

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

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MULTIPLE AWARDS SCHEDULE ADVISORY PANEL

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THURSDAY, MAY 22, 2008

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The panel met in the First Floor Auditorium of the General Services Administration Building at 1800 F Street, N.W., Washington, D.C., at 9:00 a.m., ELLIOTT BRANCH, Chairman, presiding.

PANEL MEMBERS PRESENT:

ELLIOTT BRANCH, Chairman
LARRY ALLEN
ALAN CHVOTKIN
DAVID DRABKIN
DON ERICKSON

THOMAS ESSIG
JAN FRYE
JACQUELINE JONES
JUDITH NELSON
GLENN PERRY
LESA SCOTT
THOMAS A. SHARPE, JR.

DEBRA SONDERMAN
APRIL STEPHENSON
THEDLUS THOMPSON

ALSO PRESENT:

PAT BROOKS

Designated Federal Official

PRESENTERS:

KATHLEEN SEWELL

Lead Contracting Officer

Post Award MOBIS Region 10

Management Services Center

TIFFANI HARRIS

Center for IT Schedule Program

MARK L. SIMS

Section Chief, Greater Southwest

Acquisition Center, PCO

HAROLD JACKSON

CEO, Buffalo Supply, Inc.

TONY G. FULLER

Partner, Beers & Cutler

Government Contract Consulting

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:06 a.m.)

3 WELCOME & ADMINISTRATIVE ANNOUNCEMENTS

4 MS. BROOKS: Good morning,
5 everybody. I am Pat Brooks. I am the
6 designated federal official. I am the
7 designated federal official for the multiple
8 award schedule panel. So I welcome everybody
9 this morning.

10 I am just going to do some
11 administrative announcements. Then I'm going
12 to turn it over, the remainder of the meeting,
13 over to our Chairman.

14 First of all, -- and I was guilty
15 of this the last time, did not do it -- I
16 request that everyone please turn off cell
17 phones and pagers.

18 The bathrooms are out the door and
19 to your left along the first corridor there.
20 The cafeteria is in the basement. It's on the
21 basement level for coffee and water. And the
22 other refreshments are during break.

1 I would also ask that everyone
2 sign in at the table there. We have copies of
3 some of the material there also, but please
4 sign in sometime during break if you haven't
5 done so already.

6 If there are not enough copies
7 there for you today, I will remind everyone
8 that we do have a Web page that all the
9 materials used by the panel, all of the
10 presentations are posted on the Web page.
11 Most of them are there already. If not there
12 already, they will be there within the next
13 couple of days. The transcript from the May
14 5th meeting will be there shortly also.

15 Rules of engagement. While this
16 meeting is open to the public, I remind
17 everyone that the deliberations here are based
18 upon the panel members doing the
19 deliberations. Therefore, there will be no
20 questions from the audience. If you have
21 questions regarding the FACA process or
22 anything about our proceedings here, please

1 see me.

2 Any questions for me?

3 (No response.)

4 MS. BROOKS: Okay. With that,
5 then, I am going to turn the meeting over to
6 our Chairman, Mr. Elliott Branch.

7 CHAIRMAN BRANCH: Thank you, Pat.

8 Good morning, everyone, fellow
9 members of the panel. This is our second
10 meeting. And I would like to lay out briefly
11 what we hope to accomplish today.

12 This morning and in one slot this
13 afternoon, we will be hearing presentations
14 from both contracting officers with GSA and
15 the public. Those presentations will cover a
16 range of areas but will primarily be focused
17 on the mechanics of pricing in those
18 particular schedule areas where we believe the
19 discussion of the most favored pricing clause
20 will be richest.

21 This afternoon the panel will
22 focus on meeting an objective that I set for

1 us the last meeting, which was simply become
2 with some idea what they believe the problem
3 statement was, discussion of the data that we
4 might use to attack or to further understand
5 the problem statement and to propose line of
6 attack for the work.

7 So, with that, I will ask Kathleen
8 Sewell, who is the lead contracting officer
9 post-award for MOBIS, to come up and provide
10 us some context for this. Good morning, Ms.
11 Sewell.

12 MOBIS SCHEDULE PRICE REDUCTION PROVISIONS &
13 IMPLEMENTATION

14 MS. SEWELL: Good morning. My
15 name is Kathleen Sewell. And I am from region
16 X, Acquisition Center, the Management Services
17 Center, located in Auburn, Washington, the
18 State of.

19 And I am the lead contracting
20 officer for post-award MOBIS, which is all
21 actions after the contractor has received
22 their MOBIS contract. And for those of you

1 that are not familiar with MOBIS, it is the
2 mission-oriented business integrated services
3 schedule.

4 Okay. Now I'm going to discuss
5 the price reduction clause at the operational
6 level within our center with using the
7 schedules of MOBIS, environmental schedule log
8 world language, and consolidated.

9 For us in the price reduction,
10 prior to award, we negotiate with contractor
11 as to who their MFC is going to be, what
12 customer or category of customer which is
13 going to be the basis of the award, which will
14 be the basis of award as it is related to the
15 price reduction clause.

16 At pre-award also we did negotiate
17 the discount relationship between the basis of
18 award MFC customer and the government. And
19 this discount relationship is maintained
20 throughout the entire length of the contract.
21 Our contracts are for five-year base period
22 with three five-year option periods.

1 For us, a price reduction clause
2 is triggered when there has been any change to
3 the contractor's discount relationship and
4 they are a basis of award customer.

5 At pre-award, how we use the price
6 reduction clause is it helps in our
7 negotiation because we try to receive equal to
8 or better pricing than the MFC basis of award
9 customer. We expect that the contractors
10 provide us with the greatest discount price
11 and the best terms and conditions that they
12 offer to their MFC.

13 Using MFC pricing allows us to
14 gain efficiencies and economics of scale by
15 leveraging commercial customer, category
16 customer, bargaining effort. In other words,
17 we're taking advantage of the negotiations
18 that the commercial customer has done with the
19 contractor, and we expect those prices or
20 lower prices.

21 Of course, when the MFC and the
22 basis of award customer is federal agencies,

1 we still expect to get equal to or better than
2 the lowest price that they have offered to the
3 federal agencies, but the price reduction
4 clause does not kick in.

5 In our awards, we have three
6 different ways that we incorporate the MFC
7 basis of award customer. The first one is
8 either all commercial customers can be
9 designated as a basis of award customer or we
10 can ask them to narrow it down to one or two
11 particular contractors or companies that they
12 do business with and define them as the MFC
13 basis of award customer.

14 We also will use federal agencies
15 as their MFC basis of award, but that is our
16 last resort because if you do have a federal
17 agency that is your MFC, then the price
18 reduction clause does not pertain.

19 We also will negotiate when the
20 MFC is a federal agency, but we will try to
21 get a commercial customer as the basis of
22 award customer. That means that if a federal

1 agency gets lower pricing but they actually
2 sell to the commercial sector, we will try to
3 get the commercial sector as the basis of
4 award customer so that the price reduction
5 clause does pertain to that contract.

6 In post-award, we have a number of
7 events that will trigger the price reduction
8 clause. The first one is in options. Because
9 these are long-term contracts for the base
10 period of five years and three five-year
11 options, our options are more detailed than a
12 normal option for a contract that might be
13 five years or four one-year periods.

14 In our options, we ask them to
15 recertify the standard, but we also ask them
16 to submit another commercial sales practice
17 format. And that's a form that actually tells
18 us what the commercial price is, what their
19 MFC price is, and the discount relationship
20 with GSA.

21 It's that kind of option that
22 oftentimes will trigger the price reduction

1 clause because we will find out that they have
2 actually changed their MFC, that perhaps at
3 the time of award it was company X. But now
4 they have negotiated better terms and
5 conditions with company Y. And so now they
6 have MFC. So at time of option is where we
7 most often see if there's been a potential
8 violation of the price reduction clause.

9 When a contractor comes in and
10 adds extra, adds additional special item
11 numbers, we require them to submit a
12 commercial sales practice format and indicate
13 who their MFC is going to be for that SIN.
14 And it's at that time also that we might
15 become aware that there has been a disrupted
16 discount relationship between the basis of
17 award MFC customer and the new MFC.

18 We also will find it when they
19 come in and add labor categories because at
20 that time we also require them to submit a new
21 commercial sales practice format.

22 They come in for, the contractor

1 will come in for, an economic price
2 adjustment. We have three different types of
3 economic price adjustment. One is a fixed fee
4 escalation, in which we will not have any
5 dealings with the contractor to do a price
6 reduction for the period of performance. So
7 we won't know if the price reduction clause
8 has been violated.

9 But if they come in under an index
10 or under a commercial price list and ask for
11 an increase, oftentimes we will notice that
12 their MFC basis of award customer has changed
13 and that there has been a disruption of the
14 discount relationship.

15 When contractors submit their
16 files for approval under GSA Advantage,
17 oftentimes we will notice that what they have
18 put in their GSA Advantage file is not what
19 they will have been awarded. And we will
20 notice that there has been a disruption with
21 the discount relationship at that time.

22 Contractors will come in to the

1 office and voluntarily give us disclosure that
2 they have reduced their prices. And they tell
3 us what the terms and conditions were. And
4 we'll make a determination if it was a
5 one-time price reduction or if we need to
6 negotiate the prices down.

7 We'll find through agency
8 discussions when they call in and ask question
9 about a contractor's pricing and terms and
10 conditions of the contract that perhaps their
11 MFC award customer has changed and we haven't
12 been notified.

13 We have industrial operations
14 assistance visits. And they go out and check
15 the contractor's files. And one note is that
16 perhaps there has been a disruption of the
17 discount relationship.

18 And then, lastly, we will have
19 audits. In options, we have probably about 12
20 audits scheduled a year for different MOBIS
21 contractors. And at that time, the auditors
22 will come to us and say there has been a

1 chance in the MFC.

2 For enforcement, we have to make a
3 determination. If we find that the contractor
4 has been operating at lower prices than what
5 they were awarded under GSA, is that a basis
6 for us to enforce the price reduction clause?

7 If it was a one-time reduction, if
8 perhaps it's different terms and conditions,
9 it could be a number of things such as they
10 have a contract with a company in which
11 they're guaranteed a large volume of dollars.
12 And under the schedules program, we are not
13 guaranteeing them anything.

14 If it's just because of a lack of
15 tracking methods within the commercial
16 company, for example, a lot of large companies
17 will have many salesmen out there. And in
18 order to get the job, they will offer their
19 customers a discount without realizing that
20 they have just violated the price reduction
21 clause.

22 We negotiate with contractors on

1 minor infractions. And on the substantial
2 infractions, we send the auditors out to audit
3 to see how substantial it really is.

4 So, in conclusion, as a working
5 contracting officer, I feel that the price
6 reduction clause causes the prices to stay
7 artificially high, that contractors stay away
8 from contracts with the price reduction clause
9 because it impedes their ability to extend or
10 negotiate benefits to large volume, long-term
11 customers without extending benefits to every
12 other MFC.

13 Oftentimes it doesn't follow the
14 contractor's commercial practice, which is
15 what we're finding with the large companies.
16 And when the auditors go out to audit, they're
17 having a hard time because of the way they do
18 their accounting.

19 It causes contractors to be less
20 aggressive and limits the companies' range of
21 the competitive options. It doesn't allow
22 contractors to use their staffing. Oftentimes

1 there might be a down time and they will just
2 want the work to tide them over to when they
3 are going to get other task orders. And so
4 they will offer their services at a reduced
5 labor rate. And it doesn't allow contractors
6 to do that as long as we're going to go after
7 them for the price reduction clause.

8 We have found that a lot of the
9 contractors have developed a risk aversion
10 infrastructure to ensure that they have the
11 proper data to provide us. And then that
12 price is passed on to the federal agencies.

13 So when we are negotiating labor
14 rates, they tell us that they have to add a
15 little bit in to meet our requirements for
16 their data reporting.

17 We have some of the contractors in
18 our local area. We have some big aircraft
19 contractors who won't participate in the
20 schedules program because of the price
21 reduction clause. They said that they just
22 can't track well enough for us.

1 There are different risk factors
2 that affect the pricing. For example, there
3 are just all the different terms and
4 conditions that will affect the pricing.

5 And then, of course, competition.

6 We're not always getting the lowest prices.

7 A lot of the contractors aren't educated
8 enough on the price reduction clause. They
9 feel that they can only offer the awarded
10 schedule prices and they can't give discounts
11 to the other federal agencies because they
12 feel that the price reduction clause will kick
13 in. And we all know it doesn't.

14 And that's the conclusion of my
15 presentation.

16 CHAIRMAN BRANCH: Thank you, Ms.
17 Sewell.

18 Does the panel have any questions
19 for this presenter? Larry?

20 MEMBER ALLEN: I have one
21 question. That is, do you know the extent to
22 which there are some contract specialists who

1 may attempt to make the basis of award
2 customer all customers?

3 MS. SEWELL: There are many awards
4 in which the basis of award customers are
5 commercial customers, yes.

6 MEMBER ALLEN: Can you talk about
7 some circumstances under which that might
8 happen?

9 MS. SEWELL: It happens when the
10 contractor is unwilling or unable to define a
11 particular company that is their MFC. So they
12 say that it's all commercial customers, which
13 means that they cannot offer lower prices to
14 any of those commercial customers without the
15 price reduction clause being enacted.

16 MEMBER ALLEN: From your
17 description, that sounds to me that that is
18 not GSA's, at least not in your center,
19 preferred method of operation. Is that
20 accurate? You would rather have it --

21 MS. SEWELL: Our preferred method
22 is that they name a particular customer for

1 each of the labor categories as their MFC.

2 CHAIRMAN BRANCH: Jacqueline?

3 MEMBER JONES: I would just like
4 to add, too, Larry, in a lot of cases where we
5 do use the basis of award as all commercial
6 customers is when contractors come in and say
7 they don't have any commercial business or the
8 predominant work that they do is with the
9 federal government.

10 So we'll use all commercials as a
11 category, meaning that if they were to ever
12 venture out and perform commercial business,
13 then our prices would remain better.

14 MS. SEWELL: We do strive to try
15 to get a commercial customer. If the
16 contractor is adamant that they only have
17 federal agencies as a commercial customer, we
18 will tell them that we will put the federal
19 agencies as MFC; however, if they do receive
20 commercial sales, that they must come in and
21 tell us who that commercial customer is so
22 that we can change their basis of award MFC.

1 CHAIRMAN BRANCH: Judith?

2 MEMBER NELSON: Kathy, first of
3 all, thank you very much for your presentation
4 --

5 MS. SEWELL: You're welcome.

6 MEMBER NELSON: -- and for flying
7 in.

8 I have two questions. The first
9 is, you stated that when contractors, industry
10 partners to GSA, add either new SINS or
11 products to their contract, you asked for
12 commercial sales practices.

13 Can you tell me, is that a
14 center-specific requirement or is that
15 required by regulation?

16 MS. SEWELL: I believe it is
17 required by regulation. We do services, very
18 little products. And it's in the modification
19 clause that they provide us with a commercial
20 sales practice format.

21 MEMBER NELSON: And my second
22 question, the panel has been distributed two

1 versions of the price reduction clause. The
2 first is -- and I know that you probably don't
3 know them by heart. But the first is
4 552.238-75, which speaks just to federal
5 agencies.

6 And the second is 552.238-75, alt.
7 1, which, rather than addressing federal
8 agencies, has been replaced with the term
9 "ordering activities" to take into account
10 cooperative purchasing and disaster recovery.

11 In your world at MOBIS, is your
12 solicitation -- which one of the two versions
13 is incorporated into your solicitation?

14 MS. SEWELL: We've got 552.238-75
15 --

16 MEMBER NELSON: And not the --

17 MS. SEWELL: -- the May 2004.

18 MEMBER NELSON: The May 2004?

19 MS. SEWELL: Yes.

20 MEMBER NELSON: So not alt. 1?

21 MS. SEWELL: No.

22 MEMBER NELSON: It does not pay

1 ordering activities?

2 MS. SEWELL: We don't have alt. 1.

3 MEMBER NELSON: Pardon me?

4 MS. SEWELL: We do not have alt.

5 1.

6 MEMBER NELSON: Okay.

7 MS. SEWELL: Let me double check.

8 I have a copy of it.

9 MEMBER NELSON: Yes.

10 (Pause.)

11 MS. SEWELL: It's not alt. 1.

12 MEMBER NELSON: It's not alt. 1.

13 Okay.

14 CHAIRMAN BRANCH: Yes, Jan? By
15 the way, welcome. Just before you take the
16 mike, Mr. Jan Frye is from the Department of
17 Veterans Affairs, is a newly appointed member
18 to our panel. And we have added him for their
19 specific expertise in terms of working with
20 the schedules in the health care field. So we
21 just want to welcome you to our little group
22 here.

1 MEMBER FRYE: Thank you very much.
2 Thank you for your presentation,
3 Ms. Sewell. You stated that you do audits for
4 substantial infractions. Can you characterize
5 how much GSA recovered in those audits this
6 past year?

7 MS. SEWELL: I can tell you that
8 our service has not recovered any money from
9 the audits. We are undergoing a large audit
10 right now on the price reduction clause, but
11 we think we will recover money. What we have
12 found is that normally when the auditors go
13 out there, they actually don't see a violation
14 of the price reduction clause.

15 What they're seeing is perhaps
16 false claims or the wrong labor categories
17 with the wrong experience being offered.

18 MEMBER FRYE: So could I
19 characterize that as stating that you are
20 really not very aggressive with your audits?
21 In other words, you haven't recovered anything
22 thus far?

1 MS. SEWELL: We have not recovered
2 anything.

3 MEMBER FRYE: Okay. Thank you.

4 One other question. You said that
5 contractors avoid the schedules because of the
6 price reduction clause. Can you characterize
7 how many contractors in this past year, for
8 instance, have stated that they wouldn't
9 participate because of the price reduction
10 clause?

11 MS. SEWELL: I've only talked to
12 maybe three or four of them that said that
13 they won't because of the relationship of the
14 price reduction clause and their commercial
15 customers.

16 MEMBER FRYE: That's three or four
17 out of how many thousand on the MOBIS
18 schedule?

19 MS. SEWELL: We have 18,000 on the
20 MOBIS.

21 MEMBER FRYE: So that's hardly
22 significant, 3 or 4, 18,000?

1 MS. SEWELL: We have three or four
2 of our big contractors in our local area.

3 MEMBER FRYE: Okay. Thank you.

4 MEMBER DRABKIN: Mr. Chairman,
5 before we --

6 CHAIRMAN BRANCH: Mr. Drabkin and
7 then Mr. Chvotkin.

8 MEMBER DRABKIN: You just answered
9 questions about what we recovered. When you
10 did these audits, did you find anything worth
11 recovering?

12 MS. SEWELL: They did not find any
13 violation as far as the price reduction
14 clause.

15 MEMBER DRABKIN: And so if there
16 are no violations, would we recover anything?

17 MS. SEWELL: We would not recover
18 anything.

19 MEMBER DRABKIN: And if you found
20 no violations, that means people were in
21 compliance with the clause?

22 MS. SEWELL: If they knowingly --

1 I'm sorry? Could you repeat?

2 MEMBER DRABKIN: If you found no
3 violations, does that mean that people were in
4 compliance with the clause?

5 MS. SEWELL: Yes. We found that
6 the problem was not with the price reduction
7 clause. Even though we thought perhaps that
8 was the problem which triggered us to request
9 an audit, the auditors found that that was not
10 a --

11 MEMBER DRABKIN: And who did the
12 audits?

13 MS. SEWELL: The GSA IG auditors.

14 MEMBER DRABKIN: Our IG?

15 MS. SEWELL: Our IG.

16 MEMBER DRABKIN: Okay.

17 MS. SEWELL: We in region X
18 management services center contracting do not
19 do the audits. We ask the IG auditors.

20 MEMBER DRABKIN: Is it your
21 experience that our IGs go easy on the
22 contractors they audit?

1 MS. SEWELL: No, I don't think
2 that they do.

3 MEMBER DRABKIN: Thank you.

4 CHAIRMAN BRANCH: Alan?

5 MEMBER CHVOTKIN: Thank you.

6 First, I don't want to leave Mr. Frye's
7 comment because I think your question was an
8 appropriate one, to the extent to which Ms.
9 Sewell was aware of contractors. She said
10 three or four.

11 That doesn't mean that only three
12 or four in the history of the program, the
13 18,000 schedules. That doesn't mean that
14 those are the only three or four who were not.

15 Ms. Sewell, I have a couple of
16 questions. You are the post-award side. To
17 what extent do you have visibility into other
18 than the work itself the negotiations in the
19 pre-award side over the MFC and the basis of
20 award?

21 MS. SEWELL: For three years, I
22 was the lead contracting officer for the

1 Logistic Worldwide contract, which has a price
2 reduction clause also. And that was pre and
3 post in one. So I reviewed every single one
4 of the awards that were done in that area.

5 And then for MOBIS, I was in the
6 pre-award branch for nine months. So I
7 reviewed all of the contract awards.

8 MEMBER CHVOTKIN: Secondly, your
9 conclusion, the way you went through the
10 points would lead one to conclude that you
11 would not support the current price reduction
12 clause. Can I ask whether that is a true
13 statement?

14 MS. SEWELL: That is a true
15 statement. I don't see how it adds value.

16 MEMBER CHVOTKIN: And if that is
17 the statement, do you have any personal views
18 of what else might work to ensure that the
19 government would have a basis for ensuring or
20 identifying opportunities for better pricing?
21 Is there some other alternative that might
22 work other than a price reduction clause?

1 MS. SEWELL: I think the MFC
2 pricing is a good negotiation tool at the
3 beginning of your negotiating your prices
4 before you've awarded it. I think that the
5 true competition happens at the task order
6 level.

7 Now, I know that that is flawed in
8 many cases where you are picking individual
9 contractors and you are not getting true, not
10 always getting true, competition. I think
11 that is an education process that we need to
12 give to our federal agencies and the
13 contracting officers.

14 We've got a wonderful tool in the
15 e-Buy, in which every contractor on this
16 schedule is allowed to see the RFQ. And if
17 they want to compete on it, they can so we can
18 get competition.

19 And I think that is where the
20 competition really lies, is at the task order
21 level. We negotiate prices that allow
22 contractors to bid for services anywhere

1 within the 50 states. So they're at the
2 highest level.

3 And we expect them to discount at
4 the task order level depending on the terms
5 and conditions and the risk involved in the
6 services and the location.

7 CHAIRMAN BRANCH: Judith?

8 MEMBER NELSON: Kathy, just a
9 point of clarification. You stated that you
10 have had the opportunity, say, in the last
11 year to speak with three or four companies
12 that don't want to participate because
13 inability to track or don't want to deal with
14 the price reduction clause. But then you also
15 stated that there were 18,000 contracts under
16 the MOBIS.

17 MS. SEWELL: I think it's 1,800.

18 MEMBER NELSON: Eighteen hundred,
19 right. I just wanted to clarify. There are
20 approximately 18,000 schedule contracts. So
21 about 1,800 MOBIS?

22 MS. SEWELL: There are about

1 1,800.

2 MEMBER NELSON: Right. Okay.

3 CHAIRMAN BRANCH: Okay. Other

4 questions?

5 MEMBER SONDERMAN: Yes.

6 CHAIRMAN BRANCH: Debra?

7 MEMBER SONDERMAN: You mentioned

8 on this conclusion page that different risk

9 factors affect the pricing. Have you analyzed

10 which of the terms and conditions have the

11 most impact or the key drivers in affecting

12 pricing?

13 MS. SEWELL: By that I mean that

14 it depends on the different performance-based

15 statement of work that goes out. Different

16 statement of work is going to have different

17 type of task order or different type of risk

18 involved in it.

19 Different services have different

20 risk. Different standards are going to cause

21 different risk for the contractors, which is

22 going to affect their pricing because I know

1 that it has been said that sometimes we should
2 go out to the federal agencies and see what
3 they are getting for the prices and that we
4 should negotiate lower prices. However, it
5 depends on the statement of work and the
6 different risk involved.

7 MEMBER SONDERMAN: So you're
8 referring to the terms and conditions that are
9 established by the ordering agencies, not the
10 terms and conditions that are in the basic
11 schedule contract?

12 MS. SEWELL: Correct, correct.

13 MEMBER SONDERMAN: Thank you.

14 CHAIRMAN BRANCH: Glenn?

15 MEMBER PERRY: How many of the
16 1,800 contracts do you do a price reduction
17 exercise on on an annual basis?

18 MS. SEWELL: We don't do it on an
19 annual basis. We normally will do it at
20 options. At option, we are required to do an
21 informal market analysis on their price in
22 conjunction with them providing us with the

1 new commercial sales practice format
2 identifying their MFC.

3 And it's at that time where we
4 reran the numbers because we do quite
5 extensive in-depth price analysis because they
6 are such long-term contracts that at option
7 times we often will renegotiate the prices.

8 MEMBER PERRY: There were several
9 conditions you gave under which that would be
10 triggered. How many times a year or do you
11 have any data on how many times that happens
12 from each contract?

13 MS. SEWELL: Well, I know last
14 year we did over 600 options in a 3-month
15 period.

16 MEMBER PERRY: So that would be a
17 third of them in a year?

18 MS. SEWELL: So usually we have a
19 third from one year and then less for the --
20 we have one five-year period in which we do
21 many options. And then after that, it tapers
22 off the next four years.

1 So we do options. And then on the
2 economic price adjustments, they come in.
3 Probably two-thirds of our MOBIS contractors
4 will come in once a year and ask for an
5 economic price adjustment in which we require
6 a new sales practice format, in which we will
7 review again the MFC basis of award customer
8 at that time under the new special items, when
9 we add more to the solicitation, such as MOBIS
10 has just changed one of those special item
11 number. So we will have contractors come in
12 and ask for that one to be added. And we will
13 reevaluate their prices and their MFC at that
14 time.

15 MEMBER PERRY: I am just trying to
16 get at whether you have any data as to how
17 many price reductions you have actually done,
18 you do under the clause on an annual basis or
19 triennial basis and what are the results of
20 that. Do you have any data on that?

21 MS. SEWELL: I have no data. I
22 would say it's not many for the actual price

1 reduction clause.

2 MEMBER PERRY: I have another
3 question. You said that it causes prices to
4 stay artificially high. I am trying to
5 reconcile that with the response that any
6 audit review has not revealed any need for
7 price reductions based on what is going on in
8 the commercial marketplace.

9 MS. SEWELL: The contractors are
10 telling me that they won't reduce their prices
11 because of the price reduction clause, that
12 they can't offer discounts, they don't want to
13 violate that discount relationship that they
14 have with GSA.

15 MEMBER PERRY: But I thought you
16 said that when GSA awards the contract, it was
17 supposed to have been based on most favored
18 customer rate, which would have been in theory
19 if I were at the agency, then I would expect
20 that that rate is the lowest possible rate
21 that could have been achieved by the GSA in
22 the contract, which would equate to what was

1 happening in the commercial marketplace.

2 MEMBER ALLEN: If I might, I think
3 what she is saying -- and correct me if I am
4 wrong, please -- is that the price reductions
5 clause has the unintended consequence in some
6 cases of keeping the contractor's commercial
7 basis of award price high so that they don't
8 lower that commercial price because they know
9 the resultant effect that would have on their
10 federal contract. Is that --

11 MS. SEWELL: That's correct.

12 MEMBER FRYE: But as a corollary
13 to that, wouldn't it also keep the prices low
14 in many cases, just the fact that the clause
15 is contained in the contract?

16 MS. SEWELL: It could.

17 MEMBER FRYE: Thanks.

18 MEMBER PERRY: I wanted a question
19 that I was going to ask, but that's all right.
20 Go ahead. Go ahead.

21 MEMBER CHVOTKIN: I was just going
22 to go back to the question that Glenn asked

1 because I'm not sure we answered it. The
2 pricing in the contract, Glenn said something
3 about the lowest possible price that GSA could
4 get.

5 That's not the price we get, is
6 it? It is the price based upon customers who
7 buy the way the government is buying. So that
8 may not be the lowest possible price. Is that
9 right?

10 MS. SEWELL: What GSA's getting?

11 MEMBER CHVOTKIN: Right.

12 MS. SEWELL: GSA strives to get
13 equal to or better than the MFC pricing.

14 MEMBER CHVOTKIN: Right. But that
15 is determined on an analysis of the company's
16 customers and picking one or several who buy
17 the way we buy. Is that right?

18 MS. SEWELL: With like terms and
19 conditions, yes. Yes.

20 MEMBER CHVOTKIN: Right. So let's
21 just create a hypothetical in MOBIS services,
22 but let's talk about products because it is

1 easier to understand for the purpose of this
2 discussion.

3 If a company sells a million units
4 at one time to one customer, they would price
5 it differently than a company that buys 20 or
6 30 times over the course of a year. Is that
7 right?

8 MS. SEWELL: That's correct.

9 MEMBER CHVOTKIN: And so even if
10 we might buy at the end of a year a million
11 units, the fact that we didn't buy it all at
12 once means we might not get the price of that
13 other customer they had that bought a million
14 units at once.

15 MS. SEWELL: That's correct.

16 MEMBER CHVOTKIN: And in services,
17 there would be a similar analysis?

18 MS. SEWELL: Correct.

19 MEMBER CHVOTKIN: So when GSA
20 negotiates a price, we are not getting the
21 absolute lowest possible price in the market
22 because we don't always buy the way one of

1 their customers who gets that absolute lowest
2 possible price buys. Is that right?

3 MS. SEWELL: That's correct.

4 MEMBER CHVOTKIN: Thank you.

5 I don't know, Glenn. Is that what
6 you are trying to get at?

7 MEMBER PERRY: I have one. How
8 many of the MOBIS contracts -- think, in
9 particular, for that schedule. You mentioned
10 that some -- how many only use federal
11 agencies as their most favored customer base
12 of the 1,800?

13 MS. SEWELL: I would say it's
14 getting close to 50 percent.

15 CHAIRMAN BRANCH: Five-zero?

16 MS. SEWELL: That say that they
17 only sell to the federal government.

18 CHAIRMAN BRANCH: Okay. So 50
19 percent?

20 MS. SEWELL: I would say at least
21 50 percent.

22 MEMBER SONDERMAN: Can we get some

1 data about that?

2 CHAIRMAN BRANCH: Pat, would you
3 take that as an item for follow-up? We would
4 like to see data on the proportion of MOBIS
5 schedule holders who use other government
6 agencies as the most favored customer.

7 Okay. Judith?

8 MEMBER NELSON: Kathy, have you
9 found that there has been an increase at time
10 of option for MOBIS schedule holders that have
11 converted from commercial customer, some type
12 of commercial customer, to only federal agency
13 that your contractors have moved to selling to
14 commercial customers, to federal agencies of
15 their life of their --

16 MS. SEWELL: We strive very hard
17 to find a commercial customer as the MFC basis
18 of award. And for the basis of award, we try
19 very hard to get a commercial customer, even
20 if the MFC is a government agency, in order to
21 maintain the price reduction clause in the
22 contract.

1 So, therefore, I would say that
2 our basis of award customer is normally not
3 the federal agencies. We do try to get a
4 commercial customer out of the contractor.

5 So to answer your question, at
6 time of option, how many are we changing to
7 federal agencies now compared to how they were
8 awarded, not many because of our insistence
9 that we get a commercial customer from the
10 contractors, be it all commercial customers or
11 a particular commercial customer.

12 CHAIRMAN BRANCH: Debra?

13 MEMBER SONDERMAN: So does that
14 mean we are trying to drive market behavior,
15 we are trying to dictate who the customers
16 are, the other customers are, of the
17 contractors who are providing services to us
18 under this schedule?

19 MS. SEWELL: We don't try to
20 dictate to the contractors who their MFC is.
21 We just educate them as to the price reduction
22 clause and who is their MFC.

1 MEMBER SONDERMAN: But I thought
2 you said you are working very hard to require
3 them to identify a commercial customer.

4 MS. SEWELL: We do work hard to
5 try to get them to identify a commercial
6 customer. If they simply cannot identify a
7 commercial customer, then we work with their
8 MFC as federal agencies.

9 MEMBER SONDERMAN: And do you
10 know, of the 1,800 contracts that are on
11 MOBIS, how many of those have no activity in
12 a year, no federal agency places an order
13 against them? Do you have any statistics on
14 that?

15 MS. SEWELL: We do in the office.
16 I do not have the statistics. I know that in
17 the spring, we did probably 200 cancellations
18 because of no sales, no meeting the minimum
19 sales requirement.

