develop courses on how to use the Schedules appropriately and how to use the Schedules in an advanced manner on things like how to develop a BPA and how to get the right prices.

One of the things that we need to learn how to do, the contracting corps, that is, is to learn how to leverage the Schedules when they do buy, so aggregating requirements, learning to buy at the right times of the month, all of those things that can actually drive discounts lower when they compete the procurement, either for a single buy or for something like a BPA.

Senator MCCASKILL. Senator Brown.

Senator BROWN. Thank you, Madam Chairman. I have enjoyed your line of questioning, and just to, if I may, play off it a little bit, with regard to the BPAs, it seems like we just need to make a decision and stick to it and tell them what they need to do, not sort of, kind of.

I find, being here over 100 days now, that the biggest problem we have is people just need to make decisions and stick to them and then let people know what the consequences are if they don't do it. It seems kind of common sense.

I believe, similarly to you, Madam Chairman, that if we don't do it, they will—if we don't draw the line in the sand, it will not get done. So I know the President has made an effort and a commitment to try to save money, and as you know, we are struggling

with a whole host of things, Madam Chairman. Later, we are doing an unemployment extension. We are looking for summer jobs money, FMAP, and we are talking \$40 billion that the President feels he can save in government waste or overpayments or streamlining, consolidating.

When do we start getting really serious about this and what efforts are you actually doing to save me, my kids, and my grandkids—when I have them—some money? I mean, when are we going to have that money available so we can put it to other uses, because it seems to me, as a newcomer here, that we are just not focusing on making those tough decisions, and just doing basic things that would save us dollars immediately. So I am wondering if each one of you could kind of tell us what you are doing to adhere to the Administration's request to save \$40 billion.

Mr. GORDON. Senator Brown, if I may, we take it very seriously and we view it as our responsibility. I view it as my personal responsibility in this job to see to it that we save that money and reduce the risk that our taxpayers face when we don't do a good job contracting. We are doing it on many different fronts, but I can go through the high points here.

We are terminating programs that are not effective so that we are cutting back on acquisition and not buying things that we can't afford or that we don't need.

We are focused on strategic sourcing. We are focused on cutting back and revamping the way we do IT procurements, the way we do financial systems management procurements. We need to save money. We have gone too long getting used to the idea that contractors can go over the budget, beyond the Schedule, and not deliver what they have promised us.

Senator BROWN. And get rewarded.

Mr. GORDON. Absolutely. We are trying to change that culture.

I will tell you, and it is a point that you mentioned, Senator, in your opening remarks, and I think it is absolutely true, part of the problem here is that our acquisition workforce has not been supported. We have not invested in them adequately. The President's budget includes \$158 million to build up our civilian agency acquisition workforce. That is sorely needed. We pay a price when we don't have well trained, adequately staffed acquisition offices.

We are also working to reduce the use of no-bid or sole source contracts. We have to be sure that we get adequate competition. That drives prices down.

We have got to be moving more to fixed price contracts, because cost reimbursement contracts and especially time and materials contracts risk costing us too much.

Let me stop there, but we are completely focused on the very concerns you are raising.

Senator BROWN. So do you have a number that you have ultimately saved to date or you plan to save in the future?

Mr. GORDON. We are focused on the \$40 billion challenge from the President. Our report that came out recently talked about \$19 billion in savings plans. Both the terminations and the strategic sourcing will provide very real savings.

Senator BROWN. OK. Does anyone else want to comment?

Mr. GUNDERSON. Yes, thank you. I am going to echo some of what Mr. Gordon said, because in response to last July's OMB memo on achieving these savings and reductions of high-risk contracts, we actually developed a plan and submitted it and it addressed a lot of the things that Mr. Gordon mentioned, such as what are we going to do to reduce the use of cost type, time and material, labor hour contracts? What are we going to do to increase competition?

A lot of that gets to how well do you define your requirements. A lot of times, if you don't have good requirements, you are going to be forced into cost type contracts. So we are working with our program offices to get them better trained and also better staffed so they can define those requirements.

We are also looking at increasing the strategic sourcing opportunities across the Department. Where we can in-source things that used to be contracted out which are better suited to be done in house, we are doing that, seeing some savings there. And also, where it is appropriate to have a program reduction or an elimination, we have also looked at those opportunities.

I don't have the numbers with me today, but we already have seen millions in savings and we are going to continue to do that over the next 2 years to meet the goals.

Senator BROWN. Madam Chairman, it would be helpful if maybe at some point we get an update as to what the goals are and what they have saved to date so we can report back to our folks, our citizens at home as well as our leadership.

The Economy Act was passed in 1932. It is a method of avoiding duplication of work on the government's behalf, and as you know, it was done in an effort to foster broader interdepartmental procurement. It provided one Federal agency would buy goods and services from another rather than from private industry. In addition, we have 34 separate funding authorities for multiple agencies, some dating back as early as 1958.

On the funding authorities, and this question is to the GAO and OFPP, on the funding, are there still 34 funding authorities, and if so, why? Should these dated funding authorities be reviewed to align with how the Federal Government does work today?

Mr. NEEDHAM. Senator Brown, that is an interesting question. In terms of 34 funding authorities, we will work to get that defined. I don't have an answer right now for you. But I know going through, there are multiple authorities, and I was thinking of a book that was written about a dozen years ago. It was called "The Tides of Reform," and it started with the Economy Act. It talked about all the different pieces of legislation that have occurred over the years, and the author, who used to work for this Subcommittee at one point, said that administrative sediment just builds up and builds up, and there has not been really a comprehensive look-back, because we passed a number of reforms back in the 1990s and there is not really a systematic thinking of how do these all fit together and how do they interplay so that they actually can be operationalized by that contracting officer.

It is a difficult job for the person who is trying to write the contract and do the buying for the government because they have so many rules they have to comply with. Now, General Counsels' of-

fices will typically try to make those work for them, but there are a lot of rules.

In terms of those different funding authorities, they are pretty well defined for each in the FAR, and so people know where they are. But in terms of the actual inventory of them, we can get that information for you later.

Mr. GORDON. Senator Brown.

Senator BROWN. Yes.

Mr. GORDON. It is interesting that you raise this issue because it reminds me that we actually have made some progress. If we had been having this hearing six or 7 years ago and we talked, for example, about franchise funds, which are one of those funding authorities that have caused confusion, where I worked at the time, GAO had concern that these franchise funds were being abused, that one agency would use another to do an assisted acquisition. That is to say, the Department of X would have the Department of Y run an acquisition for them. And we discovered when I was at GAO that one year's funds would be shifted over, parked there, and then they could be used in future years, taking advantage of what was essentially a loophole, and it was a cause for real concern.

The Department of Interior's National Business Center was one of those franchise funds that came under a lot of criticism for that very reason. At one point, DOD was prohibited from using those franchise funds outside the Department until the situation was corrected. The situation was corrected, and in fact, the National Business Center has received a clean bill of health from the Inspectors General at both DOD and the Department of Interior. That is why this past year DOD was able to again do an assisted acquisition with Interior for the Military One Source program in a way that turned out to be a model use of the flexibilities that interagency contracts provide.

It is, I think, a very nice case study of a problem that was recognized here on the Hill and elsewhere, the problem being addressed, and the situation being improved.

Senator MCCASKILL. So nobody is parking funds anymore, Mr. Gordon?

Mr. GORDON. I would not be willing to say that no one was parking funds.

Senator MCCASKILL. I am willing to bet there is some parking still going on.

Mr. GORDON. What I will tell you is people, if they are doing it, know that it is not proper. And in fact, 6 or 7 years ago, and this was mentioned, I think, in either a GAO report or an IG report, one of the agencies, one of the franchise funds that I think no longer is in operation in the acquisition area actually had on their Web site one of the attractions of using them was that you could park your funds. Those days are gone, which is not to say we have perfection. We don't have perfection, but we have addressed the problem. People at least know that it is not proper.

Senator MCCASKILL. Well, since we have talked about parking funds, the thing that got my attention in this area when I first arrived here there was a hearing, I believe in this Subcommittee, where there was a lot of talk about interagency contracting and

there were examples of advertisements that we examined, including the ability to park funds and then the fees.

Why are agencies able to charge other agencies fees, and has that been the appropriate incentive to streamline and maximize value for taxpayers? Or, in fact, have the fees been just a way that we can play a shell game with the public's money?

Mr. GORDON. I am perfectly willing to go first, but I don't want to deny my colleagues the ability to respond.

Senator MCCASKILL. Well, you can start, Mr. Kempf, because I think some of the agencies say they are starting their own enterprise efforts because you are too expensive.

Mr. KEMPF. Well, the General Services Administration, especially the Federal Acquisition Service, and I think the Public Buildings Service (PBS), to a certain extent, as well, we recoup our costs through the setting of fees. We don't intend to ever collect more than we actually need or the costs of our operations. We get very limited appropriation, and in our mind, it creates an incentive for us to hold down costs, to deliver goods/services, and provide what the customers want.

So it makes us look at the breadth of services we have and to make sure that they are—in many ways, it is just like entrepreneurship that you would see in the private sector to make sure we are delivering what the agencies want, because they do not have to use us, with limited exceptions. They can go elsewhere, which sometimes they do.

Senator MCCASKILL. Well, let me ask Mr. Gunderson and Ms. Frasier, do you think that your agencies have looked inward in terms of providing interagency contracting vehicles because the fees at GSA were too high?

Mr. GUNDERSON. In the case of EAGLE and First Source, our IT contracts, that was not the primary driver of deciding that we needed to have those contracts. If you probably do the math, we could probably say that from a financial perspective, we are better off. But the reason EAGLE and First Source were set up was to meet the kind of the strategic IT mission that we saw, bringing all these different IT legacy environments together. How are we going to consolidate the number of data centers? How are we going to get to an enterprise architecture?

We felt having a suite or a cadre of contractors that would become more familiar with the Department's IT environment over a short period of time, they would be better positioned to respond to the individual orders going forward. So in that situation, the fees were not the primary issue for us.

Senator MCCASKILL. OK. So the fees were not the primary issue. I get the sense that EAGLE really came about because you all wanted your own deal.

Mr. GUNDERSON. In the sense we felt that it would both meet the mission need better, delivering the products and services, and from a business standpoint, we also felt it was going to be a good business deal for the Department and the public.

Senator MCCASKILL. Was that intuitive that you felt it was going to be a good business deal, or is there any data that you can give us to support that?

Mr. GUNDERSON. If you look at, historically, what we have spent to date—if you want to look at it financially first, if you look at—
Senator McCASKILL. I do.

Mr. GUNDERSON [continuing]. The amount of money that we have spent, on EAGLE, I believe it is over \$8 billion so far. If you look at the fees associated with that, and there are some caps that would be invoked in there, there would still be millions of dollars of fees that would be associated with that.

And if you look at the cost, the estimated cost to establish those contracts, the EAGLE and First Source internally, we estimated those to be a few million dollars. I would probably say \$3.5 to \$4 million. So from a financial perspective, we see it in a positive manner.

Senator McCASKILL. Well, I would really like to see the numbers. The auditor in me would like to see you demonstrate that what you have done has saved taxpayers money.

Mr. GUNDERSON. Yes. The estimates I gave you, they are based on labor hours of FTE that were associated with the program and setting that up, also other miscellaneous costs, support contract costs, facility costs associated with establishing a competition, and things like that. So we can provide information to you.

Senator McCASKILL. Mr. Gordon, I know that you are supposed to be policy. Part of the problem here is that there is no one really in charge, and I know the challenges that DHS had in its infancy. They were significant. You were cobbling together a bunch of agencies and you were asked to do it overnight and there were incredible demands in terms of IT capability. I understand that it is almost instinctive, almost a reflex that you would want to have this inside and not be relying on outside contracting with another government agency.

But I don't get the sense that these decisions are being made with money as the primary driver. I get the sense these decisions are being made so the agencies can maintain flexibility and responsiveness as opposed to whether or not any money is going to be saved.

And I guess I am saying that, Mr. Gunderson, because I don't think that it is easy for you—I don't think there was a financial analysis done prior to making the decision to do EAGLE, was there, an in-depth financial analysis as to the costs?

Mr. GUNDERSON. That preceded my time at the Department, so I would have to go back to see when the numbers came together.

Senator McCASKILL. Mr. Gordon, so do you require that the numbers come together before something like this happens?

Shouldn't there be somebody saying that you are going to have to jump through the hoop of a cost-benefit analysis prior to creating another contracting vehicle which adds to the complexity and to the maze, that adds to the stress to the acquisition, that makes the acquisition force even more confused, that makes it even less likely that we are going to get a handle on all this?

Mr. GORDON. I very much share your concerns, especially regarding the burden on our acquisition force and the confusion that this can create and the extra cost to industry.

As I said in my opening statement, the business case model, I think, makes sense. We have used it successfully in GWACs so that

when NASA, for example, wanted to be allowed to continue to be the executive agent for a GWAC, our rules require them to come to OMB. They need to tell us what fees they are going to charge and we need to review them to be sure that those are reasonable, because these should not be profit centers. These should be reimbursing costs, but not profit centers.

We want to know why it makes sense for them to do it. What advantage do they have? With respect to NASA, for example, they told us they can provide high-end, high-tech IT and draw on their in-house scientists and engineers. So they could make a strong business case.

But in our view, before any agency creates a new multi-agency contract, they should have to do a business case, and in fact, we will be issuing guidance later this summer that requires that.

Beyond that, I think that even in the case of an enterprise-wide contract, a business case approach should be taken. Agencies should not create these confusing vehicles without being sure that they are justified.

Senator MCCASKILL. Ms. Frasier, while we are on this subject, GAO indicates that NIH gets high marks from its customers. Now, I don't think most taxpayers would understand why the National Institutes of Health is a store of choice for government agencies buying stuff.

Explain to me why you think you are, and if you all are so good at it, why don't we just take those people that are doing it for you and give them to Mr. Gordon and grow his shop to the point that they could really direct, not just policy, but direct acquisitions in the Federal Government?

Couldn't we cherry-pick the best out of all the agencies, put them in one place, dredge all the law out there that you were talking about, the multi-layering of the different laws that the people sitting in these chairs have done because they thought they were doing the right thing, dredge all that out, start with a fresh slate of rules, maybe a new piece of legislation that would clean out all the old stuff and make it modernized, make it more IT-friendly as it relates to acquisition and purchasing? Give me an argument why we shouldn't do that.

Ms. FRASIER. Well, first of all, just let me say why NIH is involved in IT procurement. Back in 1996, we had needs for IT for both the folks in our labs, all of our centers and institutes, and we developed the NITAAC program for NIH. What happened was that we never precluded any other agency from using our vehicles, and when word got out about our vehicles being available, they began to use it.

The infrastructure that we have established, and actually established in great part due to OMB's guidance and oversight, is an infrastructure that looks at customer service as being our primary focus, making sure that we have the contracting officers in place, making sure that we have a help desk that is useful to our customers, and a vehicle that is streamlined and efficient, plus using IT, since we are an IT program, using IT to reinforce the streamlining and efficiency.

As far as developing one particular cadre of professionals to look at all of IT, there is a reason that we have multiple agencies, and

there are certain needs that need to be met by those agencies and they have that requisite expertise.

Certainly, we are very proud of our NITAAC program and would welcome if Mr. Gordon wanted to take our program and infrastructure and to work closely as we do with some of our industry partners. But we do have to recognize that there are reasons why there is a GSA, why there needs to be IG contracts within some other agencies, that our vehicles cannot meet their needs.

Senator McCASKILL. Senator Brown.

Senator BROWN. Mr. Gordon, you spoke earlier in your testimony that you are recognizing that there is money there that needs to be saved, and you are working to meet the goals set up by the Administration. And something, based on the hearing that the Chairman held, which I found fascinating, is that there are many contractors that owe us money, either through overpayments or fraud or administrative errors and the like that is hundreds of millions of dollars and has been owed forever.

When you were talking about contracts, you talked about not only the structure of contracts, the type of contracts, and even if they don't deliver, they still get a bonus. And we have another situation where we know who owes us the money. We know that it has been certified appropriately as to what that number is, yet we haven't gone out and actually gotten it. Do we have a lot of extra money lying around, or should we go collect it? I mean, as an attorney, I remember I didn't have any receivables, because you have to pay the bills. Well, the Federal Government needs to pay the bills, as well. Is there a plan to collect that money?

Mr. GORDON. Absolutely, Senator. I appreciate the point. We are very much supportive—there has been a recent initiative to avoid improper payments. Actually, Chairman McCaskill, I believe, has sponsored legislation that would help crack down on tax delinquents that are trying to get Federal contracts. Now, it is true that IRS already has a program in place so that it can offset tax debts, but too often, we have situations where contractors with tax debts or tax delinquencies are nonetheless getting contracts and we need to address that and be sure that it is justified if it does happen.

So we are very much focused on avoiding improper payments. There is a “do not pay” list that was recently announced. We need to take steps to be sure that when you have, as you said, Senator, you have a settled obligation to the Federal Government, we need to collect on that obligation.

Senator BROWN. Well, I commended the President for that “do not pay” list. I thought that was a good first step, and I am wondering what is being done to try to collect the money that is owed. What is actually being done? Do you have attorneys? Do you have collection? How is it being done?

Mr. GORDON. A number of steps are underway, including, as I said, through the IRS. Incidentally, you mentioned another important point, which is this problem that GAO has highlighted of contractors getting award fees even when not justified. We are providing further guidance to see to it that companies don't get award fees when their performance doesn't justify that.

Senator BROWN. Yes, please address that. That is driving me and many other just average citizens crazy when the government is the

only place where you don't perform and you get a bonus. It just blows my mind.

Interagency usage fees, Mr. Kempf. As you know, the GAO report discusses some of the reasons the agencies establish and use multi-agency contracts and enterprise-wide contracts is to avoid fees and have more control over procurement, so I would like to just focus on those fees. Why are there fees in the first place? Just three very short questions, you can answer them in whatever order you want. What are your fees and how are they determined, and what is actually done with the revenue collected from the fees?

Mr. KEMPF. Basically, GSA, at least the Federal Acquisition Service, is not funded through appropriations, so we run ourselves much like a business. We recover our costs and only our costs. Each year, we set our fees and decide how to spend our money with personnel and with all the other things we need to run our organization. We pay our own rent. We also pay for overhead for the services we get from something like our Chief People Officer and all the rest of that. So we set our fees in line with our cost structure.

We also invest in equipment and systems, like our Enterprise Acquisition System, GSA Advantage, eBuy, and some of the other e-tools that support our program and that the customers use to buy through GSA. So, essentially, we are set up by statute that way. The Federal Acquisition Service was set up by statute and that was the way that they determined we would operate.

Senator BROWN. So do you actually have a budget? Do you have a yearly budget? Because I know the Federal Government doesn't have a budget yet, but do you actually have one?

Mr. KEMPF. Actually, last week, myself and our Management Council got together and we decided how many people we could hire, what we were going to invest in in terms of our IT infrastructure, what kinds of things we were going to do with the money. We set up a rate structure for what we would charge for the many services we provide.

And we do a little investment on things. One of the things that we are doing this year is providing agencies a carbon footprint tool that was developed with some of our money. So we, like almost every other entrepreneurial organization, does invest some of our money into tools and infrastructure and research and development, if you will, for future services and products for the agencies.

One of the things that we did this year was invest money in training, in development and training, because we felt that our customers needed to learn how to use our tools and our contracts better than they were using. So we invested some money with the Federal Acquisition Institute to develop some training for our customers.

Senator BROWN. Do you run a surplus or a deficit?

Mr. KEMPF. We try to get to zero. But, of course, we have \$9 billion a year that runs through our program. Last year, we had a \$200 million surplus.

Senator BROWN. And what happens to that? Does it just go back to the general Treasury?

Mr. KEMPF. We have a cost and capital plan that was set up in our legislation. One of the things we did with the surplus money last year was to increase our reserve fund. We need about a month-

and-a-half reserve to operate the program, and our reserve fund was low, so we invested most of the surplus into the reserve so that we would have adequate financial capital to run the organization.

We also invested a lot of the money that actually was surplus last year that actually came from—one of the things that we do is we run the Federal Government's fleet, so one of the things we have to do is guess what gas prices are going to be, and one of the things we did last year was we guessed a little wrong, so we got a little extra money in there from that. So what we did, we invested that \$70 million that we thought came from that in the fleet in alternative fuel vehicles where we could provide those to the agencies at a cost that would buy a regular sedan for.

Senator BROWN. And are you in good fiscal shape this year?

Mr. KEMPF. Absolutely. Right now, we are running—we think we will be probably at about \$100 million in the black, but we don't know exactly what is going to happen between now and the end of the year. One of the things that we have set up is we have to upgrade our infrastructure. Like I said, we are spending some money on what we call FSS-19, was the backbone of most of the services that we provide and we are upgrading that so that Advantage is much better. We have an Enterprise Acquisition System that we are putting in place for all of our contracting across FAS so it will be much more robust and will also provide some other tools, including transparency and more pricing information.

One of the things that we need to do is get better business intelligence through our operations. I think GAO talked about that. One of the ways we will be able to do that is with the new infrastructure, we will be able to collect better information, share it with our customers, and make better decisions about what we would need to do to get better prices for the agencies.

Senator BROWN. Now, I know the Administration is trying to save that \$40 billion. Is some of the profit the hundreds of millions that you are, in fact, making or saving or whatever? Is there any plan to turn it over to the people?

Mr. KEMPF. Well, actually, in addition to what we do, we are also following the same guidance from the President on saving money, so we are watching what we spend with our—we are using our own BPAs to cut our costs in terms of our office supplies, our real estate expenses. So we also watch what we spend, too, so that we can either keep our costs at the same rate or in some cases lower them.

Senator BROWN. Mr. Gordon, we talked about the importance of having a business case to mitigate the rapid growth of these contracts, and from your testimony, you indicated that business cases are currently required only for Government-Wide Agencies, GWAC vehicles. Can you explain to me what specific criteria OFPP uses to determine whether or not to approve an IT GWAC? For example, in the GSA Alliant and the Alliant Small Business GWACs, what unique requirements did these two contracts have that other existing IT GWACs don't have?

Mr. GORDON. Thank you. Mr. Kempf may actually want to address this, as well, but I—

Senator BROWN. Yes, both of you, if you could. That would be helpful.

Mr. GORDON. Absolutely. From our point of view, the question is, is there justification for another GWAC? The fact is, just a few years ago, there were more GWACs and there were more executive agencies. We have cut back. Today, the only Executive Agents are GSA, NIH, and NASA. To have a GWAC, in our view, the agency needs to show justification. They need to show that they will be meeting a need.

In NIH's case, the unique aspect of health IT is one of the key reasons that it made sense, just as, as I mentioned in the case of NASA, there was the issue of very high-end, high-tech IT, where they were able to draw on their scientists and engineers within NASA. They also need to show us that they will be charging a reasonable fee structure, responding to your concern, Senator.

This is not an effort to set up profit centers at the agencies. They need to tell us how they are going to manage these contracts. We need to have an assurance that we in OMB will get regular full reports about what is happening. We need transparency about the transactions under the GWACs.

And I think it is noteworthy that both GAO and the Acquisition Advisory Panel, the SARA Panel, have actually commended that process within OMB and said that the business case approach works. What we want to do is expand it so that it applies to multi-agency contracts and probably enterprise-wide, as well.

Senator BROWN. And just not to jump in, Mr. Kempf, so what can we do in the Senate to assist you folks in doing what you need to do, because taking off what Senator McCaskill said, I am sensing that the government is so big, it can't get out of its own way. There are so many rules and regulations, so you need an attorney. Now you need attorneys to kind of review all the contracts to make sure that they match and this and that. It just seems like we are so overwhelmed with rules and regulations. We need to streamline and be lean and mean and be able to react, not only as we are dealing with, like, the situation in the Gulf, but just basic purchasing. I mean, how long does it take to buy the paper products? It takes forever. We need to do it better.

Is there something that we can do, that we are missing? I mean, it is nice to bring you folks up here and have you testify and we do the whole boogie-woogie—I call it back home—but give us some suggestions because I am happy to work with the Chairman and try to come up with some solutions to make it easier and save us real money without going through the machinations. Is there something that we are missing and we can help with? You are all silent.

Mr. NEEDHAM. I would say that—

Senator MCCASKILL. Really, they are not asking us to do anything.

Senator BROWN. Especially lately.

Mr. NEEDHAM. To pick up on the Chairman's earlier point about shining a bright light, the fact that you are paying attention to this, the fact that there is this Subcommittee, is a very important step, because when you start asking questions, people have to start thinking about what they have done or not done or where things stand.

I mean, we are now beginning—we are rethinking a lot of the approaches to what we are doing in terms of work. This whole issue

of interagency fees is an issue we looked at about 8 years ago. We need to go back to it. There needs to be constant follow-up and improvement. I think the word that was very popular years ago is called continuous improvement, and to do that, you need to pay attention to it, and what you are doing here helps doing that, and what we do and also what the agencies are doing to keep that mindset of continuous improvement and keep going back and using some good data to say, OK, we have moved forward and how do we keep doing it again.

Mr. GORDON. I very much agree. I think that the fact that this Subcommittee exists, the fact that you are focused on improving our contract management is a service to the Congress. I hate to say this, it sounds masochistic, but I think you should bring me back up here at some point and ask me further questions and say, Mr. Gordon, have you made progress, because I think we need to be held, in our agencies and at OMB, accountable for this. We need to ensure that strategic sourcing is working, that we really are saving the \$40 billion, that we really are reducing the risk. That is our commitment. That is our plan. We have made progress. But we expect to be held accountable.

Senator McCASKILL. Go ahead, Mr. Gunderson.

Mr. GUNDERSON. In addition to the continued awareness that we have here, I think, any opportunity there is to support workforce initiatives in the acquisition workforce is critical. The things that have been talked about today, certainly in your opening remarks about best value, being more efficient, being more effective, if you ask any contracting officer or any program manager, they want to accomplish that, and they are doing the best that they can to try and find that balance between mission and business. As much as we can continue to invest in that workforce, get them the training, get the appropriate staffing in the respective offices, that will go a long way.

Senator McCASKILL. Well, I know Senator Collins has done great work on acquisition workforce and I have been happy to work with her, and I know Senator Brown supports those efforts, also. The acquisition workforce is very important.

I would like you all to give some thought to the multi-layers of laws that bring to bear in this area, because there is a tendency around here to always think prospectively about what law needs to be passed rather than retroactively what laws need to be changed that are currently on the books. We have a tendency—I thought the analogy of the sediment was a good one, where we layer and layer and layer, and we go back and look at something that was passed in the 1930s and it probably doesn't work as well today as maybe a new way of looking at it, a new way of writing. And the rules and regulations get in the way.

I am usually somebody who is saying we need more rules and regulations, because without them, you get waste, fraud, and abuse. And sometimes with them and because of them, you get waste, fraud and abuse, because they get so darn complicated. So we need to find that where the pendulum is in the middle, where we have enough regulation that people can get in trouble for waste, fraud, and abuse, but not so much regulation that they get in trouble for waste, fraud, and abuse because they were so darn con-

fused. And I think we are dangerously close to that area right now because this is such a thicket of acronyms and contracting vehicles and different types of things.

Let me ask GSA, you really are the bulk of the money in terms of what we are purchasing. I think the GAO report said about \$60 billion a year, and close to \$50 billion of that was through GSA. We talk about the GWACs and the multi-agency contracts and the government-wide contracts, but that is really still a pretty small piece of the action. Where most of the action is in GSA.

And when I asked the experts in February, what should your role be, what should GSA be doing, what are they doing right and what are they doing wrong, and there was not an unanimity of opinion on that panel as to what your role should be. Do you think your mission is still valid, and if it is still valid, should we be focusing on your acquisition workforce with the thought that if we get your acquisition workforce up to par, we get more bang for our buck because of the number of contracts that are actually running through GSA as opposed to the other contracting vehicles?

Mr. KEMPF. I would say that GSA's mission today is more important than ever, and I think this hearing highlights that. Our Administrator, Martha Johnson, has set out three areas for us to look at to guide our actions moving forward. Those are operational excellence, customer intimacy, and innovation. She feels, as do I, that if we focus on those things, we will get done right what we need to do to support our programs.

And that is why we are spending some money focusing in on our systems so that—one of the interesting things we get to do with our job every once in a while is talk to some of the foreign governments who come here, and one of the things that they invariably want to look at is how the Schedule program works and our system like GSA Advantage. They are thrilled when they see GSA Advantage, and my CIO and I always say, oh, if we could just start with a blank slate and start all over, and that is essentially what we are doing, is upgrading our systems so that they support the kind of decisions that our contracting officers make, that we can add efficiency.

One of the things we did about 2 years ago was starting—the first thing we did was look at an acquisition process improvement program, where we laid out the requirements from start to finish for all acquisition processes in GSA, and we are developing a system that will support that from beginning to end.

The other thing that we are doing is looking at the process improvement particularly in the Schedules program, where we have looked at how do we improve the many kind of steps that we take, the big steps that we take, the modification of the contracts, the exercise of the option, how long the contracts ought to be, how does a contracting officer work in that program, and really get down and make the system and make the process as effective as it can be so that they can make the right decisions.

One of the things we focused in on specifically was a pricing tool. We saw that people were using spreadsheets. They were getting information in from the vendors that was paper, and we are moving toward a paperless environment. But one of the tools I looked at the other day, I talked about our Enterprise Acquisition System, is

actually looking at getting all of that data in electronically, and the way that the contracting officers can look at that data in a way that they couldn't before.

So the only way that they could get this data—think about a contractor like Dell that might have 1,000 different kinds of component IT products on their Schedule. Somebody would have to actually build a spreadsheet. One of the things that this system will do is actually build—well, you get the information in electronically. You can see the differentiation in the price on the products. You can compare it to other products in Advantage and even import information from other contracts, whether they be governmental or commercial, and compare the prices so that you can see as a contracting officer, are you getting the very best price on that kind of product.

So the power of that tool and the flexibility will give the contracting officers greater flexibility and better intelligence to make decisions about how to award the contract, at what price, and they will even be able to see where the contractors might be playing a game with the way they are doing the pricing. So those kinds of things are essential for us doing well.

We have about 300 contracting officers that are warranted in the Federal Acquisition Service. We have about 800 1102s, which is the contracting professional series. We probably could use more. We have been able to hold our own in hiring. We continue to increase the ranks, try to bring more in so that we can deliver and get the products onto Schedule quickly, that we can staff the GWAC programs and all of our other programs that we haven't talked about today that are very important, like running the credit card programs, the City Pair program for airline tickets, and the Networx program. All of the other ones that require contracting resources at all, as well.

Senator MCCASKILL. Well, I know that as someone who doesn't have time to shop anywhere but on the Internet, that the private sector has figured this out pretty well. There are very few things that I can't easily compare quickly with a few clicks. For the consumer out there, the electronic methodology is growing by leaps and bounds in terms of delivering the best value most effectively, and I just know that the Federal Government is lagging behind. I know that we are going to get there. I just worry how many contractors and how many different IT contracts is it going to take for us to get there.

Mr. KEMPF. Well, that is one of the things I talked about earlier that we are doing with Advantage. As I said, Amazon actually started after Advantage. We were actually one of the first in the market in it. But we didn't have the resources to build the technological advances in it that they did. But I think the advances that we are going to build into the system that are scheduled to be released this fall will be really important for that tool.

One of the things that the other contracting officers using the GSA Schedules have been asking for years, when you go to an Amazon Website, you see that bright, clear picture and description. We are going to be using commercial descriptions that we get from a service that will look like an Amazon—

Senator MCCASKILL. Are you going to have reviews?

Mr. KEMPF. Excuse me, which reviews?

Senator MCCASKILL. You should have reviews for the products.

Mr. KEMPF. Oh, yes.

Senator MCCASKILL. You should have the various agencies——

Mr. KEMPF. Well, this is——

Senator MCCASKILL [continuing]. Post reviews, so when other agencies come to look, they can say, hey, don't trust this contractor——

Mr. KEMPF. Don't buy that one.

Senator MCCASKILL [continuing]. He didn't deliver what he said he was going to deliver. You should put up there shopping reviews just like the consumers have. There is no reason not to.

Mr. KEMPF. We will take that under advisement. But one of the things we will be able to do——

Senator MCCASKILL. Don't be so worried about getting sued.

Mr. KEMPF. Yes, that would never happen. [Laughter.]

But one of the things that this will actually do when we get there is once you pull up a product, you will be able to see other products similarly priced. That is one of the things that our current infrastructure doesn't support. So we will be able to be much more useful for the contracting officers in making decisions.

One of the things that they have been saying to us is the pictures, I can't tell from the pictures, because one of the things that we say, when you get your Schedule, you have to give us the pictures and we post them. Some of the contractors will give us like their icon. So when you are looking to see the picture, you see an icon of their company because they didn't have the wherewithal to provide the kind of pictures——

Senator MCCASKILL. Well, if they can't figure out how to give you a digital picture of what they are trying to sell the government, we probably shouldn't be doing business with them. In this day and age, seriously.

Mr. KEMPF. Well, we are going to fix it for them one way or the other.

Senator MCCASKILL. My teenagers could handle that for them. [Laughter.]

So I think that is something you need to be more adamant about.

Mr. KEMPF. Absolutely.

Senator MCCASKILL. I think sometimes the relationship between the vendors and the government gets a little confusing sometimes. I think that we forget how much money these vendors potentially have to be made off the Federal Government. There is not a bigger purchaser in the world than the U.S. Federal Government. That is not something I am bragging about. I am a little worried that I can say that. But we have incredible power and it is untapped. Make no mistake about it, it is untapped. We are doing—we are nibbling around the edges in unleashing the purchasing power we have.

But I think that this particular panel has demonstrated, and I know there are many others like you, dedicated government employees that are not in this for the big money. You don't go into acquisition in the government because you want to be a star. You go into it because you are driven by a desire for public service and trying to do the right thing, and I do think that there is great potential.

I have an unrelated question to this subject matter. Senator Brown, do you have any other follow-up questions on this subject?

Senator BROWN. I just have one.

Senator MCCASKILL. OK.

Senator BROWN. Mr. Gordon, one of the things I enjoyed when the President was in his early days is he was going to do a top-to-bottom review of every Federal program to see where the waste was and attack it and get rid of it, streamline, consolidate, etc. You can do this offline because I know we are kind of getting along here, but I would love to know what has been done, what the plan is to continue with that effort. Have we realized any savings? Is there anything, once again, we can help in that regard?

And then also, I will just throw this out there. Is there a mechanism—I would rather pay the people who are working for you in the form of a retention benefit of sorts to say, OK, listen. Here is our budget. This is what we spend. You spend us X and you are going to get a little piece, almost like an attorney getting his third or whatever, to incentivize the people who are working for us for retention and obviously enjoying coming to work and be kind of pit bulls to find out where the waste is and go after it and have it be interagency competition, whatever. Just get everyone thinking outside the box. Is there a program like that at all or not?

Mr. GORDON. Senator, thank you. I will tell you that my boss, Jeff Zients, our Deputy Director for Management, is the country's Chief Performance Officer and he is very focused on the fact that we need to get rid of programs that are not performing. OMB recently talked about an initiative to address the 5 percent of the weakest programs and to see to it that we are moving forward with what works and stopping what is not working. We would be happy to discuss it further with you offline, if you would like.

Senator BROWN. Thank you. I am sorry, sir. Mr. Needham, did you want to—

Mr. NEEDHAM. I was just going to mention that GAO has a body of work underway under the Acquisition Workforce and we are looking at many facets, but we are going to probably try to look at some of those issues of incentives as well as the training and so forth that they are undergoing, because there is an issue of retention. Once you train people, you need to be able to keep them.

Senator MCCASKILL. Well, and that is—somebody who is really qualified and trained in acquisition in the Federal Government is so ripe for the picking by the private sector. There is nobody that a government contractor wants more in their operation than somebody who really understands the process of government acquisition, because I talk to business people all the time that just give up on trying to do business with the Federal Government because they can't get past the complexity of it. So if you have an acquisition professional in your private company, then all of a sudden, you have got a leg up and you know how to do business with the government.

So I think looking at that, I think it is a great idea that GAO would look at the incentives, could we do financial incentives for acquisition personnel on cost savings. The most frustrating thing about government is that we want it to behave more like a business, and frankly, it is not, but in the area of acquisition, we cer-

tainly can get much closer to that goal of having some kind of bottom-line capability of, well, can we save this year compared to last year? How can we—and giving a little bit of that money to the people who helped figure out how to do it, I think is a great idea.

Mr. NEEDHAM. I think it may contribute to stability. I mentioned to Ms. Frasier when we came in, I met her about 7 years ago, and very often as I go across agencies, I don't meet the same people year in and year out. They change over. When you do see stability, that helps add into the quality of the work that they are doing.

Senator MCCASKILL. Thank you, Ms. Frasier, for staying put.

I want to thank all of you for being here today, but while I have Mr. Gordon here, I want to ask him an unrelated question. I have been working very hard to do away with the notion that we have corporations in this—doing business with our Federal Government that don't have to compete and that aren't small and aren't economically disadvantaged. I have no problem with the 8(a) program. I think the 8(a) program has a wonderful purpose for small companies trying to get their foot in the door.

There are very few Alaska Native corporations that fit that definition, and we all know that they were given special status for an inexplicable reason, frankly. I am not really sure why. I wish them great success. I think they can continue to be very successful as corporations. I just don't understand why they don't have to compete.

So I have been working on this and was very pleased that we passed a law, a law that is now on the books that all sole source contracts over \$20 million, that there must be a justification, and I have learned that there has been a delay of the implementation of this law and that there is Tribal consultation going on and I wanted to give you an opportunity to answer on the record why the implementation of the \$20 million cap is not occurring and what is the time line. How quickly can this law actually go into effect, because it is the law.

Mr. GORDON. I appreciate it, Senator. It is the law and I can assure you that the Administration is very supportive of increasing competition. Nonetheless, in this case, because the law will affect Indian Tribes as well as Alaska Native corporations, we are doing outreach to those groups. We want that outreach to be fair, but we also want it to be expeditious. We expect to move forward very promptly with outreach and then with issuing a new regulation to implement the statute.

Senator MCCASKILL. Well, I am going to be watching this very carefully, and I am not really sure what the consultation is about. It is not like you are going to change the law in these meetings. I think a \$20 million cap on non-compete is fair. While there may be some of these corporations that justifiably belong in the 8(a) program because they are small and they are trying to find their way, as you are well aware, as everyone that does anything in government acquisition is aware, there are a whole bunch of them that haven't been small for a long time. They are mega, multi-national corporations, and the notion that some of these corporations, as large as they are, never have to compete should be offensive. It should be offensive to anybody in the field of acquisition.

So I urge you to put a burner under this effort and make it go quickly. I certainly admire you wanting to do outreach at all points of your job. I think that is important. But I am frustrated that this isn't going more quickly and I am going to continue to express that frustration and I wanted to get that on the record today. And I apologize to all of you, since it is not particularly on the subject matter. Now you really will look forward to coming back the next time, because you know anything is fair game, Mr. Gordon, when you come in front of this Subcommittee.

Mr. GORDON. Thank you, Senator. I would be honored to be invited to come back.

Senator MCCASKILL. If it has to do with contracting, it is fair game.

Thank you all, and we will continue to follow up.

The hearing is adjourned.

[Whereupon, at 4:21 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Opening Statement by Senator Robert F. Bennett

February 25, 2010

Subcommittee on Contracting Oversight

U.S. Senate Homeland Security & Governmental Affairs Committee

“Interagency Contracts (Part I): Overview and Recommendations for Reform”

In Fiscal Year 2009, the federal government spent over \$536 billion on goods and services. That number is thrown around often in Washington – almost to the point of abstraction, but I want to put \$536 billion into perspective. Currently, that means federal government purchasing comprises about 3.7 percent of the US Gross Domestic Product – but maybe that is still a little abstract. If the federal government were an economy unto itself, it would rank eighteenth in the world. To compare our spending to the private sector, \$536 billion is nearly \$130 billion greater than the total revenue Wal-Mart. To put it simply - the federal government is the largest consumer in the world.

To move for a moment from macro to microeconomics – we are all familiar with basic buying and selling of goods, and we know that if you are purchasing at a large scale you usually expect a break in the price from the seller. As the largest purchaser in the world, the federal government expects these same “wholesale prices,” in fact, it should receive some of the best prices for goods and services in the marketplace. This premise is at the core of our hearing today on interagency contracts – whether the purchasing power of the federal government is used efficiently, and are the systems that have been developed and expanded in recent years the most efficient way for the federal government to buy? The most important question, however, is whether these contracts yield cost savings for the American Taxpayer?

Encouraging businesses to sell to the federal government is an essential part of gaining those cost savings. It is my belief that greater competition – which is gained through participation of new companies in the market – will have a greater effect on price than the federal government’s aggregated purchasing power. With a greater number of companies competing in the marketplace, the federal government will have access to the best goods and services available, at the best price, and the efficiencies of the market will yield cost savings to the American Taxpayer.

Unfortunately, many businesses - and small businesses in particular – find the barriers to entering the federal marketplace to large to overcome. I have stated before that the federal government’s complicated procurement system is too difficult to navigate, and keeps potential vendors out. From the perspective of small businesses, it is too costly, slow, and confusing to enter the federal marketplace – especially when they are compelled to submit bids to a complicated array of interagency vehicles.

It also troubles me that when we seek a serious cost-benefit analysis of interagency contracting, once again the government falls short. Three years ago the Acquisition Advisory

Panel (usually called the “SARA Panel) published a seminal report on interagency contracts, but today we still find the government struggles to implement the Panel’s most basic recommendations. For example – the panel recommended a comprehensive database that would list the interagency contracts in place, and assist agencies in making prudent, business like decisions. Such a database is not even in development.

I have said in previous hearings, and will say again, that serious analysis of acquisitions cannot take place until we replace the current anecdotal evidence for the status quo with serious empirical analysis. I hope this panel, which is comprised of some of the great minds on this topic, will offer some ideas on how we can do that.

Interagency contracts, in various forms, have existed for nearly eighty years, the most familiar example being the General Service Administration’s “Schedules.” Today, however, there is a panoply of large-scale contracts to do a wide variety of purchasing. I am sure that some of these other large-scale contracts are necessary, especially ones that are tailored to the unique needs of agencies that have a very specific mission. I am also suspicious, however, that some of these contracting vehicles may have grown – both in number and in size – because agencies want to defend their turf, that using them is facile, and that the sponsoring agency believes it can save money thorough creating their own enterprise, even when the fees for other programs like the “schedules” are modest.

We have seen time and again in acquisitions that agencies tend to focus on their own mission and interests, but in doing so subordinate the interests of what is most efficient for the federal government. But once again, without a full accounting for what interagency vehicles are out there, what they do, and how much they cost, we are left merely speculating about whether this array of contracts are the most efficient way for the government to make these purchases.

I am eager to hear the panel’s perspectives on these points, and I thank these leaders in the government contracting field for being here today. I also look forward to sharing the panel’s perspectives with the agency witnesses at the next hearing, so that we ensure the practice of interagency contracting is fair, is efficient, and save valuable taxpayer dollars.

###

TESTIMONY OF RALPH C. NASH**before the****Subcommittee on Contracting Oversight
Committee on Homeland Security and Governmental Affairs****February 25, 2010**

For many years, Congress has authorized agencies to establish contracts that could be used by other agencies to meet their acquisition needs. The traditional contracts of this nature are issued under the Federal Supply Schedule, pursuant to Title III, of the Federal Property & Administrative Services Act, 41 USC § 251, et seq. These contracts permit agencies to buy directly from holders of the contracts (hence they are termed the “direct acquisition” form of interagency contract). The contracts contain prices but they place the burden on the contracting agency to ensure that they are receiving the best price that can be obtained from a vendor. The major problem with these contracts is that the prices in these contracts are stated in FAR 8.404(d) to be “fair and reasonable” even though the General Services Administration has not compared the prices with the prices of other vendors when placing them on the contract (the issue addressed by GSA in making the “fair and reasonable” determination is whether the vendor has offered a discount from its commercial prices). This has a tendency to mislead contracting officers buying off of the schedule. This tendency is exacerbated in the case of “prices” that are actually fixed rates for hours of labor which is the predominate form of price on the contracts for services. The Subcommittee might want to explore the amount of overpricing that has occurred because of this situation.

The other form of interagency contract is the “assisted acquisition” contract where the agency issuing the contract actually conducts the acquisition for the originating agency. The traditional form of contract of this type was issued pursuant to the Economy Act, 31 USC § 1535, as implemented in FAR Subpart 17.5. The regulations here provide good guidance in controlling this type of interagency contract with the result that there appear to be few problems in the use of this authority.

In the 1990s Congress authorized two new forms of “assisted acquisition” contracts – Government-Wide Acquisition Contracts (GWACs), 40 USC § 11302, and Franchise Fund contracts, § 403 of the Government Management Reform Act of 1994, Pub. L. No. 103-356. These types of contracts apparently were based on the theory that allowing a single agency to acquire certain types of products or services would allow the government to obtain better prices by taking advantage of economies of scale. They may also have been the result of a belief at the time that having competing contracting agencies would induce contracting offices to improve their acquisition practices. It is my view that neither of these theories have worked out in practice.