20 MEMBER SONDERMAN: I wasn't aware
21 there was a minimum sales requirement.

22 MS. SEWELL: There is a minimum

1 sales requirement that they sell over 25,000
2 per year.

3 MEMBER SONDERMAN: Okay.

4 MS. SEWELL: And if they don't,
5 then they're up for cancellation. In the
6 February-March time frame of this year, we
7 canceled about 200 of our MOBIS contractors
8 due to no sales.

9 CHAIRMAN BRANCH: Pat, just as
10 another follow-up for information, could we
11 add that to the list, the percentage of
12 contractors on that schedule who have had no
13 activity, say, over the last two years?

14 MS. BROOKS: Yes.

15 CHAIRMAN BRANCH: Thank you.

16 Judith? I'm sorry. Jacqueline?

17 MEMBER JONES: Kathy, I would like
18 to ask, what percentage of audits required
19 renegotiation under the contract because of
20 pricing issues?

21 MS. SEWELL: In the last year, we
22 have had four audits that we have renegotiated

1 the prices.

2 MEMBER JONES: So there were four
3 audits, and all of those audits required
4 renegotiation of the contract?

5 MS. SEWELL: Yes.

6 MEMBER JONES: Because of pricing
7 issues?

8 MS. SEWELL: Because of pricing
9 issues.

10 MEMBER JONES: Okay.

11 CHAIRMAN BRANCH: Tom?

12 MEMBER ESSIG: Two questions. I
13 think you mentioned that you usually implement
14 the price reduction clause at option exercise.
15 How do you handle adjustments in pricing for
16 supplies or services where the market pricing
17 is not static, where change is possibly on a
18 weekly or a daily basis?

19 MS. SEWELL: That's not the type
20 of services that we administer at our center.

21 MEMBER ESSIG: How about IT
22 equipment, cell phones, and the like?

1 MS. SEWELL: That will be later on
2 today.

3 MEMBER ESSIG: So, secondly, many
4 agencies have set up BPAs or have conducted
5 individual directed acquisitions from many of
6 our requirements that could have been acquired
7 through schedules. We're doing that in cases.
8 And we only award where we see savings from
9 what was available from the schedule pricing.

10 Given the numbers of those that
11 we're seeing outside, how do you explain the
12 relatively low number of pricing adjustments
13 under your contracts?

14 MS. SEWELL: I'm sorry? Can you
15 repeat that?

16 MEMBER ESSIG: Many of us are not
17 using schedules. We're using our own contract
18 vehicles or we're using schedules through
19 blanket purchase agreements. In each of those
20 cases, we're getting savings over what was
21 available on schedule.

22 That to me would lead under the

1 pricing reduction clause to an expectation to
2 see more adjustments at the end of the year
3 than we're seeing.

4 MEMBER ALLEN: That is not the way
5 the price reduction clause is set up in the
6 great majority of cases. It's based on
7 companies' commercial sales primarily. You're
8 talking about two different types of pricing
9 phenomena, but they're not related.

10 MEMBER ESSIG: So for savings to
11 federal customers, basically that doesn't
12 trigger the price reduction clause. So the
13 price reduction clause offers those federal
14 customers no significant benefit?

15 MS. SEWELL: No, no. The price
16 reduction clause is triggered when the
17 contractor is providing prices at a lower rate
18 to the commercial customers.

19 MEMBER ESSIG: Okay. Thank you.

20 MS. SEWELL: We advocate discounts
21 to the federal agencies.

22 MEMBER ESSIG: Thank you.

1 CHAIRMAN BRANCH: David? David
2 and then Judith.

3 MEMBER DRABKIN: I would like to
4 follow up on your last statement because I
5 think that is very important because a lot of
6 our customers don't appreciate that.

7 The price we negotiate on the
8 schedule, that is the highest price that the
9 contractor can charge. Is that correct?

10 MS. SEWELL: That's correct.

11 MEMBER DRABKIN: And in our
12 schedules guidance to our customers, do we
13 encourage them to negotiate for and ask for
14 additional discounts?

15 MS. SEWELL: Yes.

16 MEMBER DRABKIN: And have we done,
17 has your center done, any analysis of how the
18 customers are using the MOBIS schedule
19 contracts?

20 MS. SEWELL: We are unable to see
21 the task orders that are written off the MOBIS
22 schedule. The only way we do see what is

1 being purchased out there is when the federal
2 agencies come in and ask for scope review of
3 the statement of work or they actually provide
4 us with copies of the task orders.

5 MEMBER DRABKIN: Have you obtained
6 any information about whether customers are
7 regularly asking for and negotiating for
8 additional discounts from the maximum price
9 negotiated in the schedule contracts?

10 MS. SEWELL: We tell the federal
11 agencies that they are required to ask for
12 additional discounts at the maximum dollar
13 threshold. However, we highly encourage the
14 agencies to always ask for a discount off of
15 the GSA awarded rates.

16 MEMBER DRABKIN: And so it would
17 not be unusual for us to expect agencies to
18 actually get a better price when they go to
19 buy from our schedules. Is that right?

20 MS. SEWELL: That's correct. And
21 this is for services. They need to see the
22 statement of work to see what type of risk is

1 involved in order for them to develop their
2 pricing.

3 And our pricing allows them to bid
4 on any statement of work throughout the
5 nation. So when they actually get the
6 statement of work and they see what the risk
7 is involved and the location, they most often
8 discount their rates.

9 MEMBER DRABKIN: And one last
10 question on this line. So when we look at
11 agencies who are able to get better prices, is
12 that what we contemplate them to do?

13 MS. SEWELL: That's what we want
14 them to do, yes.

15 MEMBER DRABKIN: Okay. Thanks.

16 MS. SEWELL: Yes.

17 CHAIRMAN BRANCH: Judith?

18 MEMBER NELSON: First of all, I
19 wanted to ask, and following up on David, in
20 the contracts that your contractors hold under
21 the schedule, are there specific instructions
22 for placing orders under the schedule when

1 there is a statement of work for the ordering
2 activities?

3 MS. SEWELL: Yes.

4 MEMBER NELSON: That does --

5 MS. SEWELL: There's an ordering
6 clause in there.

7 MEMBER NELSON: And does it call
8 out looking for better pricing when there is
9 over the maximum order thresholds?

10 MS. SEWELL: Yes, it's in there.

11 MEMBER NELSON: Okay. And,
12 following up on Tom's question regarding the
13 price reduction clause, price reduction
14 clauses -- and I will imagine we will go over
15 it this afternoon -- does call out very
16 specific cases in which it is triggered.

17 And one of them is that when a
18 commercial customer -- so let's assume that
19 would be the basis of award -- places an order
20 with the contractor that is above the maximum
21 order, which is on a SIN by SIN basis for a
22 firm, fixed delivery.

1 And I'll just go with IT. I know
2 we are talking MOBIS now, but what is it, a
3 million dollars on most of your SINS?

4 MS. SEWELL: For MOBIS, it's a
5 million dollars.

6 MEMBER NELSON: A million dollars.
7 So MOBIS. It's a million dollars. So let's
8 say project management. And their commercial
9 cusotmer is their --

10 MEMBER ESSIG: I understand that.
11 In the area of services, though, how do you
12 identify "savings"? What represents a savings
13 to you in a service where I don't have a
14 defined task order and what one customer
15 orders may be very different than what another
16 customer orders? Is it the labor rate?

17 The labor rate doesn't reflect the
18 specific skill sets in the individual that
19 you're hiring. And somebody with 20 years
20 experience in a particular functional category
21 could be of better value to me than somebody
22 directly out of college in that same

1 functional category.

2 And I would expect to pay a lower
3 labor rate to the less experienced person. So
4 how do I assess that qualitative difference?

5 MEMBER SONDERMAN: At the task
6 order -- can I answer you? At the task order,
7 that's part of the evaluation for best value.

8 MEMBER ESSIG: I understand that.
9 But for the price reduction clause, how do you
10 say somebody got a savings? It doesn't tie
11 in.

12 MS. SEWELL: Right.

13 PARTICIPANT: Schedule is not a
14 personal contract.

15 PARTICIPANT: You are talking
16 about apples and oranges.

17 MEMBER ESSIG: So what triggers a
18 price reduction in a MOBIS contract?

19 MS. SEWELL: Commercial.

20 MEMBER ALLEN: Well, if there is a
21 basis of award customer for the contract and
22 any time the price is disturbed for that basis

1 of award customer, that could lower the price
2 on the contract.

3 It depends on what the basis of
4 award customer was. In most cases, it's
5 commercial. In some cases, it's federal. But
6 it's tightly defined to be a customer or
7 category of customer in most cases. And the
8 clause is only triggered when those prices are
9 disturbed.

10 MEMBER JONES: So you are --

11 PARTICIPANT: It is by labor rate.
12 It is by labor rate.

13 MEMBER NELSON: And that labor
14 category would be defined by educational
15 experience, professional experience, and the
16 requirements of the labor category.

17 So perhaps what you're asking is
18 that maybe there would be four levels of that
19 labor category but not by John Doe and John
20 Smith because it's not a personal contract.
21 So each labor category would have its own
22 rate.

1 CHAIRMAN BRANCH: Okay. Ms.
2 Sewell has been most gracious in answering our
3 questions. So I would like to kind of just
4 wrap up with a few of my own and then let her
5 sit down for a minute.

6 I'm just curious. When you were
7 evaluating this idea of a most favored
8 customer as well as the rates themselves, are
9 you also looking at an offeror's pricing
10 model; in other words, the way the offeror
11 determines his pricing for the commercial
12 marketplace?

13 MS. SEWELL: Are you alluding to
14 cost buildup with their labor rates?

15 CHAIRMAN BRANCH: Well, not so
16 much cost buildup but how a particular offeror
17 decides given a particular market how he is
18 going to price to that market, whether that is
19 a function of cost in his view or a function
20 of value in his view.

21 So do you look at his pricing
22 strategy, if you will, when you look at his

1 submissions, both with respect to most favored
2 customer as well as the rates he may offer?

3 MS. SEWELL: They provide this as
4 part of their pricing proposal, their pricing
5 strategy.

6 CHAIRMAN BRANCH: Okay. Thank
7 you.

8 Just to kind of follow up on the
9 general sense of your presentation, I would
10 also infer that you are not a fan of the price
11 reduction clause, as least on MOBIS contracts.

12 So I would ask you, given that you
13 believe most of the competition and best value
14 occurs at the task order level, what would you
15 as a pre-award contracting officer like to see
16 that would provide the task order contracting
17 officer with the kind of insight to negotiate
18 an efficient and effective business deal?

19 MS. SEWELL: Well, I would like to
20 see us give more training to the task order
21 contracting officers as to how we do pricing,
22 that there's ceiling pricing, that they should

1 be asking for discounts. I would just like to
2 see a more active training schedule for
3 federal agencies.

4 CHAIRMAN BRANCH: All right. So
5 if we took the price reduction clause out of
6 the schedule contract and decided as an
7 intervention to make sure we had very
8 well-trained task ordering officers, you
9 believe that that would result in an as
10 efficient from an economic standpoint
11 procurement and as efficient pricing?

12 MS. SEWELL: Yes.

13 CHAIRMAN BRANCH: Okay. Just one
14 last question. Would it be useful at all to
15 try to induce real competition at the schedule
16 award level?

17 MS. SEWELL: With how broad the
18 services are at the schedule level, I'm not
19 sure it would be possible to do that.

20 CHAIRMAN BRANCH: Okay. Thank you
21 very much. Ms. Sewell, thank you for flying
22 in from what I know are probably some of the

1 most beautiful skies in America.

2 MS. SEWELL: It's really rainy
3 there all the time.

4 (Laughter.)

5 MS. SEWELL: It's a miserable
6 place to live.

7 CHAIRMAN BRANCH: Tell your
8 friends. Thank you again.

9 Okay. It's about 10:00 o'clock.
10 And I might suggest that we might want to take
11 a ten-minute comfort break. Why don't we just
12 say we're going to be back here at 10:15 to
13 hear from the next presenter.

14 (Whereupon, the foregoing matter
15 went off the record at 10:02 a.m.
16 and went back on the record at
17 10:19 a.m.)

18 CHAIRMAN BRANCH: If we can get
19 started now, we will hear from Tiffani Harris
20 from the Center for IT Schedule Program. Ms.
21 Harris, good morning.

22 IT SCHEDULE 70 PRICE REDUCTION

1 PROVISIONS & IMPLEMENTATION

2 MS. HARRIS: Good morning,
3 distinguished panel members and guests. My
4 name is Tiffani Harris, and I am a contract
5 specialist from the Center for IT Schedule
6 Program. And we work on Schedule 70, general
7 purpose commercial information technology
8 equipment, software, and services.

9 We are going to start with the
10 pre-award phase. The information presented in
11 an offeror's proposal helps the government
12 determine price negotiation objectives.

13 The items listed, the offeror's
14 pricing, commercial practices and pricing,
15 discount policies, commercial terms and
16 conditions, and also the commercial and
17 government customer information, is a
18 foundation for establishing the price
19 reduction clause. The information extracts
20 the most favored customer. However, the basis
21 for award is not always the most favored
22 customer.

1 Multiple award schedule policy

2 also indicates the goal is to achieve a
3 discount relationship equivalent to the MFC
4 for the government. When this is not possible
5 to obtain a discount equal to the most favored
6 customer, it may not be possible to achieve
7 most favored customer because of certain
8 factors, including the length of the contract
9 period, the minimum quantity that the
10 contractor requires, pattern of historic
11 purposes.

12 The customer base is evaluated in
13 order to determine that then the customer base
14 is determined -- you have to excuse me. If it
15 is not possible to base prices on the most
16 favored customer, then the customer base is
17 evaluated in order to determine the customer
18 that is most similar to the government. And
19 this ultimately becomes the basis for award.

20 Once the basis for award customer
21 is identified, the price reduction clause is
22 a mechanism that helps the government maintain

1 this position throughout the contract period.

2 Within schedule 70, we do use
3 alternate 1. So per the GSAM clause, it does
4 specify that schedule 70 should use it and
5 also schedules that include recovery
6 purchasing. This also allows schedule 70 to
7 base price reduction on federal sales not
8 awarded under schedule.

9 We're going to look at some key
10 elements. The price reduction clause as it is
11 written gave instructions to the offeror and
12 the CO. So, therefore, before the award of
13 the contract, the CO and the offeror must
14 agree upon the basis for award customer and
15 the government's price-discount relationship
16 to the above.

17 It states that any changes to the
18 basis of award pricing which disturbs the
19 government's price relationship triggers a
20 price reduction. All price reductions to the
21 basis of award customer must be reported to
22 the CO by the contractor.

1 Therefore, the price reduction is
2 triggered by revisions to the price list upon
3 which the award is based. It is also
4 triggered by when the contractor grants more
5 favorable discounts than those disclosed prior
6 to award. An example would be instituting a
7 sale or promotion. Generally this may be a
8 temporary price reduction.

9 Special discounts are those
10 granted to the basis of award customer
11 identified at time of award. An example would
12 be volume discounts. Special discounts may be
13 temporary or permanent.

14 Next, price reductions are not
15 triggered by commercial sales under firm,
16 fixed price, definite quantity contracts or
17 with a maximum order, schedule sales under
18 this contract, that means schedule sales that
19 are under schedule 70, and errors in
20 quotations or billing.

21 In addition, the contractor may
22 offer price reductions at any time to the

1 government. Actions that trigger the price
2 reduction must be reported no later than 15
3 days after the effective date. And, finally,
4 the contract must be modified to reflect any
5 price reduction.

6 So we can talk about some
7 examples. When the prices are reduced by ten
8 percent in the commercial price list, this
9 triggers a price reduction. When an ordering
10 activity receives a discount, such as an
11 additional discount if it is above the maximum
12 order, the price reduction is not triggered.
13 Then if the basis for award customer
14 experiences a price decrease, price reduction
15 is triggered. And that is for products.

16 And, lastly, if there is an
17 instance where the basis for award customer
18 reduces prices for services, price reduction
19 is also triggered.

20 The schedule contractor has
21 specific responsibilities: tracking and
22 reporting price reductions, updating discount

1 and sales data, -- and this is important
2 because GSA Advantage should remain current --
3 and requesting a contract modification.

4 The CO must ensure that the
5 contract file is correctly documented. The
6 following items are generally included in the
7 modification packet from the contractor: an
8 official request for a modification.

9 If it's a temporary price
10 reduction, it should include the begin and end
11 date. If it's a permanent price reduction, it
12 should include the begin date.

13 We would like to see the
14 percentage decrease and generally the range of
15 decreases, the commercial effective date via
16 bulletins, letters, or customer agreements,
17 the actual data price list. And within our
18 office, COs like to see spreadsheets that
19 indicate the price reductions by model and the
20 GSA price list with the changes.

21 Do you have any questions?

22 CHAIRMAN BRANCH: Yes, Judith?

1 Question?

2 MEMBER NELSON: Yes. Thanks,
3 Tiffani. It's really good.

4 I'm going back to slide 3.

5 MS. HARRIS: Okay.

6 MEMBER NELSON: And this is in the
7 pre-award phase. And the second bullet says
8 that the customer base is evaluated in order
9 to determine the customer most similar to the
10 government. And this becomes the basis of
11 award customer.

12 Could you elaborate a little on
13 how your COs determine what would be a
14 customer that is most similar to the
15 government?

16 MS. HARRIS: Because sometimes the
17 most favored customer may receive a bigger
18 discount than what they actually give the
19 government. That's because they may stock
20 items. They may also distribute a price list.

21 So in actually finding a customer
22 that is most similar, they may not receive

1 that same discount, but generally they do the
2 same business that the government would do
3 with that contractor. So in that case, we
4 would look at their discounts and their terms
5 and conditions for that customer.

6 MEMBER NELSON: So would this be a
7 scenario that Mr. Drabkin was referring to
8 where you would have a customer that bought 10
9 million items, as opposed to the government
10 buying or another customer buying 20 or 30
11 kind of thing?

12 MS. HARRIS: Right. So there may
13 be another established contractor agreement
14 that the government cannot adhere to.
15 Exactly.

16 CHAIRMAN BRANCH: Other questions?
17 Debra?

18 MEMBER SONDERMAN: Thank you for
19 your presentation.

20 To what extent does the length of
21 the contract in your opinion -- I'm asking
22 based on your experience as a contracting

1 officer.

2 MS. HARRIS: Yes.

3 MEMBER SONDERMAN: You mentioned
4 that the price may not, most favored customer
5 price may not, be possible because of the
6 length of the contract. What would be your
7 advice for us in terms of what a better length
8 of the contract would be?

9 MS. HARRIS: I'm not sure. I
10 mean, our contracts are for five years.
11 Commercial contractors may have agreements
12 with their commercial customers for a longer
13 term.

14 MEMBER SONDERMAN: So, unlike
15 MOBIS, where it's essentially a 20-year
16 agreement, yours are 5?

17 MS. HARRIS: You have one option.
18 You have a five-year contract with three
19 options. So ours are also 20 years, but a
20 commercial contractor may have another
21 relationship with the, I'll say, customer that
22 is longer. And I have seen those.

1 MEMBER SONDERMAN: Okay.

2 CHAIRMAN BRANCH: Tom? Tom

3 Sharpe.

4 MEMBER SHARPE: Thank you for your
5 presentation.

6 I'm trying to understand the
7 scale. How many vendors are contracts? And
8 how many price reductions have we seen, say,
9 over the last year?

10 MS. HARRIS: I don't have the
11 exact numbers, but because of the nature of
12 technology, with technology, there are a lot
13 of price reductions that our vendors
14 experience.

15 MEMBER SHARPE: And you mentioned
16 on the most favored customer, the basis could
17 change. It could be a temporary price or a
18 permanent. How do you discern between the
19 two? I would think prices are moving around
20 all the time. And how do you address them?

21 MS. HARRIS: It's based on the
22 information that we receive from the

1 contractor.

2 MEMBER SHARPE: How are they
3 differently addressed?

4 MS. HARRIS: If there's a
5 promotion, say, specifically with the
6 commercial catalogue, they may send a bulletin
7 stating that for the third quarter, they are
8 going to be offering a ten percent discount,
9 as opposed to prices are being reduced
10 beginning this day until all of the products
11 are obsolete.

12 MEMBER SHARPE: I think I
13 understand that. How do you operate the price
14 reduction across those two scenarios?

15 MS. HARRIS: With the contract
16 file documentation, with the modification, it
17 would just indicate for a temporary price
18 reduction, the beginning and end date; for a
19 permanent price reduction, when it would
20 begin, and that it's until the products are no
21 longer available.

22 MEMBER SHARPE: It would be

1 open-ended. Okay. Thank you.

2 CHAIRMAN BRANCH: Mr. Erickson?

3 MEMBER ERICKSON: Actually, I had
4 a very related question as a follow, then, to
5 Tom's. Many of the commercial electronics
6 companies, you know, the Best Buys, the
7 Circuit Cities, periodically offer sales.

8 You know, this month a weekly
9 flyer comes out. And they offer 50 percent
10 off on this desktop IT system. Do you look at
11 things like that at all?

12 MS. HARRIS: When the contractor
13 submits information, yes. That would be a
14 temporary price reduction.

15 MEMBER ERICKSON: On a one-week
16 sale. The second part of it is one thing I
17 have also found with their low price
18 guarantees is they frequently sell
19 makes/models that are not available anyplace
20 else. There is something unique about the
21 system that is offered at a tremendous
22 discount that is not available anyplace else

1 so you can't "price match."

2 Do you see any of that in our
3 situation here?

4 MS. HARRIS: I haven't seen any of
5 that.

6 MEMBER ERICKSON: Okay.

7 CHAIRMAN BRANCH: Other questions?
8 Yes, Thedlus?

9 MEMBER THOMPSON: I had a question
10 under alternate 1 on page 4, where you're
11 stating that schedule 70 allows -- the bottom
12 of page 4, it talks about you allow most
13 favored customer to be based on federal sales,
14 price reduction based on federal. Can you
15 kind of elaborate on that a little bit?

16 MS. HARRIS: If the sales --

17 MEMBER THOMPSON: Sales not
18 awarded underneath the schedule.

19 MS. HARRIS: If the sale is not
20 actually awarded under schedule 70 but it's
21 with another federal agency, yes, we can look
22 at that, especially if the most favored

1 customer is predicated on a federal agency.

2 MEMBER THOMPSON: And this is, of
3 course, primarily I would imagine vendors who
4 have little or no commercial sales?

5 MS. HARRIS: Yes.

6 MEMBER THOMPSON: And is this
7 primarily with resellers, dealers? What type
8 of vendors do you normally see this under or
9 is there any type of pattern?

10 MS. HARRIS: It's not a specific
11 pattern.

12 MEMBER THOMPSON: And are you
13 looking at open market? Are you looking at
14 other government vehicles when you say
15 "federal sales" --

16 MS. HARRIS: Any federal sales.

17 MEMBER THOMPSON: Any of that?

18 MS. HARRIS: Yes.

19 CHAIRMAN BRANCH: Debra?

20 MEMBER SONDERMAN: Thank you.

21 What was the rationale for
22 creating alternate 1 of that clause?

1 MEMBER NELSON: Debra?

2 MEMBER SONDERMAN: Yes?

3 MEMBER NELSON: I'll respond to
4 that on behalf of Tiffani. Alternate 1 was
5 created in response to the creation of
6 cooperative purchasing. The difference in the
7 two clauses changes the language from the
8 purchase by federal agencies to ordering
9 activities. Therefore, it allows for state
10 and local governments. So it's actually now
11 incorporated for disaster recovery as well.

12 And there is internal FAS guidance
13 that has been put out saying that all
14 solicitations should now incorporate alternate
15 1 into the solicitations in lieu of the other
16 because all of the solicitations now allow for
17 disaster recovery per the Department of
18 Homeland Security.

19 So the language has changed from
20 order by federal agencies to ordering
21 activities.

22 CHAIRMAN BRANCH: Yes, Debra?

1 MEMBER SONDERMAN: Well, I guess
2 as a federal agency, I fear that an incentive
3 has been created for vendors not to offer me
4 discounts when we do a solicitation for our
5 own needs because if I understand how this
6 works in practice -- and please correct me if
7 I am wrong -- that means if they offer me a
8 discount because I am saying, "Okay. With
9 this solicitation, we are going to create a
10 standard product that the Department of the
11 Interior is going to purchase. So we are
12 going through that competition, and I want the
13 best price possible," if they give me a price
14 that's lower than what is on the schedule,
15 then they have to lower their schedule price
16 if I am not buying on the schedule.

17 MEMBER ALLEN: Sales to federal
18 agencies don't usually trigger the price
19 reduction clause unless the federal agency is
20 the basis of award customer. In the
21 experiences I have seen -- and I am sure the
22 other panelists will comment, too -- in those

1 minority of cases when you have the price
2 reductions clause tied to a government
3 contract, it's usually a very specific
4 government contract or government customer
5 that it's tied to.

6 So any procurement that you would
7 do would not in and of itself trigger the
8 price reductions clause unless a contract that
9 you already have was the basis of award, in
10 which case it could.

11 But I would think that the
12 instances of that happening would be very,
13 very rare.

14 CHAIRMAN BRANCH: Yes, Tom Sharpe
15 and then Tom Essig.

16 MEMBER SHARPE: I think I had a
17 similar question to Debra's. I'm not sure I
18 fully understand. I thought federal sales
19 could be a basis for price reduction. So I
20 had a similar concern. That would discourage
21 reductions, non-schedule buying.

22 I'm not sure why we would operate

1 the clause that way. If we're going to use
2 the clause, make it federal sales including on
3 the schedule.

4 MS. HARRIS: I just want to add
5 that this is how it is interpreted within our
6 center. And this is how some of the COs are
7 interpreting the clause, especially I did
8 state when the most favored customer is
9 predicated on a federal sale. And sometimes,
10 yes, it is tied to a specific contract to a
11 federal agency.

12 MEMBER ALLEN: The old price
13 reductions clause used to be written in such
14 a way that if you lowered your price on
15 schedule to any federal customer, then you had
16 to lower it permanently.

17 If ever there were an artificial
18 barrier to lowering your price, that was it.
19 That's the primary reason that clause was
20 changed. It was changed about 15-16 years ago
21 to allow contractors to spot price on their
22 schedule.

1 Without that flexibility, you
2 would not see spot pricing on the schedules
3 program.

4 CHAIRMAN BRANCH: Tom?

5 MEMBER ESSIG: Yes. My question
6 follows the last couple and pertains to the
7 exclusion of eligible ordering activities and
8 price reductions available to them. The price
9 reduction curve in general gives I think most
10 federal contracting officers a sense of
11 security that they are not paying too much.

12 I am not confident at this point
13 in time that everybody really truly
14 understands that there is an except for there.
15 And the except for is the prices that are paid
16 by those ordering activities: DOD, Homeland
17 Security, Energy, and the like.

18 And, even in the example that you
19 have, where an eligible ordering activity is
20 on slide 9, company passes a 15 percent
21 discount to agency A, how do the rest of us
22 even know about that?

1 You know, we take a look at the
2 schedule pricing. We have this price
3 reduction curve. I think I am getting a 19
4 percent discount, and I think that is fair and
5 reasonable, not knowing everybody except me is
6 getting 15.

7 MS. HARRIS: Well, especially when
8 the contracting officers are reviewing the
9 files, that is their responsibility to argue
10 on behalf of the government, that everyone
11 should be receiving the same discount.

12 MEMBER ESSIG: Okay. And the
13 follow to that, then, is where do we make that
14 available to contracting officers so they can
15 see the prices that other federal activities
16 are paying for like requirements?

17 MS. HARRIS: It will not be at the
18 task order level. It is at the contract
19 level.

20 MEMBER ESSIG: Do we make it
21 available to them?

22 MEMBER DRABKIN: Tom, I think --

1 and I don't want to testify, but, rather than
2 try to lead the presenter, let me suggest a
3 couple of things.

4 First of all, just like in the
5 last witness, the price on the schedule is the
6 maximum price. On schedule 70, like on MOBIS,
7 every customer is encouraged when they solicit
8 for a task order to ask for and negotiate an
9 additional discount.

10 In most cases except where that
11 customer soliciting discount is identified as
12 the customer who is the baseline customer, the
13 fact that the company gives the federal agency
14 assisting a discount does not trigger the
15 price reduction clause with that one except
16 where the customer who gets it is the baseline
17 customer, which would then trigger the price
18 reduction clause. And there are not many of
19 them that are federal customers, as they have
20 pointed out.

21 There is a problem that you point
22 out. And I'm not sure this presenter can

1 address it. But we do not, we as a government
2 do not, collect the kind of spend data we need
3 to have to find out how companies price
4 against each of us.

5 It's not collected in FPDS,
6 although I guess you could get it out if we
7 fix some data elements there. It's not
8 available electronically because I guess not
9 everybody is available through an electronic
10 contract writing system.

11 And so the challenge to sharing
12 this information is one which I think at least
13 one speaker at our last meeting pointed out,
14 you know, this issue of transparency.

15 There is a wealth of data in our
16 possession. Unfortunately, most of it is in
17 paper and inaccessible to us. If we had that
18 data when we went to place a task order, we
19 could actually negotiate better with the
20 companies because we would know what they
21 charged you versus what they charged somebody
22 else.

1 In fact, in one of the
2 government-wide initiatives -- and the acronym
3 always alludes me, but the software initiative
4 that we run where we are going across the
5 government looking for prices that were paid
6 for software, trying to find the best price
7 charged to any agency and then -- Smart Buy.
8 I always forget.

9 In Smart Buy, though, we try to do
10 just exactly what you point out, take
11 advantage of the best price the government got
12 and then apply that price across the board.

13 So I want to make sure that we are
14 clear on your point. There is a maximum
15 price. Every agency is encouraged to
16 negotiate a better price. The only time the
17 price reduction clause would come into play
18 for a federal agency is if the federal agency
19 getting the price was the baseline customer,
20 which is rare.

21 Another point I would make is
22 alternate 1 was done, as they pointed out,

1 when we included in schedule 70s the ability
2 to sell the state and locals. And we wanted
3 to exclude from the whole process any work
4 done at the state level because it is all
5 voluntary.

6 Companies' participation is
7 voluntary. Their ability to accept the order
8 is voluntary. And so that also explains why
9 alternate 1 also specifically sets out federal
10 sales.

11 CHAIRMAN BRANCH: Yes. Mr. Essig,
12 then Ms. Nelson.

13 MEMBER ESSIG: If I could point
14 out what I believe is an inconsistency in the
15 argument that the schedule prices are maximum
16 prices? It's an inconsistency with the
17 current language at FAR 8.44(d), which says,
18 "Although GSA has already negotiated fair and
19 reasonable pricing, ordering activities may
20 seek additional discounts."

21 That language today is
22 inconsistent with a concept that the schedules

1 provide maximum pricing. And I think that
2 would need to be changed.

3 CHAIRMAN BRANCH: Yes. Ms.
4 Nelson, then Ms. Jones.

5 MEMBER NELSON: Going back to Ms.
6 Sonderman's question regarding the issue of
7 whether or not an agency puts out an RFQ and
8 issues a contract under their own agency and
9 whether or not they will be able to negotiate
10 lower pricing than what is on schedule,
11 Tiffani, are you aware of any guidance that
12 came out in regard to alt. 1, either from the
13 GSA CAO's office or from FAS in regard to the
14 interpretation that pricing from federal
15 agencies not under the GSA schedule would
16 trigger a price reduction?

17 MS. HARRIS: No.

18 MEMBER NELSON: Okay.

19 CHAIRMAN BRANCH: Ms. Jones?

20 MEMBER JONES: Okay. To address
21 some of your concerns, Tom, I just want to set
22 the record straight a little bit. When these

1 contracting officers are negotiating contracts
2 on behalf of GSA in establishing a contract
3 under the multiple award schedule, the
4 objective is to obtain pricing that is equal
5 to or better than the company's most favored
6 customer. That is supposed to be the
7 company's best rate. And we will determine
8 that rate fair and reasonable based on the
9 fact that we have obtained their best rate.
10 That is our pricing goal.

11 MEMBER SHARPE: But that's not
12 true. It's not the best price.

13 MEMBER JONES: That is our pricing
14 objective. That is our goal when we are
15 negotiating schedule awards.

16 MEMBER SHARPE: The best price?

17 MEMBER JONES: For similar terms
18 and conditions, we are negotiating to obtain
19 pricing that is equal to or better than a
20 company's most favored customer, meaning the
21 most favored customer gets the best price,
22 we're supposed to be getting our best price

1 for the same or similar products and services.

2 So with that said, price
3 reductions are for the purpose of maintaining
4 that relationship. So once you establish who
5 that most favored customer is, what that
6 discount is to the most favored customer --
7 and we're even talking services.

8 I am not going to exclude those at
9 this point -- then what we do is we negotiate
10 to reseed pricing that is equal to or better
11 than that. The price reduction clause drives
12 changes in that relationship.

13 So when the most favored customer
14 price-discount relationship changes, ours is
15 supposed to change. And there are times when
16 companies will increase their commercial rates
17 very high. And we may not maintain that
18 relationship. Our discount is going to be
19 even better.

20 So we never go backwards. We only
21 go forward. And I just kind of got a sense
22 that there wasn't a foundational understanding

1 of how our prices are being established and
2 negotiated. So I just wanted to kind of lay
3 that foundation.

4 CHAIRMAN BRANCH: You know, I
5 think this has been a great discussion. But
6 I think we are moving into, really, the work
7 of the panel this afternoon because what I am
8 hearing at least are kind of intimations of
9 what we each may believe the problem statement
10 would be.

11 So I would ask you if you have any
12 questions for this presenter, that we kind of
13 limit our discussions to questions for her now
14 and to kind of take some time and some space
15 to reflect on your reactions to her
16 presentation because we do have sufficient
17 time this afternoon to discuss that.

18 MEMBER DRABKIN: I'm sorry, Mr.
19 Chairman, but I am old and I will forget to
20 make this one point. Perhaps that is a
21 satisfactory excuse.

22 Tom, with regard to 8.4 and the

1 use of the word "may," I don't know if you're
2 aware, but the FAR has drafting guidelines.
3 Only two words we use. It's either "may" or
4 "shall." We don't use the word "should."

5 So later when we discuss this this
6 afternoon, if you and I both remember,
7 although you are much younger than I am and
8 perhaps you will remember, we ought to talk
9 about it in terms of whether you want that to
10 say "shall negotiate a reduction," as opposed
11 to "may."

12 CHAIRMAN BRANCH: Okay. Glenn,
13 I'm going to give you the last word. And then
14 we're going to let this young lady sit down.

15 MEMBER PERRY: You said you were a
16 contract specialist or --

17 MS. HARRIS: Contract specialist,
18 yes.

19 MEMBER PERRY: Pre-award or post?

20 MS. HARRIS: Pre-award and
21 post-award.

22 MEMBER PERRY: I would like to

1 hear -- I'm sorry, Mr. Chairman. I am going
2 to kind of work off what you had asked the
3 last person.

4 I would like to hear your
5 viewpoint based on what you understand your
6 role is in basically what I say setting up the
7 schedule contract and the pricing for agencies
8 to use. What is your viewpoint as to the
9 value or not of this clause?

10 MS. HARRIS: I think the price
11 reduction clause is very valuable because it
12 helps maintain competitive prices for the
13 federal government.

14 MEMBER PERRY: Do you feel you
15 have the ability or the resources, though, to
16 adequately administer that clause?

17 MS. HARRIS: Yes, I do. As a
18 basis consumer, I feel that I do.

19 MEMBER PERRY: Okay. Thank you.

20 CHAIRMAN BRANCH: Ms. Harris,
21 thank you for your presentation today. It was
22 most informative and, as you can see, has

1 ignited some spirited discussion amongst the
2 panel. So we thank you for your appearance.

3 MS. HARRIS: Thank you.

4 CHAIRMAN BRANCH: All right. Now,
5 if we could hear from Mark Sims, who is a
6 contracting officer from Greater Southwest
7 Acquisition Center. He is going to talk to us
8 about schedule 84.

9 MR. SIMS: Thank you.

10 SCHEDULE 84 PRICE REDUCTION

11 PROVISIONS & IMPLEMENTATION

12 MR. SIMS: First I destroyed my
13 flash drive. Now I've apparently broken the
14 microphone. Thankfully nobody is taking
15 pictures with a camera.

16 Allow me to begin by introducing
17 myself. My name is Mark Sims. I am a section
18 chief and PCO in schedule 84 in total
19 solutions in law enforcement in security out
20 of region VII, Fort Worth.

21 I am a nine-year veteran of
22 acquisition. I have five years as a PCO. And

1 I have 3 years as a front-line supervisor with
2 a staff of 10 contracting specialists and PCOs
3 administering approximately 800 contracts.

4 Let me begin by extending
5 greetings from the management and staff of
6 region VII multiple-award schedules in Fort
7 Worth to each member of this esteemed panel.

8 It is both an honor and a
9 privilege to be allowed to appear before this
10 Committee and present specific information
11 pertaining to the policies and performance of
12 region VII mass contracting personnel as it
13 relates to the price reduction clause.

14 It is the mission goal of each
15 member of our team to provide quality product
16 and services within the scope of our schedule
17 at the best value to our government customers.
18 To that end, we dedicate ourselves to sound
19 contracting principles, as found in the FAR,
20 GSA manual, central office guidance, and
21 internal training.

22 Additionally, we strive daily to

1 provide quality customer service by way of
2 information and instruction on how multiple
3 award schedules can best meet the requirements
4 and needs of federal government customers and,
5 when applicable, our state and local
6 government customers.

7 Today's topic of price reductions
8 is one that receives a great deal of attention
9 in region VII and is the focus of many
10 discussions, as I am sure you can imagine.

11 The information that I present
12 today is not intended to speak for all MAS
13 schedules across GSA but, rather, is specific
14 to the policies and practices within region
15 VII based on our interpretation of the
16 above-mentioned guidance and requirements of
17 our individual schedules.

18 The following slides examine the
19 price reduction clause by individual paragraph
20 with a brief explanation of each directive and
21 how we interpret it in region VII, clauses
22 quoted on the left side of each slide and the

1 points of discussion appear on the right.

2 Since we have discussed so many
3 parts of this clause, I am not going to quote
4 each section as we discuss it. I will just
5 talk to the talking points on the right, and
6 you can follow the clause along if you wish.

7 Identification of which commercial
8 customers to whom contractors give their best
9 terms and conditions is used currently to
10 ensure that multiple award schedules provide
11 the best value to the government customers.

12 This is accomplished in region VII
13 by having prospective contractors submit their
14 commercial sales practices information using
15 form CSP-1 as part of their submission. This
16 form has the contractor identify, among other
17 information, the customers with whom they do
18 business and what terms they give these
19 customers.

20 Terms include the basic discount,
21 any additional discounts given for quantity or
22 volume sales, whether they pay for freight, if

1 they offer prompt payment discounts, and any
2 other terms in which concessions may be
3 offered.

4 This information is evaluated by
5 the contract specialist to determine which
6 class of customer receives the best deals
7 based on the overall mentioned criteria. And
8 if the information is not clear or complete,
9 we will have the contractor clarify with
10 additional information.

11 The customer then is identified
12 who we consider to be the most favored
13 customer. This evaluation then allows a
14 specialist to establish negotiation objectives
15 that are designed to secure equal to or, if
16 possible, better than terms depending on what
17 constitutes a fair and reasonable price to the
18 contractor and our federal customers.

19 Note that in some situations the
20 government is not offered equal to or better
21 than discounts as the MFC, but the MFC
22 provides value-added services to our customers

1 that still make the award acceptable.

2 Also, in some instances, we drop
3 down to a different category of customer. And
4 our evaluation indicates that the customer
5 getting the best discounts may not be the MFC.

6 On the second part of the clause,
7 because the contractor can be held liable for
8 violations of the price-discount relationship,
9 the relationship between the government and
10 the MFC is emphasized to the contractor during
11 negotiation discussions as well as in writing
12 in various formats.

13 First, at the end of negotiations,
14 the contractor is required to provide a final
15 proposal revision document which states his
16 understanding of the results of negotiations
17 concerning all terms and conditions that are
18 to be awarded. This includes stating his
19 understanding of the required relationship
20 between the MFC and the government in writing.

21 Secondly, the price-discount
22 relationship, as stated in the FPR, is then

1 mirrored in the terms and conditions of the
2 award.

3 And, last, the commercial price
4 list that becomes the basis of award is signed
5 by the PCO and documented with the discount to
6 be afforded to government customers off of
7 list price.

8 Violations of the price-discount
9 relationship may be discovered and reported in
10 a variety of ways, including by the
11 contractor, routine visits by the industrial
12 operations analysts from the ACO's office to
13 review adherence to terms and conditions, by
14 complaint of customers, by report of competing
15 contractors, by auditors during pre or
16 post-award audits, and may even be discovered
17 by the contract specialist during discussions
18 with the contractor.

19 The next slide deals with
20 contractors' reporting of the violation. The
21 (b) section says -- well, let me just state,
22 first of all, that acceptable reporting we

1 consider in region VII any means in which they
2 communicate that there has been a violation.

3 Upon receiving this information,
4 the contract specialist will request any
5 additional information in order to make a
6 determination as to whether a violation, in
7 fact, has occurred, the extent of any
8 violation, and whether a claim against the
9 contractor is appropriate.

10 In practice, reporting of price
11 reduction violations are rare. Whether that
12 is a result of very infrequent occurrence,
13 unwillingness to self-report, or contractors
14 being unaware of when violations actually
15 occur, which of these, if any, is known.

16 Most violations are discovered by
17 government through reports of auditors. And
18 this occurrence is very infrequent. It should
19 be noted that most contracts on schedules are
20 not audited, whether that be because they
21 don't meet the dollar threshold as required by
22 the FAR or because of limitations of the

1 auditing agency.

2 We do see violations that result
3 in claims by the government in both product
4 and services. In my experience, more
5 violations occur in product, but because we
6 had ancillary services, professional services,
7 we also see violations there also. I am not
8 aware of violations in SCA-based services.

9 The next section of the clause
10 discusses a price reduction that is considered
11 to apply at any point after effective date of
12 the contract in which the contractor revises
13 his commercial price list without PCO approval
14 and that revision is outside the parameters
15 set by the price-discount relationship. The
16 same is true at any point the contractor
17 offers or quotes better terms to an MFC
18 category of customer.

19 It is important to note that the
20 contractor is not bound by these parameters
21 for any other customer that does not fall in
22 the MFC category of customer.

1 For example, if the stated MFC is
2 dealers and the government gets a ten percent
3 discount off of list price according to the
4 contract and the dealer gets a five percent
5 discount, if the contractor were to have a
6 customer that was state and local governments
7 and they reported that state and local
8 governments get no discount, the contractor
9 could quote an additional discount to a state
10 and local without violating the price-discount
11 relationship because state and locals are not
12 in the MFC category of customer, which is
13 dealers.

14 However, if the contractor changes
15 his commercial practices to permanently give
16 state and local a discount greater than the
17 five percent afforded dealers, then their
18 original CSP information is no longer valid
19 and they should report the change to the
20 contract specialist for possible renegotiation
21 of the MFC at the point in the future that
22 they either add product or exercise an

1 economic price adjustment or have an option.

2 The next section discusses
3 temporary and permanent reductions. We
4 consider a temporary reduction in price
5 reported timely to the PCO is not considered
6 a price discount violation as long as the
7 government is afforded the same percentage
8 reduction, percentage point reduction, in
9 price for the same period. This allows some
10 flexibility to contractors to respond to
11 market fluctuations and reduce inventory or
12 open new markets, for example.

13 In my experience, we most often
14 see temporary reductions on product and rarely
15 on services. My educated guess is that the
16 main purpose would be either for contractors
17 to reduce stock for various reasons or avoid
18 a reduction violation when they intend to
19 offer a customer a lower discount based on
20 competitiveness by offering the government an
21 increased discount in order to conform to the
22 clause requirements.

1 A permanent price reduction would
2 occur if the contractor changed his commercial
3 practices to increase his discounting. The
4 price discount relationship would still have
5 to be observed, however. And if the
6 government receives a five percentage point
7 better discount than the MFC, then the new
8 discount to the government would still reflect
9 this same argument.

10 If a reduction in price is
11 exercised to the MFC but is not extended to
12 the government, a violation would occur and
13 must be reported to PCO for evaluation of
14 possible claim by the government.

15 This slide is just the (d) section
16 of the clause. There is no violation, then,
17 in the following scenarios. When an order
18 exceeds a maximum order guideline for the
19 product or services, as stated in the contract
20 award, our maximum order guidelines range from
21 \$100,000 to as much as a million dollars in
22 the case of like our marine boats; secondly,

1 when the sale is to any federal agency or to
2 an authorized user; third, in region VII,
3 there is no violation when the sale is to an
4 authorized state or local entity, which right
5 now we only have authorized use by 1122
6 program, which is for drug interdiction and
7 the disaster recovery program in response to
8 a presidentially declared disaster.

9 And, lastly, there is no violation
10 when a legitimate error was made by the
11 contractor that resulted in a price being
12 charged that would otherwise be a violation.

13 Slide 9 is just the last part of
14 the clause. And it covers the price reduction
15 clause prohibits in general the contractor
16 from selling to MFC customers at a lower price
17 than the agreed-upon discount that they can
18 always offer the government a deeper discount
19 when quoting on a request for quote. In fact,
20 our contracts advise federal agencies to
21 request a deeper discount over the maximum
22 order guideline.

1 Reporting of price reductions is
2 considered timely if within 15 calendar days
3 of violation according to the clause.

4 However, reporting timely does not mean that
5 a claim will not be assessed if a true
6 violation is confirmed.

7 In our opinion, this point in the
8 clause is weak and suggests perhaps that a
9 contractor may not be penalized if they
10 self-report timely. In fact, if a contractor
11 does not report a violation, they actually
12 stand a better chance of getting away
13 unpenalized unless they are discovered by
14 audit or other means. If they are discovered,
15 they are not penalized over and above the
16 resulting claim, if any.

17 In the case that a violation
18 occurs, region VII interprets the reduction to
19 be permanent in that once the lower discount
20 has been granted to an MFC category of
21 customer, a proportional discount must be
22 given to the government. And that becomes the

1 new price discount relationship for the
2 contract.

3 For example, say two years into
4 the contract in which the contract awards the
5 MFC a five percent discount off list price and
6 the government is awarded a ten percent
7 discount. If the contractor gives the MFC,
8 say, a 10 percent discount, which would
9 violate the 5 percent by 5 percentage points,
10 then the new discount for the contract would
11 be 15 percent for the government for the rest
12 of the contract.

13 In conclusion, I would like to
14 make a comment as to my personal opinion as a
15 PCO concerning the pros and cons of the price
16 reduction clause.

17 Looking at the cons of the clause,
18 the government's practice of tying its price
19 to an MFC is not a commercial practice in the
20 industry. And contractors have told us that
21 in many cases, it is burden administratively
22 to track and monitor.

1 For example, large businesses
2 whose business model utilize participating
3 dealers or independent branch offices may be
4 at a disadvantage. Also, integrated solutions
5 require pricing variables that result in
6 site-specific pricing.

7 However, on the pro side of the
8 clause, the price reduction clause can be a
9 useful tool to protect the government's
10 negotiated position by continually requiring
11 the contractor to give the government equal to
12 or better pricing than they provide their best
13 customers.

14 For the most part, that has and is
15 an effective way to ensure schedules pricing
16 continues to be fair and reasonable for our
17 customers buying product that falls below the
18 competition requirements. And there are a lot
19 of federal dollars that are spent using a
20 credit card because they fall below the
21 requirements for getting competition.

22 Should USA decide to amend or do

1 away with the price reduction clause in the
2 future, I would think that it would be
3 important for us to be confident that there
4 are enough competitive forces at work in the
5 marketplace of any given industry to ensure
6 the customer is getting the best overall
7 price.

8 Thank you.

9 CHAIRMAN BRANCH: Thank you, Mr.
10 Sims.

11 I guess I will start this round of
12 questioning. I guess having grown up in a
13 household and raised by school teachers, I was
14 taught that words matter. So I am curious as
15 to your choice of words throughout this
16 presentation with respect to the clause.

17 As I read the text in the clause,
18 the clause allows for an offeror to sell to
19 another customer on terms better than those
20 contained in the schedule in certain
21 exceptions and if he discloses within 15 days
22 that he has done so and offers that same

1 benefit to the government.

2 So is there something significant
3 in your persistent use of the word
4 "violation"?

5 MR. SIMS: Well, when I talk about
6 violation, I am talking about when the clause
7 has been violated, when, in fact, the
8 contractor has given better pricing to a
9 commercial customer than they're allowed to
10 under this contract.

11 CHAIRMAN BRANCH: But the clause
12 allows them to give that pricing as long as
13 they subsequently disclose in a timely fashion
14 and then offer that pricing to the government.
15 So am I to infer that in your experience, that
16 there is a significant violation of that
17 particular mechanism?

18 MR. SIMS: Well, first of all, if
19 we are talking about a temporary price
20 reduction, what we covered in the presentation
21 was that a temporary price reduction is not
22 considered a violation of the clause.

1 What was the second part of your
2 question?

3 CHAIRMAN BRANCH: Well, I guess I
4 go back to the clause. And the clause says
5 that during the contract period, we will
6 report all of the cost reductions that are the
7 basis of award. A reduction will apply if
8 they revise their price, if they grant more
9 favorable terms and conditions or they grant
10 special discounts, and that they have a
11 certain period of time to disclose that to the
12 government and offer those similar terms; in
13 other words, to restore the perturbation in
14 that pricing relationship.

15 MR. SIMS: Well, our
16 interpretation of the clause is that it says
17 that if you give an equal discount to the
18 government for the same period. So if you're
19 doing a 30-day reduction in price but you
20 don't report for 15 days, then you, in fact,
21 have not given the same discount to the
22 government for the same period of time.

1 CHAIRMAN BRANCH: Right. So I
2 guess this goes back to my central question on
3 your choice of words here. So is it your
4 experience that you find it practice in
5 industry that they are not disclosing and
6 offering within the time period similar
7 pricing arrangements to the government?

8 MR. SIMS: Well, no. I think we
9 have very little currents in my experience
10 that there are temporary reductions, although
11 they do have them.

12 But no, I am not intending to
13 insinuate that contractors do not comply. But
14 by the same token, I don't think we have a
15 great deal of insight to know if they do or if
16 they do not.

17 CHAIRMAN BRANCH: Okay. Thank you
18 very much.

19 MR. SIMS: Unless it's found out
20 in an audit or a self-reporting or an IOA
21 visit, which IOA visits can be anywhere from
22 six months to two years, we don't know.

1 CHAIRMAN BRANCH: Okay. Judith?

2 MEMBER NELSON: Mark, first of
3 all, again, thank you for coming in. On these
4 temporary price reductions, even though it
5 calls out that a contractor has 15 days to
6 report the price reduction, can the contractor
7 offer the federal agency the price reduction
8 in advance of reporting it to the government;
9 in other words, lower it and then report it to
10 the government; in other words, make it
11 effective to the federal agencies in advance
12 of reporting it to the federal government, to
13 the PCO?

14 MR. SIMS: Yes. I mean, the
15 clause doesn't really give a lot of
16 description. I mean, it's a very small part
17 of the clause, and it doesn't give a lot of
18 detail. So then it lends itself to
19 interpretation.

20 That might be interpretation.
21 That may vary between PCOs. For me, I would
22 expect that they would notify me in advance of

1 giving that discount, I mean, even if they let
2 me know the day that they give the discount.

3 MEMBER NELSON: But if they were
4 rapid fire discounts. If you were, you know,
5 say in -- and I know you're out at the 84 in
6 the security industry, but if -- well, maybe
7 I offer the question to Tiffani or someone
8 from the IT if you don't mind.

9 Some of those discounts may come
10 very frequently and fast. So, Tiffani, would
11 it be your experience that those discounts are
12 offered often before the PCO is even notified
13 and then you get notified midway through them
14 but they're being offered to the federal
15 agencies, even before the notification comes
16 in so that they are in compliance with the
17 price reduction clause but the notification
18 may come midway?

19 Can you come to the microphone?

20 It's very hard to hear.

21 MS. HARRIS: If they do receive an
22 order and they have reduced their prices

1 commercially before they actually submit a
2 request for modification, they will honor that
3 price reduction at the same time as
4 simultaneously submitting the modification to
5 modify the contract and update those prices on
6 GSA Advantage.

7 CHAIRMAN BRANCH: Glenn?

8 MEMBER PERRY: I also picked up on
9 some words you were using. At the beginning,
10 you kept saying based on your region's
11 interpretation. Is your understanding that
12 different regions in different schedules have
13 different interpretations of the use of this?

14 MR. SIMS: Well, I don't presume
15 to be an expert on other regions and how they
16 interpret the clause. So, really, all I can
17 speak to is how region VII does. Are there
18 some differences in interpretation? I think
19 probably so.

20 MEMBER PERRY: Is there room for
21 interpretation?

22 MR. SIMS: Am I aware --

1 MEMBER PERRY: You're saying there
2 is room for interpretation at the local level.

3 MR. SIMS: I think that this
4 clause, as brief as this clause is, it covers
5 a lot of ground. And I think it does leave
6 room for some interpretation. And I think it
7 does occur.

8 MEMBER PERRY: Different question
9 on data. Data is starting to pick up. Do you
10 have any data in your region on how many price
11 reductions there have been or anything on this
12 issue as to how many times it's done, based
13 against how many contracts, and whether those
14 are ups/downs, any data like that at all
15 against this schedule?

16 MR. SIMS: As far as I know, we do
17 not track price reductions --

18 MEMBER PERRY: The work you do --

19 MR. SIMS: -- as far as actual
20 violations. If a contract specialist
21 determined there is and they do determine that
22 there is a claim that should be processed, I

1 don't know of any database that they keep
2 tracking those.

3 There may be, but it would
4 probably be someone from central office that
5 would speak better to that.

6 CHAIRMAN BRANCH: David?

7 MEMBER DRABKIN: You talked about
8 audits and indicated, I think I heard you say,
9 that you don't get a lot of information from
10 audits to look at the application of pricing
11 and the price reduction clause across your 800
12 contracts.

13 How many of the 800 contracts that
14 you have in your center have price audits
15 annually?

16 MR. SIMS: Well, when audits are
17 done, I mean, obviously price is something
18 that they look at and in the price-discount
19 relationship. We rarely get that as a finding
20 in audit.

21 Audits are limited only because of
22 the limited number of contracts that exceed

1 the threshold that they're required and in
2 some of those auditors either not able to or
3 decides not to conduct an audit.

4 So we don't have a large
5 percentage of audits of our contracts. And
6 those that are done, the audits are very
7 extensive. They do a very good job.

8 It's just price reduction is not a
9 common finding.

10 MEMBER DRABKIN: I understand.
11 And you didn't answer my question. How many
12 of your contracts get audited annually?

13 MR. SIMS: Out of my 800 that I
14 have oversight over, probably 10 to 15
15 percent.

16 MEMBER DRABKIN: And who does the
17 auditing for you?

18 MR. SIMS: Well, it could be
19 auditors in any region.

20 MEMBER DRABKIN: Are those
21 regional auditors or auditors in the IG's
22 office?

1 MR. SIMS: IG's office.

2 MEMBER DRABKIN: Do you have any
3 internal auditors of your own to do price
4 reduction audits?

5 MR. SIMS: Region VII has auditors
6 that are in the IG's office, but we don't have
7 anything connected to a region VII mass that
8 does audits.

9 MEMBER DRABKIN: No auditors --

10 MR. SIMS: Now, IOAs, it is one of
11 the things they look at when they do their
12 visits.

13 MEMBER DRABKIN: And you mentioned
14 the IOAs. So could you for the benefit of
15 those who may not be familiar with that
16 acronym tell us a little more about what an
17 IOA is and what they do and what relationship
18 they have to the price reduction clause, if
19 any?

20 MR. SIMS: Sure, sure. Because
21 our contracts could be anywhere in the country
22 and sometime in foreign countries, we

1 obviously don't have eyes and ears on the
2 ground at their facility.

3 And the IOAs, the industrial
4 operations analysts, are connected with the
5 ACO's office. And they actually go to the
6 contractor's facility, wherever they keep
7 their books.

8 And, actually, I don't want to
9 call it an audit because it's not an audit,
10 but they do a review. And they look at their
11 invoicing. And they look at how they track
12 sales and how they report, how they determine
13 what is a GSA order and what is open market
14 order and make sure that they're being
15 consistent there and conforming to the
16 contract. And they just look at all areas of
17 terms and conditions of the contract and make
18 sure the contractor is in compliance as well
19 as they are an excellent resource to cover all
20 the stuff that falls in the cracks.

21 When we do a negotiation with a
22 contractor, we may have an hour with them.

1 And that is simply not enough time for a
2 contractor to really understand everything
3 there is to know about administering a GSA
4 contract.

5 IOA is filling an awful lot of
6 that ground and explain how their contract
7 works. And a lot of that is done by the
8 contractor calling the contract specialist and
9 saying, "I remember you saying something about
10 this negotiation, but can we review it again?"
11 But the IOA actually sitting down with them at
12 their computer is extremely helpful.

13 MEMBER DRABKIN: And how
14 frequently do IOAs visit your 800 contractors
15 annually?

16 MR. SIMS: Well, that's a good
17 question. I mean, we've had visits as -- when
18 we had our last meeting with our ACO's office,
19 what they stated was that they attempted to do
20 annual reviews with each contractor.
21 Sometimes it's more often. Sometimes it's
22 less often depending on whatever their

1 rationale are.

2 MEMBER DRABKIN: Would it be
3 helpful to your management of your 800
4 contracts to have a greater audit capacity of
5 your own?

6 MR. SIMS: For us to be able to
7 audit our contracts?

8 MEMBER DRABKIN: Yes.

9 MR. SIMS: In what capacity?
10 Actually going to the facility and working
11 with the contractor?

12 MEMBER DRABKIN: Yes.

13 MR. SIMS: Do I get a whole lot
14 more staff to do that with?

15 MEMBER DRABKIN: I said if you had
16 the capacity.

17 MR. SIMS: I had actually really
18 thought about it, but I think that would be
19 great to be able to actually sit at a
20 contractor's facility and work with them.

21 MEMBER DRABKIN: I'm sorry. That
22 question takes us beyond the scope.

1 CHAIRMAN BRANCH: That's all
2 right. Thank you.

3 Ms. Jones?

4 MEMBER JONES: I have a question,
5 actually, for Tiffani and Mark. What
6 percentage of contracts that did result in an
7 audit had to be renegotiated because of
8 pricing issues?

9 MR. SIMS: I don't have exact
10 numbers.

11 MEMBER JONES: Just an
12 approximate.

13 MR. SIMS: Just because of
14 violations if I can use the term "violations"?

15 MEMBER JONES: Well, because there
16 were pricing-related issues that the auditors
17 found during their audit that caused you to
18 have to go back and renegotiate the contract,
19 whether it was because of the basis of award
20 customer, discount relationship, any kind of
21 pricing issues that were --

22 MR. SIMS: I would say less than

1 30 percent, maybe as small as 10 or 12
2 percent.

3 MEMBER JONES: Okay.

4 MR. SIMS: We do, however,
5 renegotiate a large percentage of our
6 contracts at option, though, just not because
7 of a specific finding from an audit. But it
8 would be a smaller percentage, you know, 12 to
9 30 percent.

10 MEMBER JONES: So why do you
11 renegotiate a large part of your contracts at
12 option?

13 MR. SIMS: Well, whenever we go in
14 and look at the option, it's been five years
15 since we looked at that contractor's
16 commercial practices. So often there's a big
17 difference.

18 They may have developed a dealer
19 network or they may have developed, be wanting
20 to institute a different pricing structure.
21 And because our mission is to get the best
22 price in the commercial market for our

1 customers, we are always looking for
2 opportunities to better our terms and
3 conditions.

4 For example, when I go into
5 negotiating an option on a contract that at
6 the time it was put in place five years ago,
7 they may have very little federal business and
8 may not. However, five years later, I mean,
9 we may have done too good a job.

10 They may now be 70, 80, 90 percent
11 federal. And most of their sales are coming
12 off of schedule. When I've got that kind of
13 buying power, I'm going to leverage it for
14 better terms and conditions.

15 MEMBER JONES: So you're
16 renegotiating a lot of your contracts at
17 option period because of changes in the CSP
18 information?

19 MR. SIMS: Yes.

20 MEMBER JONES: Right? Okay.

21 MR. SIMS: That's exactly right.

22 MEMBER JONES: Okay. So I wanted

1 to ask Tiffani that question, too, about the
2 audits. How many of them are resulting in you
3 having to renegotiate your contracts based on
4 pricing?

5 MS. HARRIS: I don't have an
6 actual number, but there are some. We do have
7 5,000-plus contracts within the IT schedule.
8 So I don't have exact numbers.

9 MEMBER JONES: Well, not an exact
10 number, but is it common that you have to
11 renegotiate pricing in your contracts as a
12 result of an audit? Is that more common than
13 not?

14 MS. HARRIS: As Mark said, yes.
15 If the audit looks at their business practices
16 and they have increased sales over the five
17 years with the federal government, yes.

18 MEMBER JONES: So do you all in
19 the IT center find yourself renegotiating a
20 lot of your contracts at option?

21 MS. HARRIS: Yes.

22 MEMBER JONES: Because it changes

1 in CSP information?

2 MS. HARRIS: Yes.

3 MEMBER JONES: Okay. Thanks.

4 CHAIRMAN BRANCH: Are there any
5 other questions for this presenter?

6 (No response.)

7 CHAIRMAN BRANCH: Okay. Hearing
8 none, Mr. Sims, thanks very much.

9 MR. SIMS: Thank you.

10 CHAIRMAN BRANCH: Complete
11 presentation. We appreciate it.

12 We are a couple of minutes ahead
13 of schedule. And we are scheduled to hear at
14 11:30 from Mr. Jackson of Buffalo Supply. Is
15 Mr. Jackson here? Mr. Jackson, are you ready
16 for us?

17 MR. JACKSON: Yes, sir.

18 CHAIRMAN BRANCH: Well, you may
19 proceed.

20 ORAL PRESENTATION & PANEL QUESTIONS

21 TOPIC: VETERAN AFFAIRS SCHEDULE CONTRACT

22 MR. JACKSON: Thank you for

1 allowing me this opportunity to speak briefly
2 this morning to an issue which continues to
3 hamper the efforts of small businesses across
4 the country to participate in the government
5 procurement process and to offer some
6 potential remedies.

7 I'm Harold Jackson, President and
8 CEO of Buffalo Supply. We are a woman-owned,
9 family-operated small business located in
10 Lafayette, Colorado.

11 We are proud to provide medical
12 and surgical equipment to serve the needs of
13 America's active duty and retired military
14 veterans domestically as well as overseas in
15 combat zones.

16 In 2007, Buffalo Supply was rated
17 by GSA as an exceptional contractor, the
18 agency's highest rating. The ability of
19 Buffalo Supply and similar companies across
20 the country to continue to compete for federal
21 business is presently threatened.

22 Certain officials with the

1 Department of Veteran Affairs' Office of
2 Inspector General continue to ignore GSA
3 policy-making authority and, instead, seek to
4 make their own determinations as to what types
5 of businesses may hold multiple award
6 schedules.

7 Specifically, exclusion of
8 distributors and channel partners is the
9 group's ultimate goal. Contrary to the VA
10 IG's assertion, the use of distributors and
11 channel partners is a customary business
12 practice, which is employed by a broad range
13 of companies, including MicroSoft and Cisco to
14 name just a couple. These practices occur in
15 both commercial and public sector markets.
16 And it is noteworthy in this respect that many
17 small businesses serve as resellers to
18 manufacturers under the auspices of the GSA
19 multiple award schedule program.

20 The VA Office of Inspector
21 General's anti-distributor campaign has
22 attracted the attention of Congress as well as

1 GSA officials. Representatives of both of
2 these groups have written a number of letters
3 to the VA, and I have submitted them for the
4 record.

5 The VA IG's anti-distributor
6 policy, which has sought to enforce through
7 direct and indirect actions, is in complete
8 contravention to GSA's mission of providing
9 taxpayers with fair and reasonable pricing on
10 contract awards.

11 GSA has delegated to the VA the
12 ability to exercise certain contracting
13 authorities. Under such delegation, however,
14 GSA maintains its authority as the sole
15 policy-making entity for the administration of
16 a schedules program. This fact has been made
17 clear by GSA's chief acquisition officer in a
18 letter of January 4, 2008 to the VA. And VA
19 has not disputed that letter.

20 While the VA has established an
21 advisory panel of its own to make
22 recommendations on the enforcement of the IG's

1 desired anti-distributor policies, it is this
2 panel and GSA which ultimately hold
3 jurisdiction over any policy changes.