Unfortunately, the result of the 1990s legislation was a competition among agencies to

create multiple assisted acquisition contracts charging significant fees as a way to bolster their contracting activities. Some of these contracts covered a limited scope of work, carrying out the apparent Congressional intent to establish specialized buying activities. Other such contracts claimed to offer the capability to acquire any and all types of work – a claim that was preposterous on its face. Many of the contracts overlapped the contracts issued under the Federal Supply Schedule. The end result was an excessive proliferation of interagency contracts that bewildered agency contracting officers and forced contractors to enter into multiple contracts for the same work in order to ensure that they would be considered for a contract no matter which vehicle the ordering agency selected. In some cases, we saw ordering agencies sending funds to an assisted acquisition office (paying a fee) which would then acquire the product of services from the Federal Supply Schedule (paying another fee). Furthermore, we saw numerous instances where requirements offices in agencies ran around their own contracting office and went to an interagency contract to obtain needed goods and services – frequently dealing with an agency that did not understand fully the special provisions applicable to that agency. In my teaching I used to warn contracting officers that these interagency contracts were hunting licences issued to contractors and they were not the quarry. Early into this decade, the Government Accountability Office, the Office of Federal Procurement Policy, and the Office of the Secretary of Defense recognized that this situation was chaotic and needed to be addressed.

I would draw several conclusion from this recent history of interagency contracting:

1. We need to reduce the proliferation of interagency contracts. If the fundamental premise is that the government should have specialized acquisition offices to obtain certain types of products or services, there should be a very limited number of such offices for each type of product or service. Furthermore, these assisted acquisition vehicles should be limited to situations where an agency has special ability to procure a narrow class of supplies or services or can accumulate the requirements of a number of agencies to take advantage of economies of scale. It makes little sense to force a contracting agency to understand the capabilities of numerous offices in other agencies in order to assess which office to use. Furthermore, having a number of offices acquiring the same product or services deprives the government of the benefits that can be obtained through economies of scale. In some cases, there should only be one office established to acquire a specified product or service. While it makes sense for the Federal Supply Schedule to duplicate such vehicles when the product or service is simple in nature (allowing the contracting office to buy directly from the vendor with a schedule contract), it is questionable whether such duplication should be allowed when complex transactions are required (where the assisted acquisition office has the specialized skills to acquire that type of product or service).
2. We need to assist contracting activities in using interagency contracts to their fullest advantage. First, the Office of Federal Procurement Policy should publish and maintain a catalog of assisted acquisition vehicles that clearly states the specific supplies or services that can be obtained through the vehicle, the procedures to be followed in using the vehicle and the fees that will be charged. Second, interagency contracting offices should be certified by the Office of Federal Procurement Policy as being fully competent to acquire the product or service in which they specialize. It is unreasonable to require an ordering office to determine by itself whether an

interagency contracting office is competent. Once an office is certified as being competent, there should be regular reviews of that office's contracts to ensure that it has actually obtained a favorable deal for the government.

3. Requirements personnel in agencies should not be permitted to run around their own contracting offices to obtain their products or services. The idea that providing competition between contracting offices would induce them to improve their capabilities was an interesting idea but in my view our experience with interagency contracts demonstrates that it was not sound. Put another way, the decision to use an interagency contract should be reserved solely to the contracting officer of the ordering agency.

4. It follows that contracting offices in each contracting activity should be staffed with sufficient personnel to acquire the unique products and services required by that activity and to determine when to use an interagency contract to obtain common products and services. Even with simplification and consolidation of interagency contracting vehicles, each contracting office will need to have a cadre of personnel that have the expertise to choose among the available interagency contracts. The government should institute training programs to ensure that these people are given the tools necessary to make wise choices in this regard.

5. The contracting office in each contracting activity should have full discretion to use an interagency contracting vehicle, establish an agency task or delivery order contract in lieu of using an interagency contract, or acquire the product or service as a separate procurement. However, such discretion should be limited when there has been a high level decision to fulfill the entire needs of the government for a certain product or service by the issuance of a government-wide contract.

STATEMENT OF
MARSHALL J. DOKE, JR.
PARTNER, GARDERE WYNNE SEWELL LLP
DALLAS, TEXAS

BEFORE THE
SUBCOMMITTEE ON CONTRACTING OVERSIGHT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

February 25, 2010

Chairman McCaskill, Ranking Member Bennett, and members of the Subcommittee. My name is Marshall Doke, and I am a lawyer in private practice in Dallas, Texas, with the firm of Gardere Wynne Sewell. I have practiced government contract law almost exclusively for over forty years, beginning as a young Army Judge Advocate General officer in the Procurement Law Division in the Pentagon with a special assignment as Counsel to the Army Contract Adjustment Board. My practice has included virtually all types of government contracting (including interagency contracting) involving preparation of solicitations, bid protests, disputes, and litigation representing federal, state, and local government agencies, as well as contractors and grantees.

I have served as Chairman of the American Bar Association's Section of Public Contract Law and was that Section's spokesman in the ABA's policy-making House of Delegates for over thirty years. I also have served as President of the United States Court of Federal Claims Bar Association and (I am currently on its Advisory Council), as President of the Boards of Contract Appeals Bar Association and as a member of the Board of Governors of the Federal Circuit Bar Association.

ACQUISITION ADVISORY PANEL

The federal Acquisition Advisory Panel (the "Panel") was authorized by Section 1423 of the Services Acquisition Reform Act of 2003, which was enacted as part of the 2004 DOD Authorization Act. I served as one of the two lawyers in private practice appointed to the fourteen-member Panel. The law directed the Panel to review all federal acquisition laws and policies, and it specifically mentioned the performance of acquisition functions across agency lines of responsibility and the use of government-wide contracts (*i.e.*, interagency contracts).

The Panel had 31 public meetings and received testimony from over 100 witnesses from both public agencies and private organizations. Our work reviewing interagency contracting included consideration of multiple reports of the Government Accountability Office ("GAO") and various Inspector Generals ("IG"). The Panel's final report was published in 2007 and is available on the Panel's website.

The Panel found that the significant increase in the use of interagency contracting methods raised a number of complex policy issues and has created an environment in which accountability often was lacking. When managed properly, interagency contracting can simplify the acquisition process and leverage the Government's buying power.

Our review of interagency contracting methods involved four basic questions: (1) what are they, (2) why do agencies use them, (3) how do agencies use them, and (4) how should agencies use them?

Here is an overly-simplified explanation of the basic types of interagency contracting methods.

a. *The Federal Supply Schedule Program* (also called the Multiple Award Schedule Program) operates by the General Services Administration negotiating many thousands of contracts (without competition) based upon the vendors' best price for their preferred customer and having provisions for a price reduction if the vendor lowers its price for those "most favored customers" ("MFG"). Other agencies can place orders under those schedule contracts. The various "schedules" describe different types of products and services. The GSA e-Buy program facilitates the submission of on-line quotations and proposals for schedule items.

b. *GSA's Government-wide Acquisition Contracts* ("GWACs") are single or multiple award indefinite delivery-indefinite quantity ("IDIQ") contracts for information technology products or services. Other agencies can place delivery orders or task orders to vendors under these contracts.

c. *Enterprise-wide Contracts* are intended to serve as an alternative to interagency contracts and share the same IDIQ ordering features as GWAC contracts but whose use generally is confined within a single agency. An example of this type of contract is the Navy's SeaPort-e program.

d. *Interagency Assisting Entities* are not contracts but have a significant interagency contracting impact. These entities generally are described as some type of "fund," such as franchise fund, revolving fund, acquisition services fund, or working capital fund. Well known examples include the Department of Interior's GovWorks, Health and Human Services' Program Support Center, and Department of the Treasury's FedSource (dissolved in 2009). Most of these have separate statutory authorizations permitting one agency to transfer funds to another for purchasing, and some allow agency funds to remain obligated after the end of the fiscal year.

There are a number of factors that have prompted federal agencies to utilize interagency contracts to satisfy the demands for their contracting services. The reductions in the acquisition workforce (with increased workloads and resulting increased lead-times) have caused agencies to seek alternate means of contract services delivery. Funding constraints have caused agencies to find ways to "park" one-year money with other agencies in order to extend the use of the funds into a subsequent fiscal year.

Agencies have used interagency contracts to avoid and waive competition requirements in favor of incumbent contractors and to reduce the basis of oversight through the protest

process. Moreover, interagency contracts allow the sponsors to collect fees for assisted and unassisted buying (this creates an incentive to increase sales volume to support other agency programs).

Interagency contracts have caused management problems by the lack of transparency and internal controls. The GAO and IG findings reflect misuse of interagency contracts, particularly service contracts. Many of the problems are the result of unclear guidance, an inexperienced workforce, and inadequate training. The Panel found, in many instances, that there were inadequate and inaccurate data that made review and evaluation extremely difficult.

One significant conclusion of the Panel was that there is no consistent, government-wide policy for interagency contracts. Addressing the misuse of interagency contracts caused by inadequate controls and oversight calls for a government-wide policy covering the broad scope of creation, utilization, and continuation of these contract vehicles rather than unorganized attempts to "fix" individual issues. Such a policy should recognize that these contracts require special business ability and flexibility to operate and manage.

The problem of the uncoordinated proliferation of interagency contracts has been compounded by the lack of coordination among the agencies regarding the various types of products and services offered under various types of contracts. There is agency competition to obtain "business" from other agencies in order to earn the fees for providing the services. There are thinly disguised "turf" issues that make solutions difficult.

The Panel concluded that most of the interagency contracting problems have resulted from an uncoordinated, bottoms-up, statutory and regulatory approach focusing on short-term benefits of reduced procurement lead times instead of as a tool for government-wide strategic sourcing with reduced administrative costs. The Panel recommended the development of a government-wide policy that requires agencies to address all relevant issues at the point of creation and continuation of these contract vehicles rather than trying to fix them at their point of use. Specific recommendations for such policy coverage were included in the Panel's report.

IMPROVING COMPETITION

Many interagency contracts require full and open competition using the competition provisions in the Federal Acquisition Regulation (FAR) and, thus, competition is a subset of interagency contracting. I was particularly pleased that your invitation asked me to address my Supplemental Views on "Improving Competition" included in the Acquisition Advisory Panel's final report (beginning at page 141). Inasmuch as my Supplemental Views are conveniently available on the Internet (with 91 footnotes referencing legal decisions and other information), I will only briefly summarize those comments.

Competition requirements in government contracts in this country go back over 200 years and now exist in all 50 states. Competition is required not only to obtain lower prices but also to prevent unjust favoritism, collusion, or fraud. I emphasize this last purpose because of what one

federal judge called a growing culture of corruption in Washington. I personally believe we have had more reported fraud in government contracting in the last 10 years (including fraud by high level government officials) than the combined amount in the previous 40 years. I believe the deficiencies in our competition process have given such enormous discretion to contracting officials that, together with a lack of transparency, they have created an environment and circumstances that have contributed significantly to this increase in fraud.

Let us look at “competition” in the abstract. All “real” competition (whether in sports, gambling, or contracting) requires “rules” for the competition, disclosure of the rules to the competitors, and enforcement of the rules. The fact that you “call” something competition does not make it real competition. Who thinks professional wrestling is real competition? What if, in football, the players are not told how many points they will get for kicking a field goal?

One big difference between government and commercial contracting is that the Government only can buy what it *needs*, not what it *wants* (in the absence of specific statutory authority). This is because the authority for government agencies to enter into contracts is *implied* from an appropriation of money by Congress, and one cannot reasonably believe Congress intended for agencies to buy more than they reasonably need (this is called the “minimum needs” doctrine). Our competition process, however, allows the agencies to purchase more than they need all the time (as I will explain).

We have two primary types of full and open competition. The first is sealed bidding in which the award is based solely on price and price-related factors (such as transportation costs). The second type, competitive proposals, results in the largest dollar volume in federal contract awards. In this type of competition, price is only *one* factor in the source selection decision. Agencies may use multiple other evaluation factors and subfactors (twenty or more are not uncommon). The Federal Acquisition Regulation gives four or five “examples” of such factors (*e.g.*, management capability, technical excellence, etc.) that “may” be used, but FAR provides absolutely no guidance about even those factors, what evaluation factors should encompass, when and in what contracts they should be used, or how much importance or “weight” they should be given in the evaluation process.

There are only two evaluation factors that must be used -- price and (usually) past performance. There is *no* requirement or even guidance in FAR regarding what percentage must, or even should, be given to price in evaluating proposals – it can be ten percent or ninety percent. Moreover, many non-price evaluation factors are entirely subjective, such as employee appearance, intrinsic value, reputation, and vision. Although there is a statutory requirement for agencies to disclose (in the Request for Proposals) all significant evaluation factors and subfactors, the GAO holds that a subfactor does not need to be disclosed if it is reasonably related to or encompassed by a disclosed factor. That view evades the statutory requirement, because any *subfactor* is, by definition, logically related to or encompassed by the primary factor – if not, it is a separate factor altogether.

One particularly troublesome problem is that agencies are permitted to give extra points or credit in evaluating proposals for *exceeding* the requirements in the specifications or statement of work, and without even telling the competitors they are doing so or how much weight will be given. This has two problems. First, the failure to disclose how proposals will be evaluated violates the fundamental rule “disclosure” principle of competition. Second, if the specifications or statement of work describe what the agency *needs*, then giving extra credit (possibly resulting in a higher price paid) violates the minimum needs doctrine.

The law is clear that agencies have very broad discretion in selecting evaluation factors and in evaluating proposals. If agencies follow the law and their own “rules” set forth in the solicitation and document their reasons, the agency’s contract award decision is virtually “bullet proof” in bid protests to the GAO or the United States Court of Federal Claims.

The significance of this “competition” process is that agencies can, pretty much, award a contract to whichever competitor it wants. Not just “agencies,” but also contracting officers or other source selection officials, can make such decisions. It is this broad *discretion*, lack of transparency, and bullet proof award decisions that, I submit, create circumstances and an environment that can result in fraudulent activity. There is, I believe, a direct correlation between discretion and fraud. That is the reason the Government has competition requirements in government contracts in the first place. That is why sealed bidding actually is the favored method of contracting if the Government can describe its requirements adequately.

Let me add that agency personnel will fight tooth and nail against any changes to this system that, basically, allows them to award to any competitor they want. It is human nature, and my clients that are public agencies also want this discretion and chaff when restrictions are imposed. It is not because they want to cheat – they just want the freedom of choice.

What about cost to the Government? When a contract is awarded to a competitor whose price is higher than the price offered in an otherwise acceptable proposal, the difference between the lowest price and the contract award price is the *price premium* being paid for the other, non-price, evaluation factors. In other words, the price premium reflects how much *more* the Government is paying for evaluation factors such as additional years of experience, better reputation, more intrinsic value, etc. That price premium must be documented in the contract file, but there is no requirement, anywhere, that these price premiums be reported above the contracting officer level.

I respectfully submit to this Subcommittee that no more important service to government contracting could be provided, right now, than merely imposing a statutory requirement that price premiums paid for every contract be reported “up-the-chain” to the Department level and aggregated at each level.

The President stated in a Memorandum of March 4, 2009, 74 Fed. Reg. 9755, that spending on government contracts has more than doubled since 2001, reaching over \$500 billion in 2008. Merely adding “sunlight” and transparency to the price premiums being paid would, I

believe, have a significant impact in slowing additional growth. I also want to call your attention to Section 845 of the 2010 DOD Authorization Act, which directed the Comptroller General to conduct a study of non-price evaluation factors such as those I have been discussing. You might want to hear GAO witnesses with respect to this study.

Finally, I want to mention briefly the concept of “responsibility” in government contracting. This is a term used to describe a competitor’s ability to perform its contract obligations. There are various factors involved, but no government contract can be awarded unless the contracting officer finds the proposed awardee is “responsible,” meaning it can perform the contract *satisfactorily*. However, many of the non-price evaluation factors used in awarding contracts are directly related to “responsibility,” such as financial capability, corporate experience, key personnel, etc. I ask you this question. If the agency cannot award a contract to anyone that cannot perform it “satisfactorily,” why should the Government pay a price premium for a contractor to perform *more* than satisfactorily? If the Government *needs* performance that is more than satisfactory, that must be because the Government has not properly defined what “satisfactory” means in the specifications or statement of work. One government program manager had a sign on his wall saying, “Better Is Worse Than Good Enough.” This meant that, if you are paying for more than you need, you are using money that could be used for something else for which money is not available.

This “responsibility” issue has a serious adverse impact on small business concerns. If a government purchasing agency finds a small business competitor to be “non-responsible,” it must refer the matter to the Small Business Administration, which has conclusive authority to determine the responsibility of a small business concern. However, if the agency uses responsibility-type evaluation factors (such as years of experience, financial capability, etc.), it can award a contract to a large business with *more* experience, *more* money, *more* people, etc., because the small business loses in a *comparative* evaluation (and, the agency is not required to refer the question to the SBA). Even if responsibility is not an issue, a larger, more experienced company with more money, people, and successful past performance usually will win in a competition with a small business concern that could perform the contract “satisfactorily” and, possibly, at a lower price.

My Supplemental Views in the Panel’s report has recommendations, and I will be happy to take questions.

Statement of

PROFESSOR STEVEN L. SCHOONER
CO-DIRECTOR OF THE GOVERNMENT PROCUREMENT LAW PROGRAM
GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Before the
United States Senate
Committee on Homeland Security and Governmental Affairs
Subcommittee on Contracting Oversight

*Interagency Contracts:
Anecdotes and Observations*

Thursday, February 25, 2010

Chairman McCaskill, Ranking Member Bennett, and members of the Subcommittee, I appreciate the opportunity to discuss the government's ongoing efforts to effectively manage interagency contracts. You asked that I discuss my relevant scholarship,¹ which, among other things, highlighted two instructive anecdotes that still resonate today.

A number of the foundations underlying flexible interagency contracting make sense. Our federal procurement regime is primarily decentralized, permitting individual agencies to fulfill their own needs. Conversely, centralized purchasing, particularly of commodities and certain types of non-personal services (such as fuel, office supplies, telephonic services, travel, delivery services), is a globally accepted practice, particularly given the potential for governments to achieve economies of scale by concatenating its purchases. Governments also have employed centralized purchasing where unique purchasing expertise (for example, related to information technology), concentrated within one agency, could benefit other agencies. Experience suggests, however, that *competition between agencies* to provide these services – specifically, for a fee – introduced a number of, arguably, unanticipated incentives and disincentives into the procurement system that required additional guidance and controls. Since 2005, when the Government Accountability Office (GAO) added interagency contracts to its High-Risk list, I believe the government has made significant progress ameliorating some of the worst aspects of these vehicles. The issues and findings generated by the Acquisition Advisory

¹ See generally, Steven L. Schooner, *Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government*, 16 STANFORD LAW & POLICY REVIEW 549, 557-561 (2005); *Feature Comment – Risky Business: Managing Interagency Acquisition*, 47 THE GOVERNMENT CONTRACTOR ¶ 156 (April 6, 2005); *Fear of Oversight: The Fundamental Failure of Businesslike Government*, 50 AMERICAN UNIVERSITY LAW REVIEW 627 (2001); *Feature Comment -- The Future of "Businesslike" Government: The CBD Asserts Its Rights Against Debtor Federal Agencies*, 41 THE GOVERNMENT CONTRACTOR ¶ 112 (March 10, 1999).

Panel (AAP or the 1423 Panel) also were extremely helpful, offering an organized approach to many of the vehicles' pathologies and generating some helpful legislative initiatives. Further room for improvement remains.

I remain concerned that these vehicles incentivize agencies to pursue the generation of fees for providing services to another agency, rather than providing services to the public. I do not believe our government exists for that purpose. Moreover, experience has demonstrated that, possibly, the most pernicious effect of the proliferation of these vehicles was that they, all too often, created a post-award contract management vacuum. In addition, as an advocate of transparency and competition, I believe that, empirically, these vehicles have failed to meet the highest standards that we aspire to for our procurement system, although, at least in part, some of the worst pathologies (such as the unjustified protest exemption) have been remedied.

A Minor Anecdote, A Potent Harbinger

More than a decade ago, I was disturbed to learn that the Government Printing Office (GPO) had threatened to bar certain federal purchasing offices from publishing solicitation notices in the Commerce Business Daily (CBD) because those agencies had failed to pay their printing fees. In so doing, the GPO ignored the mandate that the CBD was "the public notification media by which U.S. Government agencies identify proposed contract actions and contract awards." 48 C.F.R. § 5.101. Both the Small Business Act, 15 U.S.C. § 637(e), and the OFPP Act, 41 U.S.C. § 416, required agencies to publish notices in the CBD. An outstanding debt *to the GPO* was never an exception to the publication requirement; nor did such a debt excuse failure to comply with the publication and response times mandated in 48 C.F.R. § 5.203.

This comedy of errors highlighted fundamental questions of entrepreneurial government. CBD publication was not a business enterprise – the CBD was a statutorily mandated vehicle for the publication of certain procurement actions. Contrast this with some of the more appropriate ventures for entrepreneurial government that involve fee-for-service transactions, such as the Postal Service, the Patent and Trademark Office, Federal Deposit Insurance Corporation, or the Defense Commissary Agency. The public interest does not require that citizens refusing to buy stamps be permitted to send holiday cards. The public interest, however, would require that GSA not disconnect the IRS's telephone service in early April if the IRS failed to promptly liquidate its phone bills.

At the time, I concluded that intricacies of fiscal law, particularly the shell game of inter-agency budgetary transfers, need not concern taxpayers. The public – whether contractors hoping to compete for work or those that rely upon government missions facilitated by procurements – cannot be held responsible for inter-agency cash management issues. Nor should one agency's revolving fund status adversely impact another agency's ability to carry out its mission. The anecdote had limited utility in the long run because, since that time, the CBD has been replaced by FedBizOpps. Although it raised a number of intriguing issues – it was wonderful grist for a law school examination – the anecdote generated little concern.

Anecdote Two: The Straw That Broke the Camel's Back?

A few years later, interagency contracting became part of the Abu Ghraib prison debacle. This anecdote offered insight into how the proliferation of fee-based arrangements permitted government agencies to avoid longstanding contracting management and oversight constraints by off-loading their procurement function to other agencies. By the time the U.S. government became active in Iraq, these highly-flexible, contractual vehicles had become immensely popular, but concerns regarding their misuse increasingly surfaced. Numerous GAO and IG reports had disclosed agency practices in awarding task and delivery order contracts which, almost uniformly, included insufficient competition and poorly justified sole-source awards.² In principle, contractors were supposed to compete to become part of an "umbrella contract," which offered them little more than the opportunity to compete for individual task or delivery orders. Unfortunately, the anticipated competition rarely materialized – agencies tended to include all comers on the contract vehicle. That makes sense, to the extent that inclusion on the contract is no more than an opportunity to compete, akin to a "hunting license." Yet real competition also proved absent during the task order stage. Because all "contract holders" could market their services directly to individual agencies, those agencies – affected by considerations including speed, convenience, personal preference, and human nature – frequently obtained those services on a sole source or non-competitive basis from those possessing these hunting licenses. As a result, legitimate competition infrequently materialized.³

In the Abu Ghraib prison, the military relied upon one of these vehicles, managed by the Department of the Interior's National Business Center,⁴ to procure contractor personnel to assist

² Section 803 of the 2002 Defense Authorization Act was intended to rein in some of these practices. See 67 Fed. Reg. 15,351 (Apr. 1, 2002); 67 Fed. Reg. 65,505 (Oct. 25, 2002). "It remains to be seen, however, whether these new regulations will enhance competition because agencies often have disregarded the existing FAR provisions...." Steven N. Tomanelli, *Feature Comment: New Law Aims to Increase Competition and Oversight of DoD's Purchases of Services on Multiple Award Contracts*, 44 GOV'T CONTRACTOR ¶ 107 (2002).