4 By advancing a clear
5 recommendation to GSA leadership that all
6 responsible parties be permitted to compete
7 for contracts, consistent with the specific
8 requirements of the Competition in Contracting
9 Act as they apply to the multiple awards
10 schedule contracts, this panel can strengthen
11 the position GSA has taken to ensure
12 competition in the schedules program as
13 maximized. And the value taxpayers receive
14 from the program remains.

15 One technique which has been used
16 against distributors by the VA IG's agent is
17 requiring manufacturers' CSP data be submitted
18 by the distributor when contract modifications
19 are sought. At that stage of the contract,
20 this represents a significant burden to
21 companies like Buffalo Supply.

22 GSA's FAS commissioner, Mr.

1 Williams, recently testified before the House
2 Small Business Committee that once the
3 customer of comparability is agreed upon, the
4 distributor should not be asked for such
5 manufacturers' data.

6 Prior to the award of contract,
7 such information is appropriate to ensure that
8 the taxpayers receive fair and reasonable
9 pricing. Once an independent contracting
10 officer makes a contract award, ongoing
11 demands for such information we believe are
12 inappropriate.

13 In order to ensure that all
14 competitors in the process are treated fairly
15 and that the MAS program is administered in
16 the most efficient manner possible, I suggest
17 that GSA policy be made clear as to when in
18 the contract process manufacturer CSP data may
19 be requested.

20 Another strategy employed by the
21 VA IG has been one of delay. We are aware of
22 numerous instances in which the VA IG has

1 blocked efforts by contracting officers to
2 promptly process modifications to add
3 cutting-edge products at fair and reasonable
4 prices.

5 These delays occurred because the
6 VA IG representatives insert themselves into
7 the contracting process to demand that
8 contracting officers ask for additional
9 information about pricing in specific formats
10 that the contracting officer either has
11 decided are unnecessary or are not required by
12 the terms of the solicitation or GSA policy.

13 In addition, we have encountered
14 situations in which auditors, not contracting
15 officers, have sought to negotiate directly
16 with us and to dictate the terms of a price
17 reduction clause relationship and basis of
18 award for our MAS contract.

19 These actions frustrate the
20 contracting process, usurp the authority of
21 the warranted contracting officers to make
22 fair and reasonable price determinations, and

1 awards, and to negotiate other contract terms.

2 We understand and endorse the role
3 of the VA IG to advise contracting officers on
4 such matters. We do not believe that the
5 auditors should be permitted to continue to
6 act as if they possess the warrant and the
7 powers of contracting officers.

8 The single most effective tool
9 which exists in the MAS process to ensure
10 America's taxpayers receive the best possible
11 price for goods and services is competition.
12 Like all companies, Buffalo Supply competes on
13 a daily basis with businesses of all types and
14 all sizes to win orders.

15 There are many times in which the
16 price paid by the government customer is far
17 below the MAS contract price. However, even
18 when we lose orders to other companies, our
19 mere presence in the arena represents a gain
20 for the taxpayers.

21 There are products we provide the
22 government where there exists only other

1 manufacturer. Thus, the elimination of our
2 right to compete would leave taxpayers with an
3 expensive sole source contract.

4 The document I have submitted for
5 the record also includes some specific case
6 studies and actual dollar figures that Buffalo
7 Supply's competition has brought significant
8 savings to the federal government.

9 Additionally, I have submitted a
10 2006 letter from the Cleveland, Ohio VA
11 Medical Center noting that by working with
12 Buffalo Supply, it was able to realize an
13 average savings of 36 percent on its
14 purchases.

15 Ensuring that the recommendations
16 of this panel promote the highest level of
17 competition as well as equitable treatment for
18 all participants in the MAS arena is vital.

19 I and the employees of Buffalo
20 Supply appreciate your time in considering my
21 remarks. And I would be happy to answer any
22 questions.

1 CHAIRMAN BRANCH: Thank you, Mr.
2 Jackson.

3 Does anyone on the panel have any
4 questions for Mr. Jackson? Debra?

5 MEMBER SONDERMAN: Mr. Jackson,
6 thank you very much for your comments. You
7 raise a number of fascinating issues. Can you
8 elaborate a little bit about the relationship
9 of your particular concerns with the VA
10 Inspector General's report and the
11 relationship between that and the price
12 reduction clause particularly, which is the
13 stated scope of this group?

14 You mentioned competition, which,
15 of course, is a very important thing for all
16 for us. But I am hoping you can help us find
17 a nexus on these issues.

18 MR. JACKSON: Certainly. Our
19 price reduction clause for our VA schedule is
20 predicated on us maintaining the relationship
21 between our cost and the sales price.

22 So hypothetically if we have

1 negotiated a 10 percent markup, then we're not
2 allowed to take a 12 or we would violate our
3 price reduction clause.

4 CHAIRMAN BRANCH: Mr. Essig?

5 MEMBER ESSIG: Question. You made
6 the comment that IGs should not be permitted
7 to act as if they held a warrant. If the
8 request for cost and pricing data had come
9 from a PCO, would you have an issue with that?

10 MR. JACKSON: Well, it depends on
11 the circumstances. But what is happening is
12 they are completely circumventing our
13 contracting officer. And once the contracting
14 officer and I have agreed on a determination,
15 then they come in wanting to override that
16 agreement. And I don't think that that is
17 appropriate after the fact.

18 MEMBER ESSIG: Okay. Just to make
19 sure I fully understand the answer again, if
20 you and the contracting officer were not able
21 to reach agreement and the contracting officer
22 requested cost and pricing data, would you

1 have a problem providing that or would that
2 create an issue for you?

3 MR. JACKSON: Again, it depends on
4 the circumstances. At the beginning of the
5 contract, I have no problem providing CSP
6 data. And I might point out that not only
7 have I provided it for my company but all the
8 suppliers that I represent. And I don't have
9 a problem of doing that at the appropriate
10 time.

11 I do have a problem with it when
12 it becomes an issue of harassment and delay
13 and stalls to keep from approving our
14 modifications.

15 MEMBER ESSIG: To clarify, when
16 you say, "the contract," are you talking about
17 your contract with GSA or of the specific
18 order from the ordering activity?

19 MR. JACKSON: I'm sorry. I'm
20 having a hard time hearing you.

21 MEMBER ESSIG: When you said, "the
22 contract," just to clarify, are you talking

1 about your contract with GSA or are you
2 talking about the specific order that the VA
3 is placing?

4 MR. JACKSON: No. And, actually,
5 our contract is with the VA contracting
6 office, as opposed to GSA, but I am talking
7 about the central contract, not task orders.

8 MEMBER FRYE: If I can add some
9 clarity? Some years ago GSA delegate to the
10 VA certain schedules related to medical items:
11 pills and potions, pharmaceuticals, medical,
12 surgical stuff. And we are mini GSA, so to
13 speak.

14 We have those schedules. We
15 operate those schedules out of National
16 Acquisition Center in Chicago, Illinois. So
17 the schedules that he refers to are multiple
18 award schedules.

19 We hire 25 auditors from the
20 Inspector General. We pay for those out of
21 non-appropriated funds, out of our revolving
22 fund. And they are employees of the Inspector

1 General, but they serve as our auditors, much
2 as Defense Contract Audit Agency auditors
3 audit contracts in DOD.

4 CHAIRMAN BRANCH: Mr. Allen?

5 MEMBER ALLEN: You've raised a lot
6 of points, which I thought were good points
7 generally, some perhaps unique to your case
8 let's hope.

9 Do you have any remedies that you
10 would like to offer to the panel for how this
11 situation might not repeat itself or spread?

12 MR. JACKSON: Well, my experience
13 has been that the VA IG's office frequently
14 does not agree with the policies that come out
15 of GSA.

16 I have spent a lot of time trying
17 to put together answers from GSA to our
18 contracting officers to support our position.
19 And there needs to be some organized mechanism
20 for both vendors and contracting professionals
21 to get timely interpret actions of contract
22 provisions.

1 Because virtually every time after
2 months of work what we find out is that GSA
3 supports my company's position. And that is
4 the opposite position that the VA IG has
5 taken.

6 So there needs to be some kind of
7 mechanism, both for the contracting officers
8 and for the vendors to go to. And when there
9 is an honest difference of opinion on
10 interpretation of a clause, have someone
11 provide that interpretation and be willing to
12 run with it.

13 CHAIRMAN BRANCH: David?

14 MEMBER DRABKIN: Just for the sake
15 of clarity since we have a transcript and
16 there is a record, GSA does not support any
17 particular company's position. When we are
18 asked to review a matter, we review the matter
19 and provide our opinion on the policy that GSA
20 has issued.

21 And while I appreciate that you
22 may see that as support for your particular

1 position, sir, it is simply for the policies
2 that we have written and we enforce. And we
3 do have a working relationship with Jan Frye.
4 And we are working together on a number of
5 these issues, but we have never said we
6 support Buffalo Supply, we support --

7 MR. JACKSON: No. I didn't mean
8 to imply that.

9 MEMBER DRABKIN: -- or not support
10 it.

11 MR. JACKSON: I just meant to
12 imply that our position was the same as GSA's.

13 MEMBER DRABKIN: We have, in fact,
14 said that there are policies and these are our
15 interpretations. And since we make them,
16 those -- and those letters, I believe, are in
17 the package that he had shared with us.

18 CHAIRMAN BRANCH: Alan?

19 MEMBER CHVOTKIN: Thank you.

20 I'm interested in -- maybe Mr.
21 Frye knows the answer. Well, VA has
22 established its own working group,

1 internalized to that.

2 Could you explain the scope of
3 that and the likely timing of any
4 recommendations that that might make, might be
5 helpful to inform this panel as well?

6 MR. JACKSON: Yes. We've
7 established a working group. We will include
8 GSA representatives on that working group. It
9 could take anywhere from 6 to 18 months before
10 the recommendations are established.

11 And obviously those will be
12 submitted to GSA for their look. And nothing
13 will be implemented until we receive their
14 approval.

15 CHAIRMAN BRANCH: And, Mr.
16 Jackson, I just want to make sure I understand
17 the scenario that you have presented today.
18 So let me repeat that back to you as I
19 understand it. And feel free to interrupt me
20 if I don't.

21 MR. JACKSON: Thank you.

22 CHAIRMAN BRANCH: But I think what

1 I have heard is that GSA has delegated the
2 authority essentially for medical services
3 contracts to the VA, that the VA enters into
4 what we would call schedule contracts, much on
5 the same basis that GSA manages the schedules
6 for all the other goods and services which are
7 centrally managed, and that in the process of
8 your firm negotiating a contract with VA, that
9 overall broad contract, then you essentially
10 furnish the information required under the
11 commercial sales practice agreement.

12 MR. JACKSON: That's correct.

13 CHAIRMAN BRANCH: Okay. So --

14 MR. JACKSON: Not only for me but
15 for my manufacturers also.

16 CHAIRMAN BRANCH: So you are
17 essentially a distributor for several
18 manufacturers as well as perhaps provided for
19 yourself the commercial sales practice data is
20 provided for yourself and those manufacturers
21 and a most favored customer or a comparable
22 customer relationship is established between

1 you and the VA. And that is the basis of your
2 pricing. So am I good so far?

3 MR. JACKSON: Yes, a comparable
4 customer of our manufacturer, I might point
5 out.

6 CHAIRMAN BRANCH: Okay. A
7 comparable customer of your manufacturer.
8 Very good. So when we are talking about the
9 VA coming and doing audits subsequent to the
10 award of that contract, are they auditing your
11 compliance with the clause or are they coming
12 in and auditing specific task order
13 solicitation proposals?

14 MR. JACKSON: Well, it's a little
15 bit difficult for me to determine exactly what
16 they're auditing because they don't tell you
17 much, but we have been under two pre-award
18 audits followed by a post-award audit that in
19 total ran three and a half years.

20 And the auditors did visit our
21 office. They did visit the offices of some of
22 our manufacturers and spent a great deal of

1 time reviewing the manufacturers' commercial
2 transactions.

3 CHAIRMAN BRANCH: Okay. Thank you
4 very much.

5 Does anyone have any other
6 questions for this presenter? Glenn?

7 MEMBER PERRY: VA, though, is a
8 very large customer as the VA, I understand,
9 of any particular drug product. Is that true?

10 MR. JACKSON: I would need to
11 stick with medical equipment because I am not
12 affiliated with any drug-related --

13 MEMBER PERRY: I'm sorry.
14 Equipment. And also because of the volume and
15 the range, would you not agree that you have
16 probably been here -- these contracts in
17 general run five years. How long do they run?
18 Five years.

19 In a marketplace, in a commodity
20 marketplace like that, you would expect in the
21 marketplace to be quite a lot of volatility in
22 certain items over that five-year period.

1 From your perspective, what would
2 be the best way for the government and
3 industry to be able to assure that we're at
4 least somewhat current with where those
5 products are in the marketplace over a
6 five-year period?

7 MR. JACKSON: I do not have a
8 problem, and I have certified that our
9 customer comparability still exists. The
10 pricing is still what we disclosed on the
11 previous disclosures. If there were changes
12 to that, I don't have a problem disclosing it.

13 But the most recent thing they
14 asked for, in the medical equipment arena,
15 there's a handful of group purchasing
16 organizations that have a huge number of
17 hospitals.

18 We chose a customer comparability
19 that had 60 percent larger purchasing power
20 than the federal government. And we said,
21 "This is a customer of comparability."

22 I don't mind reporting changes to

1 that customer comparability, and I don't mind
2 reporting any changes that might impact that.
3 But there are other group purchasing
4 organizations that are two to three hundred
5 percent larger than the federal government.

6 I have disclosed in general terms
7 these customers receive, these customers of my
8 manufacturer receive, better pricing than what
9 we're giving the government. We agreed that
10 the GPO that was 60 percent larger was a fair
11 comparison.

12 So now our friends from the IG's
13 office come back and say we don't want just
14 the general statement that these other GPOs
15 get better pricing. We want transactional
16 data for all invoices to over 4,000 hospitals,
17 and I don't think that is a reasonable
18 request. It doesn't get them anywhere at the
19 end of the day. They have already agreed that
20 that group of hospitals has a larger
21 purchasing power than the government and that
22 the government isn't entitled to those

1 pricing.

2 So why put me through the hoops of
3 asking for data that is very large that I
4 don't have access to and then refuse my
5 modifications if I don't do it. At the end of
6 the day, it doesn't get them anywhere.

7 CHAIRMAN BRANCH: Okay. Thank
8 you.

9 Any other questions? Mr. Jackson
10 --

11 MEMBER FRYE: I've got a comment
12 in hopes that Mr. Drabkin and yourself, sir,
13 will allow the VA to come in and present our
14 side of this issue as this panel moves down
15 the road.

16 MEMBER DRABKIN: You don't have to
17 ask my permission. I'm not the Chairman.

18 CHAIRMAN BRANCH: I think to the
19 extent that the issues discussed this morning
20 are relevant to the panel's charter, we would
21 certainly welcome an opportunity from the VA
22 to kind of lay this out in broader context.

1 Mr. Jackson, thank you very much
2 for your time.

3 MR. JACKSON: Thank you.

4 CHAIRMAN BRANCH: Let's see. We
5 are a little bit ahead of schedule. And I
6 think given the hour, it might be useful to
7 give people a little longer lunch. It's
8 11:45. And I would ask the panel members to
9 be back at 1:15 so we can start to have an
10 open discussion about some of the things we
11 have heard.

12 MEMBER DRABKIN: Mr. Chairman,
13 just a reminder that the panel is invited to
14 join me in my office, where lunch is being
15 served to the panel only.

16 CHAIRMAN BRANCH: Great.

17 (Whereupon, a luncheon recess was
18 taken at 11:45 a.m.)

19

20

21

22

1 of July dates. Remember I need to do the
2 Federal Register notice 15 days in advance.
3 The Federal Register notice for the June 16th
4 meeting will be published on the 27th of May.
5 So we've got that already going.

6 So if one of the items that I had
7 in your package was the calendar that we made
8 up, kind of those darkened lines indicate
9 based upon what we had received already, the
10 panel members indicating they are not
11 available during those time frames. So you
12 see May 22nd, which is today, ended May 16th.
13 But those other darkened days indicate
14 non-availability for various panel members.

15 MEMBER STEPHENSON: And, Pat, when
16 I gave you my schedule, I just went with the
17 Mondays because I thought that's what we were
18 aiming for. So I thought there might be days
19 if we deviate from Monday that I will not be
20 available.

21 MS. BROOKS: Your dates are
22 indicating Mondays that you are not available?

1 MEMBER STEPHENSON: Yes. What I
2 did is I indicated the Mondays I was not
3 available, but I didn't give you every date
4 that I was not available.

5 MS. BROOKS: Okay.

6 MEMBER STEPHENSON: I just
7 concentrated on the Mondays I was not
8 available. So if we go with Tuesday through
9 Friday, there might be some dates I did not
10 give you that I am actually not available.

11 MS. BROOKS: Okay. Well --

12 MEMBER STEPHENSON: We can do that
13 day by day.

14 MS. BROOKS: Right. Again, we had
15 generally agreed at the previous meeting that
16 Monday appeared to be the best day.

17 MEMBER ERICKSON: I will try to
18 accommodate. Monday is the worst day for me.

19 MEMBER NELSON: In general, I
20 personally would request that -- I know we are
21 going to meet June 16th. For me just going
22 forward to the next meeting, the first week of

1 July I am not available looking for the next
2 meeting.

3 CHAIRMAN BRANCH: I'm not sure it
4 would be useful to schedule a meeting the
5 first week of July anyway because the holiday
6 falls at the end of that week. I'm sure a lot
7 of people will be taking vacation either
8 during that week or perhaps the following
9 week.

10 MS. BROOKS: What about, then, the
11 week of the 14th of July, one day that week,
12 and then the last week in July to get in a
13 couple of meetings in July?

14 MEMBER STEPHENSON: Pat, I would
15 be available on the 14th, the 21st, or the
16 28th. Any of those three Mondays I am
17 available.

18 CHAIRMAN BRANCH: You know, let's
19 try this a little backwards. Going to July
20 after that holiday week, is there anyone who
21 is not available that Monday, the 14th, the
22 21st, or the 28th?

1 (No response.)

2 CHAIRMAN BRANCH: How about the
3 21st? Is everybody available for the 21st?
4 Do we want to say the 21st?

5 (No response.)

6 CHAIRMAN BRANCH: That will give
7 us about 30 days and hopefully consistent with
8 the discussions we will have this afternoon.
9 That may give us time to actually do some
10 research and some reflection on those.

11 MS. BROOKS: Okay. So we've got
12 16 June and then 21 July. Okay. Let's see
13 what we can come up with for August.

14 MEMBER ALLEN: I'll recommend
15 early August because I suspect the last couple
16 of weeks of August will be very difficult.

17 CHAIRMAN BRANCH: I'm not
18 available the last week of August, period.
19 The whole week is --

20 MEMBER ALLEN: Right. I'm not
21 available August 4th, which is that Monday,
22 but I am available any day after that.

1 MS. BROOKS: I've got some
2 indication that someone will be out for two
3 weeks. It may be a couple of people. Look at
4 your calendar the week of the 4th and the week
5 of the 11th. I've got either one or two
6 people that are off that entire two-week time
7 period.

8 MEMBER STEPHENSON: Well, how does
9 the 18th look? Right now it looks all right.

10 MS. BROOKS: Eighteenth agreeable
11 for everyone?

12 CHAIRMAN BRANCH: Yes. Hearing no
13 objection, it looks like the 18th.

14 MS. BROOKS: Okay. So that's
15 getting us for June, July, August right now
16 just meeting once a month.

17 CHAIRMAN BRANCH: I think that
18 probably takes us out far enough. I mean,
19 that gets us through the next 90 days or so.

20 MS. BROOKS: Okay.

21 CHAIRMAN BRANCH: And I think we
22 will probably have some sense. I would hope

1 we would have some sense of where we're headed
2 by the 21st of July meeting. And that would
3 allow us to plan for the rest of the calendar
4 for the panel.

5 MS. BROOKS: Okay.

6 CHAIRMAN BRANCH: I know our
7 objective is to have this done sooner than
8 later.

9 MS. BROOKS: Okay. And during the
10 discussion this afternoon, hopefully we can
11 come up with some -- have an idea about topic
12 areas for at least all three meetings, even
13 though the announcement would have already hit
14 for the June or could not notify the public in
15 advance --

16 CHAIRMAN BRANCH: Right.

17 MS. BROOKS: -- of kind of the
18 theme for the meeting. But if we could do
19 that also for the July and August meeting,
20 that would help.

21 CHAIRMAN BRANCH: Okay. Very
22 good.

1 MS. BROOKS: Okay.

2 CHAIRMAN BRANCH: Okay. Thank
3 you, Pat.

4 MEMBER CHVOTKIN: Mr. Chairman,
5 may I ask one other --

6 CHAIRMAN BRANCH: Yes.

7 MEMBER CHVOTKIN: -- continuing
8 administrative announcement, not about the
9 scheduling, if we ever work that out. I asked
10 you earlier during the presentations this
11 morning. There were a couple of other
12 questions that I had.

13 Do we have or can we establish a
14 process that we might submit some questions in
15 writing through Ms. Brooks to the presenters
16 for consideration?

17 I'm happy to write them up in my
18 own handwriting but type them up and circulate
19 them to the panel members for review for Ms.
20 Brooks or send them directly to Ms. Brooks or
21 anything that is appropriate and would welcome
22 those opportunities.

1 CHAIRMAN BRANCH: Okay. Let me
2 just kind of propose a framework for that.
3 First of all, I don't really think -- you
4 know, everybody on the panel has the right to
5 ask the questions that strike them.

6 So I certainly don't think a
7 review is a necessary step. If you could get
8 those to Pat via e-mail as they arise? And
9 please copy other members of the panel because
10 your questions may indeed spur follow-on
11 questions that could best be answered in one
12 shot. If we could get those to Pat?

13 And, Pat, if you could get us that
14 information, say, a week before the meeting
15 with any other handouts, would that be an
16 acceptable approach to everyone?

17 MS. BROOKS: These are follow-on
18 questions --

19 CHAIRMAN BRANCH: Right.

20 MS. BROOKS: -- to the previous --

21 CHAIRMAN BRANCH: Right.

22 MS. BROOKS: -- to the presenters?

1 Okay.

2 CHAIRMAN BRANCH: Okay? Does that
3 approach framework work for everyone?

4 (No response.)

5 CHAIRMAN BRANCH: Okay. Very
6 good. Okay. Thank you.

7 I guess we are through about seven
8 presentations cumulatively since we met on the
9 5th of May. And I think they have provided
10 for us some rich context for the way the
11 schedules function, some rich context for the
12 way the pricing clause within the schedule
13 functions, as well as some of the issues on
14 the schedule as I had asked in our last
15 meeting panel members to come back and to talk
16 about three things.

17 So we will be moving into that
18 phase of our deliberation. We do have one
19 additional presentation this afternoon, which
20 will interrupt our deliberations. And you
21 have copies of that at your places.

22 So what I would like to do at this

1 point -- and I will reserve the prerogative to
2 speak last on this issue, but I would like to
3 start with Judith Nelson. And after having --

4 MEMBER DRABKIN: Mr. Chairman?

5 CHAIRMAN BRANCH: Yes?

6 MEMBER DRABKIN: If I might
7 interrupt you, I believe Tony Fuller is here.
8 Maybe you would want to get his -- Tony,
9 you're here, right? Raise your hand.

10 CHAIRMAN BRANCH: Okay.

11 MEMBER DRABKIN: Maybe we could
12 get Tony's presentation. Then we won't have
13 to interrupt.

14 CHAIRMAN BRANCH: Outstanding.
15 Tony, if you are willing to come forward, we
16 will take this opportunity to hear your say.

17 Thanks, Dave.

18 ORAL PRESENTATION & PANEL QUESTIONS

19 TOPIC: UNIQUE CHALLENGES FOR
20 SERVICE CONTRACTORS & OIG AUDITS

21 MR. FULLER: Good afternoon,
22 everybody. I appreciate the opportunity to

1 come before you today and talk about the GSA
2 schedule program. Just by way of brief
3 background, I am a partner at the firm of
4 Beers and Cutler, which is an accounting and
5 consulting firm with approximately 350
6 professionals in Tyson's Corner. I lead our
7 government contracts consulting practice that
8 consists of about 65 people that provide a
9 broad range of services to government
10 contractors.

11 In the last few years alone, my
12 practice has probably focused 80 percent on
13 GSA schedule and commercial item acquisition.
14 Myself and teams under my supervision have
15 spent over 30,000 hours in the last 3 years
16 working with contractors on a range of issues,
17 starting with proposal preparation and
18 disclosures through compliance program
19 development, audit support, and
20 investigations.

21 I am also a co-chair of the
22 American Bar Association's Commercial Products

1 and Services Committee of the public contract
2 section of law. I am not up here representing
3 the ABA today, but I just thought I would put
4 that in because the ABA and through my
5 discussions with the leader of the public
6 contract section, Pat Meagher, we are
7 certainly interested at the right time to
8 provide written formal comments.

9 And I don't know whether that is
10 after there are some initial observations and
11 recommendations from the panel or whether that
12 would be welcome before, but I am certainly
13 willing to discuss that with the panel at any
14 future date.

15 I, unfortunately, couldn't be at
16 the first meeting. And I wasn't here this
17 morning. But I was briefed by one of my
18 colleagues who attended a couple of weeks ago.
19 And I did review the presentations that were
20 given this morning. I got here about an hour
21 ago.

22 I came and talked to Pat about

1 coming and talking primarily about services
2 contracting and the unique issues that
3 services contractors face with the GSA
4 schedule program.

5 Originally I was also going to
6 talk about audits, but I decided I didn't know
7 exactly how much time I had. And I just
8 thought, well, I would keep it primarily to
9 just the services contracting issues. I tend
10 to get a little bit more emotional about some
11 of the audit issues anyway. So I thought I
12 would maybe leave that for another date.

13 I welcome questions at any time,
14 of course. Starting with slide number 2 in my
15 presentation, which you all hopefully have a
16 copy of in front of you, I just wanted to
17 start out by saying my overall theme to my
18 comments today is to hope -- and I'm sure that
19 the panel will take this opportunity to take
20 a step back and look at the GSA schedule
21 program as a whole.

22 And, in particular, obviously the

1 price reduction clause is an important part of
2 that, but in my opinion, both when I counsel
3 clients as well as when I have opportunities
4 to speak publicly, I think everything starts
5 pre-award. And I think everything starts with
6 the disclosures the contractors make. And I
7 think it all kind of wraps around the CSP
8 format as well as the other elements of the
9 solicitation that services contractors, in
10 particular, must work with.

11 See, my first point there is that
12 the GSA contracting model was not designed
13 necessarily for service contractors. I think
14 many in the room would agree with that. It
15 doesn't mean that it can't work with services
16 contracting. And that is nice to know given
17 the volume of business that occurs on the GSA
18 schedule.

19 Whether it's the nature of the
20 required disclosures or the way that the price
21 reduction clause operates, which we will talk
22 more about both of those issues, I think I

1 will try today to share with you my
2 experiences with my contracting clients that
3 range from a million dollars a year in federal
4 business to billions of dollars a year and
5 hundreds of millions of dollars a year on the
6 schedule.

7 I have broken my observations down
8 into two areas: the pre-award disclosures and
9 then the post-award performance and
10 compliance. Going on to slide 3, my first
11 bullet there states the solicitations
12 themselves are designed to capture information
13 that either does not exist or is irrelevant to
14 a service contractor's business and pricing
15 practices.

16 I think as services became much
17 more popular on schedules, I think it took a
18 while for the contracting officers to really
19 get a good understanding of how the
20 professional services industry operates.

21 I have been a professional
22 services provider for 15 years, and I have

1 worked for a Big Four accounting firm as well
2 as smaller firms as well as consult numerous
3 services firms in GSA schedule contracting.
4 And so I have seen a lot of this.

5 First, the prices are set on
6 numerous factors on a project by project
7 basis. As you know, most services companies
8 aren't interested in publishing their rates.
9 Oftentimes the prices are based on some
10 internal price list from which there may be
11 standard or some sort of average discounts
12 taken from that.

13 In the CSP, you are to disclose in
14 a suggested format that is open to being
15 altered for each particular company's
16 situation, at least to varying degrees,
17 different GSA schedule contracting offices to
18 state what your standard discounts are. And
19 I think as a threshold matter, most companies
20 that I have experienced don't have standard
21 discounting practices. If there is a
22 standard, it is that there is none.

1 It doesn't mean that they don't
2 discount, and I am not saying that they don't
3 discount, but it is rare, whether it is a
4 multibillion-dollar company or a \$20 million
5 a year company, to see that there is an
6 established price list that you will see on my
7 third point, sub-bullet, there that would have
8 different discounts per different categories
9 of customers.

10 Another reason for that is that
11 they typically don't have categories of
12 customers. You know, whether you are staffing
13 17 different individuals on a project, the
14 issues of whether it is a firm, fixed price,
15 whether it is time and materials, what the
16 staff mix is, what the perceived risk is to
17 performance, the geographic location, the
18 levels of expertise required, all of that goes
19 into account and is typically priced in some
20 way usually based on an hourly rate but not
21 that it's a standard rate or some discount
22 from a standard rate.

1 Unfortunately, the CSP is designed
2 so that a contractor discloses its "standards"
3 and then hopefully answers the proper
4 questions to the key questions that are behind
5 the CSP as to, one, have you ever offered
6 pricing deeper than those you are proposing to
7 the GSA; and, perhaps even more importantly
8 for many contractors, have you ever deviated
9 from the "standards" that you are disclosing
10 in the CSP?

11 And since there often aren't any
12 standards, it is very difficult for a
13 contractor to make effective disclosures
14 unless they pay an enormous amount of money to
15 attorneys and accountants and consultants to
16 try to do it for them or if they just happen
17 to have a lot of extensive GSA expertise
18 in-house to really understand some of the
19 issues.

20 My second main bullet on this
21 slide is many contractors cannot disclose
22 their actual discounting practices without

1 performing an historical review.

2 I won't even take on a GSA
3 proposal preparation project unless that
4 client understands that I am going to look at
5 a year's worth of data every single
6 transaction and do a detailed analysis because
7 if you don't really have standards, it's hard
8 to understand what your standards are versus
9 what your deviations from the standards are.
10 And that way at least, you know, we can
11 mitigate the contractor's risk by giving them
12 a very thorough statistical analysis of the
13 frequency of discounts at different levels.

14 Therefore, they are able to at
15 least fully disclose. They can still put
16 together a persuasive proposal and try to
17 negotiate prices that are favorable to them,
18 just as the government does, but that they
19 fully disclose so that they are protected in
20 the case of a pre-award or post-award audit
21 down the road.

22 Oftentimes -- and I've done a lot

1 of work in the cost-plus world and with Tina
2 in the past as well -- their systems aren't
3 even sufficient to really capture a lot of
4 that information.

5 They may work up an estimate for a
6 fixed-price contract based on hourly rates,
7 but that is in an Excel spreadsheet and never
8 makes it into their system of record. That
9 happens all the time at nearly every single
10 one of my contractors.

11 So how can they go back and do an
12 historical review looking at their fixed-price
13 contracts if their system data doesn't even
14 capture what hourly rates were used to build
15 up the fixed price?

16 I made the point about the fact
17 that even though you can -- and then, of
18 course, you would be going manual, you know,
19 one by one looking at contracts and proposals,
20 in which case that is unduly burdensome I
21 think to try to think about, especially a
22 large international professional services

1 firm, for example, to go through and try to do
2 that type of analysis and still actually fully
3 disclose their practices.

4 Kind of a separate point here at
5 the end, I just wanted to throw that in and
6 certainly welcome any comments if there are
7 any. Prices based on a cost buildup should be
8 subject to a separate set of solicitation
9 instructions that provide clarity around the
10 disclosures in the pricing compliance.

11 Arguably, if someone is getting their rates on
12 the GSA schedule to demonstrate commerciality,
13 they should have commercial pricing.

14 We all know, though, that many
15 times, for whatever reasons, a company may
16 not. Maybe they are new and they have only
17 done work for the federal government. It is
18 of a type. So it could be considered
19 commercial. But that might be all the
20 experience that they have. And, therefore,
21 they might want to go with cost-plus rates or
22 maybe they are even larger and they have

1 matured a little bit and they are actually
2 subbing to prime contractors under federal
3 awards but still pretty much operating in the
4 cost-plus world.