³ See generally GEN. ACCOUNTING OFFICE, GAO/NSIAD-00-56, CONTRACT MANAGEMENT: FEW COMPETING PROPOSALS FOR LARGE DOD INFORMATION TECHNOLOGY ORDERS 4 (2000).

⁴ It was difficult to get a sense of the mission, purpose, or mandate of the National Business Center at that time. In 2004, NBC's website touted that its new or expanded customers included: (1) the Public Defender Service of the District of Columbia (PDS), a federally funded, independent agency of the District of Columbia; (2) the Millennium Challenge Corporation (MCC), a new government corporation, which provides U.S. foreign development assistance to countries that adopt pro-growth strategies for meeting political, social and economic challenges; and (3) the African Development Foundation (ADF), a government corporation, which provides small grants directly to private organizations in Africa to carry out sustainable self-help development activities in an environmentally sound manner. Like a commercial firm, to the
(footnote continued...)

in interrogations in Iraq and Guantanamo Bay. Despite the relatively small size of this transaction, the attention it generated may have been the straw that broke the camel's back on interagency contracts, spurring the GAO to add interagency contracting to its High Risk list.

In reviewing the Abu Ghraib transactions, the Interior Department Inspector General concluded that the pursuit of fees distorted the moral compass that we would otherwise hope to animate federal government procurement officials. "The inherent conflict in a fee-for-service operation, where procurement personnel in the eagerness to enhance organization revenues have found shortcuts to Federal procurement procedures and procured services for clients whose own agencies might not do so."⁵ The federal procurement statutes and regulations assume a model in which agencies rely upon warranted purchasing professionals to procure their needed supplies and services. This longstanding arrangement bifurcated programmatic authority from procurement authority – in other words, program or project managers (PM's) must rely upon contracting officers (CO's) to fulfill their requirements. Our procurement regime assumes that CO's will be familiar with, understand, and follow Congressional mandates and effectuate the government's procurement policies in making these purchases. Contracting officers are expected to meet the PM's needs, but only within the established constraints of the procurement system.

Unfortunately, perverse incentives associated with flexible, interagency, fee-based acquisition vehicles turned this system on its head. Various statutory schemes, dating back to the Economy Act,⁶ permit interagency transfers, such as permitting one agency to conduct a purchase for another. Of particular relevance here, the Clinger-Cohen Act⁷ resulted in a proliferation of governmentwide acquisition contracts, popularly known as GWAC's. While the Economy Act authorized interagency transfers, the statute permitted "an agency to take advantage of another agency's expertise, not merely to offload work, funds, or both to avoid legislative restrictions."⁸ One of the most common violations of this prohibition was "parking" funds before they expired. As the end of the fiscal year approaches, agencies "parked" or "dumped" funds by issuing open-ended or vague orders that did not state a specific and definite

extent that "[t]he NBC operates on a full cost-recovery business basis[.]" it had to generate fees. Unlike a commercial firm, one might expect its ultimate purpose to derive from a Congressional authorization in some way related to the Interior.

⁵ Memorandum from Earl Devaney, Inspector General, Department of the Interior, to Assistant Secretary for Policy, Management and Budget (July 16, 2004).

⁶ In 1932, Congress intended the Economy Act, 31 U.S.C. §§ 1535, 1536, to generate economies of scale by reducing redundant activities of various government agencies.

⁷ National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, § 5112(e), 110 Stat 186, codified at 40 U.S.C. § 1412(e). The Federal Acquisition Reform Act (FARA) and the Information Technology Management and Reform Act (ITMRA) were renamed as the Clinger-Cohen Act of 1996.

⁸ STEVEN N. TOMANELLI, APPROPRIATIONS LAW: PRINCIPLES AND PRACTICE 371 (2003).

requirement or identify a bona fide need. Nor was the Economy Act (or similar inter-agency purchasing regimes) intended to facilitate the avoidance of competition.

The problem arises because fee-based purchasing offices (or, in other words, the servicing agency) need revenue to survive. In other words, revolving funds permit agencies or governmental organizational units to operate like an ongoing business. Like a business, however, the survival of revolving fund instrumentalities depend upon the generation of fees. Thus, all too often the pursuit of fees, rather than any Congressionally-mandated mission, drives these purchasing organizations. (See the GPO anecdote, above.)

This also answers a question often asked by visitors to the District of Columbia: why are government agencies spending advertising dollars competing for other agencies' business? Most federal government agencies and operations depend upon annual appropriations. Normally, agencies are not permitted to "augment" amounts provided by Congress. To the extent that they generate income or receive funds from the public, the Miscellaneous Receipts Statute requires those funds - typically termed miscellaneous receipts - be returned to the general fisc. 31 U.S.C. § 3302(b) (absent a statutory or regulatory exception, "an official or agent of the government receiving money for the government from any source shall deposit the money in the Treasury as soon as practical without any deduction for any charge or claim"). (In other words, the agency cannot use them to fund other activities.) By contrast, the revolving fund concept permits certain agencies to create funds, credit receipts to the fund, and use the funds without further Congressional appropriation.

In practice, this created an unfortunate "race to the bottom." Fee-based purchasing instrumentalities had insufficient stake in the outcome of contracts that they awarded. The program manager at the purchasing (or receiving) agency willingly paid a franchise fee to the servicing agency to avoid the bureaucratic constraints (such as competition mandates) that slow down the PM's in-house contracting officer. In turn, the servicing agency gladly streamlined the purchase. The servicing agency, which had no vested interest in the purpose of the procurement, also had an incentive to facilitate the purchasing agency's use of personal services contracts for employee augmentation. Moreover, once the contract was awarded, the serving agency had no interest in administering, nor did it have sufficient resources to manage, the contract. Thus, in exchange for a fee, the program manager can choose a favored contractor without competition and enjoy the contractor's performance unfettered by typical contract administration. As the Interior Department Inspector General explained at the time: "Without the checks and balances provided by effective internal controls, the 'risk taking,' 'out-of-box' thinking, and 'one-stop shopping' advertised ... and encouraged by fee-for-service organizations can result in inappropriate procurements."

Conclusion

That concludes my statement. Thank you for the opportunity to share these thoughts with you. I would be pleased to answer any questions.

**PREPARED WRITTEN STATEMENT OF
PROFESSOR JOSHUA I. SCHWARTZ**

Before the Subcommittee on Contracting Oversight

of the

Senate Committee on Homeland Security and Governmental Affairs

Interagency Contracts (Part I): Overview and Recommendations for Reform

February 25, 2010, 2:30 p.m.

Room SD-342, Dirksen Senate Office Building

Thank you, Chairman McCaskill and Ranking Member Bennett, for this opportunity to share my thoughts about the challenges and opportunities associated with interagency contracting by the United States government.

Interagency contracting is simply a tool; it is neither inherently abusive as critics have sometimes suggested, nor is it a panacea for ills of government procurement as its strongest proponents have sometimes claimed. So the challenge for Congress and the Executive Branch is to shape and guide the use of this procurement device to reduce abuse, increase competition, and enhance accountability in the use and management of interagency contracts.

The Acquisition Advisory Panel, on which I had the honor to serve during its existence from 2005-2007, responded to explosive growth in interagency contracting in the preceding decade. For instance, sales under the GSA Schedules in Fiscal Year 2006 were nine times what they had been in Fiscal Year 1995. By Fiscal Year 2004, 40% of total United States obligations, \$142 billion, was spent through interagency contract vehicles.

The Panel recognized that we had created an “environment biased toward the uncoordinated proliferation of interagency contracts” (AAP Report, at 246). Although the increased use of interagency contract vehicles is in large measure a result of inadequate acquisition workforce staffing at the procuring agencies, the AAP found, reliance on interagency contracts too often simply postpones, rather than solves, the problems created by inadequate acquisition workforce throughout the United States government. Moreover, reliance on interagency contracts has actually exacerbated one part of the workforce shortfall problem by allowing agencies to go forward with

procurement with inadequate acquisition workforce resources, only to find that they lack the resources to use interagency contracts well, and that they are particularly short of resources for contract management. I do not think it will not surprise this Committee that a long series of reports by GAO and by the various Special Inspectors General has documented that the most serious failings in the procurement program of the United States regularly occur in the area of contract management.

In the last decade, my research has focused on patterns that characterize the long-term evolution of United States public procurement law. In particular, I have documented a pendulum-like progression from eras dominated by deregulation, such as the 1990s, and the first half of the last decade, and periods dominated by a movement to increased regulation. Too often, I believe, this movement – in either direction -- is driven by a hasty response to procurement scandal, or by over-reaction to egregious cases of bad performance in the procurement system that are not be representative of the performance of the system as a whole. Damping down this swinging of the procurement policy pendulum would itself tend to improve the performance of the procurement system.

I want to emphasize that there are costs associated with too much regulation of public procurement and costs associated with too little regulation. In the early 1980s Congress enacted the Competition in Contracting Act, responding to the recognition that there was a need for a structured transparent process for competitive procurement of goods on the basis of best value, rather than lowest price. The inaptness of sealed bidding type procurement thus was no longer allowed to become a basis for non-competitive procurement.

On the other hand, a decade or so later, the deregulatory procurement reformers of the 1990s correctly emphasized that excessively tight regulation had hamstrung capable and devoted procurement and program managers in their efforts to secure good value for the government and federal taxpayers. Thus a series of reforms were instituted, including the opening up of interagency contracting, as well as of intra-agency task order contracting, that were designed to afford increased flexibility and quicker procedures for federal agency acquisition of goods and services.

My view is that both of these initiatives, in the 1980s and in the 1990s, though seemingly moving our procurement system in opposite directions, were fundamentally desirable. Getting the details of implementation right, however, is critical to achieving the best performance in procurement that is realistically achievable.

Thus, while the new contracting vehicles simplified some aspects of federal acquisition, three related points received insufficient attention:

First, although some of the new contracting mechanisms offered simplified procedures, the procurement system as a whole was becoming more complex, as new contracting vehicles were added to the options available to contracting officers. Second, the new mechanisms tended to facilitate the ordering of goods and services, but did nothing to assure that adequate personnel were available for contract management. Third, the federal acquisition workforce continued to shrink, or at best stabilized in size, while the dollar volume and complexity of the goods and services purchased sharply increased. A particular shortage developed of mid-level, experienced, acquisition personnel who would become the key acquisition leaders of the future.

Thus, by the middle of the last decade, the single greatest problem facing the federal government acquisition system was the mismatch between the human resources needed to effectively use the acquisition tools that had been made available, and the actual size, experience level, and expertise of the existing acquisition workforce. This mismatch is an ironic fact, given that the deregulatory reformers of the 1990s had emphasized the need for empowerment of this very workforce.

In the middle of the last decade, the Acquisition Advisory Panel reflected a commitment to what I have called an “agnostic” approach with respect to the virtues and the vices of the deregulatory reforms of the 1990s, including the dramatic growth of, and reliance on, interagency contracting. The Panel members, individually quite diverse in their dispositions toward these changes in the procurement system, were able to find common ground on some key propositions:

- Because of the inadequacy of the federal acquisition workforce, it was genuinely impossible to make a fair assessment as to how these new procedures would work, were they to be properly implemented.
- Because of serious shortcomings in the system for the collection of federal procurement data, and demonstrable inaccuracy of much of the collected data, it was impossible to render reliable judgments on the efficacy of the new procedures.
- The shortcomings of the federal acquisition workforce were most acute in the area of contract management. Insufficient contract management resources in the hands of the government meant that deficiencies in contract performance too

often went unredressed and undermined incentives for appropriate contractor performance.

Faced with these circumstances, the Panel was neither disposed to “roll back” the deregulatory initiatives of 1990s, as some of the proponents of these approaches feared, nor was it receptive to further radical innovation or deregulatory reform as some of these proponents had hoped. Rather, the Panel’s approach was incrementalist, focusing recommendations for change narrowly to avoid perpetuating the dysfunctional cycle of overreaction that we have seen in the past.

Moreover, the Panel viewed the measures that it recommended as simply appropriate first steps down the path toward improved performance of the procurement system, to be followed by collection of more accurate data, and more rigorous analysis to delineate any additional steps that might be necessary. Moreover, to the extent that apparent shortcomings of the procurement system, including those involving use of interagency contracts, were attributable to acquisition workforce inadequacies, rather than inappropriate contracting mechanisms, per se, allowing time for the recommended strengthening of the acquisition workforce might allow a more accurate assessment of whether additional reforms were necessary.

Certainly, this incrementalist approach is evident in the Panel’s recommendations regarding interagency contracts. First, the Panel recommended creation of a comprehensive database of existing interagency and intra-agency task order contract vehicles. Second, the Panel recommended that the Office of Management and Budget (and where appropriate the General Services Administration) undertake a general review of the procedures and criteria for the establishment of new interagency contract vehicles,

and for the continuation of, or periodic reauthorization of, existing vehicles. These measures are plainly just the beginning of what should be a sustained commitment to control proliferation of interagency contract vehicles. Other Panel recommendations, including the recommendation to extend bid protests to task orders over \$5 million (implemented by Congress at the \$10 million level), and the recommendation to require meaningful competition on all substantial task orders under the multiple awards schedule, were designed to begin to make sure that the benefits of competition were not lost because of the shift to less-regulated procedures, but were not specifically addressed to the issue of proliferation of interagency contract vehicles.

Thus, the Panel saw its recommendations as just the beginning of efforts to pay closer and more consistent attention to the actual results of procurement reforms. For that reason, I particularly welcome the attention that the Committee is paying to this important area of federal procurement.

Going forward, the primary issues that should, in my view, engage the Committee's attention are as follows:

1. Proliferation of overlapping interagency contract vehicles and the resulting competition between interagency contract vehicles should not be mistaken for competition in the marketplace to provide goods and services for the government. It is only the latter that tends to secure best value for government consumers, and, ultimately, for the taxpayers. Proliferation is not justified, moreover, by a hosting agency's desire to support its own acquisition workforce or to support other activities of the hosting agency. Conversely, however, agencies should not be

driven to create parallel and duplicative contract vehicles simply to avoid using, or incurring the expense of using, interagency vehicles.

2. Division of responsibility between the hosting agency and the procuring agency in interagency contracts blurs responsibility for securing meaningful competition, and obscures responsibility for proper contract management and for oversight of performance. Skeptics have suggested that this division is a fatal error. I am not so persuaded. But the responsibility of procurement officials *using* interagency vehicles to ensure that there is genuine competition for the government's business must be underscored, so that this responsibility is not avoided. As for contract management, Congress and the agencies must supply, train and retain the necessary acquisition workforce personnel so that this vital function does not become the unwanted stepchild of the federal acquisition process. I am neither a habitual basher of government contractors, nor blind to their limitations, and failings. But it seems to me unrealistic to expect consistently good performance by contractors, unless they know that the government has adequate resources to actively monitor the delivery of the goods and services for which it contracts.
3. Interagency contracts cannot substitute for the need to INVEST substantial resources in building up the capacity and numbers of the federal government's acquisition workforce. The goods and services that we buy today are generally more complex than those bought a generation ago; this only increases the demands on the acquisition workforce. It is important in this time of fiscal stress to emphasize that this is indeed an investment, and that the returns that

appropriate management of the government's contracts will pay are substantial and dramatic.

4. The resolution of the issues about interagency contracting that demand our attention should not turn on a partisan approach or ideological judgments as to the relative merits of the government and the private sector. Nor should they turn on whether one is inclined to be a "fan" of government contractors or a critic. Rather, to a degree that ought to be pleasing to the public, in the last two decades a consensus has emerged, across party lines, that the pressing needs of the public demand that government make use of goods and services that the private sector can supply to accomplish vital public ends, including providing for our national defense and homeland security. But in order to do so effectively and efficiently, the public must invest in professional contract management. In order to make effect use of the productive capacity of our private sector, a serious and sustained commitment to effective public management is necessary.

Opening Statement by Senator Scott P. Brown
June 30, 2010
Subcommittee on Contracting Oversight
U.S. Senate Homeland Security & Governmental Affairs Committee
“Interagency Contracts (Part II): Management and Oversight”

As Ranking Member of this subcommittee, it is again an honor to join with Chairman McCaskill in exploring the important issues of this subcommittee that go to the core of how our government conducts business. Unfortunately, I was not a member of the subcommittee at the time of the Part I hearing where subject matter experts from academia and industry provided key insights into what is working and what is not working with interagency contracting. Taking these lessons learned and applying them to the way the U.S. Government has traditionally does business is vital to getting the best value for the American taxpayer.

As the largest single consumer on the planet, our federal government spent over \$537 billion on goods and services last year alone – that’s nearly \$130 billion more the annual revenue of Wal-Mart. We are all familiar with buying and selling of goods, and we know that if you are purchasing on a large scale you usually expect a break in the price from the seller. As the largest purchaser in the world, the federal government should receive these same “wholesale prices,” in fact; it should be receiving the best prices for goods and services in the marketplace. Unfortunately, that is rarely the case.

The premise of harnessing this purchase power is at the core of our hearing today. How can we efficiently and effectively use interagency contracts to leverage the purchasing power of the federal government to achieve maximum savings for the American taxpayer?

Let me be clear upfront: the use of interagency contracting has significant benefits when used properly. It allows the government to leverage its aggregate buying power and reduce acquisition costs through simplified and expedited methods for procuring goods and services. However more needs to be done. Just as every successful business does, the U.S. government should be strategically assessing its requirements and using the most efficient mechanism to achieve the best value for the American taxpayer. Interagency contracting can achieve these goals but as the recent General Accountability Office (GAO) report indicates the government is falling short of these objectives.

The GAO report raises the same troubling questions on interagency contracting that have continued for over a decade. How can we expect the Government to leverage its buying power to get the best prices when we continue to create multiple contracts to purchase the same kinds of goods and services from the same vendors? The President in December of 2009 implemented a requirement that the Government save \$40 billion annually by the end of fiscal year 2011. An important component of this initiative is strategic sourcing and the kinds of tough problems we are taking on here today. Even the Administration concedes that the benefits of strategic sourcing and smarter contracting have not yet been fully utilized.

The GAO report also identified significant obstacles that prevent Government buyers from realizing the advantages of interagency contracts. A key problem identified by GAO was that government buyers lack the necessary data on the available contracts to make fully informed decisions. GAO also identified the lack of a cohesive policy for agencies to follow on interagency contracting. This lack of a clear plan creates a leadership void that pushes agencies to establish their own contracts, with their own vendors, rather than using existing contracts and

saving money. This duplication of effort exacerbates the strain on an already stretched acquisition workforce. In the report, the GAO also questioned whether the General Services Administration (GSA), who manages the Multiple Award Schedule (MAS) Program, the largest interagency government contracting program, is achieving the best prices for the taxpayer. A key problem GAO identified in the MAS program was the lack of available transactional data that could be accessed by GSA to negotiate better prices for the government.

I am interested in exploring *actionable solutions* in today's hearing to address these long-standing issues. I'd like to leave here today knowing, who in the Administration is accountable for ensuring that the Government delivers on its promised acquisition savings? What policies and guidance are necessary to achieve the benefits of interagency contracting?

I look forward to hearing the witnesses perspectives on these critical issues and I thank these witnesses for being here today.

United States Government Accountability Office

GAO

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

For Release on Delivery
Expected at 2:30 p.m. EDT
Wednesday, June 30, 2010

**CONTRACTING
STRATEGIES**

**Better Data and
Management Needed to
Leverage Value of
Interagency and
Enterprisewide Contracts**

Statement of John K. Needham, Director
Acquisition and Sourcing Management



GAO-10-862T

June 2010

CONTRACTING STRATEGIES

Better Data and Management Needed to Leverage Value of Interagency and Enterprisewide Contracts

Highlights of GAO-10-862T, a testimony before the Subcommittee on Contracting Oversight, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

Agencies can use several different types of contracts to leverage the government's buying power for goods and services. These include interagency contracts—where one agency uses another's contract for its own needs—such as the General Services Administration (GSA) and the Department of Veterans Affairs multiple award schedule (MAS) contracts, multiagency contracts (MAC) for a wide range of goods and services, and governmentwide acquisition contracts (GWAC) for information technology. Agencies spent at least \$60 billion in fiscal year 2008 through these contracts and similar single-agency enterprisewide contracts.

GAO was asked to testify on the management and oversight of interagency contracts, and how the government can ensure that interagency contracting is efficient and transparent. GAO's testimony is based on its recent report,

Contracting Strategies: Data and Oversight Problems Hamper Opportunities to Leverage Value of Interagency and Enterprisewide Contracts (GAO-10-367, April 2010). In that report, GAO made recommendations to the Office of Management and Budget (OMB) to strengthen policy, improve data, and better coordinate agencies' awards of MACs and enterprisewide contracts, and to GSA to improve MAS program pricing and management. Both agencies concurred with GAO's recommendations.

View GAO-10-862T or key components. For more information, contact John Needham at (202) 512-4841 or needhamj1@gao.gov.

What GAO Found

Interagency and enterprisewide contracts should provide an advantage to government agencies when buying billions of dollars worth of goods and services, yet OMB and agencies lack reliable and comprehensive data to effectively leverage, manage, and oversee these contracts. More specifically, the total number of MACs and enterprisewide contracts currently approved and in use by agencies is unknown because the federal government's official procurement database is not sufficient or reliable for identifying these contracts. Departments and agencies cite a variety of reasons to establish, justify, and use their own MACs and enterprisewide contracts rather than use other established interagency contracts—reasons that include avoiding fees paid for the use of other agencies' contracts, gaining more control over procurements made by organizational components, and allowing for the use of cost reimbursement contracts. However, concerns remain about contract duplication—under these conditions, many of the same vendors provided similar products and services on multiple contracts, which increases costs to both the vendor and the government and can result in missed opportunities to leverage the government's buying power. Furthermore, limited governmentwide policy is in place for establishing and overseeing MACs and enterprisewide contracts. Recent legislation and OMB's Office of Federal Procurement Policy initiatives are expected to strengthen oversight and management of MACs, but no initiatives are underway to strengthen approval and oversight of enterprisewide contracts.

GSA faces a number of challenges in effectively managing the MAS program, the federal government's largest interagency contracting program. GSA lacks data on orders placed under MAS contracts that it could use to help determine how well the MAS program meets its customers' needs and help its customers obtain the best prices in using MAS contracts. In addition, GSA makes limited use of selected pricing tools, such as pre-award audits of MAS contracts, which make it difficult for GSA to determine whether the program achieves its goal of obtaining the best prices for customers and taxpayers. In 2008, GSA established a program office with broad responsibility for MAS program policy and strategy, but the program continues to operate under a decentralized management structure that some program stakeholders are concerned has impaired the consistent implementation of policies across the program and the sharing of information among the business portfolios. In addition, performance measures were inconsistent across the GSA organizations that manage MAS contracts, including inconsistent emphasis on pricing, making it difficult to have a programwide perspective of MAS program performance. Finally, GSA's MAS customer satisfaction survey has had a response rate of 1 percent or less in recent years that limits its utility as a means for evaluating program performance.

United States Government Accountability Office

Madam Chairman and Members of the Subcommittee:

I am pleased to be here to discuss the management and oversight of contracts designed to leverage the government's buying power when acquiring commercial goods and services. To address these issues, I will discuss our recent report that addressed the need for better data and management to effectively oversee the awarding and use of interagency and enterprisewide contracts. Collectively, federal agencies used these types of contracts to buy at least \$60 billion in goods and services during fiscal year 2008. When managed properly, interagency contracting—a process by which one agency uses another agency's contract directly or obtains contracting support services from another agency—can provide several benefits for federal agencies. These include the ability to leverage the government's aggregate buying power for commercial goods and services and provide a simplified and expedited procurement method. Enterprisewide contracts, although not interagency contracts, are also intended to leverage a particular agency's buying power and appear to have become more popular in recent years according to procurement officials, as internal purchasing programs established within a federal department or agency to acquire goods and services. Benefits of enterprisewide contracts can include the ability to reduce contracting administrative overhead within an agency and provide information on agency spending.

To realize the benefits of using interagency contracts—including the multiple award schedule (MAS) program, multiagency contracts (MACs), and governmentwide acquisition programs (GWACs)—as well as single-agency enterprisewide contracts, the government will have to take steps to address identified shortcomings in the management of and amount of data available on both interagency and enterprisewide contracts that currently make it difficult to determine whether they are being used in an efficient and effective manner. A basic problem is the lack of data about the number and sponsors of both MACs and enterprisewide contracts. Given that there has been renewed focus on maximizing efficiencies in the procurement process to achieve cost savings, we believe the federal government will continue to miss opportunities to leverage its vast purchasing power when buying commercial goods and services unless it takes steps to improve the management and oversight of these contracts.

In response to this Subcommittee's interest in improving the use of these contracts, I will draw primarily on our recent report to discuss (1) issues related to transparency and the framework for managing GWACs, MACs,

and enterprisewide contracts, and (2) management and pricing issues associated specifically with the MAS program.¹

We conducted this work at the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB), which has governmentwide procurement policy responsibility. We also conducted work at six federal agencies including the General Services Administration (GSA), the Department of Defense (DOD), including the three military departments, Department of Health and Human Services, Department of Homeland Security (DHS), Department of Veterans Affairs (VA), and the National Aeronautics and Space Administration (NASA). We also met with Senior Procurement Executives or their representatives from these agencies, 16 vendors that have been awarded these contracts, and 17 contracting officers from a number of the agencies in our review to obtain their perspectives on interagency and enterprisewide contracts. The report that formed the basis for this statement was prepared in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The largest of the interagency contracting vehicles is the MAS program (also known as the Federal Supply Schedule or the schedules program).² GSA directs and manages the MAS program.³ MACs and GWACs are also

¹ GAO, *Contracting Strategies: Data and Oversight Problems Hamper Opportunities to Leverage Value of Interagency and Enterprisewide Contracts*, GAO-10-367 (Washington, D.C.: Apr. 29, 2010).

² MAS means contracts awarded by the General Services Administration or the Department of Veterans Affairs for similar or comparable goods or services, established with more than one supplier, at varying prices. Federal Acquisition Regulation (FAR) § 8.401.

³ The Department of Veterans Affairs operates schedules for medical supplies and services. VA operates its portion of the schedules program under a delegation authority from GSA. Although GSA has delegated to VA the authority to contract for medical supplies and services under various MAS, GSA has not delegated to VA the authority to prescribe the policies and procedures that govern the MAS program.

interagency contracts.⁴ Government buyers usually pay a fee for using other agencies' GWACs, MACs, and schedule contracts. These fees are usually a percentage of the value of the procurement, which are paid to the sponsoring agency and are expected to cover the costs of administering the contract.

Along with using interagency contracts to leverage their buying power, a number of large departments—DOD and DHS in particular—are turning to enterprisewide contracts as well to acquire goods and services. Enterprisewide contracts are similar to interagency contracts in that they can leverage the purchasing power of the federal agency but generally do not allow purchases from the contract outside of the original acquiring activity.

Enterprisewide contracting programs can be used to reduce contracting administrative overhead, provide information on agency spending, support strategic sourcing initiatives, and avoid the fees charged for using interagency contracts.

All of these contracts are indefinite delivery/indefinite quantity (ID/IQ) contracts. ID/IQ contracts are established to buy goods and services when the exact times and exact quantities of future deliveries are not known at the time of award. Once the times and quantities are known, agencies place task and delivery orders against the contracts for goods and services.

In fiscal year 2008, federal agencies spent at least \$60 billion through GWACs, MACs, the MAS program, and enterprisewide contracts to buy goods and services to support their operations:

- about \$46.8 billion was spent on the MAS program;
- about \$5.3 billion was spent on GWACs;

⁴MACs are task-order or delivery-order contracts established by an agency that can be used for governmentwide use to obtain goods and services, consistent with the Economy Act. FAR § 2.101. GWACs are considered multiagency contracts but, unlike other multiagency contracts, are not subject to the same requirements and limitations, such as documenting that the contract is in the best interest of the government, set forth under the Economy Act. The Clinger-Cohen Act of 1996 authorized GWACs to be used to buy information technology goods and services. 40 U.S.C. § 11314(a)(2). They are task or delivery-order contracts established by one agency that can be used for governmentwide use that are operated by an executive agent designated by the Office of Management and Budget. FAR § 2.101.

-
- at least \$2.5 billion was spent on MACs although the actual amount could be much higher;⁶ and
 - at least \$4.8 billion was spent on the three enterprisewide contracts we reviewed, although, like MACs, the actual amount spent on all enterprisewide contracts could be higher.⁶

Sales under the MAS program have been relatively flat in recent years, and obligations under GWACs have declined slightly in recent years. However, the total amount of money spent in fiscal year 2008 using the three enterprisewide contracting programs included in our review is approaching the amount spent for GWACs during the same period.⁷ In addition, as OMB recently reported, numerous agencies are planning to increase their use of enterprisewide contracts as a means of addressing the administration's goal of reducing the amount agencies spend on contracting by 7 percent through fiscal year 2011.

Nevertheless, GSA's MAS program is still the primary governmentwide buying program aimed at helping the federal government leverage its significant buying power when buying commercial goods and services. As the largest interagency contracting program, the MAS program provides advantages to both federal agencies and vendors.⁸ Agencies, using the simplified methods of procurement of the schedules, can avoid the time, expenditures, and administrative costs of other methods. And vendors receive wider exposure for their commercial products and expend less effort in selling these products.

⁶ The four MAC programs in our review had obligations totaling \$2.5 billion in fiscal year 2008.

⁶ The three enterprisewide contract programs in our review had obligations totaling \$4.8 billion in fiscal year 2008.

⁷ These significant enterprisewide contracting programs are DHS's Enterprise Acquisition Gateway for Leading-Edge Solutions (EAGLE) and FirstSource programs and the Department of the Navy's SeaPort Enhanced program. EAGLE and FirstSource provide contracts with 64 vendors for information technology services and commodities, respectively, for the 16 components that make up DHS and obligated over \$1.2 billion in fiscal year 2008. The Department of the Navy's SeaPort Enhanced program provides contracts for procuring engineering, technical, programmatic, and professional support services. The program had contracts with over 1,800 vendors and obligated almost \$3.6 billion in fiscal year 2008.

⁸ While GSA, in its regulations uses the term "offeror," for purposes of this testimony we use the term "vendor."

A Lack of Transparency and Limited Governmentwide Policy May Result in Duplication and Inefficient Contracting

Interagency and enterprisewide contracts should provide an advantage to government agencies when buying billions of dollars worth of goods and services, yet OMB and agencies lack reliable and comprehensive data to effectively leverage, manage, and oversee these contracts. More specifically,

- The total number of MACs and enterprisewide contracts currently approved and in use by agencies is unknown because the federal government's official procurement database is not sufficient or reliable for identifying these contracts,
- Departments and agencies cite a variety of reasons to establish, justify, and use their own MACs and enterprisewide contracts rather than use other established interagency contracts—reasons that include avoiding fees paid for the use of other agencies' contracts, gaining more control over procurements made by organizational components, and allowing for the use of cost reimbursement contracts,
- Concerns remain about contract duplication—vendors and agency officials expressed concerns about duplication of effort among these contracts, and in our review we found many of the same vendors provided similar products and services on many different contract vehicles. This could be resulting in duplication of products and services being offered, increased costs to both the vendor and the government, and missed opportunities to leverage the government's buying power,
- Limited governmentwide policy is in place for establishing and overseeing MACs and enterprisewide contracts.

Recent legislation and OFPP initiatives are expected to strengthen oversight and management of MACs, but no similar initiatives are underway to strengthen oversight of enterprisewide contracts. In April 2010, we made five recommendations to OMB to improve data, strengthen policy, and better coordinate agencies' awards of MACs and enterprisewide contracts, and OMB concurred with all of our recommendations.

The Identification and Use of MACs and Enterprisewide Contracts Is Unknown

Prior attempts by the acquisition community to identify interagency and enterprisewide contracts have not resulted in a reliable database useful for identifying or providing governmentwide oversight on those contracts. In 2006, OFPP started the Interagency Contracting Data Collection Initiative to identify and list the available GWACs, MACs, and enterprisewide contracts. However, the initiative was a one-time effort and has not been updated since. In conducting our review, we were not able to identify the universe of MACs and enterprisewide contracts because the data available

in the official government contracting data system, the Federal Procurement Data System-Next Generation (FPDS-NG), were insufficient and unreliable. For instance, FPDS-NG includes a data field that is intended to identify GWACs but we found a number of instances where known GWACs were coded incorrectly. We also searched the system by contract number for MACs that we were aware of and found similar issues, with some contracts coded properly as MACs and some not. Despite its critical role, we have consistently reported on problems with FPDS-NG data quality over a number of years.⁹

Most of the senior procurement executives, acquisition officials, and vendors we spoke with as part of our review believed a publicly available source of information on these contracts is necessary. For example, senior procurement executives from DHS and DOD stressed the usefulness of a governmentwide clearinghouse of information on existing contracts. Agency officials we spoke with said that if agencies could easily find an existing contract, which they cannot do, they would avoid unnecessary administrative time to enter into a new contract, which they said could be significant. The report of the Acquisition Advisory Panel—often referred to as the SARA panel¹⁰—previously noted some of these concerns, stating that too many choices without information related to the performance and management of these contracts make the cost-benefit analysis and market research needed to select an appropriate acquisition vehicle impossible.¹¹

⁹ We have previously reported on data reliability issues with FPDS-NG. See, e.g., GAO, *Federal Contracting: Observations on the Government's Contracting Data Systems*, GAO-09-1082T (Washington, D.C.: Sept. 29, 2009); *Contract Management: Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules Program*, GAO-09-579 (Washington, D.C.: June 24, 2009); *Interagency Contracting: Need for Improved Information and Policy Implementation at the Department of State*, GAO-08-578 (Washington, D.C.: May 8, 2008); *Department of Homeland Security: Better Planning and Assessment Needed to Improve Outcomes for Complex Service Acquisitions*, GAO-08-263 (Washington, D.C.: April 22, 2008).

¹⁰ The panel was established by Section 1423 of the Services Acquisition Reform Act of 2003, which was enacted as part of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. No. 108-136), (2003). The statute tasked the panel, among other things, to review governmentwide policies regarding the use of governmentwide contracts.

¹¹ *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress* (Washington, D.C.: January 2007).

<p>Recommendations to OFPP</p>	<p>To improve the transparency of and data available on these contracts, we made three recommendations to OFPP:</p> <ol style="list-style-type: none"> 1. Survey departments and agencies to update its 2006 data collection initiative to identify the universe of MACs and enterprisewide contracts in use and assess their utility for maximizing procurement resources across agencies. 2. Ensure that departments and agencies use the survey data to accurately record these contracts in FPDS-NG. 3. Assess the feasibility of establishing and maintaining a centralized database to provide sufficient information on GWACs, MACs, and enterprisewide contracts for contracting officers to use to conduct market research and make informed decisions on the availability of using existing contracts to meet agencies' requirements.
---------------------------------------	--

<p>Departments and Agencies Cite a Variety of Reasons for Establishing New MACs and Enterprisewide Contracts</p>	<p>Agencies cited several reasons for establishing their own MACs and enterprisewide contracts including cost avoidance through lower prices, fewer fees compared to other vehicles, mission specific requirements, and better control over the management of contracts. For example:</p> <ul style="list-style-type: none"> • The Army cited several reasons for establishing their MACs for information technology hardware and services in 2005 and 2006. The Army wanted to standardize its information technology contracts so each contract would include the required Army and DOD security parameters. According to the Army, GSA contracts do not automatically include these security requirements and using a GSA contract would require adding these terms to every order. The Army also cited timeliness concerns with GSA contracts and GSA fees as reasons for establishing their own contracting vehicles. • In 2005, DHS established the EAGLE and FirstSource contracting programs. Both involve enterprisewide contracts used for information technology products and services. Officials stated the main reason these programs were established was to avoid the fees associated with using other contract vehicles and save money through volume pricing. In addition, the programs centralized procurements for a wide array of mission needs among DHS' many agencies. Furthermore, DHS officials stated they wanted to be able to coordinate the people managing the contracts, which did not happen when using GSA contracts.
---	--

<p>Concerns Exist About Contract Duplication</p>	<p>We found the same vendors on many different contract vehicles providing information technology goods or services, which may be resulting in duplication of goods and services being offered. Table 1 below shows that</p>
---	--

the top 10 GWAC vendors, based on sales to the government, offer their goods and services on a variety of government contracts that all provide information technology goods and services. For example, of the 13 different contract vehicles listed in Table 1, 5 of the 10 vendors were on 10 or more of these.

Table 1: Top 10 GWAC Vendors on GWACs, MAS, MACs, and Enterprisewide Contracts										
Type of contract by agency or military department	Vendors									
	1	2	3	4	5	6	7	8	9	10
Selected GWACs										
General Services Administration										
Alliant. Designed to provide information technology solutions to federal agencies.	X	X	X	X		X	X	X	X	
Applications'N Support for Widely-diverse End-user Requirements (ANSWER). Expired. Can support an array of information technology services.	X	X	X				X	X	X	
Millennia. Provides information technology support for large system integration and development. Expired.	X		X	X		X	X		X	
Millennia Lite. Provides information technology solutions.	X	X	X	X		X	X	X		
National Aeronautics and Space Administration										
Scientific and Engineering Workstation Procurement (SEWP). Provides information technology products.						X				X
National Institutes of Health, Department of Health and Human Services										
Chief Information Officer-Solutions and Partner 2 innovations (CIO-SP2i). Provides wide range of information technology products, services, and solutions.	X	X	X	X		X	X	X	X	
Electronic Commodities Store III (ECS III). Offers computer hardware and software.		X				X				X
General Services Administration Multiple Award Schedules										
Information Technology	X	X	X	X	X	X	X	X	X	X
Selected MACs										
Army										
Information Technology Enterprise Solutions-2 (ITES-2). Provides information technology service solutions and the purchase or lease of hardware.	X	X	X	X	X	X	X	X	X	X
Defense Information Systems Agency										
ENCORE II. Provides information technology requirements.	X		X	X		X	X	X	X	
Department of Treasury										
Total Information Processing Support Services (TIPSS-3). Provides a broad range of information technology services.	X	X	X	X			X		X	
Selected enterprisewide contracts										
Department of Homeland Security										
Enterprise Acquisition Gateway for Leading-Edge Solutions (EAGLE). Provides information technology service solutions.	X	X	X	X		X	X	X	X	
Department of Justice										
Information Technology Support Services-3 (ITSS-3). Procurement of information technology services.	X	X		X		X	X			
Total	11	10	10	10	4	8	11	8	9	4

Source: GAO analysis of vendors' and agencies' data.

Vendors and agency officials we met with expressed concerns about duplication of effort among the MACs, GWACs, and enterprisewide contracts across government. A number of vendors we spoke with told us they offer similar products and services on multiple contract vehicles and that the effort required to be on multiple contracts results in extra costs to the vendor, which they pass to the government through the prices they offer. The vendors stated that the additional cost of being on multiple contract vehicles ranged from \$10,000 to \$1,000,000 due to increased bid and proposal and administrative costs.

Interestingly, we found one vendor offering the exact same goods and services on both their GSA schedule and the NASA's GWAC and offering lower prices on the GWAC. Another vendor stated that getting on multiple contract vehicles can be cost-prohibitive for small businesses and forces them to not bid on a proposal or to collaborate with a larger business in order to be on a contract vehicle.

Government procurement officials expressed additional concerns. For example, an official from OFPP has stated that such duplication of effort only complicates the problem of an already strained acquisition workforce. The GSA Federal Acquisition Service Deputy Commissioner stated that while the agencies cite GSA fees as a reason for creating their own vehicles, agencies fail to consider the duplication of effort and cost of doing these procurements.

**Governmentwide Policy on
MACs and Enterprisewide
Contracts Is Limited**

Federal agencies operate with limited governmentwide policy that addresses the establishment and use of MACs and enterprisewide contracts. Federal regulations generally provide that an agency should consider existing contracts to determine if they might meet its needs.¹² The six federal agencies and the three military departments we reviewed have policies that require approval and review for acquisition planning involving large dollar amount contracts which would generally include the establishment of MACs and enterprisewide contracts. The review process varies from agency to agency. For example, an official from the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics told us that any new DOD contract estimated at over \$100 million would be required to go through a review process to ensure that no other contract exists that could fulfill the new requirement. As another example,

¹² FAR § 7.105.

DHS requires that the senior procurement executive approve the establishment of each enterprisewide contract.

In contrast, GWAC creation and management have governmentwide oversight, as OFPP exercises statutory approval authority regarding establishment of a GWAC. The senior procurement executives we spoke with had mixed views on the proper role of OFPP in providing clarification and oversight to agencies establishing their own contract vehicles. For example, Army senior acquisition officials representing the senior procurement official told us that the policy on interagency contracting is not cohesive. In their view, OFPP should provide policy and guidance that agencies would be required to follow. In contrast, the Senior Procurement Executive for the Department of the Navy pointed to agency-specific circumstances or requirements that create uncertainty about the utility of broad OFPP guidance.

Furthermore, agencies have issued guidance encouraging the use of enterprisewide contracts rather than using interagency contracts. For example, DOD guidance advises that contracting officers consider the use of internal DOD contract vehicles to satisfy requirements for services prior to placing an order against another agency's contract vehicle. Moreover, OMB recently reported that 20 of the 24 largest procuring activities are planning on reducing procurement spending by using enterprise contracting to leverage their buying power, as part of the administration's goal of reducing contract spending by 7 percent over the next 2 years.¹³

Recommendation to OFPP

To provide a more coordinated approach in awarding MACs and enterprisewide contracts, we recommended that OFPP take steps to establish a policy and procedural framework in conjunction with agencies for establishing, approving, and reporting on new MACs and enterprisewide contracts on an ongoing basis. The framework should stress the need for a consistent approach to leveraging governmentwide buying power while allowing agencies to continue to use their statutory authorities for buying goods and services.

¹³ Office of Management and Budget, *Acquisition and Contracting Improvement Plans and Pilots: Saving Money and Improving Government* (Washington, D.C.: December 2009).

Legislation Requires a Business Case Analysis for MACs, but Does Not Address Enterprisewide Contracts

Recent legislation and OFPP initiatives are expected to strengthen oversight and management of MACs, but these initiatives do not address enterprisewide contracts. The 2009 National Defense Authorization Act required, 1 year after its enactment, that the FAR be amended to require that any MAC entered into by an executive agency after the amendment's effective date be supported by a business case analysis.¹⁴ The business case is to include an analysis of all direct and indirect costs to the federal government of awarding and administering a contract and the impact it would have on the ability of the federal government to leverage its buying power. However, the Act is silent on what steps an agency should take to examine the effect a new contract will have on the ability of the government to leverage its buying power. Additionally, the Act does not address similar requirements for enterprisewide contracts. Under the Act, the pending FAR rule relating to this legislation was required to be issued by October 15, 2009; however, the rule was still in progress as of June 11, 2010.

A business case analysis approach for MACs has the potential to provide a consistent governmentwide approach to awarding MACs as was pointed out by the SARA panel. The panel noted that the OFPP review and approval process for GWACs could serve as a good business model for approving MACs. Using the GWAC process as a model, the full business case analysis as described by the SARA panel would need to include measures to track direct and indirect costs associated with operating a MAC. It would also include a discussion about the purpose and scope, and the amount and source of demand. Further, the business case would need to identify the benefit to the government along with metrics to measure this benefit.

Recommendation to OFPP

We recommended that as OFPP develops the pending FAR rule to implement the business case analysis requirement above, it ensures that departments and agencies complete a comprehensive business case analysis as described by the SARA panel, and include a requirement to address potential duplication with existing contracts, before new MACs and enterprisewide contracts are established.

¹⁴ Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417 § 865 (2008).

Management and Pricing Issues Hinder MAS Program Effectiveness

Our work identified a number of challenges GSA faces in effectively managing the MAS program, the federal government's largest interagency contracting program. More specifically, GSA

- Lacks transactional data about its customers' use of MAS contracts, which would provide GSA insight to facilitate more effective management of the program;
- Makes limited use of selected pricing tools that make it difficult for GSA to determine whether the program achieves its goal of obtaining the best prices for customers and taxpayers;
- Uses a decentralized management structure for the MAS program in conjunction with deficient program assessment tools, which create obstacles for effective program management.

In April 2010, we made a number of recommendations to GSA to improve MAS program management and pricing, with which GSA concurred.

GSA Needs Transactional Data to Strategically Manage MAS Contracts and Negotiate Pricing

GSA lacks data about the use of the MAS program by customer agencies that it could use to determine how well the MAS program meets its customers' needs and to help its customers obtain the best prices in using MAS contracts. GSA officials told us that because agency customers generally bypass GSA and place their orders directly with MAS vendors, they lack data on the orders placed under MAS contracts; as a result, GSA also lacks data on the actual prices paid relative to the MAS contract prices. While GSA does have a spend analysis reporting tool through its GSA Advantage system that provides agencies with sales and statistical data on their orders, it accounts for a very small percentage of overall MAS program sales, thus restricting the amount of data available.