5 And, yet, to my knowledge, even in
6 the engineering schedule, PES, which is much
7 more common to see those cost-built-up rates,
8 they are present in many of the schedules but
9 certainly a lot in PES. You just don't see
10 any instructions on exactly what people should
11 do and how that should work. And, you know,
12 we'll talk a little bit more later but just to
13 follow up on that point now.

14 They are still in a basis of award
15 category of customers for price reduction
16 clause. If it's based on cost-plus and if you
17 negotiate a fixed escalation of three or four
18 percent every year for the five-year term or
19 whatever it might be, how does basis of award
20 really even come into play with respect to
21 price reduction clause?

22 You are getting really good rates

1 in the first place, and they are often even
2 discounting from those rates as well. And it
3 is very ambiguous.

4 And you have contractors out there
5 scratching their heads trying to figure out,
6 "Well, you know, my business base changed.
7 And so my indirect rates changed. And does
8 that constitute a change in commercial
9 practices that I need to disclose to GSA?"

10 And so I would just throw that out
11 there as kind of a separate issue that I think
12 would be very important for you to consider
13 overall when there are circumstances that
14 really require a cost build.

15 And I will say another situation
16 where you might have a cost build is that you
17 have a very large, complicated organization
18 that experiences a lot of the things that I
19 just talked about, you know, standard versus
20 nonstandard, what discounts are, frequency of
21 discounts, and they get a pre-award audit and
22 the auditors can't get comfortable that the

1 government is getting the lowest price, which
2 is GSA's negotiation objective.

3 As a result, the auditors would
4 say, "The only way that we can recommend that
5 the contracting officer get comfortable with
6 this would be on a cost build." And so
7 sometimes that happens that way as well.

8 Going on to slide 4, kind of
9 tieing the post-award performance and
10 compliance to the pre-award disclosures, I
11 mentioned this earlier, but I say in my first
12 sub-bullet what constitutes a change in
13 commercial practices. And I say in theory,
14 this would be largely driven by the pre-award
15 disclosures, which are difficult to frame in
16 the first place.

17 You know, I think you heard a lot
18 about the price reduction clause this morning,
19 you know what triggers a price reduction
20 clause event.

21 And if a company has disclosed
22 that it deviates from its commercial practices

1 a very specific percentage, which is sometimes
2 the route that some companies take that is
3 very difficult to track and so sometimes that
4 is not the right way to go, you know, say,
5 "Well, you know, we charge \$100 an hour for a
6 project manager, but 10 percent of the time,
7 we discount more than that," how do they
8 really track that?

9 And sometimes they get kind of
10 tripped up during negotiations and end up
11 signing up to things that just don't really
12 make sense. And I am just going back to
13 perhaps the instructions that are provided to
14 the offerors and some clarification there so
15 that it is obviously talking a little bit from
16 the contractor's perspective here. And I will
17 admit that. So it is better for the
18 contracting officers, the contractors, the
19 auditors later down the road, and everybody
20 else.

21 Small contractors that aren't as
22 sophisticated, even though they might have a

1 fair amount of sales or maybe they vary
2 rapidly, went from a small amount to tens of
3 millions of dollars a year in GSA sales, which
4 is very common, don't even really understand
5 what they are signing up to sometimes.

6 You could say that is their fault.
7 They signed up to it. And they submitted a
8 proposal. And there they are. But I wish I
9 had a penny for every time I got called into
10 a meeting with a client that didn't even know
11 what the basis of award or a price reduction
12 clause really meant.

13 And so certainly when they don't
14 understand what it means, it's pretty easy in
15 the final proposal revision for GSA to put all
16 commercial end users as the basis of award.
17 They don't even really understand how the
18 mechanism works, let alone what it really
19 means to say all commercial end users as the
20 basis of award.

21 And I would argue that there is
22 probably not a single contractor out there

1 that could comply effectively with the price
2 reduction clause when that is the situation.

3 This maybe has come up. And I
4 know some on the panel that I know I have
5 discussed this with in the past, but federal
6 customers are specifically excluded from
7 triggering a price reduction. But we also
8 know, those of us who have been involved with
9 this, that there are still many contracts out
10 there that actually have federal customers as
11 the basis of award.

12 So if federal customers or some
13 subset of federal customers are the basis of
14 award, does that render the price reduction
15 clause moot in that situation?

16 Another issue with the schedule,
17 particularly for service contractors, is my
18 final sub-bullet on slide 4. And it is, how
19 should a services contractor account for the
20 maximum order threshold during its price
21 reduction clause compliance reviews?

22 As I think you heard this morning,

1 there is some pretty specific language with
2 respect to definite quantity. Again, it kind
3 of goes back to the product world, I think,
4 not really a services world.

5 But if you have a customer that
6 you might have -- you know, if a commercial
7 company does 100 different projects for
8 Coca-Cola in any given year and ends up doing
9 \$27 million worth of business for them but it
10 just so happens most of those were under
11 \$500,000, which might be their maximum order
12 threshold and if they discount more deeply, I
13 guess that triggers a price reduction. But I
14 think you might want to think about it from a
15 services perspective whether that is really
16 the way that should work or not. I can tell
17 you that is the way that the OIG auditors
18 would interpret it and that they would make
19 observations in that regard.

20 I have a few more listed on page
21 5, talked about the price reduction clause for
22 the cost buildup, particularly when there is

1 a negotiated escalation factor.

2 You know, some interesting issues
3 around whether a company that is a
4 subcontractor to a prime on a federal award,
5 whether that is a federal deal or a commercial
6 deal.

7 Pre-award if that is all a
8 contractor has, they want it to be commercial
9 because they want to demonstrate commerciality
10 and be able to get on the schedule.

11 Post-award if it's not an OIG
12 audit but if it's a contractor assistance
13 visit and they're coming in and checking for
14 the industrial funding fee, I think those
15 industrial operations analysts are very eager
16 to argue that those are federal deals, whether
17 they may actually be under a GSA task order
18 ultimately or not.

19 And then you have some issues with
20 respect to the basis of award and price
21 reduction clause here as well. If it's a
22 federal deal and if all commercial end users

1 are your basis of award, then our projects to
2 prime contractor is a part of what would be
3 considered the basis of award customer class
4 for price reduction clause purposes.

5 Another one kind of separate from
6 many of the other points that I have made is
7 whose responsibility is it to make sure the
8 project was performed under the correct
9 schedule.

10 You know, obviously the area of IT
11 and MOBIS, there's a lot of overlap. I know
12 that there is even an attempt, I believe, in
13 the solicitation to try to draw a distinction
14 there, but I don't know how effective that
15 really is.

16 And it's a little painful to see
17 some companies that might be involved in some
18 disputes down the road or some audit issues,
19 where auditors or others decide that, well,
20 you know, that is really MOBIS work, not IT,
21 you know, and that's a false claim.

22 I think, you know, that is

1 obviously the two parties to the contract
2 there. And I think there could be some more
3 clarification around that as well.

4 I haven't had many questions yet,
5 but I also at one point did have some comments
6 on OIG. And I guess just in a general sense,
7 you know, I'm doing a lot of work with
8 companies.

9 And, as you are probably aware,
10 the OIG is picking companies for pre-award
11 audits in connection with their contract
12 option extensions. They do that because they
13 typically are on the radar screen because they
14 are picking contractors that have a higher
15 amount of sales, which makes a lot of sense
16 from a risk-based audit approach.

17 However, I think there are some
18 issues that are exacerbated even more when you
19 move from pre-award to the post-award and
20 compliance and then when you are being
21 audited.

22 You know, I think that the

1 auditors see the world a little bit more black
2 and white. And I have worked with them a lot.
3 And I have a lot of respect for what they are
4 trying to achieve.

5 But, again, I just don't think
6 things are set up from the start so that they
7 can actually effectively do their job as well.
8 And I have some other issues with some of the
9 things that I am seeing with respect to some
10 of the audits, not the least of which would be
11 coming in and doing a pre-award audit in
12 connection with an option extension that kind
13 of turns into a post-award audit or it's a
14 post-award audit in disguise from the start.

15 You know, my understanding is that
16 at least one of the primary purposes of a
17 pre-award audit is to review the disclosures
18 to make sure they're current, accurate, and
19 complete so that the contracting officer has
20 a reasonable basis to determine fair and
21 reasonable prices. But certainly I think
22 we're seeing a lot of audit activity that

1 really isn't focused solely on that.

2 That's really all I had. It's the
3 first time I've been up, and I didn't know how
4 much I might have time for. But those were,
5 frankly, just some of the issues that came to
6 mind, tried to focus my comments particularly
7 on services contractors, obviously some of
8 this also relates on the product side as well.

9 I just think that, in particular,
10 the professional services industry has a
11 unique set of challenges that even many
12 products companies do not have.

13 CHAIRMAN BRANCH: Tom?

14 MEMBER ESSIG: What I would like
15 to do now is focus on a comment you made on
16 slide 3. Prices are set based on numerous
17 factors on the project by project basis.

18 And I would like to explore that
19 for a second and ask you, in your professional
20 opinion but from the perspective of the
21 government, what risks do you see in using a
22 system that focuses almost exclusively on

1 labor rates?

2 I am thinking in terms of the
3 pricing in the schedules, the price reduction
4 clause, everything focused again on what that
5 rate is.

6 MR. FULLER: Well, there is a
7 preference to do fixed-price contracting under
8 task orders for under GSA schedules. But we
9 also all know that there is a heck of a lot of
10 T&M going on, time and materials, contracting.

11 I'm trying to think of the best
12 way to answer your question. I might ask you
13 to even be a little bit more specific, if I
14 may. But prices are built up based on hourly
15 rates in one way, shape, or form typically,
16 commercially and federally.

17 Most of my clients aren't the
18 Lockheeds and the Northrops that do almost
19 exclusively federal contract work. They're
20 those companies that, even though they might
21 do hundreds of millions or billions a year in
22 federal business, it still may be only 10, 20,

1 30, 50 percent of their overall business.
2 And, therefore, they're not really as good at
3 it perhaps. You know, they don't have all the
4 systems and infrastructure in place like a
5 Lockheed and a Northrop to really handle that
6 situation.

7 I think that the GSA schedule
8 program and professional services on the GSA
9 schedule program has to be based on hourly
10 rates. There's a billion different solutions
11 out there for IT, MOBIS, PES, and AIMS and all
12 the other schedules where there are a lot of
13 professional services.

14 I think that the schedules program
15 with appropriate changes could accommodate
16 services contracting based on hourly rates.
17 My main contention is that the nature of the
18 CSP-1 form and the disclosures around the
19 pricing practices aren't conducive to
20 effective disclosure for the contractor or for
21 the government.

22 Now I'm going to ask you for a

1 little more clarification because I'm not sure
2 I answered your question.

3 MEMBER ESSIG: Actually, I don't
4 think you did. The clause is called price
5 reduction clause, but it focuses on rate
6 reduction. And, as you indicated in that
7 sub-bullet, price is based on more than just
8 the rates alone. It's based on how many hours
9 it takes to do the job. It depends upon the
10 specific processes and tools you will use to
11 implement the program, et cetera.

12 So while we talk about a price
13 reduction, my concern is, in your opinion,
14 does it focus exclusively on that labor rate
15 component of price? Could that lead to a
16 situation where we end up paying more than we
17 otherwise would have?

18 MR. FULLER: Thank you.

19 That's possible in the federal
20 world, and it's possible in the commercial
21 world when you are doing a fixed-price task
22 order. The special order procedures, you're

1 typically getting competition. And so you are
2 getting a little bit more assurance that the
3 prices are fair and reasonable on a task order
4 by task order basis.

5 The hourly rate would be the one,
6 probably the only, variable that could be
7 measured. The scope, the staff mix, the level
8 of effort, the geographic location, other
9 special circumstances are case by case.

10 And so if there is a mechanism to
11 try to ensure that through the life of a
12 5-year contract term or 20 years of the life
13 of a GSA contract, I think that's where you
14 have to start would be the hourly rate.

15 CHAIRMAN BRANCH: Judith?

16 MEMBER NELSON: I think my
17 question circles somewhat around where Mr.
18 Essig was going. On the same slide, you made
19 the statement that many of your clients or
20 many of the offerors that you work with do the
21 commercial work and largely the federal work
22 that they do on a firm, fixed basis. And,

1 therefore, when providing disclosures to the
2 government, it is difficult for them to
3 provide hourly rates for their work.

4 So if you were to provide us
5 guidance, what basis of evaluation would you
6 suggest that the panel look to?

7 MR. FULLER: Let me say one thing
8 first and then answer your question. Thank
9 you. I know that the SARA panel had some
10 observations regarding the nature and extent
11 of fixed-price work in the commercial sector
12 versus T&M. My experience has been a little
13 bit different in that I don't see it being
14 quite as heavily weighted on fixed-price work
15 as I think some of the information I read on
16 the panel tended to imply.

17 Contractors, some do a lot of
18 fixed-price work. Some do very little
19 fixed-price work depending on industry,
20 primarily in the mix that they might be in and
21 what is acceptable practice.

22 Maybe I will tell you what I do

1 sometimes. It would be cost-prohibitive and
2 take too much time for me to come in and say,
3 "Okay. Well, you have 500 million in
4 professional services revenue over the last
5 year, and I am going to look at all of it,"
6 particularly when I told you that on the
7 system side, it is very hard to capture those
8 hourly rates electronically to where you could
9 leverage technology to analyze that
10 information quickly.

11 So oftentimes I will take, for
12 example -- and this is often the case. If on
13 all of their hourly rates, their T&M projects,
14 if it is readily available, I would analyze
15 only that information and then test it against
16 the prices that were used to build up the
17 fixed price to make sure that the look and the
18 analysis around the T&M contracts was an
19 appropriate proxy for their practices as a
20 whole but then be very clear in my disclosures
21 and my notes to the commercial sales practices
22 format that that is what we did to arrive at

1 fair and reasonable prices that we're
2 proposing in the schedule.

3 Often -- and I will just tell you
4 this -- my proposals typically have somewhere
5 between 10 and 20 pages of text that are notes
6 to the CSP. And that's because I usually take
7 months to complete a proposal for one of my
8 contracting clients because I'm being so
9 thorough with it and I want to thoroughly
10 disclose their practices. That's what you
11 want to do is you want to thoroughly disclose
12 practices.

13 But, of course, the reason why
14 they are willing to pay me to do that is
15 because those that understand understand how
16 much I'm mitigating their risk down the road
17 by making those disclosures to protect them
18 against defective pricing.

19 You might want to refine your
20 question a little bit. I'm not trying to
21 avoid any questions. I want to make sure I
22 really focus in and answer your question if I

1 didn't get close enough there to that.

2 You know, I try to use solid
3 analytical methodologies. This is just what
4 I do, but it's certainly not the norm. I
5 would possibly look at some of those
6 fixed-price deals, go back and find that
7 proposals where they may have listed what
8 their hourly rates were, and compare it to the
9 total hours and the total fees associated with
10 that to see.

11 But the problem is when it's on
12 fixed price, it might take the hours that they
13 thought it would take. It might take a lot
14 more hours and, therefore, their effective
15 rate would be lower or to might take a lot
16 less and they might come out looking pretty
17 good.

18 And so that's a lot of the problem
19 is it greatly varies when you're looking at
20 the fixed-price work because of the risks that
21 the contractors are typically taking on and
22 risk rewards. Sometimes it can be more

1 efficient and come out a little bit better.
2 And sometimes you have to do a lot of rework
3 or they absorb scope creep and really don't
4 come out looking as good on the project.

5 So practically it is just a very
6 challenging area in terms of the fixed-price
7 work. And although we try to look at that and
8 encourage contractors to try to look at that,
9 sometimes it's pretty difficult to do unless
10 it's a very small contractor that doesn't have
11 a very high volume.

12 CHAIRMAN BRANCH: Okay. I think
13 we have a number of questions: Messrs.
14 Chvotkin, Allen, and then Ms. Jones and then
15 Ms. Sonderman.

16 MEMBER CHVOTKIN: Thank you, Mr.
17 Chairman.

18 Maybe building on Judith's
19 questions, I want to be clear. Mr. Fuller, do
20 I understand you that in your judgment, the
21 CSP doesn't make sense in professional
22 services? Does it follow, then, that the

1 price reduction clause also doesn't make sense
2 in the context that we have been talking about
3 it today?

4 MR. FULLER: The price reduction
5 clause right now in general doesn't make sense
6 for services contractors. Let me just take
7 one very simple example. A price reduction is
8 supposed to be you are supposed to notify the
9 contracting officer within 15 days.

10 This isn't a products company that
11 is running a special promotion that might have
12 systems and controls to be able to identify
13 that and then quickly pass it along to the
14 contracting officer. This is a professional
15 services firm that, for example, could be a
16 Big Four firm that essentially has two or
17 three thousand different little companies,
18 meaning two or three thousand different
19 partners.

20 It is very decentralized. And
21 there is no way of capturing that information.
22 I would almost argue that I have never seen a

1 contractor that even came close to being able
2 to report a price reduction within 15 days in
3 the services side. Many can't do it on the
4 product side either but certainly on the
5 services side.

6 MEMBER CHVOTKIN: Two questions.
7 then. For services, on what basis, then,
8 should the U.S. government make an award to a
9 services company at the front end? And then
10 if we're not going to use the CSP or the price
11 reduction clause, what other techniques are
12 available to ensure that the MAS prices are
13 the lowest overall price? What do we do?

14 MR. FULLER: Well, I thought about
15 putting some comments in my slides to talk
16 about potential solutions, but I thought I
17 might only have five minutes. And I was going
18 to be not able to cover everything.

19 I think if you look at what our
20 common industry practices are and start there
21 and then think about how disclosures in
22 general could be formed so that it would

1 provide the government the protection it
2 needs, I think that's a must. I think that's
3 where we have to start. I think in a certain
4 respect, that's where this panel needs to
5 start.

6 For example, you know, you don't
7 have to have customer categories or other ways
8 of describing it. There are other ways of
9 looking at the practices.

10 For example, what happens is you
11 might have a company that has 150 different
12 labor categories. They might only offer eight
13 or ten on the GSA schedule. But those 8 or 10
14 labor categories on a GSA schedule might be
15 representative in some general way of 50 of
16 their 150 labor categories.

17 And what contractors really
18 struggle with, both pre-award and post-award,
19 is mapping their standard internal labor
20 categories to the categories that they have on
21 their GSA schedule, both pre-award for
22 purposes of disclosure to try to help the

1 contracting officer assess fair and reasonable
2 prices and certainly for post-award for price
3 reduction clause purposes, you have the same
4 challenges.

5 And so one thing that I think you
6 would want to maybe include in the pre-award
7 disclosures would be some sort of an
8 understanding of how those rates were built up
9 and in a different way because it is not
10 necessarily customer categories. It is not
11 necessarily discounts from standards.

12 Many, many companies have to do
13 quite an extensive mapping. And it is very
14 challenging to do that to be able to come up
15 with good, solid disclosures that accurately
16 represent what their practices are.

17 That is an example of something
18 that you would look at and think about how not
19 only their commercial practices are but what
20 they have to do to be able to fit that into a
21 GSA contracting model. That is one example.
22 There are others.

1 I personally think that, you know,
2 I will tell you -- and OIG hates this, but
3 many times the data is such that I would put
4 forth an average rate calculation and go
5 through and determine what the average rate
6 was for that project manager, too, or the
7 software engineer and try to determine what
8 the average was just to get some sort of a
9 benchmark. Now, average implies half of the
10 companies are getting a better deal and half
11 of them aren't getting as good a deal.

12 But it goes back to every single
13 project being separate. For example, you
14 might have senior-level people, middle-level
15 people, junior people on a project. Those
16 often result in different profits for a
17 contractor.

18 And on one project, depending on
19 the staff mix, you might offer your project
20 manager one that you have said to GSA is \$100.
21 You might offer it for 70. But you might
22 offer that project manager three that you said

1 on GSA was 140 for 180.

2 So how do you look at a project as
3 a whole and try to make sure that you are
4 getting the good deal versus the OIG coming in
5 and saying, "Oh, you sold that project manager
6 for \$80," but they didn't see that all the
7 other prices for the other labor categories
8 for that commercial customer were priced
9 higher than what is being offered at GSA?

10 And that is just a fact. And that
11 is how things work. And it's a big problem
12 area when it comes to the audit side.

13 CHAIRMAN BRANCH: Thank you.

14 Ms. Jones, Ms. Sonderman, and then
15 Mr. Drabkin.

16 MEMBER JONES: Okay. I have a
17 question. Would you agree that in order for
18 a company to track profits, that it has to
19 have a pricing strategy?

20 MR. FULLER: Of some sort, yes.

21 MEMBER JONES: To track profits,
22 they have to have a pricing strategy.

1 MR. FULLER: Well, to make money,
2 they need to have some sort of a strategy that
3 would allow them to make profit, yes.

4 MEMBER JONES: Right. Yes. Okay.
5 So when companies are coming in and proposing
6 under the GSA schedules, they're proposing
7 their expertise and their capabilities as a
8 commercial entity, if you will. Okay?

9 So my question is, why is the
10 schedule differentiated in that when you are
11 offering the same level of capability that you
12 are commercially, it would force you to come
13 in with a different pricing strategy just
14 because it is for the government?

15 MR. FULLER: A senior manager at a
16 Big Four accounting firm, there might be a
17 common understanding for what you are getting
18 in the commercial world. It might not be as
19 common an understanding of what you are
20 getting in the federal world.

21 MEMBER JONES: But you are
22 proposing a labor category with experience and

1 expertise. And you're giving us a functional
2 description of what that person offers, like
3 it said.

4 And it mirrors or it's supposed to
5 mirror the capability of the company and their
6 labor force that they're providing in the
7 marketplace.

8 MR. FULLER: I agree with that.

9 MEMBER JONES: Right. So why do
10 the government solicitations require you to
11 come up with a different pricing strategy?

12 MEMBER NELSON: Can I add onto
13 that? Why wouldn't you propose your standard
14 commercial? Why would you substitute
15 something different?

16 MR. FULLER: It's primarily on IT.

17 MEMBER JONES: I was referring to
18 services.

19 MR. FULLER: Primarily IT services
20 because of all the different technical
21 functional descriptions. You might have
22 someone that specializes in SAP and someone

1 that specializes in People Soft. And they
2 might have separate labor categories in your
3 system.

4 But, for all practical purposes,
5 they have the same general technical skills
6 and could perform in a general IT analyst
7 position on various projects.

8 The fact of the matter is that the
9 company would like to be able to offer both of
10 those individuals to the government under the
11 appropriate circumstances. And so sometimes
12 you will find that companies will merge those
13 labor categories, as I talked about in the
14 mapping exercise, so that they can actually
15 provide a greater range of services to try to
16 offer and fill the government's needs.

17 I think you have a good question,
18 and I think I agree with your statement. If
19 their practice doesn't include customer
20 categories and discounts to different customer
21 categories, if that is what is generally
22 required in the CSP, naturally they can't

1 really disclose it in a natural sense in a way
2 that's truly reflective of what they do.

3 If they don't have customer
4 categories, if they don't have a price sheet
5 that says, "National corporate accounts get
6 this discount. State, local, and education
7 get this discount. Major integrators get this
8 discount. And then just typical commercial
9 customers get this discount," which they
10 typically do not, then it doesn't lend itself
11 to being disclosed.

12 And what you find is companies try
13 to find ways to disclose within that
14 framework. And it's like fitting a square peg
15 into a round hole.

16 And so you get a wide variation of
17 what you see in these pre-award disclosures,
18 then. Sure, there are always companies out
19 there that aren't doing the right thing or
20 there are always companies that are trying to
21 do the right thing. And they still come up.
22 And you still get quite varied responses on

1 the pre-award side as a result of trying to
2 fit that square peg into the round hole, so to
3 speak.

4 Did It answer your question,
5 ma'am? Can you repeat it, please?

6 MEMBER SCOTT: Well, I keep
7 hearing about mapping, and I keep asking, what
8 are we mapping to and from? And repeatedly
9 people say to me, "Well, I'm mapping to the
10 GSA list."

11 And I'm going, "What GSA list?"
12 So then we find out that somehow we are taking
13 ownership of this list of labor categories
14 that was originally proposed by a contractor.

15 And then you have to go back
16 going, "Well, it was what you proposed. And
17 it's your labor categories. Now what has
18 happened to cause changes to your system? And
19 educate us to what has happened over time.

20 And we need to get more understanding of what
21 the commercial practices are, particularly for
22 the services and the labor categories." I'm

1 trying to figure out how to get to that and
2 hold onto it.

3 MR. FULLER: Post-award during the
4 performance of the contract. Yes. You know,
5 the reason why this is a problem for the
6 contractor and, therefore, it's a problem for
7 the government, not that it's the government's
8 problem to solve necessarily, is that services
9 evolve through time. And, frankly, companies'
10 commercial sales practices evolve all the
11 time.

12 Unfortunately, it's usually only
13 at their contract option extension that a
14 company realizes when they maybe stop and take
15 a look at it that it's like "Oh, my gosh. Our
16 business is really different today than it was
17 five years ago, but it happened so slowly over
18 time." And that's why you kind of get to that
19 what constitutes a commercial sales practices
20 change.

21 And it's when you don't have the
22 standards and the discounts and it's not all

1 framed. I'm not saying that there's not a
2 single company out there that doesn't do it
3 like that. I'm just saying the vast majority
4 don't. Then it's very, very challenging. And
5 it's challenging for the contractor.

6 And, again, it's not trying to
7 justify mistakes they may make by not
8 disclosing or things like that as much as is
9 there a way to set this thing up from the
10 start to make it a little bit easier for
11 everybody.

12 CHAIRMAN BRANCH: Debra?

13 MEMBER SONDERMAN: Thank you.

14 And that's where I would like to
15 take you. You had mentioned risk. I'm
16 curious about what you perceive are the areas,
17 the biggest areas, of risk for the private
18 sector in proposing on schedules and what you
19 see as the biggest risk areas for the
20 customer, whether it's government or not.

21 MR. FULLER: The biggest risk for
22 our contractors is the financial and,

1 therefore, reputational risk and everything
2 else associated with the price reduction
3 clause.

4 Again, I think there are a lot of
5 elements of the GSA program that should be
6 examined. And this is a great opportunity for
7 you all to do that. But certainly that would
8 be the number one risk.

9 There's an art to this on the
10 contractor's side. And that's understanding
11 it well enough to negotiate a narrow basis of
12 award customer class that's still fair and
13 reasonable but narrow it to where it is really
14 reflective of your practices as a whole but
15 doesn't require you to maintain and monitor
16 3,000 separate employees on 793 different
17 projects a year.

18 So that's the number one risk in
19 my opinion to the contractor. The second
20 would just be, you know, what can happen to a
21 contractor if they really inadvertently don't
22 fully disclose their practices up front before

1 contract award.

2 Again, thinking in terms of being
3 user-friendly, I don't know that the current
4 CSP model is user-friendly. I think it is
5 very possible for certain companies, large and
6 small, again, not here for excuses, for them
7 to not do that great a job with it because
8 they can't get at the data or they don't
9 understand what it really means, what question
10 4 means after the CSP. And the fact that they
11 just checked the wrong box, it could almost
12 result.

13 And if they ever discounted below,
14 it really in certain respects could from the
15 government's perspective be interpreted as
16 defective pricing. And, therefore, every
17 invoice after that is a false claim. That's
18 a big risk.

19 So it's price reduction after, and
20 it's just the disclosures in general before on
21 the contractor side.

22 MEMBER SONDERMAN: Given these

1 myriad challenges, is there any reason to have
2 a professional services schedules program?

3 MR. FULLER: I think there is a
4 reason to have a professional services
5 schedules program. I think it does go a long
6 way to be able to if you can effectively
7 negotiate up front terms and conditions and
8 prices so that, particularly given the
9 acquisition work force in the government
10 community, things can be a little bit more
11 streamlined down the road so long as the
12 acquisition community is educated and trained
13 and able to use them and perhaps just as
14 importantly, that the GSA contracting officers
15 that are awarding the schedules in the first
16 place are really doing a thorough and good job
17 as well.

18 And I would be remiss if I didn't
19 say that the contractors were doing a better
20 job and the best job they could possibly do
21 fully disclosing their practices so that it is
22 a level playing field.

1 CHAIRMAN BRANCH: Okay. Ms.
2 Nelson and then Mr. Drabkin. Judith?

3 MEMBER NELSON: Thank you very
4 much for coming today.

5 First of all, in an effort to
6 clarify for some of our panel members who do
7 not negotiate or use the contract, well, do
8 not negotiate the contract; rather, use it as
9 an end user, are you able to clarify for us
10 that you average the labor rates internally
11 for your evaluations, rather than for
12 negotiation purposes, since average labor
13 rates are not allowed under GSA schedules?

14 MR. FULLER: I'm not sure where it
15 says average labor rates are not allowed on
16 the GSA schedules. And I know there are a lot
17 of companies that have them on there.

18 So, as a threshold matter, I would
19 just start with that comment.

20 MEMBER NELSON: Okay.

21 MR. FULLER: You know, we would
22 run a variety of analyses to understand from

1 both a business and a compliance perspective
2 the nature of the company's business and make
3 sure we understand it.

4 You know, a company might think it
5 only discounts ten percent. And it's
6 standard. But when you actually look at the
7 history, it might be a lot more now, which is
8 why I insist on doing that historical pricing
9 analysis to prove it.

10 MEMBER NELSON: I have one other
11 question. The question came up regarding the
12 difficulty in mapping the labor categories.
13 Do you find that that happens when some of
14 your clients have other federal contracts
15 where the labor categories have already been
16 called out, say a GWAC or a MAC, where the
17 labor categories were predefined, and so their
18 commercial labor categories were fit under
19 that?

20 MR. FULLER: Yes.

21 CHAIRMAN BRANCH: David?

22 MEMBER DRABKIN: Along these lines

1 -- and you mentioned earlier the 1423 panel
2 and its work or not so good work in the area
3 of services. You didn't say, "not so good."
4 That's my commentary. Since I was on the
5 panel, I can be self-deprecating.

6 One of the things that we
7 discussed was that -- and this discussion
8 between members of the panel and the issue of
9 competition on services brings me back to the
10 fact that the government doesn't specify what
11 it wants in terms of defined labor rates.
12 You're nodding your head. So I assume you
13 agree yes.

14 And we allow every company to
15 offer back to us their defined labor rates.
16 And you're nodding your head again yes. And
17 when we have a competition between companies,
18 the labor rates defined by one company are not
19 and rarely are, in fact, the same as the labor
20 rates defined by the other companies in the
21 competition, which creates some of the
22 confusion and also suggests to some people, I

1 suspect, that you really aren't getting
2 head-to-head competition on the services you
3 are buying, whether you are buying them on a
4 time and materials basis or whether you are
5 using the time and materials figure to do a
6 cost buildup for a fixed price. And you are
7 again nodding your head yes.

8 So one of the things that we
9 discussed -- and it never made it out of the
10 discussion phase -- was to go back to those
11 dreaded days where the government actually
12 devised a spec. You know, we used to have fed
13 specs and mill specs, but they were for things,
14 where the government would define the various
15 categories of labor and have each company in
16 its original proposal, do whatever mapping
17 they needed to do to that labor definition and
18 then propose a rate for that definition.

19 What do you think of that idea?

20 MR. FULLER: I think that's a good
21 example of the outside-of-box thinking we need
22 to be thinking about. You know, the devil

1 could be in the details of how effectively can
2 the contractors than really effectively map
3 it. And would that result in another host of
4 problems? But as I spoke just earlier, they
5 are often mapping anyway to try to fit some
6 different set of categories, kind of designed
7 for GSA.

8 I think that is something that to
9 me would be definitely worthy of discussion
10 among the panel and something that if there
11 were some observations, recommendations from
12 the panel, I'm sure that there would be some
13 good public comments on what may or may not be
14 challenging if you were to go that route.

15 MEMBER DRABKIN: Let me take it
16 one step further. Of course, my suggestion
17 initially when we talked about this was the
18 government defined was raised. What if we
19 turned to industry and said, "Industry, you
20 define definitions for categories of labor,
21 kind of like an ISO standard or something like
22 that" and adopt these standards so that when

1 every company comes back in and they say,
2 "We're talking about a senior systems
3 engineer," we all know exactly what we are
4 talking about, how many years of experience,
5 how many years of education, what level of
6 education, those kinds of things, and then
7 when they assign a price and we run a
8 competition, we know what it is we're buying
9 and if there is any mapping, it is done in the
10 original proposal for pricing, not in the
11 subsequent task orders, where you get all of
12 this difficulty about what is IBM senior
13 system engineers versus CACI versus SAIC
14 versus some small company? What about having
15 industry do that?