There are two drawbacks to the lack of available transactional data on the goods and services ordered under the MAS program and the prices paid:

The lack of data hinders GSA's ability to evaluate program performance and manage the program strategically. Several GSA officials acknowledged that it is difficult for GSA to know whether the MAS program meets their customers' needs without data on who uses MAS contracts and what they are buying. The GSA Inspector General has recommended that GSA take steps to collect these data to use in evaluating customer buying patterns and competition at the order level in order to adopt a more strategic

management approach.¹⁵ We have made similar observations in prior reports going back several decades.¹⁶

The lack of data could limit the ability of GSA and its customers to achieve the best prices through the MAS program. Some GSA officials informed us that they could possibly use transactional data to negotiate better prices on MAS contracts. Several agency contracting officers we spoke with cited benefits of having additional transactional data on MAS orders to improve their negotiating position when buying goods and services, and increasing visibility over the purchases their respective agency makes. In addition, a number of the senior acquisition officials at agencies in our review said that they considered the prices on MAS contracts to be too high, and without additional data from GSA, it was difficult to see the value in the MAS program and the prices that GSA negotiates.

GSA officials told us that they have initiated a process improvement initiative to collect more transactional data in the future, as they make improvements to information systems that support the MAS program. However, this initiative is currently in its early stages.

Recommendation to GSA

We recommended that GSA take steps to collect transactional data on MAS orders and prices paid and provide this information to contract negotiators and customer agencies, potentially through the expanded use of existing electronic tools or through a pilot data collection initiative for selected schedules.

GSA Makes Limited Use of Selected Pricing Tools

GSA uses several tools and controls in the contract award and administration process to obtain and maintain best prices for its contracts. These tools include:

- pre-award audits of MAS contracts by the GSA Inspector General,
- clearance panel reviews of contract negotiation objectives, and
- Procurement Management Reviews.

¹⁵General Services Administration Office of Inspector General, *Review of Multiple Award Schedule Program Contract Workload Management* (Kansas City, Mo.: July 31, 2007).

¹⁶GAO, *Management of Federal Supply Service Procurement Programs Can Be Improved*, GAO/PSAD-75-32 (Washington, D.C.: Dec. 31, 1974); and *Ineffective Management of GSA's Multiple Award Schedule Program—A Costly, Serious, and Longstanding Problem*, GAO/PSAD-79-71 (Washington, D.C.: May 2, 1979).

However, it applies these tools to a small number of contracts, which hinders GSA's ability to determine whether it achieves the program's goal of obtaining best prices.

For example, the GSA Inspector General performs pre-award audits of MAS contracts, which enable contract negotiators to verify that vendor-supplied pricing information is accurate, complete, and current before contract award. These audits can also result in lower prices for MAS customers by identifying opportunities for GSA to negotiate more favorable price discounts prior to award. From fiscal year 2004 through 2008, the GSA Inspector General identified almost \$4 billion in potential cost avoidance through pre-award audits. However, we found that GSA could be missing additional opportunities for cost savings on MAS contracts by not targeting for review more contracts that are eligible for audit. While GSA guidance instructs contract negotiators to request audit assistance for new contract offers and extensions as appropriate when a contract's estimated sales exceed \$25 million for the 5-year contract period, more than 250 contracts that exceeded this threshold were not selected for audit for the 2-year period of 2009 through 2011 due to resource constraints.¹⁷ In addition, the 145 contracts that were selected for audit represent only 2 percent of the total award dollars for all MAS contracts.

GSA uses other tools to improve the quality of contract negotiations, but we found that their effectiveness was limited by incomplete implementation and a narrow scope. GSA established a prenegotiation clearance panel process to ensure the quality of GSA's most significant contract negotiations by reviewing the contract's negotiation objectives with an emphasis on pricing, prior to contract award for contracts that meet certain defined dollar thresholds. However, we found several instances where clearance panel reviews were not held for contracts that met these thresholds, and GSA officials said that they do not check whether contracts that met the appropriate threshold received a panel review, thus limiting the effectiveness of this tool. GSA has begun the process of updating its prenegotiation clearance panel guidance to address this issue.

¹⁷ Contracts that fall below the \$25 million threshold may also be selected for audit based on issues such as a specific concern with a vendor's MAS contract.

<p>Recommendations to GSA</p>	<p>GSA also conducts Procurement Management Reviews to assess contracts' compliance with statutory requirements and internal policy and guidance. However, GSA only selects a small number of contracts for review and at the time of our fieldwork did not use a risk-based selection methodology, which does not permit GSA to derive any trends based on the review findings. A subsequent update to GSA's PMR methodology to focus on attempting to select a statistical sample of contracts for review could address this issue.</p> <p>We recommended that GSA, in coordination with its Inspector General, target the use of pre-award audits to cover more contracts that meet the audit threshold. In addition, we recommended that GSA fully implement the process that has been initiated to ensure that vendors who require a prenegotiation clearance panel receive a panel review.</p>
-------------------------------	--

<p>Decentralized Management Structure and Limitations in Assessment Tools Limit Effective Program Management</p>	<p>The decentralized management structure for the MAS program and shortcomings in assessment tools also create MAS program management challenges. GSA established the MAS Program Office in July 2008 to provide a structure for consistent implementation of the MAS program. The program office's charter provides it broad responsibility for MAS program policies and strategy.</p> <p>Responsibility, however, for managing the operation of individual schedules resides with nine different acquisition centers under three business portfolios. None of these business portfolios or the MAS acquisition centers that award and manage MAS contracts are under the direct management of the MAS Program Office. In addition, the program office's charter does not specifically provide it with direct oversight of the business portfolios' and acquisition centers' implementation of the MAS program. GSA officials and program stakeholders we spoke with had varying opinions about this management structure, with some noting that the program is still not managed in a coordinated way and that there is a lack of communication and consistency among MAS acquisition centers which impairs the consistent implementation of policies across the program and the sharing of information between business portfolios. The GSA Inspector General has expressed similar concerns, noting in a recent report that a lack of clearly defined responsibilities within the new FAS</p>
---	---

organization has harmed national oversight of the MAS program and may have affected the sharing of best practices between acquisition centers.¹⁵

We also found that performance measures were inconsistent across the GSA organizations that manage MAS contracts, including inconsistent emphasis on competitiveness of pricing, making it difficult to have a programwide perspective of MAS program performance. Finally, GSA's MAS customer satisfaction survey has had a response rate of one percent or less in recent years that limits its utility as a means for evaluating program performance.

Recommendations to GSA

We recommended that GSA clarify and strengthen the MAS Program Office's charter and authority so that it has clear roles and responsibilities to consistently implement guidance, policies, and best practices across GSA's acquisition centers, establish more consistent performance measures across the MAS program to include measures for pricing, and take steps to increase the MAS customer survey response rate.

**Concluding
Observations**

Billions of taxpayer dollars flow through interagency and enterprisewide contracts; however, the federal government does not have a clear and comprehensive view of who is using these contracts and if they are being used in an efficient and effective manner—one that minimizes duplication and advantages the government's buying power by taking a more strategic approach to buying goods and services. Long-standing problems with the quality of FPDS-NG data on these contracts and the lack of consistent governmentwide policy on the creation, use, and costs of awarding and administering some of these contracts are hampering the government's ability to realize the strategic value of using these contracts. Furthermore, departments and agencies may be unknowingly contracting for the same goods and services across a myriad of contracts—MACs, GWACs, the MAS program, and enterprisewide contracts. In addition, GSA's shortcomings in data, program assessment tools, and use of pricing tools create oversight challenges that prevent GSA from managing the MAS program more strategically and knowing whether the MAS program provides best prices. In agreeing with our recommendations, OMB and GSA recognize the importance of addressing these problems, but until they are resolved, we believe the government will continue to miss opportunities to minimize

¹⁵ General Services Administration Office of Inspector General, *Review of Consistency in Implementing Policy Across Acquisition Centers* (Arlington, Va.: September 2009).

duplication and take advantage of the government's buying power through more efficient and more strategic contracting.

Madam Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or the other members of the subcommittee may have at this time.

Contacts and Staff Acknowledgements

For further information regarding this testimony, please contact John Needham at (202) 512-4841 or needhamjk1@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this product. Individuals making key contributions to this statement were James Fuquay (Assistant Director); Marie Ahearn; Lauren Heft; and Russ Reiter.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
www.whitehouse.gov/OMB**

STATEMENT OF
THE HONORABLE DANIEL I. GORDON
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON CONTRACTING OVERSIGHT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

JUNE 30, 2010

Chairman McCaskill, Ranking Member Brown, and Members of the Subcommittee, I welcome the opportunity to appear before you today to discuss management and oversight issues associated with the use of interagency and agency-wide contracting vehicles. As you know, the President directed agencies to become more fiscally responsible in their contract actions and to take immediate steps to achieve real and sustainable improvements. As part of our response to the President's mandate, the Office of Federal Procurement Policy (OFPP) is increasing attention on agencies' interagency contracting, which occurs through government-wide acquisition contracts (GWACs), the Multiple Award Schedules (MAS) Program, and other "multi-agency" contracts used by more than one agency pursuant to the Economy Act. We are also increasing our attention on agency-wide contracting to the extent that it duplicates any of these tools. All of these tools, when used and managed properly, allow agencies to leverage their buying power and achieve administrative efficiencies that reduce costs and produce savings for our taxpayers.

We have carefully studied the report recently released by the Government Accountability Office (GAO) on interagency and agency-wide contracting and have also revisited the findings

and recommendations made by the Acquisition Advisory Panel when it looked at this issue several years ago. Over the last several months, we have also been conducting a significant amount of outreach to gain additional insight into the perspectives held by different stakeholders in the acquisition community. In addition to meeting with staff from this and other Congressional committees, we have met with the General Services Administration (GSA) and other agencies who manage GWACs, agencies who use them, and agencies that have opted to establish their own contracts in lieu of using existing interagency vehicles. We also conducted roundtables with our Chief Acquisition Officers (CAOs) and Senior Procurement Executives (SPEs) and interviewed a number of contract holders and trade associations. While our outreach efforts continue – as we want to make sure that we hear from all interested parties – I would like to share with the Subcommittee what OFPP has concluded based on our review thus far as well as some of the actions we are taking to make improvements in this important area.

Areas of progress

1. *The discipline and transparency applied to GWACs have helped to enhance the value of contract products and services available to agencies.* Under the Clinger-Cohen Act, OMB is responsible for approving executive agents to manage the creation and operation of GWACs. For many years, OMB has required that agencies seeking to establish GWACs prepare business cases describing the expected need for the vehicle (e.g., the anticipated level of agency usage), the value that its creation would add, and the agency's suitability to serve as its executive agent. The Acquisition Advisory Panel concluded that OMB's business case process is sound. It recommended that OMB consider applying this model to the establishment of multi-agency contracts.

OMB uses these business cases in deciding whether to approve the agency's request. For example, in 2008, this process helped OMB to conclude that there was a solid basis for granting a request by the National Aeronautics and Space Administration (NASA) to serve as an executive agent for the renewal of the Solutions for Enterprise-wide Procurement ("SEWP") GWAC. NASA's business case showed that agencies have routinely looked to SEWP for cost-effective access to high-end scientific IT products at reasonable fees. NASA also demonstrated that it is particularly well suited to serve as an executive agent because it could leverage the in-house expertise of its scientists and engineers to assist in evaluation of contractors and new products. It also had created a support structure and management controls to promote good contracting practices.

While in the past as many as six agencies managed at least 16 GWACs, currently there are only 3 executive agents who manage a total of 10 GWACs:

- All are for information technology, as required by the Clinger-Cohen Act.
- Two focus on hardware and software, of which one focuses on high-end scientific IT.
- Three provide IT service solutions, of which one offers medical imaging equipment.
- Four of the current GWACs are set aside for small business contractors – including one for 8(a) contractors and one for service-disabled veteran-owned small businesses. Small business set-aside GWACs have proven to be a helpful vehicle for facilitating agency access to the talents and skills of small businesses in an efficient and effective manner.

2. We are improving how we leverage buying power at the government-wide level.

Agency spending for many commonly-used items is typically fragmented across multiple departments, programs, and functions, which means that agencies often rely on hundreds of separate contracts, with pricing that varies widely. The result is that agencies often do not get the best price they could, leading to an unacceptable waste of taxpayer dollars.

We are working with agencies to change these inefficient practices. Effective strategic sourcing begins with good acquisition planning. The first step is convening a team of agency experts on the commodity at issue to understand agencies' needs, share pricing information, analyze spend data, and identify common requirements. This information allows us to maximize the benefits of competition by securing up-front spending commitments from agencies to increase vendor interest in the procurement (a point whose importance industry has underscored repeatedly). The competition should be structured in a way to maximize small business participation, and we should use innovative practices, such as reverse auctions, to drive down prices. Wherever appropriate, we should structure pricing to include ongoing price reductions during the life of the contract, as the quantity of the government's purchases passes cumulative thresholds. Finally, we need to require that vendors provide agency customers with detailed spend data so they can continually analyze their internal business processes, identify more efficient practices, achieve additional savings, and share best demonstrated practices with the commodity team in crafting future agreements.

Over the past several months, GSA used many of these elements when it was selected by a team of agencies to conduct a competition for a new round of government-wide blanket purchase agreements (BPA) for office supplies, and the results are impressive. The new BPAs, which include sustainable technologies and other green products, are expected to help federal agencies cut procurement costs for office supplies by as much as 20 percent, or close to \$200 million, over the next four years. The BPAs provide for additional price reductions of up to 19 percent as government-wide purchasing increases the spending above pre-set volume discount thresholds. Federal agencies will automatically receive the discounted pricing just by using their

SmartPay card at any one of the twelve winning vendors, which includes two service-disabled veteran-owned small businesses and eleven small businesses overall.

Of course, the office supplies BPAs provide only a small glimpse into the vast benefits that strategic sourcing offers and we need to share these experiences so that we can replicate success. Over the coming months, GSA will launch a knowledge management portal where studies, market research, and spend analyses developed in connection with strategic sourcing initiatives will be posted to promote knowledge sharing of best demonstrated practices and further mature strategic sourcing as a tool for fiscally responsible buying.

3. *Agencies are strengthening internal management controls associated with interagency contracting.* In reports submitted to OMB earlier this month, SPEs advised that their buying organizations are implementing practices to improve how they evaluate if an interagency acquisition will be beneficial. These practices, which are outlined in OFPP's 2008 guidance on interagency acquisitions, include making "best interest" determinations before using another agency's contract, taking into account factors such as the suitability of the vehicle, the value of using the vehicle (including the reasonableness of the fees), and the requesting agency's ability to use the vehicle effectively. If the requesting agency is seeking acquisition assistance, such as help in awarding a contract on its behalf, the requesting agency is considering, as it should, the servicing agency's authority, experience, expertise, and customer satisfaction with its past performance. When assisted acquisitions are pursued, agency customers and servicing agencies are entering into agreements that establish terms and conditions to govern the relationship between the agencies, including each party's role in carrying out responsibilities in the acquisition lifecycle.

Improvements that our agencies are making in assisted acquisitions are particularly noteworthy. Unclear lines of responsibility for assisted acquisitions was one of the root causes that led GAO to add interagency contracting to its High Risk List in 2005. It also led Congress to restrict use by the Department of Defense (DoD) of this authority until certain corrective actions were taken. Not only has the Department taken these steps, but, with its renewed authority, it entered into an assisted acquisition with the Department of Interior (DOI) that will save our taxpayers hundreds of millions of dollars in the operation of the Military OneSource Program. This program provides a wide variety of support services to military personnel and their families to ensure military members will continue to be mission deployable. Previously, it had been supported by a sole-source contract. Working closely with Defense officials, DOI conducted a full and open competition that encouraged offerors to submit proposals to reengineer the delivery of counseling services and to price call center operation services based on actual monthly call volume, rather than a fixed monthly rate. As a result of DOI's efforts, DoD expects to save \$300 million over the five-year life of the contract, while delivering higher quality services to military personnel and their families.

While the guidance that OFPP issued in 2008 to help agencies with interagency contracting has been well received, we are now working with the other members of the Federal Acquisition Regulatory Council (FAR Council) to develop a regulatory case that will incorporate appropriate details from OFPP's guidance into the FAR. These changes, coupled with others that have already been made and more that are coming to strengthen the use of competition in task and delivery order contracts, should reinforce sound contracting practices and effective oversight in this area. We expect the new FAR changes to be published this summer.

Areas requiring greater attention

While we are making progress on several fronts, we are not making sufficient progress on others. We continue to hear concerns, such as that raised in your letter of invitation, that agencies may be undercutting the benefits of interagency contracting by duplicating each other's contracting efforts. We recognize, as did the Acquisition Advisory Panel, that, "[s]ome competition among vehicles is . . . desirable and even fundamental to maintaining the health of government contracting." That said, unjustified duplication must be avoided, as it increases both the workload for our acquisition workforce and procurement costs for vendors, which are then passed on to our taxpayers in the form of higher prices, actions we can ill afford. In its recent report, GAO concluded that the waste associated with proliferation may be minimized by expanding use of business cases and improving the quality of data on interagency contracts. We concur with GAO's conclusions. Here is how we are approaching each of these issues.

1. *Expanding the use of business cases.* Later this summer, OFPP will issue guidance for agencies to develop business cases for multi-agency contracts. We are building on the basic analytical model that we have successfully used for GWACs. Consistent with section 865 of the National Defense Authorization Act for FY 2009, the business case will require an agency to address the anticipated impact that its proposed vehicle will have on the government's ability to leverage – such as how it differs from existing vehicles and the basis for concluding that it will offer greater value than existing vehicles. The business case will also require the agency to evaluate the cost of awarding and managing the contract and comparing this to the likely fees that would be incurred if the agency used an existing vehicle or sought out acquisition assistance. This process will help to improve internal management and oversight of multi-agency contracts.

As part of this process, we are considering if and where review outside the agency might be warranted. Some stakeholders have stated that business cases should be approved by an independent reviewer outside the agency. Other stakeholders believe internal approval is enough, as long as the approval authority is at a sufficiently high level within the agency to ensure proposed actions have been properly vetted. In the current environment, the case for considering external review may be strongest for contracts involving IT. When OFPP surveyed agencies in 2006 to gain a snapshot of interagency activity, we found most of the overlap among multi-agency and agency-wide contracts was in the IT area (we are now in the process of updating the results of that survey). Equal, if not more, importantly, because GWACs already provide agencies with access to a wide range of contracted goods and services for IT, external review of business cases to establish multi-agency contracts for IT may serve a useful purpose in guarding against unjustified duplication of GWACs.

In addition, we are considering whether an exemption from the requirement for a business case should be provided if other agencies use of the contract at issue is expected to be minimal. The term "multi-agency contract," as it is currently defined, includes not only contracts where inter-agency activity is significant, but all contracts where use by other agencies is permitted, even if it is minor and incidental. In the latter case, the potential for duplication should be reduced, thus reducing the need for a business case.

Finally, we will promote the use of a business case process for agency-wide contracts. Because agency-wide contracts involve large investments likely to have an impact on government-wide buying power, we believe it is prudent for an agency to develop a business case before moving forward with that approach. GAO's report points out that a number of agencies already require business cases to consider the value of establishing an agency-wide

vehicle in light of the costs of doing so and the suitability of alternative existing vehicles that may be available. Equally important, the GAO report also describes a number of reasons why an agency may opt to establish an agency-wide contract in lieu of using an existing interagency contract. For example, the agency may wish to negotiate terms and conditions that are tailored to its needs, simplify contract management by bringing contractors together under one contract vehicle (in lieu of having to manage contractors on multiple interagency vehicles, each of which addresses only part of the agency's requirement), and better ensure products are in compliance with agency standards. Therefore, as we develop guidance for business cases associated with agency-wide contracts, we must accommodate the legitimate reasons that might favor an agency-specific vehicle over an interagency vehicle.

2. *Improving the quality of data.* We must improve the adequacy of information that is available on interagency and agency-wide vehicles. Without adequate data, agency planners cannot effectively evaluate available options before awarding contracts and managers can't accurately assess if the use (or non-use) of these vehicles resulted in best value for the taxpayer. OFPP is conferring with the Chief Acquisition Officers Council's Acquisition Committee for E-Gov (the "ACE"). The ACE evaluates investments in the government-wide electronic acquisition systems that support common functions performed by all agencies. We are reviewing the status of programming changes to identify interagency contracts. We are also looking at options for recreating a clearinghouse of information on existing interagency contract vehicles, including GWACs, multi-agency contracts, MAS contracts, and any other procurement instrument intended for use by multiple agencies including BPAs under MAS contracts. My understanding is that a database of this nature was developed close to a decade ago, but was not maintained.

While data weaknesses are real and must be addressed, it is important to keep in mind that even a perfect data system will not cure unhealthy duplication, and we can make considerable improvements, even with incomplete data. Equally important, we must continually test assumptions that are made in the absence of complete data, so that our actions remain properly focused on where the challenges are greatest. With respect to multi-agency contracts, in particular, I, like many others, believed for a number of years that there were many of these vehicles that were essentially unofficial, and unregulated, GWACs. That is, that there were many agencies awarding large task and delivery order contracts primarily for the benefit of other agencies, but without demonstrating either a need for creating this capacity or even having the ability to manage such a contract effectively. This assumption was based, in part, on a statement in the Acquisition Advisory Panel's report that 40 percent of total federal procurement obligations was spent on interagency contract vehicles. Over the last several months, I have spent time trying to pin down how this capacity is actually being used and whether, in fact, it is supporting interagency contracting. Even in the absence of precise data, I found information that has caused me to reconsider my initial assumptions about the level of multi-agency contract activity. Specifically, these indicators suggest that multi-agency contracts are *not* operating as "disguised" GWACs and that interagency activity under these vehicles generally appears to be more incidental, along the lines traditionally envisioned under the Economy Act. For example, officials handling the Encore II multi-agency contract at the Defense Information Systems Agency, which was highlighted in the GAO's recent report as a large "multi-agency" contract, advised us that they have had minimal or no interagency activity. Similarly, when we looked at the more than 100 GAO bid protest decisions (which I view as a good window into the general state of what is occurring in our acquisition system) issued during 2010, only a small handful

involved an interagency transaction under a multi-agency contract. By contrast, there are a number of vehicles operating as agency-specific contracts that may affect government-wide buying power, which is why OFPP is focused on developing and pushing use of business cases to support these investments.

Conclusion

The efficiency of interagency and agency-wide contracts makes their popularity easy to understand, but concerns that we are not getting the best possible returns from these vehicles are also well founded. We have made some progress, but we must make much more. OFPP is redoubling its efforts and asking agencies to do the same to address remaining challenges and implement meaningful and lasting solutions that allow our agencies to take advantage of the savings and other benefits these vehicles can produce on behalf of our taxpayer. I look forward to working with this Subcommittee and other members of Congress on this important task. I am happy to address any questions you may have.