16 MR. FULLER: Yes. No. I would
17 strongly suggest that if you were to go down
18 that path, it would be collaborative with
19 government and industry to come up, discuss
20 that, see if there could be some sort of
21 standard rates. Something tells me you would
22 have to have some mechanism for some rates

1 that -- call them open market or otherwise --
2 you would have to compete on an order by order
3 basis if there were some specific requirements
4 outside the standard.

5 MEMBER DRABKIN: And I appreciate
6 you finding a middle ground, but I wasn't
7 talking about a collaborative effort.

8 MR. FULLER: Oh, just industry?

9 MEMBER DRABKIN: I was talking
10 about saying to industry, "You go out, figure
11 out how to define these things, and come back
12 and tell us how you agree to define them."
13 And then we'll ask you to assign a price to
14 them.

15 MR. FULLER: Yes. I think that
16 would be a great observation or recommendation
17 that there are many professional services, the
18 association of which you have a couple of
19 representatives up there today that would be
20 very interested in being a part of that and
21 providing some comments on whether that is
22 something that was feasible or not.

1 CHAIRMAN BRANCH: Larry?

2 MEMBER ALLEN: That's very similar
3 to the comment I was going to make. I am
4 looking out in the audience. And I can see
5 several members of industry in various states
6 of apoplexy --

7 (Laughter.)

8 MEMBER ALLEN: -- over this line
9 of discussion.

10 MEMBER DRABKIN: We have got to
11 keep them awake in the afternoon.

12 MEMBER ALLEN: That's right. It
13 may very well be a good idea before we get too
14 far down that road to get some input from
15 service contractors themselves on some of
16 these ideas. And I would suggest that if we
17 were going to follow on.

18 MR. FULLER: I would just add, if
19 I may, one thing. You typically look at the
20 minimum education, maybe professional
21 certifications, and years experience for the
22 labor categories.

1 And then there are some functional
2 and technical responsibilities that are also
3 in there, but, you know, many, many times I
4 have done labor category market analysis under
5 GSA. And I know GSA has a database that the
6 contracting officers can use.

7 I will tell you it's interesting.
8 I think that may be something to think about
9 and talk about going forward. But I can tell
10 you that I can find a rate for a particular
11 labor category at \$130 an hour. And I can
12 find the exact same description, plus or minus
13 the word "the" or "and," for \$400 an hour on
14 the schedule.

15 And a company that has a rate of
16 \$400 an hour you know they're not getting that
17 on a task order basis, but they're got that on
18 their schedule as their starting point. And
19 so the rates vary significantly, even when you
20 can really compare apples to apples.

21 CHAIRMAN BRANCH: First of all, I
22 want to thank you for your presentation today.

1 And I just have a couple of questions before
2 we close this out myself.

3 On page 3 of your presentation,
4 your second bullet, you state, "Many
5 contractors cannot disclose their actual
6 discounting practices without performing a
7 detailed historical review."

8 I guess my more general question
9 is, you know, are the folks that you support
10 capable of properly administering time and
11 material contracts; i.e., can they actually go
12 into their accounting systems and identify the
13 discrete labor categories and labor rates that
14 were used to do work such that it would
15 satisfy my colleague here at the Defense
16 Contract Audit Agency?

17 MR. FULLER: Generally, yes

18 CHAIRMAN BRANCH: Well, if they
19 can do that, then I guess I am not quite sure
20 why they can't disclose the level of
21 discounting from what was bid and what their
22 time-keeping systems show.

1 MR. FULLER: Some companies may
2 actually develop a rate for every individual
3 that provides services.

4 CHAIRMAN BRANCH: Okay.

5 MR. FULLER: That means that if
6 you had 200 different people in a particular
7 labor category, you could have 50 to 75
8 different actual rates for that.

9 CHAIRMAN BRANCH: So let me follow
10 on to a question there. Let's take that
11 hypothetical so that I have 200 uniquely
12 qualified individuals that shared a similar
13 pedigree with respect to education, training,
14 and certification such that I wanted to have
15 a different labor rate for those folks.

16 Is it your experience that the
17 discounting methodology for each one of those
18 people would be consistent within a client?

19 MR. FULLER: No.

20 CHAIRMAN BRANCH: Why wouldn't
21 they be -- I'm just curious as to why they
22 wouldn't be consistent. Why wouldn't I take,

1 you know, say, a systems engineer who had a
2 particular area of expertise in an application
3 area and a systems engineer similarly
4 qualified in another application area and use
5 the same kind of discounting methodology, not
6 necessarily the same percentage but the same
7 framework for determining how I would discount
8 those two individuals.

9 MR. FULLER: It would be great if
10 companies did do that, I suppose. It just
11 typically doesn't happen that way for a number
12 of reasons and maybe because in a situation of
13 a large professional services firm that might
14 be a partnership or act like a partnership
15 where you have lots of different managing
16 directors or partners kind of operating their
17 own businesses. Although there are general
18 incentives there, they have different
19 objectives.

20 One managing director might be
21 willing to manage \$20 million worth of work a
22 year and do more to get higher volume of work

1 and cut his prices more as a result. Another
2 one might say, "I don't want to try to manage
3 \$20 million worth of work a year. I want to
4 manage \$8 million. I'm going to be more
5 selective and keep my prices higher."

6 That's just one of many, many
7 examples. But there are -- unfortunately, it
8 just typically doesn't work that way.

9 CHAIRMAN BRANCH: Okay. So the
10 inference that I take is that this ties back
11 to your first bullet and on that page where we
12 say that there really isn't a commercial
13 pricing methodology in those firms.

14 MR. FULLER: Yes. Again,
15 sometimes they will have a standard internal
16 price list, but as far as any standards --
17 and, by the way, what is standard is that
18 discount that you would use 85 percent of the
19 time? Is it something that you would use 95
20 percent of the time? Is it 60 percent of the
21 time?

22 It just typically doesn't exist.

1 Sometimes you'll have some thresholds for
2 approval depending on certain circumstances,
3 but that's about as far as most companies
4 would get with respect to their policies.

5 CHAIRMAN BRANCH: Okay. Thank
6 you. Does anyone else on the panel have any
7 further questions? Yes, April?

8 MEMBER STEPHENSON: You know, I've
9 listened to a number of the things that you
10 have talked about, and I certainly can see
11 where you've got a lot of people working in a
12 firm, et cetera, et cetera. But when the day
13 is gone and the government gets a price, what
14 assurance can you give us that that is a fair
15 and reasonable price for the service that
16 we're getting?

17 Because it sounds like you're
18 offering a lot of different discounts, a lot
19 of different pricing. A lot of different
20 things are going out there. But when the day
21 is done, how can we be assured we are getting
22 a fair and reasonable price for that service?

1 MR. FULLER: Me personally or if I
2 was the contractor?

3 MEMBER STEPHENSON: Well, if the
4 answer is different, I would like to hear both
5 answers.

6 (Laughter.)

7 MR. FULLER: Well, let me ask you
8 this. How do you define a fair and reasonable
9 price? I mean, is it the best price that you
10 have ever offered any other customer? I'm
11 going to say you would not get that assurance
12 from me.

13 MEMBER STEPHENSON: Well, I think
14 your answer may have answered my question,
15 which is we from the government have a risk
16 that we are not getting assurance that we are
17 getting a fair and reasonable price. It
18 almost sounds as though we're getting the
19 price that will bear, which may not be fair
20 and reasonable for the type of service we're
21 getting.

22 MR. FULLER: It's possible, yes.

1 CHAIRMAN BRANCH: Lesa?

2 MEMBER SCOTT: When you mention
3 the standard internal price list, what I
4 understand anecdotally is that that can be a
5 number that is handed out by the CFO that
6 says, "Folks, when you're setting up your bid
7 rate, whatever you're going to do, commercial
8 rate, that's the minimum that we will ever
9 late you charge anybody for."

10 In other occasions, that's just a
11 target or a range around which they work
12 depending on the internal corporate. One of
13 the problems I'm understanding is that these
14 internal price lists are not what we, the
15 government, would consider to be a standard
16 that could be used for coming to us with data.

17 MR. FULLER: Correct. Yes, both
18 of those exist. I think it's a little bit
19 more often to have the target, the higher end,
20 than it is like the floor. Sometimes you have
21 the higher end, and you have some very loosely
22 defined parameters about what could the floor

1 be.

2 But then, again, how often is that
3 really the floor? And how often might you
4 deviate from that floor?

5 MEMBER SCOTT: Well, it also
6 depends on whether the employee affected is
7 sitting on the bench or on a project.

8 MR. FULLER: And that's another
9 one of those factors that goes into account on
10 a case-by-case and project-by-project basis.

11 CHAIRMAN BRANCH: Any other
12 questions for Mr. Fuller?

13 MEMBER PERRY: Yes, I have one --

14 CHAIRMAN BRANCH: Okay. Glenn?

15 MEMBER PERRY: -- because we have
16 gotten into this issue of granularity down to
17 basically people's salary in the services
18 side. And I can see the argument where --
19 when you start talking discounts, I started
20 thinking discounts on what. If I've got it
21 down to that granularity, supposedly I've got
22 it down to what it would really take to get

1 this work done. I'm not clear where the
2 discount even comes in.

3 Would it be better for us to focus
4 on granularity of rates without the discounts
5 or are we doing something that causes
6 something unnatural to happen in the business
7 relationship when we're talking discounts or
8 when we're allowing for that?

9 MR. FULLER: Most services
10 contractors -- I gave an example where you
11 might have 200 different employees that fit
12 some general labor category that might have
13 200 different rates or 75 different rates
14 because generally they would be in a pay band.
15 You know, those 200 people get paid something
16 plus or minus 5 or 10 or 15 thousand dollars
17 a year, what have you.

18 There are companies that handle it
19 that way, but I will say that is the minority.
20 It is much more common that you do not have
21 that granularity in the natural course of
22 business on the commercial side. It's more

1 common that there would be some rates set.

2 Sometime there might have been
3 some analysis that took some of that detailed
4 information to do accounts to establish those
5 rates, but that could have been seven years
6 ago. And since then they just upped rates on
7 what they thought the market would bear.

8 And so it really does vary. I
9 would characterize a more natural practice to
10 have some sort of internal price that really
11 isn't based on an individual-by-individual
12 basis, although I did use that as an example
13 before and it is -- I've seen that more than
14 once. It's not rare, but it's not the
15 prevailing practice.

16 Hopefully you don't think I am
17 trying to dodge any questions. Go ahead and
18 please clarify.

19 CHAIRMAN BRANCH: I don't want to
20 belabor it.

21 MR. FULLER: Okay.

22 CHAIRMAN BRANCH: Tom?

1 MEMBER ESSIG: Just one brief
2 question I don't think we really touched on.
3 In a performance-based acquisition, do rates
4 matter at all?

5 MR. FULLER: Rates matter because
6 the rates would ultimately be used to build up
7 the price. If it's a performance-based
8 acquisition, that would be, say, a fixed price
9 with certain objectives that need to be met in
10 terms of performance. You're having to arrive
11 at that price somehow.

12 CHAIRMAN BRANCH: Mr. Fuller, we
13 really appreciate you presenting for us today.
14 And we appreciate even more the dialogue that
15 you have graciously allowed us to engage in
16 with you. Thank you very much.

17 MR. FULLER: Thank you. I
18 appreciate it.

19 CHAIRMAN BRANCH: It's about 20
20 minutes of 3:00. So why don't we take a break
21 here. Why don't we come back at 3:00 o'clock.
22 And what I would like to do is to just canvass

1 the panel members. We have heard a lot of
2 information. We have had a lot of good
3 dialogue.

4 I would like to start to move
5 toward a definition of a problem statement.
6 And my goal is that we could end the day
7 coalescing around that and if not agreeing not
8 to coalesce around that and agreeing to the
9 approach to kind of proceed from here. So
10 let's come back at 3:00.

11 (Whereupon, the foregoing matter
12 went off the record at 2:37 p.m.
13 and went back on the record at
14 2:59 p.m.)

15 PANEL DELIBERATIONS

16 CHAIRMAN BRANCH: I think we've
17 had a number of very, very good presentations.
18 I can say that personally they have certainly
19 helped to shape my thinking around a problem
20 statement. So what I am going to do is I am
21 going to start with Judith, and I am going to
22 ask each of the members of the panel to talk

1 about what they believe the problem statement
2 is here.

3 I think we talked about goals last
4 meeting. We talked about what success would
5 look like. And that had to do a lot with
6 transparency. It had to do a lot with fair
7 and reasonable pricing, both for government as
8 well as our industry partners. It had to do
9 with consistency of application throughout our
10 system.

11 So I am not looking for those
12 sorts of things in terms of outcomes. What I
13 guess I am really asking everybody to spend a
14 little bit of time to talk about is given our
15 desired outcomes from the last meeting and
16 given the information that we have been
17 presented as well as the information we have
18 been given to read, exactly what do we think
19 are the obstacles to achieving that
20 transparency, that consistency, and that
21 fairness to all parties concerned?

22 I would like to do this in

1 somewhat of a structured way. So I am going
2 to start with Judith. And I am just going to
3 go around. I am going to ask my fellow panel
4 members to hold any comments they might have
5 on anybody's problem statement unless there's
6 an issue of clarification to be raised until
7 we have gotten all of the way around the
8 table.

9 And I have asked Pat to try to
10 capture that on the white board so we might
11 have something to think about in advance of
12 receiving a transcript of this meeting of the
13 panel.

14 So, Judith, if I could just ask
15 you to start off? Given our objectives, our
16 outcomes, what do you see the obstacles to
17 achieving our outcomes to be?

18 MEMBER NELSON: I amazingly did do
19 my homework and wrote them down. And I broke
20 the problem statement down into three areas.
21 The first is that I see that under the
22 schedules program, we offer the government

1 agencies and state and local three different
2 areas. And we have one price reduction
3 clause.

4 We offer products, services in the
5 sense that there are labor hour services.

6 Let's call them either project management or
7 guard services, for instance, as well as sort
8 of the turnkey solutions. And I don't believe
9 that as the single price reduction clause is
10 a one size fits all.

11 The second area is that I think
12 that it is imperative that we revise the
13 mechanism and requirements for disclosure of
14 practices and pricing for companies' offers,
15 both for product but especially for
16 professional services as well as SCA, Service
17 Contract Act, and such.

18 And, finally, we have talked a
19 great deal about transparency of pricing and
20 cost. And I'll separate those out, both at
21 the GSA PCO level; so at the contract level as
22 well as at the buyer's level.

1 I think that there is a barrier
2 there that we need to consider how to achieve
3 that and at what level that can be achieved,
4 what is reasonable and feasible transactional
5 data to require to be reported and by whom, as
6 well as being able to ensure that we are able
7 to compare apples to apples because if we are
8 looking at a turnkey solution, I don't know
9 that we can and I don't know if it is a
10 reasonable requirement.

11 CHAIRMAN BRANCH: Okay. Thank
12 you.

13 Any questions about Judith's
14 problem statement from members of the panel?

15 PARTICIPANT: (Question not on
16 microphone.)

17 MEMBER NELSON: On the second
18 bullet, I would say revised mechanisms for
19 disclosures, not just for services but overall
20 but especially for services and barriers to
21 transparency at contract level. And I would
22 like to add in there reasonableness for

1 collecting transactional data.

2 CHAIRMAN BRANCH: Thank you.

3 Let's see. We're missing Jan, I
4 guess. April?

5 MEMBER STEPHENSON: Elliott, I
6 have two statements. And I will say them in
7 the problem statements, and that is what we
8 would capture. And then I have some
9 elaboration on why I think it is a problem
10 statement, which probably does not need to be
11 captured on the board.

12 The first problem statement is, do
13 the GSA schedule contract prices represent
14 fair and reasonable prices or is there an
15 expectation that customers adjust the prices
16 when awarding contracts?

17 And in assessing this, there are
18 several things I think that we would want to
19 take into consideration. And that is, should
20 schedule prices be presented by quantity
21 purchases, rather than a quantity of one;
22 i.e., multiple, price breaks? What type of

1 price analysis is involved? And is it
2 sufficient? Are pre-award and post-award
3 audits conducted? And are the findings
4 appropriately addressed, adopted? And should
5 the schedule prices be set for one year versus
6 multiple years to permit price reductions from
7 year to year as products mature?

8 And those are just kind of the
9 thoughts that went along with the problem
10 statement, but it is the problem statement
11 which is captured.

12 Second problem statement is,
13 should processes used to establish schedule
14 prices for goods be different than services?
15 And if you ask, what processes should be
16 changed and/or improved?

17 And when assessing this, the
18 various things I think we should consider are,
19 is the process for identifying the types and
20 levels of services currently adequate; i.e.,
21 can a customer adequately distinguish between
22 a senior engineer for all the contractors

1 offering a senior engineer or we can consider,
2 should GSA develop the standard set of
3 qualifications used for services or I'll say
4 what Mr. Drabkin asked? Should contractors do
5 that and present it to us?

6 And then, lastly, should a process
7 be implemented where the pricing is
8 established as requirements are further
9 defined by the ordering customer?

10 And, Elliott, those are my problem
11 statements.

12 CHAIRMAN BRANCH: Okay. Thank
13 you.

14 Are there any questions of
15 clarification for April? No?

16 MEMBER SCOTT: Can we get a
17 handout of her backup data?

18 CHAIRMAN BRANCH: Yes. Okay.
19 Great. Jacqueline?

20 MEMBER JONES: Okay.

21 MS. BROOKS: Did I capture your
22 two problems? Okay. I can just revise it

1 later.

2 MEMBER JONES: Okay. I had a
3 couple of things. First of all, the thing
4 that I would like to address first is the fact
5 that we at the schedule level are saying to
6 the customer agencies that the prices have been
7 determined fair and reasonable.

8 So how do we leverage our buying
9 power as an agency and ensure that the prices
10 are, in fact, fair and reasonable and
11 competitive at the schedule level?

12 As I mentioned earlier, the price
13 reduction clause is a better fit for products,
14 but it was primarily relied upon to ensure our
15 schedule prices are competitive.

16 So the question is, how do we
17 retain competitive prices at the schedule
18 level if we were to get rid of the price
19 reductions clause? Is there another way to
20 ensure that?

21 Okay. And then from some of the
22 presenters today, there was mention concerning

1 the audits and whether or not the audits
2 produced any types of conflicts as a result of
3 companies not following the price reductions
4 clause and the savings to the government that
5 are recommended in the audit reports when they
6 find that there are violations.

7 I think that we should gather some
8 input from the OIG's office concerning the
9 number of violations that they have found and
10 what are some of the problem areas that the
11 auditors are finding in the schedule audits.

12 It was mentioned that there is a
13 lot of price renegotiation at the option
14 period, which is also when the pre-award
15 audits are done.

16 And then, lastly, is 20-year
17 pricing realistic in the schedules arena? Are
18 20-year contracts realistic, I should say, in
19 the schedules arena given the changing nature
20 of the services industry and whether or not we
21 need to consider that that contract term is
22 possibly too long? And that's it. That's all

1 I have.

2 CHAIRMAN BRANCH: Okay. Are there
3 any questions for Jacqueline?

4 (No response.)

5 CHAIRMAN BRANCH: Okay. Thank
6 you.

7 Larry?

8 MEMBER ALLEN: I'm a little bit
9 like April. I have a couple of macro-level
10 issues that I have some specific subsets of.
11 So I will just go through them.

12 I think one of the problems is
13 that it seems obvious from the input we've
14 gotten last meeting and today that the
15 schedules program as currently constructed has
16 some government-only mechanisms that don't
17 serve the needs of anyone.

18 They don't serve the needs of
19 contractors, but they also don't serve the
20 needs of customer agencies. That certainly
21 seems to be apparent. So this is something
22 that where we are right now, I think the

1 mechanisms in place are obsolete relative to
2 where the program is.

3 Certainly probably first and
4 foremost of those government-only mechanisms
5 that need to be eliminated, revised, or
6 amended is the price reductions clause.

7 I think we have heard from people
8 on this panel and elsewhere that the clause as
9 currently constructed is not helpful and in
10 some cases is not relevant at all.

11 I would like to add to that
12 something we haven't heard a lot about but is,
13 nevertheless, important. And that is the
14 economic price adjustment clause on the
15 schedule. This is a clause that is, again,
16 unique to government and unique I think to the
17 schedules program. Essentially it places
18 artificial caps on how much a company can
19 raise its prices.

20 And this is a current front page
21 issue given the market volatility. Not just
22 with fuel prices but with steel prices and

1 other things, you have companies right now
2 that simply cannot afford to keep items on
3 their schedule contract because they are faced
4 with EPA caps that do not allow them to offer
5 those products at anything other than a loss.
6 So that is another specific.

7 Another issue on here, on
8 government-only mechanisms, there are
9 collectively I think so many requirements that
10 they all add up to fairly lengthy time lines.

11 And while I know GSA, particularly
12 with Judith, is working on those, that is
13 something that requires an extra burden on
14 contractors. And if we can streamline the
15 process and speed it up a bit, I think we will
16 go a long way towards solving some of these
17 issues.

18 The second macro-level problem
19 statement I have is the need to engage in more
20 extensive customer education and outreach.
21 Again, it seems to be apparent from the
22 discussions just among the panel that there is

1 an uneven level of knowledge about what it is
2 that GSA does when putting these contracts in
3 place and what it is that GSA is anticipating
4 that customer agencies will do.

5 I think the prima facie one is
6 that customers are unsure of how prices are
7 set and kept updated on the schedule. And the
8 need to promote fair and reasonable pricing
9 and to educate people on just what steps GSA
10 does take is vitally important.

11 I think, for the record, that GSA
12 probably does do some good things to keep
13 prices updated, but I don't know that everyone
14 who uses the program is aware of what those
15 things are.

16 Another issue that we haven't
17 discussed but is closely related to this is a
18 better way to identify who is and who is not
19 a legitimate schedule buyer. And that is
20 important because you don't always know who an
21 authorized buyer is or even if an authorized
22 buyer is buying correctly.

1 And that can lead to some price
2 reductions clause problems if you
3 inadvertently give a lower price to somebody
4 who holds themselves out as a qualified
5 entity. And it can also lead to people who
6 are selling your products to the federal
7 government who are not authorized to do so.

8 CHAIRMAN BRANCH: Questions for
9 Larry of this problem statement?

10 (No response.)

11 CHAIRMAN BRANCH: Okay. Thank
12 you, Larry.

13 Debra?

14 MEMBER SONDERMAN: Thank you.

15 I have a couple of observations on
16 the topic of obstacles that you asked us
17 about. One is that it appears that the price
18 reduction clause is interpreted differently
19 within different GSA entities.

20 And as a customer agency, that is
21 a source of concern to me because that means
22 that my own contracting officers who are

1 trying to understand how the pricing -- you
2 know, what they need to do is based not on
3 consistent application of the same language.

4 So I think that goes back to the
5 comment earlier or the problem earlier that
6 Judith stated that clearly the language needs
7 to be better tailored to meet the different
8 industries or the different categories of
9 products and services that we are trying to
10 meet.

11 The second area that I observe,
12 there is clearly too much burden on industry
13 to disclose. And I am very concerned that
14 that is creating a disincentive for companies
15 to participate in government contracting. It
16 is really important for us to figure out how
17 to keep competition in our marketplace.

18 And I guess I am reflecting back
19 on Mr. Yukins' presentation about us resulting
20 in an oligarchy and Mr. Fuller commenting that
21 a small number of companies figure out how to
22 do this disclosure correctly or how to set up

1 their pricing right. That doesn't seem to be
2 a good thing to me.

3 And then there's just a general
4 concern that I don't know that these entities,
5 these things that we are creating in the
6 schedules are agile enough for us to be able
7 to meet the dynamic challenges that we are
8 facing in the kinds of problems that we're
9 called on to solve in the federal government.

10 CHAIRMAN BRANCH: Questions for
11 Debra?

12 (No response.)

13 CHAIRMAN BRANCH: No? Thank you.
14 Tom?

15 MEMBER ESSIG: I have three
16 issues. The first one has already been
17 addressed, but I would like to amplify it a
18 little bit. And I did mention it this
19 morning.

20 It concerns the statement in FAR
21 8.404(d) that ordering activities are not
22 required to make a separate determination of

1 fair and reasonable pricing. I find that
2 language inconsistent with reality, and I
3 think it really needs to be modified.

4 Now, a related aspect of that is
5 because we have significant involvement
6 required on the part of the ordering activity
7 before we can actually determine the pricing
8 is fair and reasonable and award a contract or
9 an order, we really have to take a step back
10 and ask ourselves -- I don't think this has
11 been tested -- ask ourselves whether or not
12 the schedules as they are written today; in
13 particular, the services schedules, provide
14 sufficient benefit for the cost.

15 I have asked that question both of
16 DHS and DOD on a number of occasions. I have
17 yet to get a satisfactory answer. I think
18 it's something we need to address.

19 The third issue is more specific,
20 has to do with some guidance on commercial
21 item description. We occasionally get some
22 questions as to whether or not schedule buyers

1 are for commercial items, so should we be
2 incorporating part 12 language or 4 language.

3 That is particularly problematic
4 in areas of time and materials contracts
5 because the clauses for commercial items are
6 significantly different than the T&M clause
7 for noncommercial items under part 15. It's
8 also relevant in the area of cost-type
9 contracts since they are generally not used
10 for commercial item purchases.

11 CHAIRMAN BRANCH: Questions for
12 Tom?

13 MEMBER SCOTT: Could he repeat his
14 number two?

15 MEMBER ESSIG: Excuse me?

16 MEMBER SCOTT: Could you repeat
17 number two?

18 MEMBER ESSIG: The question
19 largely is, given the significant ordering
20 activity effort required to place the orders,
21 do the schedules themselves provide sufficient
22 value? Do they pass the cost-benefit test?

1 CHAIRMAN BRANCH: Okay. Other
2 questions for Tom?

3 The plus?

4 MEMBER THOMPSON: I actually
5 approach this a little bit differently. You
6 had mentioned looking at a plan of attack and
7 some of the constraints and the approaches.
8 And that's basically how I looked at this.

9 In terms of plan of attack, I had
10 as my first bullet something that we have
11 really been steeped in the last two sessions,
12 which is thoroughly understanding the multiple
13 award pricing issues and the different
14 permutations that we have seen in the clauses.
15 I think that is very important. I think it is
16 also good.

17 We need to look at the needs and
18 concerns of each of the stakeholders, the
19 vendors in terms of needing clarity from us in
20 terms of what we're asking them, the MAS
21 contracting officers needing to have their
22 concerns for having the specific detailed

1 information provided to them, the ordering
2 activity. I agreed with Larry in terms of
3 training for some of the ordering activities
4 to know what is expected of them in this
5 process. It's not just the MAS contracting
6 officer.

7 I also think -- we had touched on
8 this before -- looking at services versus
9 products. I think we have really seen a real
10 delineation there in terms of how services and
11 products are handled or should be handled.
12 Dealers and resellers I think are very
13 important issues that probably need to be
14 addressed as well.

15 One thing that I think would be
16 rather interesting is to obtain some data just
17 kind of comparing the price competitiveness of
18 MAS products and services. Perhaps we could
19 do some comparison with other government
20 contract vehicles. I'm thinking of soup, in
21 particular. There might be others. But I
22 think that would be kind of an interesting way

1 to look at this.

2 In terms of constraints and
3 approaches, we have all heard, of course, of
4 our limited statutory authority. And I think
5 it is really important to remember that it
6 says contracts and orders must result in the
7 lowest overall cost alternative, not just
8 orders, the contracts do as well. And I think
9 we need to keep that in mind when we are
10 reviewing potential options.

11 The other thing I wanted to
12 mention, too, is also, you know, the
13 government should also try to avoid
14 restrictive, overly restrictive, provisions.
15 I think that is sort of a balancing there.
16 And I think both of those two provisions
17 should sort of help when we're looking at
18 these.

19 CHAIRMAN BRANCH: Questions for
20 Thedlus? Yes, Judith?

21 MEMBER NELSON: Teddy, when you
22 say you are looking potentially to get some

1 data comparing the pricing on one contract
2 versus another, are you looking at data that
3 was negotiated? Let's use schedule versus
4 SEWP, so IT to IT.

5 Are you looking at data that was
6 negotiated at the contract level or at the
7 task order level?

8 MEMBER THOMPSON: At the contract
9 level.

10 MEMBER NELSON: Okay. So in that
11 case, it's almost like a non because SEWP
12 benchmarks off the GSA schedule price. So we
13 would have to look for another vehicle.

14 MEMBER THOMPSON: All right.

15 MEMBER NELSON: And, actually,
16 many of the MACs do and GWACs do.

17 MEMBER THOMPSON: All right.

18 MEMBER NELSON: But we will look
19 for another one.

20 MEMBER THOMPSON: Okay.

21 CHAIRMAN BRANCH: Glenn?

22 MEMBER PERRY: I think we're

1 starting to duplicate some of these now. I am
2 going to hop on the bandwagon that I think we
3 definitely have to deal with the issues of
4 separating products from services with some
5 distinction, rather than the blend that we
6 have now in front of us.

7 I think a problem more is a little
8 different way of saying what a couple other
9 people have said. I guess as representing a
10 customer agency, I believe based on what I
11 have heard this morning, for example, about
12 what is going on in GSA with the schedules, I
13 really think we need to clarify what are we as
14 customers to GSA.

15 What can we believe is the
16 credible activity around providing pricing on
17 the schedule and be clear about what is left
18 to be done at the agency if they choose to
19 partner with GSA's agreements using their
20 agreements that they have in place? Because
21 I heard a lot of things that we should be
22 doing as part of what I think people think GSA

1 is doing, but it's clear it's not being done
2 across the board.

3 And I know at the agency level,
4 those that are out there in the field who are
5 using the schedules have an expectation. They
6 have an expectation that all those things are
7 being done.

8 And if they're not, I think it's
9 up to us to be clear about what that is so
10 that they can do the right thing by their
11 agencies and also that GSA and we can agree
12 what GSA can responsibly or whoever the
13 schedule holder is is responsible for doing as
14 getting them to a certain part, realizing that
15 it may still end up that you're not getting
16 there because the clause that we're focused on
17 a lot people view as whether it's their right
18 or not in the way they look at it, but they
19 are looking at it as an insurance that there
20 is some level of expectation that I am getting
21 aside from Dave's -- that I am getting a
22 pretty good starting point at least, that then

1 if I am over the order limit, for example,
2 sure, I can take it to another level.

3 But on a lot of things we do, I
4 don't have time to do that. And I am highly
5 dependent on that. And I am going to make it
6 at whatever I think someone else has already
7 done for me.

8 And I don't believe there is a
9 confidence level. It would not be a
10 confidence level at the front line if they
11 have heard some of the things we have heard in
12 the last two sessions about what is really
13 going on.

14 It is a problem we need to deal
15 with here. And then in the process, let's
16 figure out is it that right expectation for
17 GSA or not. And then we can set expectations
18 at the agency level as to what they need to do
19 because at the end of the day, we are charged
20 with the funds that we -- our money, making
21 sure that we have gotten the best deal for the
22 taxpayer because at the end of the day, we are

1 accountable for that.

2 And if we're going to depend on
3 another agency to help us do that, we've got
4 to be in sync. We have to be able to stand up
5 and say, "Yes. We built on that, and we did
6 something a little better. Thank you, GSA."
7 And everybody won in this situation, and that
8 include industry, too, which is one of my
9 objectives. It is important for them.

10 A third area, which hasn't really
11 come up so far in comments from industry, is
12 that in the services area also, there are so
13 many different schedules with so many
14 different labor categories I know there is
15 significant overlap because the same type of
16 -- to the extent we can say commodity service
17 on those different schedules.

18 And all of us know that there is
19 no consistent between how people are doing
20 that. And part of that is what we do to
21 industry, industry reacting to us.

22 But I think it also leads to

1 problems with this clause because if they're
2 trying to do -- let's use the system engineer
3 example. If they're using a system engineer
4 on this schedule and then they've got another
5 system engineer on another schedule because
6 they need that to provide the integrated
7 services, a turnkey service, then they're
8 having to keep track of, you know, well, I did
9 what I had to do for this one, but then I
10 didn't check with this one. And I had to do
11 that. And I don't believe we're checking
12 between them, anyway, between all of those
13 anyway.