**STATEMENT OF
STEVEN J. KEMPF
ACTING COMMISSIONER
FEDERAL ACQUISITION SERVICE
U.S. GENERAL SERVICES ADMINISTRATION
BEFORE THE
SENATE HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS
SUBCOMMITTEE ON CONTRACTING OVERSIGHT
JUNE 30, 2010**



Good morning Chairman McCaskill, Ranking Member Brown, and members of the Subcommittee. My name is Steven Kempf and I am the Acting Commissioner of the Federal Acquisition Service within the U.S. General Services Administration. Thank you for inviting me to appear before you today to discuss the Government Accountability Office's (GAO) report findings regarding the multiple award schedules (MAS) program, government wide acquisition contracts (GWACs) and benefits of interagency contracting.

The MAS program provides Federal Agencies with a simplified and competitive process of procuring commercial products, services, and solutions critical to achieving their missions. As a result, it has grown significantly over the past decade. During the federal acquisition streamlining efforts of the mid-1990s, the MAS Program conducted approximately \$7.5 billion dollars in sales in Fiscal Year 1997. In contrast, in Fiscal Year 2009, the MAS Program achieved approximately \$47 billion dollars in sales. This was approximately 10 percent of the Federal Government's overall procurement spending of more than \$500 billion dollars. Given the enormous size and impact the MAS Program can have on federal spending, there is a continuous need to ensure the program's efficiency and effectiveness. We accomplish this through policy changes, process improvements, electronic system enhancements, and customer training on how to effectively maximize the use of the MAS vehicle.

I would like to address each of the eight recommendations GAO made to GSA and the actions we are taking to enhance MAS Program management.

Recommendation #1 – In coordination with the GSA Inspector General, target the use of pre-award audits to cover more contracts that meet the audit threshold;

The MAS Program Office is working with the Office of the Inspector General (OIG) to target additional MAS contracts for pre-award audits. Past history has shown that for every dollar invested in pre-award contract reviews, at least \$10 in lower prices or more favorable terms and conditions are attained by GSA Contracting Officers for the government's benefit.¹ GSA is committed to ensuring these savings are passed down to the American taxpayer.

Recommendation #2 – Fully implement the process that has been initiated to ensure that vendors that meet the pre-negotiation clearance panel threshold receive a panel review.

GSA is taking steps to improve the process for conducting pre-negotiation panel reviews. An appropriate threshold for new offers and contract modifications is established for each Schedule based on the relative volume of business which is realized in that industry sector. GSA is updating the policies and procedures for conducting these reviews to ensure that all offers and contract modifications meeting the threshold actually receive a panel review, and that all reviews are conducted in a consistent manner, prior to entering into discussions with the offeror. GSA is also taking steps to ensure that our acquisition systems capture that the review occurred and the results of that review.

¹ From the Office of Inspector General, GSA, Semiannual Report to the Congress, Oct 1, 2009 – Mar 31, 2010, Management Challenges

Recommendation #3 – When considering the MAS Advisory Panel recommendations to clarify the price objective and eliminate the price reduction clause, ensure that any alternative means to negotiate and determine best prices are validated and in place before eliminating these pricing provisions.

GSA is still in the process of reviewing the recommendations made by the MAS Advisory Panel, a Federal Advisory Committee tasked with providing independent advice to GSA to help ensure we negotiate the best prices possible for our customers. GSA is carefully studying the potential impact of the Panel recommendations on the MAS program.

Recommendation #4 – Collect transactional data on MAS orders and prices paid, possibly through the expanded use of existing electronic tools or through a pilot data collection initiative for selected MAS schedules and make the information available to MAS contract negotiators and customer agencies.

GSA will perform an analysis of how to collect transactional data on MAS orders and prices paid. Concurrently, we will initiate conversations with our stakeholders to ensure that all of their concerns are addressed.

Recommendation #5 – Establish more consistent performance measures across the MAS program, including measures for pricing.

GSA is improving the development of performance measures across the MAS Program particularly as they relate to quality, which will address pricing. This will ensure that FAS' acquisition centers and business lines use a more consistent approach to performance measurement across the MAS Program.

Recommendation #6 – Take steps to increase the MAS customer survey response rate by using a methodologically sound means to identify bona fide program users and employing survey techniques that produce meaningful and actionable information that can lead to program improvements.

GSA will examine its overall customer satisfaction survey methodology and investigate ways to increase the response rate. Customer satisfaction is a critically important performance measure to GSA and provides meaningful and actionable information that can lead to program improvements.

Recommendation #7 – Clarify and strengthen the MAS program office's charter and authority so that it has clear roles and responsibilities to consistently implement guidance, policies and best practices across GSA's acquisition centers including policies and practices related to the above recommendations.

GSA will examine the MAS Program Office's Charter and authority in context of establishing clear roles and responsibilities to consistently implement guidance, policies and best practices across GSA's acquisition centers and business portfolios.

Recommendation #8 – Report GSA's plans to address these recommendations to the Administrator of the Office of Federal Procurement Policy.

Conversations between GSA and OFPP to discuss GAO's recommendations have occurred. Discussions between the two organizations will continue.

GSA is working on several electronic tool enhancements to streamline the acquisition process, making it easier for our customers and industry partners to do business with us. In Fiscal Year 2011, GSA *Advantage!*® will be using Web 2.0 features and enhanced search capabilities, have new product recommendations, greater environmentally friendly product searching and identification features, and improvements to the overall shopping experience, such as direct links to company shipment tracking websites and other GSA contracting vehicles.

GSA is also working on several internal initiatives to make it easier to do business with the MAS Program. We are streamlining our processes for adding products and fixed price services to the Schedules when an industry partner is not changing its contract terms and conditions. We are reducing the amount of time it takes Contracting Officers to make administrative modifications to contracts (e.g. address changes), increasing their capacity to focus on more complex modifications. Finally, our Enterprise Acquisition Solution is a long-term, multi-year effort that will create an electronic end-to-end contracting system (i.e. from market research to contract close-out).

We are also making policy changes that will enhance our performance. Section 863 of the Fiscal Year 2009 National Defense Authorization Act requires enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple award contracts. To help our customers achieve this, we are updating our policy to make it easier for civilian agencies to use eBuy, our online Request for Quote (RFQ) system.

GSA has an Executive Agent Designation from the Office of Management and Budget (OMB) to manage governmentwide acquisition contracts (GWACs) for information technology services. Four of the five GSA managed GWACs are small business GWACs and provide agencies with access to 8(a), small and service-disabled veteran-owned small business set-aside contracts for IT solutions. Alliant, GSA's only enterprise-wide GWAC, provides agencies access to 59 highly qualified industry partners. Thirty-seven of those industry partners were included in the recently published top 100 Federal Contractors list. Alliant, which has a \$50 billion ceiling, replaces the expired GWACs ANSWER and Millennia. It will also replace the Millennia Lite contract which expires next month.

Alliant and our other GWACs are managed by the GWAC Program Office, whose responsibilities include:

- Develop, award and administer contracts
- Educate and train contractors and federal buyers on the proper use of GWACs
- Issue Delegations of Procurement Authority (DPA) to Agency Contracting Officers (A DPA is required to order service from a GSA GWAC)

- Review Statements of Work (SOW) and task orders for scope compliance (pre-award and post-award)
- Ensure that Fair Opportunity is applied (FAR 16.505)
- Provide guidance on contract terms and conditions throughout task order life cycle
- Survey customers for contractor performance data for each task
- Develop business cases for new GWACs

As part of its transparency efforts, GSA submits an annual report to OMB with information on contract specific activity, financial data and small business contracting and subcontracting information. GSA is a major proponent of all our industry partners and we spend an extraordinary amount of time assisting small businesses and agencies in achieving government-wide socioeconomic goals. Approximately 80 percent of all schedule contract holders are small businesses, who received 35% of the all Schedule sales in fiscal year 2009. This is 12 percent greater than the government wide goal of 23 percent. Four out of five GWACs are set-aside for small business. This allows agencies access to a very talented pool of industry partners and helps support agencies ability to achieve government-wide socioeconomic goals.

GSA believes in robust competition and in the non-commercial IT solutions arena feels that this competition exists amongst the OMB designated agencies which include NASA, NIH, EPA and GSA. GSA values its acquisition expertise and will soon be providing training, through an agreement with the Federal Acquisition Institute. The initial training will focus on the MAS program and future training will focus on GWACs and sustainable acquisition practices. We intend to develop training that reaches all generations in the acquisition workforce, including social media technologies. All of the training will be offered as part of FAI's curriculum.

Finally, FAS is developing its own Level 4 Certification. Designed to complement OFPP Federal Acquisition Certification in Contracting (FAC-C), it will focus on critical project management such as IT skills, leadership and team building.

A highly skilled workforce will provide better value to the agency's mission as well as to the American taxpayer.

Benefits of Interagency Contracting

GSA offers agencies a way to streamline their acquisitions by making available pre-negotiated contracts with access to a wealth of industry partners. By using GSA multiple award schedules, GWACs, Networx and other contract options, agencies drastically reduce the lead time needed to put a new acquisition in place. GSA contracts allow agencies to use their limited acquisition workforce to focus on the agency's core mission.

As an example, the Office of Management and Budget (OMB) mandated agencies cut their procurement expenditures by 3.5 percent in Fiscal Years 2010 and 2011, for a total

reduction of 7 percent. Federal Strategic Sourcing Initiative (FSSI) procurements help customers achieve these reductions by purchasing items more effectively and efficiently, increasing savings, value, and socio-economic outcomes.

GSA, in collaboration with its government partners, has issued two FSSI procurements. In September 2009, GSA awarded the Express and Ground Domestic Delivery Services (DDS2) contract to the United Parcel Service (UPS), which has an estimated savings of \$1 billion from commercial retail costs over the next five years.

On June 2, GSA established 12 new MAS blanket purchase agreements for office supplies that will help federal agencies meet mandates to cut procurement expenditures by seven percent for the current and 2011 fiscal years. The pricing structure in these new agreements more fully leverages the government's buying power as discounts increase as collective purchases grow across the federal government. The estimated savings that can be achieved through these 12 BPAs is \$48 million per year for a four year total of \$192 million. These agreements include socioeconomic solutions, sustainable product offerings and low prices.

House Report 111-202 instructed GSA to conduct a study of the ten largest Federal Agencies on the level of funds spent on office supplies during fiscal year 2009 through GSA Schedule 75 and outside of GSA's Multiple Award Schedule (MAS) Program. According to the recent report issued by Censeo Consulting, government-wide purchasing of office supplies is largely decentralized and was estimated at \$1.61 billion. Purchases through GSA's Schedule 75 were \$671 million or 42 percent. Total purchases for the top ten agencies were \$1.31 billion, representing 81 percent of the total \$1.61 billion, with \$486 million (37 percent) going through the GSA multiple award schedule. A majority of purchases outside Schedule 75 are through retail stores and agency-specific IDIQ contracts. On average, the price differential for major categories of office supplies outside Schedule 75 is between 79% and 101% as compared to purchases made through the Schedule.²

This report validates the benefits of MAS as well as the Federal Strategic Sourcing Initiative concept and the outcome from those efforts.

Thank you for the opportunity to testify before you today. I am happy to answer any questions you may have.

² Reference from the "Government-wide Office Supplies Pricing Inquiry Report" prepared by Censeo Consulting Group for the U.S. General Services Administration, dated June 8, 2010



**STATEMENT OF
RICHARD K. GUNDERSON
DEPARTMENT OF HOMELAND SECURITY**

**BEFORE THE
SUBCOMMITTEE ON CONTRACTING OVERSIGHT
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS**

**UNITED STATES SENATE
JUNE 30, 2010**

Chairwoman McCaskill, Ranking Member Brown, and members of the Subcommittee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security's (DHS) contracting program and, in particular, its use of interagency contracts. As the Acting Chief Procurement Officer for DHS, I am the lead executive responsible for the management, administration and oversight of DHS's acquisition program. In that capacity, I oversee and support nine procurement offices within DHS.

DHS Contracting Overview

The mission of my office, in conjunction with the component contracting offices, is to provide the needed products and services to meet the DHS mission, and to do so in a way that represents sound business and demonstrates that we are good stewards of taxpayers' dollars. To trim costs, streamline operations and better manage resources across the Department, Secretary Napolitano launched a Department-wide efficiency review. This effort includes more than two dozen initiatives to increase efficiency and save millions of dollars. Consistent with the Secretary's Efficiency Review initiatives, DHS looks at all acquisition strategies to ensure that our contracting efforts are as effective and efficient as possible.

The threats we face are variable, and as a result, the acquisition program must be flexible and provide alternatives to deliver effective solutions. Similarly, the contracting officers and program offices must assess each requirement and determine the optimal acquisition and procurement strategy to meet the given need. This strategy includes the examination of existing contracting vehicles both internal and external to DHS, as well as the award of new contracts. Whether awarding a DHS contract, or leveraging an existing external vehicle such as a Government-Wide Acquisition Contract (GWAC), socio economic set-asides are always given full consideration.

The Homeland Security Acquisition Regulation and the Homeland Security Acquisition Manual provide the foundation for procurement policy at DHS. These documents reflect current statutory, regulatory, Office of Federal Procurement Policy, and internal DHS mandates. One of the key oversight requirements is for the Chief Procurement Officer to approve the establishment of an enterprise-wide contract.

Quality Contracting

As the Acting Chief Procurement Officer for DHS, one of my priorities is "Quality Contracting", which is focused on making sound business decisions that enable us to accomplish our critical mission. This includes the pre-award activities that lead to a contract award and effective post-award contract administration, including the monitoring of contractor performance against the requirements of the contract. Determining the procurement strategy is an important part of the pre-award process, and is critical to the execution of the program and delivery of the needed capability in a timely and cost-effective manner. The contracting officer utilizes a toolbox of contracting vehicles before selecting a path forward. In accordance with the Federal Acquisition Regulation,

the contracting officer first considers required sources for particular supplies and services. The contracting officer also considers existing available contracts, including the General Services Administration's GWACs, Multiple Award and Federal Supply Schedules. Additionally, if the particular need is covered by a Federal Strategic Sourcing Initiative, the contracting officer will leverage this vehicle to achieve demonstrated savings as well as to limit the resources necessary to execute a new procurement.

While these different contracting alternatives are utilized regularly, given the unique scope of the DHS mission, there is often a need to conduct a new procurement. In situations where there are like needs across DHS, an enterprise-wide contract may be determined to be the best strategy. An enterprise-wide contract can provide a combination of benefits, including (1) support of specific mission needs, (2) support of a strategic sourcing initiative, (3) a vehicle to be used by the various contracting activities in lieu of conducting multiple new procurements, and (4) achieving socio-economic objectives, such as small and small disadvantaged business goals.

As noted in the GAO report on Contracting Strategies, DHS regularly leverages its EAGLE and First Source contracts – enterprise-wide vehicles for Information Technology (IT) services and products, respectively. Shortly after DHS was formed, the Chief Information Officer recognized a need to establish an enterprise architecture for DHS and to develop a strategy for an IT infrastructure that both integrated systems and eliminated inefficiencies. Given the pre-existing IT environments, we recognized that this would be a challenging undertaking and would not be completed in a short timeframe. As a result, we determined that a cadre of contractors that were familiar with the DHS IT infrastructure would be best positioned to deliver the needed capability in the most cost-effective and timely manner possible. While the products and services available under these contracts are similar to those found under GSA programs, this rationale justified the award and use of these contracts.

Another example when an enterprise-wide contract is the best strategy is our Professional, Administrative, Clerical, and Technical Services program. This Service-Disabled, Veteran-Owned small business (SDVOB) set-aside was established to increase opportunities for SDVOBs and better position DHS to meet the federal government-wide goal of 3 percent SDVOB utilization. Since the award of these contracts, DHS has increased its awards to SDVOBs and we are currently on target to meet federal goal this fiscal year.

While enterprise-wide contracts have been integral to our contracting program, contracting officers and program managers have effectively utilized GSA contracts where appropriate. Over the past three and half fiscal years (FY07 – present), DHS has awarded approximately \$9.6 billion on its EAGLE and First Source contracts for IT products and services, but also awarded \$7 billion on GSA contracts, including nearly \$1.4 billion on IT efforts. Having the flexibility afforded by alternative contracting vehicles has proven both effective and beneficial to the contracting and program offices in their efforts to deliver mission capability.

Conclusion

DHS is committed to awarding quality contracts that deliver mission capability and represent sound business judgment, including compliance with federal procurement regulations, policies, and guidance.

Thank you for your continued support of the DHS Acquisition Program and for the opportunity to testify today. I look forward to your questions.



**Testimony before the
Committee on Homeland Security and
Governmental Affairs
Subcommittee on Contracting Oversight
United States Senate**

**Statement for Hearing entitled,
"Interagency Contracts (Part II):
Management and Oversight"**

Statement of

Diane Frasier

Director

Office of Acquisition and Logistics Management

National Institutes of Health

U.S. Department of Health and Human Services



**For Release on Delivery
Expected at 2:30 p.m.
Wednesday, June 30, 2010**

Chairman McCaskill, Ranking Member Brown, and members of the Subcommittee, good afternoon. My name is Diane Frasier, and I am the Director of the Office of Acquisition and Logistics Management at the National Institutes of Health (NIH), within the Department of Health and Human Services (HHS). Thank you for the invitation to appear before you today to discuss efforts by the National Institutes of Health to ensure competition, efficiency, and transparency in its interagency contracting program.

In response to the Clinger-Cohen Act, NIH established the NIH Information Technology Acquisition Assessment Center (NITAAC) to provide technical and acquisition subject matter expertise in the area of technology management to NIH. NITAAC established several indefinite delivery contracts with the goal of providing a means for the NIH acquisition community to acquire, in the most efficient manner, the most up-to-date information technology solutions and products for its laboratories and programs. News of the value and effectiveness of using the acquisition vehicles established by NITAAC quickly spread, and other components within HHS, as well as other Federal agencies began using these vehicles in order to meet their information technology needs.

In September 2000, NIH was designated as an executive agent for acquisition and authorized by the Office of Management and Budget (OMB) to establish and administer the following contract programs for government-wide use:

- **Chief Information Officer-Solutions and Partners (CIO-SP2):** awarded to 44 contractors that provide information technology services focused on supporting research, health, and mission-critical programs;

- **Image World:** awarded to 24 contractors that provide health imaging and geographic information system-related services and products; and,
- **Electronics Commodities Store III (ECS III):** awarded to 60 contractors that provide computing resources, telecommunications equipment, and scientific research workstations

NIH is one of three agencies designated as an executive agent by OMB for government-wide acquisition of information technology.

Since the inception of the NIH Government-Wide Acquisition Contracts (GWACs), 14 federal departments and more than 21 agencies have utilized them to fulfill critical information technology needs. During Fiscal Years 2001 through 2009, departments and agencies have placed task and delivery orders against these NIH contracts, resulting in obligations ranging from \$68 million to \$1.1 billion for a given fiscal year, totaling \$6.7 billion.

Currently, NIH is not managing any multiagency contracts. NIH does take advantage of GSA Multiple Award Schedules to obtain supplies and services that it cannot acquire either through its internal inventories, or through other NIH contracts.

With each iteration of its GWACs, NIH strives to enhance competition, efficiencies, and transparency. NIH is planning for a recompetition of the CIO-SP2 and the Image World GWACs, both of which are scheduled to expire in December 2010.

The new GWACs will continue to give Federal agencies access to the most progressive and innovative technologies and solutions available from contractors that are expert both in IT and health-related fields. To provide a few examples: the contracts will offer

**Statement for hearing entitled, "Interagency Contracting (Part II): Management and Oversight"
Senate Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight
June 30, 2010**

Page 2

solutions in areas such as health science informatics and computational services that address the use of information in health and biomedicine; biomedical information services such as the development of database technologies for biology and medicine; and geospatial scientific imaging that uses technology to extract geospatial information from remotely sensed imagery to make smart decisions about the impact of human development on the natural environment. Further, with the advent of the Affordable Care Act, solutions made available through these vehicles will go far in assisting Federal agencies in executing reform initiatives and aligning with the Federal Health Architecture.

NIH continually strives to ensure that small and small disadvantaged businesses receive a fair proportion of the total dollars awarded under the GWACs. In fact, 70% of NIH's GWAC awards were made to small businesses. Under the proposed re-competition, the offerings under CIO-SP2 and the Image World GWACs will be consolidated. Two identical solicitations are anticipated; one of which will be set aside for small businesses. Plans are to offer an incentive, in the form of a reduced fee, in an effort to further encourage agencies to use small and disadvantaged businesses to fulfill their requirements and meet their socio-economic goals.

NIH has streamlined the task order process under the GWACs through the development of agile web-based tools that enable federal agencies to ensure fair opportunity and obtain the highest level of service at fair and reasonable prices. NIH also provides its customers with acquisition and technical expertise to assist them in defining their requirements in a manner that promotes high quality solutions.

Statement for hearing entitled, "Interagency Contracting (Part II): Management and Oversight"
Senate Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight
June 30, 2010

Page 3

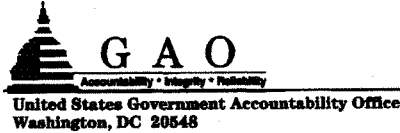
All of our vehicles offer pricing that is quite competitive; in fact, our ECS III contracts consistently offer pricing for IT products at rates that are lower than the established catalog or market price, and with a very low contract access fee. For this reason, in 2009, the ECS III contracts were designated as a strategic sourcing vehicle by HHS.

Pursuant to its executive agent designation, NIH is required to maintain transparency with respect to its overall management of the GWAC program. In this regard, NIH regularly reports to OMB on its performance metrics and its ongoing efforts to improve contracting practices, competition, and financial management. Transparency is further achieved through outreach to customer and contractor communities; active involvement in its long-standing Industry Advisory Committee, which is utilized to enhance communications between NIH acquisition management personnel and the GWAC holders; and, a website containing a wealth of information highly useful to existing customers, potential customers, and GWAC holders.

As an executive agent for the GWAC reporting directly to OMB, NIH provides an alternative to federal government agencies in meeting their IT requirements through a value proposition that best supports:

- healthcare reform initiatives;
- efficiency, competition, and transparency throughout the acquisition process;
- and
- meaningful Small Business and Small Disadvantaged Business participation.

Thank you for the opportunity to testify before you today. I am happy to answer any questions you may have.



August 18, 2010

The Honorable Claire McCaskill
Chairman
Subcommittee on Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate

Subject: *Question for the Record Related to Interagency Contracts*

Madam Chairman:

It was a pleasure to appear before your subcommittee on June 30, 2010, to discuss issues related to interagency and enterprisewide contracts.¹ This letter responds to your request that I provide an answer to a question for the record from the hearing. The question, along with my response, follows.

1) What could be done to streamline layers and redundancies of existing laws in regard to interagency contracting?