14 So I think there are things,
15 again, we do through the proliferation of the
16 schedules and that what we're doing in each of
17 those places, not consistently, that creates
18 some real issues from the industry side and
19 certain creates issues for the front line.
20 Those are my thinkings.

21 CHAIRMAN BRANCH: Questions for
22 Glenn?

1 (No response.)

2 CHAIRMAN BRANCH: Okay. Thank
3 you. Lesa?

4 MEMBER SCOTT: I have one specific
5 problem with the price reduction clause. And
6 that is that I feel that it is reactive versus
7 proactive.

8 Another question I have is, do the
9 schedules present reflect true -- and I put
10 the word "true" in quotations -- commercial
11 practices?

12 And my third is a fairly radical
13 thought. Should we allow competition at the
14 task order level to be the place where the
15 prices get set, as opposed to trying to set
16 prices at the contract level, as we do
17 presently?

18 One of the focuses that I know
19 from my contracting officers and my auditors
20 is that the target of the MFC is for us to
21 leverage the entire government and try to get
22 the best price, particularly for those prices

1 between quantity one and the max order, where
2 we are helping the small agencies that aren't
3 going to be placing orders above the maximum
4 level. And that is a target area that the
5 price reduction may not even hit. It's a
6 concern that I have.

7 CHAIRMAN BRANCH: Questions for
8 Lesa?

9 (No response.)

10 CHAIRMAN BRANCH: Thank you.
11 Tom?

12 MEMBER SHARPE: Thanks, Elliott.

13 I have four elements of what I
14 thought was a problem statement. I will
15 mention them so Pat can get them and then talk
16 to them briefly.

17 The first, if I understood our
18 charter, is, how do we know that the schedule
19 prices are fair and reasonable? And I think
20 we have to discipline our discussion. I hear
21 fair and reasonable, and then I hear best
22 price. They're markedly different.

1 The second, I'm concerned we may
2 have structural issues we're going to have to
3 better understand. I read the literature on
4 the economics. Do we understand the economics
5 and what is happening with the price reduction
6 clause and what it does to the actual prices
7 we pay?

8 The third -- and this is evolving
9 in my mind -- what is the value of the
10 schedule, particularly for services? And I
11 agree we're going to have to discipline this
12 discussion and separate products from
13 services.

14 But I'm just as I sit here the
15 second session not necessarily sure that the
16 schedule for services is doing good, as
17 opposed to maybe just creating a difficulty.

18 And the fourth I really haven't
19 heard too much or a little bit from David. Is
20 there not an opportunity here for some
21 breakthrough thinking and benchmarking and
22 best practice, the idea of a rate card for

1 services and defining services?

2 I would point out the Chief
3 Acquisition Officer Council through the
4 strategic sourcing working group hired a
5 consultant to go ahead and do that analysis
6 and make a case for change.

7 So, you know, as I go through
8 those four points, it strikes me the big
9 underpinning to note is if prices are fair and
10 reasonable, not the best price, is this price
11 reduction clause. It strikes me as pretty
12 complex.

13 I haven't seen any data so far,
14 you know, number of contracts versus the
15 number of price reductions we have taken. As
16 opposed to renegotiations annually, I think
17 they are different, different aspects.

18 And even beyond that, where is the
19 analysis that we know how the pricing
20 compares, period? The price reduction clause
21 strikes me as one tool. And I think it is
22 overly complex and overly relied on.

1 And then on the structural issues,
2 beyond the economics, I am not sure what
3 contracting officer behavior we have driven.
4 I picked up on Tom's comment. I think COs do
5 rely on this. And it may be leading us in a
6 direction we didn't mean for those schedule
7 prices to lead us and may have contributed to
8 the erosion of the contracting officer and
9 contract specialist skills over time.

10 And I think I made my points
11 around the opportunity. I think, particularly
12 on services, there is a better way to do this.

13 CHAIRMAN BRANCH: Questions for
14 Tom?

15 MS. BROOKS: Yes. I would like
16 him to clarify, again, what was the structural
17 issue?

18 MEMBER SHARPE: Well, to me, the
19 structural issues were maybe two, really. Do
20 we really understand the economics? Have we
21 inadvertently with this price reduction clause
22 actually raised the overall prices we paid?

1 I mean, I read the literature. And I don't
2 personally fully understand it, but I think it
3 needs to be looked at.

4 And the second is what behavior or
5 what reliance have we created them on the part
6 of the contracting officers or contract
7 specialists who rely on these prices and not
8 do the work maybe historically they have done?
9 And, as a result, we're not seeing the prices
10 we like to see?

11 CHAIRMAN BRANCH: Alan?

12 MEMBER CHVOTKIN: Tom, a question.
13 You mentioned the rate card for services and
14 some actions that the CAO Council took. Can
15 you describe that just a little bit more and
16 what the likely timing is of that contract
17 response for the response from the contractor?

18 MEMBER SHARPE: The CAOC, as folks
19 may or may not know, has a number of working
20 groups. There's one that was stood up over a
21 year ago to kind of lead government thinking
22 and activity around strategic sourcing.

1 One of the ideas, hypotheses was
2 there would be value, not just price but also
3 process and value in the broadest sense around
4 standard IT skill descriptions. So we hired
5 a vendor to help us kind of flush out that
6 hypothesis and see if there was a basis for a
7 case for change.

8 And that's where the work stands
9 right now. We've got that basis that hasn't
10 gone beyond that.

11 CHAIRMAN BRANCH: Okay. Other
12 questions for Tom? Yes, Jacqueline?

13 MEMBER JONES: I just have a
14 comment, Tom. In our offices, one of the
15 practices that has been recognized as a best
16 practice is that we keep a database of
17 contractors' labor categories, their
18 functional descriptions, their education and
19 experience, and the rates for those labor
20 categories so that when a contract has been
21 evaluated for an award, the CO can also test
22 the market, and see what the market bears for

1 that particular labor category based on their
2 functional description and expertise.

3 And, even with that, we find that
4 there are challenges in the negotiating
5 process because companies will really dig in
6 their heels and declare that these are my
7 rates, these are our rates, these are the
8 rates that we charged in the marketplace.

9 And so there is even some
10 resistance at that level when you start to
11 negotiate around what the market will bear as
12 well. So it is certainly something to explore
13 and look at, but I am just letting you know
14 there is push-back in that area, too.

15 MEMBER SHARPE: I would consider
16 the push-back validation it should be looked
17 at further.

18 CHAIRMAN BRANCH: Absolutely.

19 MEMBER JONES: That's true.

20 CHAIRMAN BRANCH: David?

21 MEMBER DRABKIN: Thank you.

22 I have two problem statements and

1 432 substatements.

2 (Laughter.)

3 MEMBER DRABKIN: One --

4 (Laughter.)

5 MEMBER DRABKIN: I think the first
6 problem is a broader question than some of you
7 have posed today, but it takes into
8 perspective what you talked about. I think we
9 ought to ask the question, how should we price
10 the schedules in the first place? And I think
11 that is within our mission statement.

12 For instance, I have tried to
13 remind several folks during the course or draw
14 it out for the witnesses that right now the
15 GSA schedule prices are the maximum price or
16 the price to beat. We set the price in the
17 market.

18 But is that what we should be?
19 And does that really serve our customer? Is
20 it really what our customers need today? When
21 we set it up, maybe it was. And maybe
22 something has changed.

1 But it goes to some of the other
2 issues, like should we rely on the contracting
3 officers at the task order level to really do
4 a price competition or should we actually set
5 the price that is going to be used at the task
6 order level?

7 I'm not expressing opinion on that
8 one way or the other. I'm just saying I think
9 we need to ask that as part of how should we
10 price it. I think, secondly, clearly we heard
11 in the last meeting that at one point in time,
12 GSA did negotiate quantity discounts.

13 And although my colleague Judith
14 pointed out that some contracts still do, the
15 majority of them don't and they're not being
16 used. And would that be more beneficial to
17 our contracting officers at the task order
18 levels if we prenegotiated in quantity
19 discounts at a time when we have some leverage
20 when we're awarding the basic contract?

21 Three, should we distinguish
22 between goods and services? I think the

1 obvious answer to that is yes, I think it's a
2 question we should spend some time talking
3 about in the pricing arrangement.

4 And then even within services --
5 and although I know we're not supposed to buy
6 personal services, we all know we are. And
7 how you buy personal versus non-personal
8 services -- and I realize we have to talk
9 about it by creating service category A and
10 service category B because legally we can't
11 buy one of those categories. But still how
12 you price those is very different in the
13 marketplace.

14 And even the 1423 panel had that
15 same discussion with industry where they buy
16 bodies, on one hand, and they buy services, on
17 another, and they treat them completely
18 different. And maybe that needs to be
19 addressed in our pricing analysis.

20 Should we turn to industry to
21 define the service categories so that if we do
22 have service competitions, we can actually

1 have a head-to-head competition on something
2 we're buying between companies, instead of
3 having a dissimilar competition, where we
4 really don't understand the nature of the
5 dissimilarity of the service categories being
6 offered to us, which makes the pricing that
7 much harder, as opposed to easier, which is
8 what the schedules, at least in theory, should
9 be?

10 Fourth, do we need a price
11 reduction clause at all? We heard from one
12 contracting officer today we don't. Oddly
13 enough, she buys professional services all the
14 time -- and then we heard from two others who
15 buy a mix of goods and services who thought we
16 needed it -- or should we substitute for the
17 price reduction clause exposed head-to-head
18 competitions at the task order level so that
19 you really only understand what is going on in
20 pricing the marketplace?

21 And, then, finally, I think we
22 need to look at whether or not we need more

1 internal -- and by that I mean non-IG -- audit
2 capacity for price audits so that we can
3 support the task order contracting officers
4 when they want to know what is going on in
5 pricing in a particular market when they come
6 to that market with an order which merits that
7 kind of review.

8 The second point I have is, how
9 can we provide greater transparency into the
10 schedules pricing? It occurred to me that
11 when Chris Yukins talked to us last meeting,
12 he made a very good point. And I think we
13 mentioned it again today at least once.

14 We have amongst ourselves
15 incredible data on pricing of goods and
16 services in the federal marketplace.

17 Unfortunately, we can't use any of it because
18 it's not available to us. It's stuck on paper
19 in somebody's file somewhere.

20 But if we had that data available
21 to us when we're doing a competition, we can
22 understand whether the price is fair and

1 reasonable if that is the test we want to use
2 or best overall evaluated price or whether it
3 represents the best value. And we clearly
4 don't have that available to us today.

5 And it may not be something the
6 panel itself can solve since it would involve
7 efforts beyond GSA, but it certainly is
8 something we ought to address in the question
9 about transparency.

10 And, finally, can we provide that
11 not only for greater price competition but for
12 better management oversight and then third
13 party oversight of what we do?

14 Managers, all of us who sit here
15 and manage acquisitions, need to know what the
16 pricing is, how it compares to what's been
17 obtained elsewhere when there are deviations,
18 be able to identify those and study them so
19 that we can explain to our third party
20 oversight folks why we paid what we paid for
21 a particular item.

22 Those would be mine. The other

1 430 I will submit later.

2 CHAIRMAN BRANCH: Does anyone have
3 any questions for David's rather comprehensive
4 analysis of the problem? Larry?

5 MEMBER ALLEN: I don't necessarily
6 have a question, but I do have a comment. I
7 think that David's point about GSA being the
8 price off of which everybody beats and the max
9 price people pay, my comment -- and it is just
10 my own -- is that it is worth having that
11 discussion.

12 I don't have a preconceived notion
13 about where it goes out, but I do think that
14 if we have that discussion, we need to
15 understand that at the end of that, it may
16 come to a point where GSA has to undo a
17 decades worth of customer education on seeking
18 spot discounts because what you don't want to
19 do is create an unintended problem where
20 you've got perfectly happy federal customers
21 today who say, "Hey, I beat the schedule price
22 by 15 percent."

1 If you have a certain outcome
2 where the price you have on the contract level
3 is a little bit lower, then you likely will
4 not have customers who can say that anymore.

5 Absent some sort of macro-level
6 education, you will then have customers come
7 back and say, "Well, I can't beat the schedule
8 price by 15 percent anymore. The schedule is
9 a terrible program." It's just a question of
10 managing the expectations.

11 MEMBER DRABKIN: And, Larry, lest
12 you walk away thinking I said change it, I
13 didn't. I said we should discuss it --

14 MEMBER ALLEN: Right, right.

15 MEMBER DRABKIN: -- because what I
16 hear from some of my colleagues here at the
17 table is they are not happy with the price to
18 beat.

19 MEMBER ALLEN: Right.

20 MEMBER DRABKIN: They want the
21 best price when their people use it. They
22 don't see the utility. I think in our

1 discussion, I personally think there is a good
2 thing to having someone responsible for
3 establishing a benchmark price to measure your
4 pricing against.

5 But if our customers don't want
6 that, if they want something else, we need to
7 have this discussion and understand it and
8 decide whether we can do something about it.

9 CHAIRMAN BRANCH: Yes. And I
10 think that is a fair comment. So that will
11 certainly inform our discussions on this
12 issue.

13 Alan?

14 MEMBER CHVOTKIN: I don't have a
15 problem statement. I have an opportunity
16 statement.

17 (Laughter.)

18 MEMBER CHVOTKIN: And as the last
19 one, I get to say it because I think we ought
20 to start with the premise that the current
21 schedules actually meet the need in the
22 marketplace, but we can do better. There are

1 opportunities to improve it.

2 I think our charter, however, and
3 a lot of the discussion, starting with Judith
4 and getting around to me, focused on pricing.
5 And if we start at pricing, I think we really
6 do miss the opportunity to look more
7 holistically at the schedules programs.

8 There are 36 of them, cover a wide
9 variety of goods and services. They meet a
10 variety of different needs. And I think we
11 ought to look at not only the pricing element
12 but the broader questions around the processes
13 and structure in use, just like our charter
14 recommends.

15 I think Ms. Stephenson really
16 raised the two right questions. How do we
17 assure fair and reasonable pricing at the
18 formation level? And then how do we assure
19 that sort of transparency and competition at
20 the ordering level? And if we think about it
21 in those two phases, pricing will be an
22 important element but not the only element in

1 that discussion.

2 And I thought we need to raise the
3 right set of questions in making sure that we
4 think about the different stakeholders, the
5 GSA as the contract holder, federal agencies
6 and others as the ordering activities, and the
7 contractor as the offerors. If we align them
8 that way, there will be some real
9 opportunities to make some substantial
10 improvements in the schedules today.

11 I've got notes on probably 300
12 other suggestions of what e-buy does, where we
13 can make some improvements. I think there
14 will come a time for those later.

15 CHAIRMAN BRANCH: All right.
16 Thank you.

17 Questions of Alan?

18 (No response.)

19 CHAIRMAN BRANCH: Okay. I guess I
20 will wrap this up. Add this is a good thing
21 about going last because everybody has said
22 everything that needs to be said. So I will

1 repeat some of it.

2 I certainly think we have got to
3 look at changing the application of a single
4 provision to what are clearly three sectors.
5 And I would observe to my colleague Mr.
6 Drabkin, of course, we in DOD never ever buy
7 personal services, although from time to time
8 we do buy level of effort, as opposed to
9 solutions or completion.

10 MEMBER DRABKIN: I would never
11 call my customer a liar.

12 (Laughter.)

13 CHAIRMAN BRANCH: Well, that's my
14 story, and I'm sticking to it. But I think it
15 really does -- I think you started out to
16 break up in three pieces. I mean, there were
17 goods. And most of the goods that we buy off
18 schedule to some degree are fungible, you
19 know.

20 So we can use those sorts of
21 algorithms because in the marketplace, if we
22 are not the buyer, there will be another buyer

1 for that good. They're very, very susceptible
2 to quantity breaks and all sorts of things
3 that will allow you to pursue a more
4 deterministic algorithm with that pricing.

5 Services, I believe even level of
6 effort versus solutions or completion services
7 are a different animal, which brings me to my
8 second issue with respect to problem stating.

9 What I have gotten out of our last
10 two meetings is that we as stakeholders -- and
11 that is to say industry; that is to say GSA;
12 that is to say the audit community; that is to
13 say the user agencies -- do not have a common
14 understanding of what constitutes commercial
15 pricing practice.

16 And until you get to at least a
17 working understanding of that -- and it
18 doesn't even have to be a real one. You know,
19 sometimes truth happens to be what we all
20 agree on for purposes of operation.

21 But until you get to that common
22 truth as to what you are dealing with, how can

1 you possibly design a mechanism to meet either
2 the goal of fair and reasonable price or most
3 favored customer price or anything else?

4 So I think that is a significant
5 barrier that stands in our way. What is our
6 common baseline with respect to what
7 constitutes a commercial pricing practice?

8 The third one is just this whole
9 idea of fair and reasonable versus most
10 favored customer. And I think we have to
11 manage that expectation because I, for one, do
12 not believe that fair and reasonable is one of
13 those absolute definitions. It is relative to
14 the transaction.

15 You know, if I am five miles from
16 home on a sunny day and the bus line is not
17 working, \$50 for a cab ride may not be fair
18 and reasonable, but if it's pouring rain
19 outside, \$50 may look like a bargain.

20 So if you are on the industry
21 side, I have folks that are going to go
22 straight to the bottom line because they are

1 sitting unoccupied and I can put them on an
2 engagement. I might be induced to discount
3 that rate to simply cover my variable costs,
4 make some contribution margin.

5 If I am an agency and I am
6 pursuing an enterprise-type solution to either
7 a goods or a services problem, I have a
8 different environment. And I think we need to
9 also establish a common expectation as to the
10 goal of schedule pricing at schedule contract
11 formation.

12 Is it fair and reasonable? Is it
13 the ceiling? Is it supposed to be the most
14 favored customer pricing? So those are my
15 three.

16 What I would like to do now is
17 kind of start a discussion. I think we have
18 a very, very exhaustive and rich list. I
19 think some of these tie together. You know,
20 we certainly heard some of that.

21 But I would like to hear the panel
22 talk about what I would call the 80 percent

1 solution. You know, if we were to pick 3
2 barriers up there to attack or we were to pick
3 3 opportunities to pursue, 3 questions to
4 answer, do we think any 3 or, say, 4 questions
5 would really result in us getting 80 percent
6 to that desired outcome that we talked about
7 last meeting?

8 Because otherwise we just have a
9 very long laundry list, and we will be here
10 for a very long time. And I, for one, do not
11 tend to serve out my entire two years. I
12 know. I know.

13 MEMBER SCOTT: This is when I wish
14 we had done the sticky method, where we could
15 go rearrange them.

16 CHAIRMAN BRANCH: Yes. Yes, I
17 agree, I guess kind of logistically. I will
18 start this off. You know, I think clearly
19 from the discussion, in my opinion, clearly
20 from our discussion, we have to look at how we
21 structure provisions for goods, level of
22 effort, and solutions. I think that is a key

1 obstacle with that. So I will just put that.
2 That's my vote for my number one.

3 Other thoughts? You know, what
4 are the real issues we have to really get at
5 to advance this? Judith?

6 MEMBER NELSON: I know it was on
7 my list. But I would still go that we need to
8 clarify and define the commercial sales
9 practices and the disclosures around what
10 offerors and, therefore, contractors need to
11 supply to GSA in order to negotiate pricing.

12 And I think that, taking that
13 further, it gets around the question that you
14 have raised and several others have in
15 different phrases what is the negotiation goal
16 for the schedule.

17 So the first question that perhaps
18 we answer is what is the negotiation goal?
19 And then once we have established what that
20 is, that helps us refine what we are looking
21 for as far as disclosures, how those should be
22 done, both for products and for services.

1 And I think April also talked
2 somewhat about that. And I don't know.
3 Somebody else said, is it on unit price, is it
4 on quantity discount pricing, and the same for
5 services?

6 CHAIRMAN BRANCH: Okay.
7 Jacqueline and then Tom?

8 MEMBER JONES: I have a question
9 for the customers who are here on the panel.
10 What do you expect from GSA schedule pricing?

11 MEMBER ESSIG: Actually, the
12 related question is I think we have jumped in
13 pricing before we have identified what
14 basically we would like to see the schedules
15 do in the first place. And I think until you
16 understand what the schedules are supposed to
17 do, pricing is premature.

18 MEMBER JONES: But from an agency
19 standpoint, what do you expect from us at GSA?

20 MEMBER ESSIG: I believe the
21 ability to have GSA schedule set out to firm
22 price, every potential requirement we have is

1 solving world hunger. It's way beyond
2 anything we are going to be capable of doing.

3 And so what I am looking at, I
4 have asked, actually, a number of program
5 managers over the years, why are you going to
6 GSA schedules when I can do it in-house
7 cheaper?

8 And I have come back with two
9 common answers. One, because they're a heck
10 of a lot faster, and I can't wait eight months
11 to get my contract in place. Two, -- and I
12 actually heard this one -- I can get the
13 source I want. Okay?

14 Now, from the perspective of the
15 competition advocate and promoting
16 competition, that is not an answer I can
17 support. The first one is an answer I have to
18 support.

19 CHAIRMAN BRANCH: Well, let me
20 talk to just kind of build on what Tom has
21 said because I think this goes to some of the
22 issues here. And this is an agency issue.

1 It's not a GSA issue. The only reason we can
2 get the speed out of that is because there is
3 a presumption that if we compete within the
4 schedule, we will get fair and reasonable
5 pricing off the schedule.

6 So I will get a program manager
7 who may be looking for level of effort and who
8 will look at descriptions by, say, three
9 different MOBIS schedule offerors and say,
10 "Yes, those are the labor categories I want."

11 And the real advantage to us is
12 that I can line up those three labor
13 categories without making phone calls, at
14 least on some of this business. And I can say
15 yes, I have run a competition amongst the
16 schedule guys. And my analysis shows that
17 company C is the winner and I can execute.

18 And I think this is kind of
19 fundamentally part of the unease that has
20 caused this panel to be constituted because if
21 you don't really understand the pricing
22 mechanism that is in the contract to begin

1 with, my ability to say that that price is
2 fair and reasonable is somewhat compromised.

3 And it balances against the idea,
4 but if you are going to put the burden of fair
5 and reasonableness on me to go do more due
6 diligence below those rates, I lose your chief
7 advantage, which is speed. So we are kind of
8 looking to kind of balance those two as agency
9 customers.

10 The second observation I will make
11 is what I want from you depends. You know, if
12 I am sitting in my activity, which spends a
13 significant amount of the Navy's total
14 obligational authority and probably has some
15 of the more sophisticated contract specialists
16 that we employ, my need for that schedule is
17 going to be very, very different than if I am
18 sitting down on the waterfront in Norfolk or
19 I don't have as sophisticated a workforce
20 where I do not have that kind of buying power
21 and I have a different set of needs.

22 So our expectations are that you

1 will get us in, if you will, our worst
2 possible competitive situation the best price
3 we can obtain, that there's a framework to do
4 that. I mean, that's a Navy point of view.

5 Yes, April?

6 MEMBER STEPHENSON: Elliott, I see
7 that as we go down this and listen to what
8 everyone has to say, I think we have all come
9 to a conclusion that good services solutions
10 if I am saying solutions properly need to be
11 addressed in some way.

12 It seems almost as though our
13 first problem statement may be what are the
14 expectations and purpose of the schedule. And
15 that subset would be goods, services,
16 solutions because it may be different.

17 Second, what is a fair and
18 reasonable price, subset goods, services,
19 solutions? And I think once you tackled those
20 first two because I think you have to tackle
21 the first one, which is the expectation and
22 purpose, in order to get the second one, what

1 is going to be the fair and reasonable price?

2 There may even be a third, but I
3 think based on what everybody is saying, those
4 two umbrellas and then with the subset of
5 goods, services, solutions may cover 80
6 percent of what we have talked about today.

7 CHAIRMAN BRANCH: Okay. Thoughts
8 on that? Glenn?

9 MEMBER PERRY: I don't know if
10 it's a -- I'm not trying to complicate what
11 you just posed. It sounded good. I don't
12 know if it's before or after, but whether or
13 not we question, for example, what's on the
14 schedules or what the schedules are for, at
15 minimum, I would like to see a world where it
16 was real clear who was responsible for what in
17 getting to the price that the agency-level CO
18 issues the order at, make sure we're not
19 overlapping, be real clear, and make sure the
20 information we're asking from industry is not
21 duplicated, it's not overburdening, that it's
22 necessary to fulfill the role that we clarify,

1 either at the schedule holder, contract holder
2 location, or at the agency level so that
3 industry understands how we're using that and
4 getting to the end game.

5 CHAIRMAN BRANCH: Yes. April?

6 MEMBER STEPHENSON: Glenn, I think
7 you said it great, in a great way. And I
8 think that that was the third one, which maybe
9 I was trying to figure out where that may be.

10 I think perhaps what it may be is
11 expectations, purpose; number two, who has got
12 what responsibilities; number three, where do
13 the fair and reasonable prices fall out. And
14 it may be one, two, three that we have to
15 review in order to get at how best do we use
16 these schedules. So I agree.

17 CHAIRMAN BRANCH: Okay. Other
18 thoughts on this? Yes, Larry?

19 MEMBER ALLEN: I think that we are
20 very, very close on some of this. And I think
21 that the only thing that I would add to it is
22 some element of making sure that whatever

1 prices are arrived at, whatever the
2 negotiation goal is, that ensuring that level
3 of comfort with those prices moving forward
4 over the length of the contract, whatever it
5 may be, is implicit probably in this, but I
6 want to make sure we don't lose sight of it.

7 I think making sure that the
8 customers understand what the schedules are
9 there for, how the stuff is put in place, who
10 is responsible for doing what, if we can keep
11 it simple, then we have come a long way.

12 CHAIRMAN BRANCH: Very good.
13 Judith and David?

14 MEMBER NELSON: I'm looking over
15 the objective scope of our activities. And
16 just a caution that we keep the problem
17 statement within our objectives.

18 I don't know exactly how we
19 ultimately will phrase those three. And I
20 think that it is critical that we ensure that,
21 however we go about that first statement, that
22 we ensure that GSA is meeting the needs of our

1 customer agencies.

2 But the question as to whether or
3 not the GSA schedules should continue to
4 provide services is not within the scope of
5 what I am reading here.

6 How we interpret the -- what
7 advice we can give to the administrator, how
8 those regulations should be interpreted, how
9 they can be improved, what should exist, but
10 I think we need to make sure that how we
11 phrase the problem statement and what we are
12 going after need to stay within the scope of
13 the mission.

14 MEMBER SONDERMAN: Can you clarify
15 how you -- if you look in the second sentence
16 of objectives and scope of activities, it
17 says, "The MAS panel will review the MAS
18 policy statement in implementing regulations,
19 solicitations, and contract provisions in
20 internal GSA processes regarding the
21 structure, use, and pricing of the GSA
22 multiple award schedules program."

1 So I guess when I see a word like
2 "use," I don't see how looking at the use of
3 the schedules is outside of our scope.

4 MEMBER DRABKIN: Debra, if I might
5 -- and, Judith, with all due respect, I
6 disagree completely with your statement. I
7 think the way you phrased these are
8 satisfactory in terms of being within the
9 scope. And if that is what the group wants to
10 look at, I am sure the administrator will be
11 very pleased.

12 But I do want to take something
13 Tom said because it's a pet peeve of mine,
14 Tom. It's not that you said it but it's that
15 you said that you could do it cheaper. And,
16 you know, I hear that about the schedules from
17 a lot of people. And I think when we talk
18 about pricing and the cost to spend, that
19 people who tell me they can do it cheaper, I
20 always want to do what I'm sure April would
21 do, which is peel back what you mean by
22 cheaper.

1 MEMBER ESSIG: Can I clarify
2 something? I may have said something
3 incorrectly or misinterpreted. When people
4 ask me, for example, does DHS plan to continue
5 to use schedules or are we going away from
6 them, what I have said is that the answer to
7 that question has to be a data-driven answer.

8 MEMBER DRABKIN: I agree.

9 MEMBER ESSIG: Do the analysis.
10 Tell me which approach makes the most sense
11 for the Department. And that's the way we go.

12 MEMBER DRABKIN: Right.

13 MEMBER ESSIG: So I said we can do
14 it better at times but other times no.

15 MEMBER DRABKIN: Cheaper.
16 Cheaper. Well, if you let me, I'll help you
17 because I have the same issue. Part of our
18 job is responding to this regularly. And I
19 really think it's important when we talk about
20 cost to spend that we talk about cost to
21 spend. And if that is going to be part of our
22 analysis, then we need to look at the fully

1 burdened cost, which GSA recognizes and
2 accounts for.

3 So the .75 percent, the contract
4 fee -- I'm not talking about assisted
5 acquisitions, just the contract fee. When you
6 place a direct order against the schedule, you
7 pay .75. When you place a direct order
8 against the GWAC, you pay .75. And that is
9 fully burdened.

10 When I say, "fully burdened," it
11 is more fully burdened than any other agency
12 in government because it pays for the entire
13 operations of GSA. It pays for our lawyers.
14 It pays for our CIO. It pays our rent. It
15 pays our electricity. It pays for everything.
16 It's not just the calculation of what it costs
17 for a contracting office to award a contract.

18 And I think it's fair to look at
19 what it costs you to use it. Now, if you were
20 to say to me, "I'm going to award a \$100
21 million task order against the schedules," I
22 would encourage you to do a price analysis

1 because when you've multiplied .75 times \$100
2 million, that's a lot of money. And you may
3 well be able to do it for the same or lower
4 price in terms of cost to spend.

5 Then you've got to ask the other
6 questions. You know, what's the value? Do
7 you really want to award another contract
8 yourself? Can you get the same level of
9 competition? Can you do it as quickly? And
10 those are legitimate questions.

11 When we talk about cost to spend,
12 I'm not picking on you, but you raised the
13 issue of the cost of the schedule. I just
14 want to make sure that we're all going to talk
15 about it if we talk about the price of the
16 schedules to you, that we talk about the price
17 in an apples to apples comparison because I
18 don't think many agencies -- DOE might come
19 close as being as fully burdened as GSA. I
20 don't think many other agencies can even tell
21 you what it really costs them to award a
22 contract.

1 That's just my pet peeve. I'm off
2 my soap box. Please don't be offended. Thank
3 you very much. We love you. Bring your
4 business.

5 MEMBER ESSIG: We are in
6 agreement.

7 CHAIRMAN BRANCH: Are there other
8 comments, thoughts as to how we might -- I
9 think April has given us an excellent
10 framework with some modifications from Glenn.

11 So if we look at this and we parse
12 this into goods, services -- and I'm using
13 services as level of effort, as opposed to
14 solutions -- and we start by looking at the
15 idea of -- although I would broaden this, I
16 think we need to take a look at what the
17 stakeholders expect, not just the user
18 agencies, because we can ask for apple pie and
19 ice cream at every meal, but if there is no
20 one from industry to bring it to us, it's kind
21 of a hollow wish.

22 So I think it's important to

1 perhaps try to gather stakeholder expectations
2 with respect to the sale of goods, services,
3 and solutions to try to figure out, again,
4 what purposes we're trying to accomplish with
5 respect to goods, services, and solutions.

6 And I think, as Glenn very, very
7 trenchantly observed, we need to understand
8 what the roles and responsibilities at both
9 the contract formation level and the task
10 order formation level are vis-a-vis agencies,
11 offerors, and GSA and if we perhaps do those
12 three things, that that will kind of lead us.
13 It will build us a road to figure out what is
14 fair and reasonable to all parties because at
15 the end of the day, that is what it is about.

16 So do we have kind of a consensus
17 around that approach to attacking the problem?
18 Is everyone comfortable with that?

19 (No response.)

20 CHAIRMAN BRANCH: Okay. So I
21 would like to kind of hear, then, how we might
22 attack that work. Do we want to break down

1 into subcommittees, you know, understanding
2 that Pat would still probably have to announce
3 meetings because those would still be public
4 meetings, and come back to the larger body?
5 Is this stuff that we want to stay together as
6 a corporate body and pursue together, much
7 like we have the last two meetings?

8 Does anybody have any passion
9 around an approach to tackling this problem?
10 Sure?

11 MEMBER STEPHENSON: Elliott, to
12 clarify, are we looking -- I always look at
13 the end game, the end game when this group is
14 done and we are issuing our report to the
15 administrator.

16 Are we going to have not only
17 recommendations but also proposed solutions or
18 are we talking about here are some things for
19 your consideration and leaving it at that
20 because I think that may help form what we are
21 trying to do here?

22 I just needed a clarification on

1 what we are looking for for the end game.