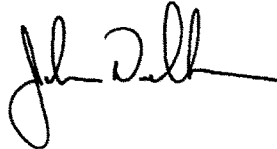
There are several existing laws that govern the operation of interagency contracting. The principal laws include the Economy Act of 1932, which authorizes agencies to place orders for goods and services with another government agency as a means to achieve efficiencies within the government. Agencies that use multiagency contracts (MACs) to engage in interagency contracting rely on the Economy Act as the authority for the transactions. In 1949, Congress enacted the Federal Property and Administrative Services Act, which provides the authority for the General Services Administration (GSA) to operate its Multiple Award Schedule (MAS) program. The MAS program is the largest interagency contracting vehicle in the federal government. More recently, Congress authorized additional tools used for interagency contracting through the Federal Acquisition Streamlining Act of 1994 and the Clinger-Cohen Act of 1996. The latter statute authorizes the creation of governmentwide acquisition contracts (GWACs) for the purchase of information technology goods and services. The Office of Management and Budget (OMB) must approve the creation of any GWAC.

¹ GAO, *Contracting Strategies: Better Data and Management Needed to Leverage Value of Interagency and Enterprisewide Contracts*, GAO-10-862T (Washington, D.C.: June 30, 2010).

Working together, these laws provide the underpinning for the major interagency contracting programs across the government. When properly justified and implemented, each of these programs can serve to leverage the government's buying power, streamline the contracting process, and deliver value for the taxpayer. Our work shows, however, that the government is not well positioned to realize fully the potential benefits of interagency contracting. Specifically, OMB and federal agencies lack reliable and comprehensive data to effectively leverage, manage, and oversee these contracts. There are concerns about the extent of contract duplication, i.e., that the same vendors may be providing similar products and services on multiple contracts. Without reliable and comprehensive data, the government has limited ability to make affirmative and efficient decisions when obtaining similar products and services. In addition, there is only limited governmentwide policy in place for leveraging MACs and single-agency enterprise-wide contracts. We found that similar issues limit the effectiveness of GSA's MAS program, including lack of data at the ordering level and a decentralized management structure that some stakeholders say has impaired the consistent implementation of policies across the program.

In short, we believe Congress has provided a framework for the operation of interagency contracting. In our view, the issues we have identified in this area are the result of a lack of management focus on ensuring that the system works as intended administratively. Effective use of the existing statutory and regulatory framework to achieve the intended benefits of interagency contracting will require concerted efforts by the responsible executive agencies.

If you or your staff have any questions on the matters discussed in this letter, please contact me at (202) 512-4841 or needhamjk1@gao.gov.



John K. Needham
Director, Acquisition and Sourcing Management

**Post-Hearing Questions for the Record
Submitted to
Richard Gunderson
From Senator McCaskill**

“Interagency Contracts (Part II): Management and Oversight”

**Wednesday, June 30, 2010, 2:30 P.M.
United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs**

1) You stated during the hearing that from a financial standpoint, DHS was better served creating its own contracting vehicles, Eagle and First Source than it would have been using GSA, which has additional fees associated with its programs. Specifically, you stated that it was “a good business deal for the department and the public.” Please provide the business case analyses for the Eagle and First Source contracts.

Response: In 2005, as part of the development of its acquisition strategy, DHS reviewed available Government Wide Acquisition Contracts (GWACs) and Indefinite Delivery Indefinite Quantity (IDIQ) contracts to determine the most beneficial way of meeting our information technology (IT) acquisition needs. At that time, the principal contracts in consideration were the National Institute of Health’s Chief Information Officer-Solutions and Partners 2 Innovations, GSA’s Millennia, Commerce’s Commerce Information Technology Solutions, Treasury’s Total Information Processing Support Services-3, Defense Information Systems Agency’s ENCORE (a contract that provides technical solutions for the Department of Defense in support of its migration to an integrated and interoperable Global Information Grid, as well as other Federal agencies having similar IT migration and integration needs), and GSA schedules (the GSA Schedule 70 for IT and the GSA Mission Oriented Business Integrated Services). The analysis of alternatives considered the pros and cons of leveraging existing contracts versus the establishment of DHS contracts. The analysis included an assessment of mission need, resources, costs, management, and control.

Areas of consideration that supported establishing new contracts versus leveraging existing contracts included:

- The ability of DHS to facilitate standardization, operation, and management requirements from an enterprise-wide perspective, including the common DHS Enterprise Architecture and Service Delivery Model;
- The ability of DHS to provide management and administration of the underlying IDIQ contracts to better control issue resolution and contract terms and conditions without dependence on an external agency;
- A reduction in the impact of usage fees charged by agencies managing the contracts, ranging from .5 percent to 2 percent;
- The ability of DHS to establish DHS partnership with industry and opportunities for Small Business;

- The ability of DHS to further standardize the processes for task order procurement;
- The ability to provide an initial strategic centralized buying capability to address Department-wide needs, but also provide ordering authority delegated to DHS buying activities;
- Contract ceilings on many of the available contracts were insufficient to support DHS needs;
- A reduction in the use of Economy Act and Interagency Agreements to support DHS, for which GAO was critical of DHS (GAO report issued in September, 2006, entitled “Interagency Contracting – Improved Guidance, Planning, and Oversight Would Enable the Department of Homeland Security to Address Risks”). This was relevant to the use of non-GWAC contracts; and
- Servicing agencies were unlikely to possess the bandwidth to handle increased workload provided by DHS or support the priorities and turn-around times required. This was relevant to the use of non-GWAC contracts.

Areas of consideration that suggested using existing contracts in lieu of establishing new contracts included:

- Contract vehicles were already in place that covered majority of DHS requirements;
- External agencies have established infrastructure to process task and delivery orders that were already at some level of maturity;
- DHS will not be responsible for contract-level administration and management;
- DHS has option to issue orders directly (relevant to use of GWACs); and
- Relief from committing the resources required to establish and manage contract vehicles and implement processes, procedures, and tools.

Based on this analysis and trading off the pros and cons of each strategy, DHS determined the establishment of its own contracts to be in the best interest of the Department from both a mission and business perspective. Having a suite of contractors that become familiar with the enterprise architecture is better suited to meet the recurring IT needs of DHS. As a result, the EAGLE contractors have become very familiar with the DHS infrastructure, programs and personnel. The EAGLE Alliance, comprised of the 53 EAGLE contractors and DHS personnel has proven a valuable tool for communications with our cadre of contractors. It has allowed the DHS CIO and component CIOs to discuss important topics and initiatives with the entire pool of EAGLE contractors. This also resulted in shorter delivery periods as well as avoiding duplication of start-up costs. Additionally, based on fees ranging from .5 percent to 2 percent of obligated dollars, the estimated cost savings/avoidance associated with GWAC fees is in the tens of millions of dollars over the life of the contract. Considering all of the factors, EAGLE was determined to be the best solution for DHS.

2) You testified during the hearing that DHS spent an estimated \$3.5 to \$4 million to establish Eagle and First Source. Please provide the analysis for these costs and the dates that this analysis was prepared.

Response: The \$3.5 to 4.0 million number provided during the hearing was the estimated costs to establish EAGLE (it did not include FirstSource). The table below provides the basis for the estimated cost of \$3.1 million to establish EAGLE. The costs include the Federal labor costs of personnel with a substantive involvement in the pre-award and award phases of the procurement, contractor support costs, evaluation facility costs, software tool costs and the costs for the pre-proposal conference. In addition, DHS estimates that the cost to maintain the EAGLE contract post-award is approximately \$408,000 per year. This includes the cost of the full-time GS-14 contract administrator (1920 hours at \$76.38/hr for a total of \$147,513.60), a fulltime GS-15 program manager (1920 hours at \$90.38/hr for a total of \$173,529.60) and a quarter-time for the supervisory contract specialist and the supervisor to the program manager (equating to 960 hours at \$90.38/hr for a total of \$86,764.80). Note that the costs associated with individual order processing is not included because it would be incurred using EAGLE, Alliant, GSA Schedule, or any other vehicle.

EAGLE					
Federal Employees	Labor Hours	Average Hourly Rate ¹	Fringe Benefit	Fully Burdened Hourly Rate	Total
Hours at GS-13	6,400.00	\$47.72	36.25%	\$65.02	\$416,119.77
Hours at GS-14	2,136.00	\$56.39	36.25%	\$76.83	\$164,117.32
Hours at GS-15	4,462.40	\$66.33	36.25%	\$90.38	\$403,311.42
Contractor Support					\$1,832,726.40
Evaluation Tool					\$13,000.00
Lease space for source selection*					\$260,000.00
Cost of Pre-proposal Conference**					\$6,000.00
EAGLE Total Estimated Cost					\$3,095,274.91

¹ The 2005 GS pay tables were used with Step 5 hourly rates used in the calculations.

*Cost based on similar costs for recent and comparable source selection

**Cost based on similar cost for EAGLE II event

3) In your written testimony you state that from FY07 to the present, DHS “awarded approximately \$9.6 billion on its Eagle and First Source contracts for IT products and services, but also awarded \$7 billion on GSA contracts, including nearly \$1.4 billion on IT efforts.”

a. The ratio of use is approximately 13 percent GSA to 86 percent Eagle and First Source. What analysis has DHS done to show that this is a good ratio of use for the different vehicles?

b. What is the decision process DHS uses to order from GSA versus Eagle or First Source? What factors do you consider?

Response:

- a. The vehicle choice is made by DHS users on a case by case basis, depending on the unique requirements and circumstances of the individual procurement. DHS does not have an established, pre-set ratio for the use of Eagle and First Source contracts vice GSA contracts.
- b. EAGLE and FirstSource are not mandatory for use, but are mandatory for consideration. EAGLE and FirstSource have decentralized ordering, i.e., individual users have the flexibility to determine the most appropriate and beneficial method for fulfilling their needs. The following are some of the considerations that may be used by individual ordering offices in determining which contract is the best method for fulfilling a specific requirement:
- o Does the requirement facilitate standardization, operation, and management requirements from an enterprise-wide perspective, including the common DHS Enterprise Architecture and Service Delivery Model?
 - o Is the requirement for telecommunications? If so, a GSA telecommunications contract such as Networx or WITS may be more appropriate.
 - o Does the nature and scope of the requirement fit into the scope of services in EAGLE or the commodities in FirstSource? Is there a contract with more specifically targeted technical capabilities or goods to fulfill the need?
 - o Is a task or delivery order the appropriate means of fulfilling the need?
 - o Is there a small business consideration in determining the best source? For example, if a local 8(a) incumbent is successfully performing the services, it may be more beneficial to leverage the flexibilities of FAR 19.8 (Contracting with the Small Business Administration (the 8(a) program) in meeting the requirements. Although EAGLE and FirstSource provide prime contracting opportunities for small business, there may be benefits in using other small business avenues.
 - o Is there a well performing incumbent, regardless of size, that should be afforded the opportunity to compete for follow-on work? If so, GSA schedules or other vehicles may be appropriate.

4) During the hearing, Senator Brown asked what DHS' savings goals were for Eagle and First Source and what DHS has saved to date by using these enterprisewide vehicles instead of the GSA schedules. Please provide responses to these questions.

Response: DHS estimates EAGLE cost avoidance based on 2.9 percent of obligated dollars. This figure is a weighted average of the fees DHS would have paid to use similar vehicles to purchase IT commodities and services, such as the Federal Supply Schedules and various GWACs.

Since the inception of the EAGLE contract, DHS has obligated approximately \$3 billion, which at 2.9 percent equates to an estimated cost avoidance of \$87.0 million. Considering the estimated cost of \$3.1 million to establish the EAGLE contract, the net cost avoidance of the EAGLE contract is approximately \$83.9 million.

The DHS FirstSource contract cost avoidance figure is based on the average percentage difference of 22.8 percent between the actual awarded price and the price of the same item on the GSA Federal Supply Schedule. Since inception, DHS has obligated \$1.1 billion on FirstSource. This resulted in an estimated cost avoidance of \$251.0 million over the life of the contract.

The combined total estimated cost avoidance for both EAGLE and FirstSource is \$334.9 million. As computed below:

EAGLE:	\$ 83.9 million
FirstSource:	<u>\$251.0 million</u>
Total:	<u>\$334.9 million</u>

5) What could be done to streamline layers and redundancies of existing laws in regard to interagency contracting?

Response: Federal interagency contracting principally falls within the following four primary types of contractual vehicles with varying authorizing statutes and procedures, depending on which interagency vehicle is being used:

- Assisted acquisitions performed by one agency for another per the Economy Act (31 U.S.C. § 1535);
- Government-wide acquisition contracts (GWACs) for IT products and services through the executive agent designation for the Office of Federal Procurement Policy (OFPP) per 40 U.S.C. § 11302;
- Federal Supply Schedules (40 U.S.C. § 501); and
- Multi-agency contracts (MAC's per the Economy Act).

Each of these types of interagency contracting has its own set of processes and procedures. Each procedure is spelled out in the Federal Acquisition Regulation (FAR) or in the acquisition vehicle itself. Normal procurements that are not interagency acquisitions also have their own set of procedures in accordance with the FAR. Dealing with these varying sets of procedures adds complexity that could hinder getting the best value out of the full range of procurement options available to the agencies. The varying procedures result either from statutory requirements peculiar to the vehicle (e.g., the Economy Act) or from differing statutory authorities granted to the agency responsible for establishing the vehicle (e.g., Federal Supply Schedules versus standard FAR contracts).

**Post-Hearing Questions for the Record
Submitted to
Steve Kempf
From Senator McCaskill**

**“Interagency Contracts (Part II): Management and Oversight”
Wednesday, June 30, 2010
United States Senate, Committee on Homeland Security
and Governmental Affairs
Subcommittee on Contracting Oversight**

1. What is being done within GSA to streamline layers and redundancies in existing law with regard to interagency contracting?

GSA has been actively involved in the formulation of Federal Acquisition Regulation (FAR) Case 2008-032, Preventing Abuse of Interagency Contracts.¹ When the FAR Case is completed, an interim rule will be issued. This interim rule is currently at the OMB - Office of Information and Regulatory Affairs (OIRA) for approval for publication. Interim rules become effective upon publication in the Federal Register.

When published the rule will:

- Strengthen FAR subpart 17.5, Interagency Acquisitions, by broadening the scope of coverage to address all interagency acquisitions (with limited exceptions), rather than just those conducted under the Economy Act, in recognition that an increasing number of interagency acquisitions are conducted under other authorities.
- Require agencies to support the decision to use an interagency acquisition with a determination that such action is the best procurement approach.
- Direct that assisted acquisitions be accompanied by written agreements between the requesting agency and the servicing agency. These written agreements will document the roles and responsibilities of the respective parties, including the planning, execution, and administration of the contract.
- Require the senior procurement executive for each executive agency to submit an annual report on interagency acquisitions to the Director of the Office of Management and Budget, in accordance with section 865(c) of Pub.L. 110-417.

¹ FAR Cases are the administrative rule-making process to modify the Federal Acquisition Regulation (FAR).

- Direct readers to existing OMB guidance on procedures for the use of interagency acquisitions to maximize competition, deliver best value to executive agencies, and minimize waste, fraud, and abuse. The OMB guidance is currently posted online at:
http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf.
- Require the development of a business case to support the creation of a multi-agency contract (MAC). Key components of the business case include analysis of all direct and indirect costs when awarding and administering a MAC and a requirement for agencies to consider strategies to ensure small business participation during acquisition planning.
- OMB is developing additional guidance on the use of business cases; once the guidance is issued, it will be referenced in the FAR.

In summary, the rule will strengthen interagency acquisition procedures to achieve efficiencies and economies of scale across the Federal government.

2. During the hearing, you discussed some of the steps being taken to improve GSA Advantage!, which you expect to complete this fall.

Improvements to GSA Advantage!® are listed below.

- a) Enhanced search ability for services will provide more information for customers
- b) Addition of "Advanced Search" capabilities for services
- c) Ability to download services search results
- d) Update of GSA Advantage!® look and feel using Web 2.0 features
- e) Providing direct links to UPS and FedEx for tracking shipments
- f) Digitizing vendor catalogs for standardization and higher resolution
- g) New State and Local virtual store to provide access to State and Local programs
- h) Product recommendations i.e. customers who bought "X" also bought "Y"
- i) Improvements to "Green" searching
- j) Highlighting of items with "Green" characteristics
- k) Improved search "refine filters" to help customers find products and services
- l) New tools to access Blanket Purchase Agreements (BPAs) and Federal Strategic Sourcing Initiatives (FSSI) arrangements
- m) Ability to upload multiple photos allowing various angles and views of products

2(a). In addition to the steps you outlined for GSA Advantage!, what improvements need to be made for the other programs and databases GSA manages, such as FPDS, and how long will it take to achieve these fixes?

GSA's Integrated Acquisition Environment (IAE), which includes the Central Contractor Registry (CCR), Federal Procurement Database System (FPDS), Federal Business Opportunities (FBO), Excluded Parties List System (EPLS), Wage Determinations On-

Line (WDOL), Electronic Subcontract Reporting System (eSRS), and the Past Performance Information Retrieval System (PPIRS), is currently working on consolidating these Government-wide systems under one architecture. This consolidation will eliminate duplicative processes, data elements and streamline the Government-wide electronic acquisition process. Information about a procurement, from the moment it was offered as an opportunity to the vendor's performance in relation to that procurement, will be found in one location. The project timeline for this effort extends through Fiscal Year 2014.

2(b). Does GSA plan to allow contracting officials to provide feedback about various vendors' capabilities and services in programs such as GSA Advantage?

GSA currently allows contracting officials to provide evaluations and feedback about vendors through the Past Performance Information Retrieval System (PPIRS) and has no plans to create another database for this function. PPIRS allows the government to employ a consistent evaluation methodology of contractor performance.

In addition, contracting officials may use the Federal Awardee Performance and Integrity Information System (FAPIS). The FAPIS system is available through PPIRS to provide performance information on Federal contractors. This includes information from the Central Contractor Registration (CCR) system and the Excluded Parties List System (EPLS).

2(c) What are the legal and legislative roadblocks that would prevent GSA from adding such an option?

The FAR, and the Defense Federal Acquisition Regulation, and other agency supplemental requirements cover the assessment, including the collection, of past performance information. These regulations guarantee varying levels of due process to contractors where potentially adverse information is being released. The need to safeguard information related to privacy and potential proprietary matters is of concern.

FAR Part 42.1503(b) specifically precludes release of past performance information, as shown in the italicized/enlarged text (italics/enlargement added) below:

(b) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used

to support future award decisions, and should therefore be marked "Source Selection Information." Evaluation of Federal Prison Industries (FPI) performance may be used to support a waiver request (see 8.604) when FPI is a mandatory source in accordance with Subpart 8.6. *The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations.* Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

Response from Daniel I. Gordon, Administrator for Federal Procurement Policy
Questions for the Record
June 30, 2010
Homeland Security Governmental Affairs Committee
Subcommittee on Contracting Oversight

Questions from Senator McCaskill

- 1) **You testified that the government should be moving “to fixed price contracts, because cost reimbursement contracts and especially time and materials contracts risk costing [the government and the taxpayer] too much.” However, GAO found that one of the reasons departments and agencies do not use GSA’s schedules program is because those agencies want to utilize more, not less, cost-reimbursement contracts, which are not available through GSA’s Schedules program. How will you reconcile departments’ and agencies’ desire for access to more cost-reimbursement contracts with OFPP’s goal of reducing the use of cost reimbursable contracts?**

As a result of the President’s direction to become more fiscally responsible in contract actions, agencies are focused on reducing the use of high-risk contracting practices that can lead to taxpayers paying more than they should. This includes relying more heavily on fixed-price contracts that require contractors to deliver completed products and services. Data from the Federal Procurement Data System (FPDS) indicates that agencies are beginning to move in this direction. Data from the first two quarters of FY 2010 shows that the percentage of dollars awarded for new cost-reimbursement contracts dropped by 6 percent when compared to the same period in FY 2009. Where cost-reimbursement contracting is appropriate, agencies have a number of options available to take advantage of existing contracts, including, for example, GSA’s Alliant and Small Business Alliant government-wide acquisition contracts.

The GSA Schedules have long focused strictly on acquisitions that can be met with commercial items. The law appropriately precludes the use of cost-reimbursement contracting for commercial item acquisitions. While the Schedules Program could be broadened to offer non-commercial items and allow cost-reimbursement contracting, we think this action, as a general matter, would create unnecessary duplication with GSA’s Government-wide Acquisition Contracts and other existing vehicles and therefore would be undesirable.

- 2) **How does OFPP plan to streamline layers and redundancies in existing law with regard to interagency contracting?**

Some of the current complexity in interagency contracting is the result of unclear, incomplete, or out-of-date guidance that creates confusion on the appropriate application of various interagency contracting authorities and tools. For example, while a range of authorities have been in place for a number of years to facilitate interagency contracting,

including the Clinger-Cohen Act and the GMRA, regulatory coverage in the Federal Acquisition Regulation has focused only on the Economy Act. Pending changes to the FAR will lay out a set of basic principles that are applicable to all interagency acquisitions – including what is required before and after a decision is made to conduct an interagency acquisition. As we work with agencies to improve their use of interagency acquisitions, we will carefully consider the additional guidance and tools (such as a database of available contracts) that can help agencies to understand their responsibilities and available options, both in terms of authorities and specific contract vehicles.

**Post-Hearing Question for the Record
submitted to
Diane Frasier
Director
Office of Acquisition and Logistics Management
National Institutes of Health
U.S. Department of Health and Human Services**

**From Senator McCaskill
following hearing entitled,
"Interagency Contracts (Part II): Management and Oversight"
Wednesday, June 30, 2010
Subcommittee on Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate**

- 1) What could be done to streamline layers and redundancies of existing laws in regard to interagency contracting?

Response: As an executive agent for Government-wide acquisition contracts, the National Institutes of Health fully appreciates the need for, and value of, laws and rules that clearly lay out available authorities and how they are to be used so agencies can understand and weigh options, make reasoned choices, and meet their responsibilities. Currently, however, the Federal Acquisition Regulation (FAR) only regulates transactions executed under the Economy Act. This coverage is in FAR Subpart 17.5, Interagency Acquisitions Under the Economy Act. This means that other authorities that may be available to agencies to undertake interagency acquisitions are not addressed by these regulations. The Department of Health and Human Services has been working with the civilian agencies and the Department of Defense (DOD) to explore the possibility of extending FAR coverage, if appropriate, so users can more easily understand the statutory and regulatory landscape. We understand that FAR Case 2008-032, Preventing Abuse of Interagency Contracts, is currently circulating for comment. This is a draft interim rule that implements Section 865 of the Fiscal Year 2009 DOD Authorization Act, and any effort to extend FAR coverage on interagency contracting must be consistent with this statutory implementation. We are hopeful that this effort, informed by public comment, will help to reduce some of the difficulties regarding interagency contracting. We also intend to confer with our agency peers and the Office of Federal Procurement Policy in the Office of Management and Budget to share lessons learned, identify and assess the cause of any weaknesses, and gauge how any identified weaknesses may be properly addressed by statutory changes.