2 CHAIRMAN BRANCH: I don't know
3 that the charter really calls that out in
4 detail. And I am not willing as the Chair of
5 the panel to make that call. I think that is
6 a good point for discussion.

7 So I will give you what is simply
8 my opinion and then open the floor for
9 discussion. You know, I think they fall into
10 three categories. One, there are probably
11 some observations we can make.

12 You know, this is a large and
13 global issue, not that we have a particularly
14 narrow charter, but I think it is very
15 important for us to stay focused on the
16 charter.

17 And to the extent that the
18 administrator may want to follow up on some
19 larger, more global issues, I think it might
20 be useful to the administration if we
21 highlighted those in terms of observations.

22 Where we feel strongly about some

1 issues, such as -- and, again, I think there
2 is a lot of energy around this idea just
3 already. Whatever you do, if you're going to
4 have some kind of a pricing clause, it's got
5 to be tailored to services, goods, and
6 solutions. Then we ought to say that. You
7 know, we very strongly believe that this ought
8 to be the case.

9 If there are some other situations
10 in which there may be a range of possible
11 options and we have no strong feeling about
12 which one should be pursued, then we might
13 want to say, "Here are your range of options.
14 And here is what we believe the pros and cons
15 and possible intended and unintended
16 consequences of pursuing any of those are.

17 So, I mean, that's just kind of my
18 personal opinion. If we broke it up kind of
19 into those three buckets, here are some things
20 that we're just going to tell you, here are
21 some things we really strongly recommend that
22 you need to do and here are some issues where

1 there is a range of options and we believe
2 here is the context for that range, I would be
3 comfortable.

4 MEMBER JONES: I just have a
5 question for clarity. Solutions, what is
6 meant by that?

7 MEMBER ALLEN: I think those are
8 areas where you have products and services
9 that are bundled together to make one turnkey
10 solution.

11 CHAIRMAN BRANCH: Right.

12 MEMBER JONES: But you are talking
13 across schedules, too.

14 CHAIRMAN BRANCH: Well, that's
15 true.

16 MEMBER ALLEN: Yes, absolutely
17 true.

18 MEMBER JONES: And then you get
19 into a scope issue.

20 CHAIRMAN BRANCH: Not only scope
21 issues, but you could drive some pricing
22 clause issues here because what if I am a

1 hardware provider, I partner with a services
2 provider to provide a solution and in the
3 course of doing that inadvertently trip the
4 price adjustment clause in my schedule in what
5 I believe any reasonable person would look at
6 and say that is probably not applicable. The
7 whole context of that pricing exercise is very
8 different.

9 MEMBER JONES: That would fall
10 under teaming arrangements, and that wouldn't
11 necessarily happen if they both have
12 schedules.

13 MEMBER ALLEN: Yes. I wouldn't
14 necessarily worry about that for right now.
15 I think, you know, this could well end up
16 being something under what Elliott just said
17 in terms of a four-year consideration type of
18 thing that would lead GSA where I think it is
19 already going, which is providing solutions
20 across schedule.

21 I know there are a couple of
22 specific initiatives underway on that that cut

1 across the program. That is inevitable anyway

2 --

3 MEMBER JONES: Right.

4 MEMBER ALLEN: -- over the
5 evolution of the commercial marketplace as
6 well as the government marketplace.

7 MEMBER JONES: I guess my point
8 was that I'm not thinking that that is a
9 separate issue. I mean, we have the goods.
10 We have the services. And, of course, I think
11 more of the solutions as being at the agency
12 task order level as it relates to competition
13 and pricing.

14 MEMBER DRABKIN: You would agree
15 that would be at least worth a discussion.

16 MEMBER JONES: Oh, yes.

17 MEMBER DRABKIN: Okay. I think
18 that's --

19 MEMBER JONES: Yes. I just wanted
20 a better definition of it. I wasn't sure.

21 MEMBER DRABKIN: Back to your idea
22 about the report, Elliott, or the outcome, I

1 certainly think taking the approach of a
2 decision paper that DOD trained me on
3 preparing where we identify the issues, have
4 the discussion, develop the recommendations,
5 I think in those three pieces, I think we
6 capture what both April and you both have
7 said. It's a logical way to lay it out.

8 It may be in our discussions we
9 point out that there are some things for which
10 we are not prepared to make a recommendation
11 or we think that it may exceed the scope of
12 our charter and, therefore, we are not going
13 to address it in the recommendations.

14 But it's a fairly logical way.
15 And it's a way in which most of us are used to
16 presenting this stuff. And I think that would
17 serve the purpose.

18 I mean, at the end of the day, for
19 our work to have meant anything, we need to
20 give the administrator something he can act --
21 he or whoever is the administrator at the time
22 can act on.

1 And if you lay it out that way in
2 a logical path, there has also been already
3 some concern about what we are going to do and
4 whether what we do will be supported and not
5 just, you know, be pushed in some direction by
6 a particular group.

7 And so laying it out that way with
8 the issues and the discussion we may even have
9 a section called facts if there are things
10 that we say we want to find that, as a matter
11 of fact, so we lay these out and say, "This is
12 what we find" and then have the discussion for
13 the recommendations, which is, again, very
14 similar to how we present a decision
15 memorandum to any boss.

16 CHAIRMAN BRANCH: Very good.

17 Glenn?

18 MEMBER PERRY: I was going to say
19 to the extent of detailed solution, we could
20 possibly have some recommendations. And then
21 let's say we all agree status quo is
22 wonderful. And if we did say something like

1 that, I think you would be forced to say,
2 "Yes, but you have got to do these three
3 things right now because you have a problem
4 right now, and you need to do that. And this
5 is what you need."

6 CHAIRMAN BRANCH: Yes, April?

7 MEMBER STEPHENSON: You know, you
8 asked about how best to approach this. And I
9 see that, you know, we've got the three areas.
10 We have three meetings coming up: June, July,
11 and August.

12 Perhaps what we should do is take
13 the June meeting to be the purpose and
14 expectations to stakeholders and solicit
15 through the Federal Register both the industry
16 and government stakeholders' purpose, et
17 cetera, people to come in to talk specifically
18 about this and bring data if they have it.
19 And we may be able to say what type of data we
20 might want.

21 The July meeting, at the end of
22 that meeting, we maybe could reach a consensus

1 as to purpose, expectations, the July meeting,
2 hit the roles and responsibilities of the
3 contract at the task order level and at the
4 August meeting, then get into the fair and
5 reasonable prices but tailor our solicitation
6 for the speakers, government and industry,
7 into these three particular items. That way
8 we can keep that meeting focused on that item
9 and handle it as a panel.

10 CHAIRMAN BRANCH: Okay. We have
11 got a suggestion on the table. Thoughts on
12 that?

13 MS. BROOKS: I think it is late
14 for the June 15th meeting because that amounts
15 to submitting it no later than next Friday.
16 Right now I have already submitted it. So we
17 may not have the opportunity to get a revision
18 to get it published in time.

19 MEMBER DRABKIN: You know, Pat, I
20 think the issue in the Federal Register
21 notification is the notification of the
22 meeting. If we follow that a day or two later

1 with here's what we would like for people to
2 bring, the whole purpose is so the public
3 knows when the meeting is.

4 So maybe we can try. We'll have
5 to check with our FACA person to make sure
6 we're in order. But we can certainly try, I
7 think. Don't you?

8 MS. BROOKS: Sure.

9 MEMBER DRABKIN: Yes. I think we
10 can try.

11 MS. BROOKS: But I just wanted to
12 alert them that there is the possibility that
13 you may not.

14 MEMBER DRABKIN: Plus, the Federal
15 Register itself will be closed Monday. And
16 then there will be a backlog on Tuesday. And
17 there's a whole bunch of rules that have to
18 get through because of the administration's
19 June 1st moratorium on proposed rules, so work
20 to do. But we can try.

21 CHAIRMAN BRANCH: Yes.

22 MEMBER STEPHENSON: We could also

1 post this on the GSA Web site that we have,
2 the Multiple Service Advisory Committee Web
3 site, that these are the things that we're
4 looking for. And maybe we can make a greater
5 use of that on a real-time basis.

6 The Federal Register is a good
7 supplement, but there may be other avenues we
8 can do as well.

9 CHAIRMAN BRANCH: Absolutely. Do
10 we violate any boundaries as a Committee if we
11 go back to our constituencies and encourage
12 them to contact you to attend the next
13 meeting, so the trade associations go back to
14 their membership and say, "Hey, this is kind
15 of what we're doing" if we go back to our
16 agencies? Because I, for one, would like to
17 hear from some real contracting officers who
18 are -- I mean, you know, we had great
19 presentations today from the GSA contracting
20 officers.

21 And I really, really appreciate
22 and have a greater understanding of the

1 schedule. I guess I would like to hear from
2 some DOD, DHS, Treasury, Education contracting
3 officers who will tell me "Okay. So this is
4 how we really use them to conduct
5 transactions."

6 So do we violate any rules --

7 MS. BROOKS: No.

8 CHAIRMAN BRANCH: -- if we go back
9 to our communities and say, "Hey, we're
10 looking for people to" --

11 MS. BROOKS: No. Just have them
12 contact me about the scheduling.

13 CHAIRMAN BRANCH: So we might be
14 able to kind of get our data gathering going
15 by our own personal initiatives?

16 MS. BROOKS: Let me capture again
17 what area we're looking for for the 16th.
18 From the contracting officer's perspective and
19 stakeholders?

20 CHAIRMAN BRANCH: No. Any
21 perspective. Any perspective.

22 MS. BROOKS: Okay. Okay.

1 CHAIRMAN BRANCH: I thought the
2 idea was, say, let's attack expectations,
3 stakeholder expectations, on the 16th, purpose
4 in July, and then take kind of a look in July
5 and see where we want to go for the August
6 meeting, thinking that that may be a good
7 discussion of roles and responsibilities or
8 however this plays out.

9 If I didn't hear you right, April,
10 please, I won't be offended if you correct me.

11 MEMBER STEPHENSON: Yes. If I
12 could just restate it just to make sure I
13 understood what I said, too, is the June
14 meeting would look at our first item, which
15 was the purpose of the schedule and the
16 expectation of stakeholders and customers.
17 July meeting would be roles and
18 responsibilities at the contract and task
19 order level. And then the August meeting
20 would be fair and reasonable prices. We would
21 adjust accordingly at the end of each of those
22 meetings.

1 But I think if we stay focused and
2 we try to accomplish something within that
3 meeting and then move on to the next one, this
4 may give us some structure and some beginning
5 and end.

6 MEMBER SHARPE: Just a comment.

7 CHAIRMAN BRANCH: Okay. Yes,
8 Thomas?

9 MEMBER SHARPE: That makes good
10 sense. I wonder if you would want to talk
11 about what we are doing around fair and
12 reasonable before you figure out the roles and
13 responsibilities because part of the roles and
14 responsibilities, who is figuring out if it's
15 fair and reasonable? I just wonder if you
16 would change that order.

17 MEMBER STEPHENSON: You know, I
18 was piggy-backing on a really good comment
19 Glenn made about you really needed to know the
20 roles and responsibilities as to who was --

21 MEMBER SHARPE: But to be --

22 CHAIRMAN BRANCH: Yes. I was just

1 going to say I'm not sure which one comes
2 first.

3 MEMBER SHARPE: But it's to do
4 what, right?

5 CHAIRMAN BRANCH: I kind of think
6 expectations come first because that kind of
7 defines whether the meal is good. And maybe
8 the thing to do is once we kind of get a sense
9 of the community's expectations expressed, we
10 can adjust to see which of those two then
11 comes next because I think if we understand
12 expectations, the next set of questions will
13 kind of logically follow from that.

14 MEMBER SONDERMAN: So does that
15 mean we should for the meeting on the 16th ask
16 stakeholders to specifically identify what
17 their expectations are as far as fair and
18 reasonable most favored customer or other with
19 respect to the meaning of pricing? Do we want
20 to elicit --

21 MEMBER DRABKIN: If I heard what
22 everybody said, I think we also are going to

1 go beyond that.

2 MEMBER SONDERMAN: Well, right.

3 MEMBER DRABKIN: And what do you
4 expect on the schedules?

5 MEMBER SONDERMAN: Yes.

6 MEMBER DRABKIN: Are they
7 structured the right way? Has it got the
8 right mix? Is there too much mix?

9 MEMBER SONDERMAN: Okay.

10 MEMBER DRABKIN: I mean, the whole
11 thing about what do you expect from the
12 schedules generally, pricing would be a subset
13 of that. But I think I heard everybody say
14 they wanted to first figure out, you know,
15 what should the schedules be and then look at
16 how we should price them.

17 MEMBER THOMPSON: Are we going to

18 --

19 CHAIRMAN BRANCH: I think
20 everybody is nodding, for purposes of the
21 transcriber.

22 MEMBER THOMPSON: We are going to

1 be talking about the purpose at the same time
2 as we're talking about the stakeholder
3 expectations, right?

4 MS. BROOKS: Right.

5 MEMBER THOMPSON: Okay. I just
6 wanted to make sure.

7 MEMBER JONES: I would like to
8 add, too, that I think it is important to hear
9 from the customer agencies at this point, not
10 that the contractor community wouldn't have a
11 part in it, but we heard a lot of that as
12 well.

13 But just from a schedule CO
14 standpoint, what the expectations are from the
15 customers is we don't get a lot of that
16 feedback. And we don't get a lot of feedback
17 from them concerning the use, the ease of use,
18 the pricing, how they see our pricing, and
19 just how useful of a program it is to them to
20 accomplish their mission. So I think that it
21 is a great idea.

22 MS. BROOKS: The Federal Register

1 announcement if we can do it, I will define
2 stakeholders. I will try to list all of
3 those, the agencies, the COs, industry. And
4 so that should also drive that we are not just
5 looking at one particular stakeholder that
6 everybody in those categories -- that's what
7 we are looking to add to this.

8 MEMBER DRABKIN: I think since we
9 are looking at stakeholders, too -- and April,
10 of course, is part of our panel, but what we
11 don't have is the IG community or GAO.

12 And while it would have been
13 difficult to get them to be on the panel
14 because of independence issues, I certainly
15 think we ought to at least extend an
16 invitation to them to come and talk about this
17 issue to make sure at least they have the
18 opportunity to tell us what they see from
19 their perspective.

20 And if there was a way that we
21 could touch congressional oversight groups who
22 also -- I mean, the schedules are established

1 by a statute which created GSA. There is some
2 expectation there as well.

3 And we probably if we can -- well,
4 we should at least invite them. And if they
5 can come, they can. If they can't, they
6 won't.

7 PARTICIPANT: I agree.

8 CHAIRMAN BRANCH: I would agree
9 with that. And I also would add that, even
10 though our friend from the VA has departed, I
11 think it is important to get the VA IG
12 perspective. Interesting that I would say
13 that given from industry.

14 But still, knowing what I know
15 about the peculiarities of the VA
16 pharmaceutical pricing, I think it is
17 particularly important to get that perspective
18 while we're having an IG presentation.

19 CHAIRMAN BRANCH: And I think
20 that's certainly something we ought to do. I
21 mean, they are a major stakeholders as one of
22 the holders of your delegated authority to put

1 schedules in place.

2 MEMBER DRABKIN: The only other
3 thing I would suggest is it could wind up
4 being a really long meeting with a lot of
5 people. And so maybe we ought to make sure we
6 let people know that there will be chunks of
7 time.

8 And we're going to try to stick to
9 it because, I mean, if every one of you go
10 back and talk to your constituents, you know,
11 that's 16 people potentially. And that
12 doesn't include the extra people we're talking
13 about inviting.

14 CHAIRMAN BRANCH: So propose a
15 time limit. Submit prepared remarks in
16 advance, no more than five minutes for
17 presentation. And we'll have to discipline
18 ourselves to limit questions?

19 MEMBER DRABKIN: I don't know
20 whether five minutes will be enough time. I
21 mean, I don't know if the IG GAO comes. I
22 think they will have more than five minutes of

1 things to say. And I think we want to hear
2 them. And I think we've got to hear at least
3 from the VA IG, as you have just mentioned.

4 I'm sure the GSA IG will want to
5 speak. The DOD IG may want to come speak,
6 too. I don't know. I don't know whether DHS'
7 or Treasury's or anybody else's. You know,
8 right there that's -- you know, five minutes
9 may be too short.

10 MEMBER SONDERMAN: How about if
11 you have 20 people and give them 15 minutes
12 apiece? That's five hours.

13 CHAIRMAN BRANCH: Then do we want
14 to possibly plan to hold the 2-day meeting, 16
15 and 17? Could people live with that?

16 MEMBER ALLEN: Are you going to
17 buy the drinks?

18 (Laughter.)

19 MEMBER PERRY: Well, I'll buy the
20 first round.

21 MEMBER DRABKIN: I think Debra
22 made the right observation. If we had 16

1 people show up and they each got 15 minutes,
2 we're talking about 5 hours. And five hours
3 is certainly what we have. We have more than
4 five hours planned for the day.

5 If we go a little longer, we go a
6 little longer. I can do two days, but I
7 already looked around the room and saw that
8 people were somewhat uncomfortable with your
9 suggestion.

10 I can do three days. This is my
11 job.

12 MEMBER STEPHENSON: I can go until
13 midnight if you'd like.

14 MS. BROOKS: As of right now, the
15 Federal Register announcement is five minutes.
16 But, again, we have not been holding folks
17 strictly to that time.

18 But I think we have the
19 flexibility, just as we did with the schedules
20 contractors, for people that we specifically
21 invite. Then we can allow the additional
22 time.

1 CHAIRMAN BRANCH: Yes, April?

2 MEMBER STEPHENSON: One other
3 comment. I have nothing against my fellow
4 industry people on the panel. I love you all.
5 That's why I pointed to you, Alan, to make
6 sure that you were listening to exactly what
7 I was going to say.

8 It sounds like a lot of the people
9 we were talking about are government. I don't
10 know that we want to limit this to just
11 government, but is that a possibility when
12 we're talking purpose stakeholders?

13 I mean, we want to hear from
14 everybody, but when it comes to what is the
15 expectation of the schedule, a lot of that is
16 the government community.

17 CHAIRMAN BRANCH: Yes. I'm not
18 comfortable limiting it. I'll tell you why.
19 I mean, you know, we are essentially talking
20 about what is a bargain for exchange. So
21 industry walks into the room with a set of
22 expectations as well.

1 And part of the issue that we get
2 into whether we're talking schedule
3 contracting or any other type of contracting,
4 when we try to unilaterally set expectations,
5 industry doesn't come to the table.

6 So I'm not quite comfortable with
7 that, but I would like to hear from the rest
8 of the --

9 MEMBER DRABKIN: I hope you will
10 also hear that part of the advantage of the
11 schedules program is that we reduce the cost
12 of industry to sell the government, which if
13 we're not good negotiators, we leave it on the
14 table. Shame on us. But we ought to be able
15 to recognize that if the schedules do their
16 job.

17 And so I think we should hear from
18 the people who we're trying to get to help us
19 use the streamline session.

20 MEMBER STEPHENSON: You absolutely
21 convinced me. And so, Alan, and his people
22 are more than welcome.

1 (Laughter.)

2 MEMBER DRABKIN: Leave out the
3 others.

4 MEMBER NELSON: Elliott, if we
5 can't do two days back to back, I would
6 suggest that we actually in order to
7 accommodate who I think that -- personal
8 opinion, I think that there are a lot of good
9 people from the government and a lot of
10 industry people that we should hear from,
11 including the IGs and such. I think that we
12 should try and squeeze in another meeting
13 somewhere along the way and do this purposeful
14 meeting in order to accommodate also some
15 deliberation.

16 MEMBER ALLEN: Agreed.

17 MEMBER NELSON: Do it over two
18 sessions.

19 PARTICIPANT: It would be better
20 to make it two days.

21 MEMBER NELSON: I also want to
22 point out -- and Pat hasn't -- that the FAS

1 commissioner is scheduled to come to the next
2 meeting. And I can guarantee he is not going
3 to speak for five or ten minutes.

4 CHAIRMAN BRANCH: So it sounds
5 like we have some energy building around an
6 idea of a two-day session but not necessarily
7 two consecutive days --

8 PARTICIPANT: Right.

9 CHAIRMAN BRANCH: -- but two days
10 close enough together that we do not lose the
11 thread. Is that what I'm hearing? April?

12 MEMBER STEPHENSON: So we could do
13 -- maybe if the 17th doesn't work, you're
14 talking maybe the 16th and 23rd, back to back
15 weeks?

16 MEMBER ALLEN: I think the 17th is
17 better. Again, Monday is my worst day. If we
18 keep scheduling all of these on Mondays, I'm
19 going to really have problems.

20 MEMBER NELSON: So how about not
21 the 23rd? How about the 17th because Teddy
22 is flying in from Auburn.

1 PARTICIPANT: The 17th works for
2 me.

3 PARTICIPANT: The 16th and 17th.

4 MEMBER SCOTT: Can we get softer
5 chairs?

6 MEMBER SONDERMAN: I will
7 certainly try to make my schedule fit.

8 MS. BROOKS: We're talking about
9 --

10 CHAIRMAN BRANCH: What does the
11 18th look like for people?

12 MEMBER ALLEN: I'm good that week.

13 MEMBER STEPHENSON: The 18th is
14 out. I'm on the West Coast.

15 PARTICIPANT: The 18th is out for
16 me.

17 CHAIRMAN BRANCH: Okay. All
18 right. So it looks like it's maybe the 17th
19 or we could maybe go the 17th and the week
20 after if people want a break. Let's do it two
21 days: 16th and 17th. Folks comfortable with
22 that? All right.

1 MEMBER CHVOTKIN: Elliott? Mr.
2 Chairman, I have a lunch commitment, but I
3 will make arrangements to go out and come back
4 for that. Otherwise it's internal for me. So
5 it will just be a couple-hour window.

6 CHAIRMAN BRANCH: And we have a
7 rather large Committee. I have to say this.
8 I certainly appreciate the commitment that
9 everybody has made to this, but I think it
10 would be unrealistic of us to expect everybody
11 to be at every meeting.

12 So let's all just kind of make a
13 commitment to do the best we can with an
14 understanding that life is going on outside
15 the auditorium.

16 PARTICIPANT: I won't be able to
17 be here the whole day on the 17th.

18 CHAIRMAN BRANCH: Okay.

19 MEMBER SONDERMAN: Elliott, could
20 we talk about what kind of data we might be
21 interested in getting? I know there was some
22 discussion during questions and answers

1 earlier today. And I don't know if Pat or
2 someone could recap what we have already said
3 we wanted.

4 MS. BROOKS: The only thing that I
5 remember capturing on the data was for the
6 MOBIS schedule, the percentage of their
7 contractors, that they have had a price
8 reduction implemented. That's the only action
9 that I remember in terms of data.

10 MEMBER NELSON: I think there was
11 also a call for the number of MOBIS contracts
12 that have no activity for the last year.

13 MS. BROOKS: Okay.

14 MEMBER SONDERMAN: And I think
15 that was an interest. Well, I am interested
16 in having that for the other schedules as
17 well. And one of the reasons is those
18 industry stakeholders, particularly smaller
19 companies, who, you know, we used to tell
20 them, "Oh, you need a standard form 129 to
21 start your shopping with the government or
22 your marketing to the government." And now

1 they have the idea that they have to have a
2 GSA schedule to start to gain entry to the
3 government.

4 I am just curious about what the
5 data say in terms of who is getting actual
6 orders against their schedules.

7 MS. BROOKS: So you want it across
8 the schedules as to the number of contractors
9 that don't meet the minimal sales --

10 MEMBER SONDERMAN: Yes.

11 MS. BROOKS: -- requirements over
12 some period of time, however we could capture
13 it?

14 MEMBER SONDERMAN: Yes.

15 PARTICIPANT: That's a lot of
16 information.

17 MEMBER NELSON: Debra, that's
18 actually an easy poll. It's very easy to
19 gather.

20 MEMBER SONDERMAN: It's a lot,
21 though.

22 MEMBER NELSON: But just to refine

1 because I can actually get the data from
2 systems, but let's refine it so we don't have
3 to come back and clarify. For what time
4 period?

5 MEMBER SONDERMAN: Last two years.

6 MEMBER NELSON: Fiscal year?
7 Calendar year? I'm just trying to get it down
8 right now.

9 MEMBER SONDERMAN: Fiscal.

10 MEMBER PERRY: Whatever you --

11 MEMBER SONDERMAN: Whatever,
12 whatever --

13 MEMBER PERRY: Do you use fiscal
14 year as your contract terms or is it all in
15 one place?

16 MEMBER NELSON: For us we go
17 actually by fiscal year.

18 MEMBER PERRY: Okay.

19 MEMBER SONDERMAN: Okay.

20 MEMBER PERRY: We'll let's use
21 fiscal year.

22 MEMBER SONDERMAN: That's fine.

1 MEMBER NELSON: That would be the
2 easiest way to pull it.

3 MEMBER PERRY: We also ask for how
4 many schedule holders use our federal business
5 only that someone said --

6 MEMBER NELSON: That may be a
7 harder thing to pull because --

8 MEMBER PERRY: You said yes
9 before.

10 MEMBER NELSON: I didn't say yes,
11 but we'll see what Pat can pull out from her
12 grant sheets.

13 MEMBER PERRY: The reason I was
14 asking, I was trying to figure out how much of
15 this market we're creating ourselves. And
16 we're kind of just feeding our going around
17 here spinning.

18 I would also be interested in --
19 do you have data on orders that are over the
20 MOLs in the schedule versus those that are
21 under? Because it may tell us where we are
22 kind of hoping --

1 MEMBER NELSON: You know, Glenn,
2 GSA does not collect data on orders placed
3 against GSA schedules.

4 MEMBER DRABKIN: Actually, we
5 don't collect the data. Debra, you are
6 supposed to submit it coded properly.

7 MS. BROOKS: But I think this one,
8 the numbers schedules are holding in the
9 federal ceiling. That one I think is going to
10 be difficult because without looking at the
11 individual contract and look at the basis of
12 negotiation, that's the only place that you
13 would be able to get that.

14 MEMBER PERRY: Is from where?

15 MS. BROOKS: It's looking at
16 individual contracts.

17 MEMBER PERRY: I got an impression
18 that you guys did know how many people were in
19 that universe.

20 CHAIRMAN BRANCH: Let me suggest
21 that we take this approach. If the data is
22 readily available, then please provide it. If

1 it is not readily available, tell us the cost
2 of providing it, if you will. And then I
3 think we can decide whether we really need
4 that to do what we intend to do.

5 MEMBER SONDERMAN: One of the
6 reasons I'm asking is that in thinking about
7 reflecting on what people have said, we have
8 some areas where there is lots of volatility
9 in the pricing in the market, information
10 technology being one.

11 In services where we are talking
12 about people's pay, there isn't so much
13 volatility within that within a given year.
14 And although the level of expertise, there may
15 be great variability in the actual price, but
16 you're not likely to be priced at \$200 an hour
17 one week and \$600 an hour the next week. So
18 I'm trying to again help us figure out what
19 are the rights, area to look at given that
20 we're segmenting by goods, services, and
21 solutions.

22 MEMBER JONES: I was just

1 wondering. Why are we looking at the contract
2 schedule sales again?

3 MEMBER SONDERMAN: The purpose and
4 expectations for the schedules. Contractors
5 think that if they have a schedule, they
6 either have an entitlement or an entre into
7 the federal marketplace.

8 I hear it all the time from
9 especially relatively new entrants into the
10 federal marketplace. So, again, in terms of
11 clarifying expectations about what being on
12 the schedule means for a particular vendor, I
13 am just curious to know how many actually do
14 get awards.

15 It's sort of like looking at the
16 data in the 8(a) program. Who actually get
17 contracts and who doesn't?

18 MEMBER NELSON: Hey, Debra, can I
19 ask you a question since you hear it all the
20 time? And we hear it all the time, too. So
21 I wanted to hear from an agency.

22 Since you are hearing it all the

1 time, where are they getting the perception
2 from?

3 MEMBER SONDERMAN: I don't know.
4 I would like to ask a small business industry
5 association to poll its members and --

6 MEMBER JONES: We get calls all
7 the time saying, "I have to have a schedule
8 contract because this agency told me that I
9 needed one in order to compete on this
10 upcoming requirement." So that's where a lot
11 of that is.

12 CHAIRMAN BRANCH: Right. I think
13 there are probably a number of places it comes
14 from. And some of it is driven by a less than
15 sophisticated understanding of our methods of
16 contract formation in the federal government,
17 especially by small companies.

18 You know, we are very good people
19 to do business with, but we can be very hard
20 to do business with if you don't understand
21 the rules. So some of that is misconception,
22 you know, just very broadly.

1 I hear that from a lot of
2 minority-based contractors that say, "I have
3 a schedule contract. So why don't I have any
4 orders"?

5 MEMBER NELSON: No. I mean, we
6 get it all the time.

7 CHAIRMAN BRANCH: Yes.

8 MEMBER NELSON: And particularly
9 my office and I'm sure the centers get it. I
10 mean, we get calls that say, "Why aren't you
11 marketing for us? Where's my money?"; you
12 know, all the rest of it.

13 And we do hear often. And I know
14 from my previous life a lot of time it really
15 comes from a CO or a COTR saying essentially,
16 "Get out of my office. Go and come back when
17 you have a schedule contract. And then we'll
18 talk." And we're left to kind of deal with
19 them.

20 But I wondered just because Debra
21 had made the comment if she had a follow-on to
22 the perception because that is part and parcel

1 to the notion of a recommendation for
2 education. And we talk about educating all of
3 the stakeholders, so the full circle.

4 And I know that GSA now has on the
5 front of all solicitations this are you sure
6 you want to get a schedule because look at
7 what the marketplace is. Make sure that you
8 really are ready to go into this.

9 But I think, you know, there is
10 something that can go further than that.

11 MEMBER JONES: Well, there's the
12 training, too, on the GSA Web site. It's
13 called Pathways to Success that educates them
14 on what they're getting into. I believe the
15 new solicitations have a requirement that new
16 offerors complete that training before they
17 submit an offer.

18 MEMBER DRABKIN: But you know
19 what? I think this discussion points out that
20 we ought to specifically invite some people to
21 come and tell us what they think because all
22 of us are talking about what we have heard or

1 been told or what we hypothesize or intuit.

2 Let's just invite or get --

3 CHAIRMAN BRANCH: Absolutely.

4 MEMBER DRABKIN: -- one of the
5 associations here to make sure that a small
6 business group and talks to us why they get a
7 --

8 CHAIRMAN BRANCH: Absolutely. So
9 just to kind of wrap this up if we're at that
10 point, it sounds like we really have some
11 sense of what takes down the barriers toward
12 an 80 percent solution. One of it is
13 expectations with respect to the stakeholders
14 of what it means to both buy and sell off the
15 schedule as well as kind of roles and
16 responsibilities.

17 We I think have come to an
18 agreement that there needs to be some
19 delineation, whether it's across two
20 categories or three categories, as to how the
21 pricing mechanisms function in those
22 environments, one clearly for goods, one for

1 services.

2 And there's a potential that you
3 may look at services that are level of effort
4 very different than you might look at services
5 that are completion, that that's how we want
6 to attack the work, that if we can do that,
7 come down to understanding what the roles and
8 responsibilities are allocated amongst the
9 vendors, amongst GSA as the primary instrument
10 of contract formation, the agencies as
11 ordering officers, then that will put us on a
12 pathway to understanding what we mean in the
13 context of a fair and reasonable price.

14 So that we're going to commit the
15 next meeting, which is looking like it is
16 going to be a two-day meeting, the 16th and
17 the 17th, to really starting to tackle those
18 first areas amongst the stakeholders, want to
19 hear from government folks, want to hear from
20 industry folks, want to hear from all the
21 stakeholders, the audit community as well.

22 So we then have a baseline to move

1 forward. And then in our July meeting, we can
2 determine what -- I guess the end of the June
3 meeting, we can really determine next steps
4 for the July and the August meeting.

5 So is that kind of a fair summary
6 of where we are?

7 (No response.)

8 CHAIRMAN BRANCH: Okay. Does
9 anybody have any closing comments, any final
10 observations on our meeting today?

11 (No response.)

12 CHAIRMAN BRANCH: Okay. I want to
13 thank everybody for hanging in there with us.
14 I thought good presentations, great
15 discussion. And I look forward to us getting
16 back together in June and really starting to
17 tackle this. Thanks, everyone.

18 (Whereupon, the foregoing matter
19 was concluded at 4:46 p.m.)

20

21

22

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