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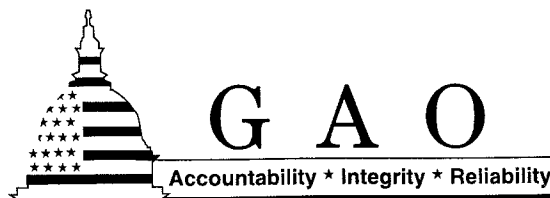
Testimony
Before the Subcommittee on Government
Management, Organization, and Procurement,
Committee on Oversight and Government
Reform, House of Representatives

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FEDERAL ACQUISITION

Oversight Plan Needed to Help Implement Acquisition Advisory Panel's Recommendations

Statement of John P. Hutton
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Highlights of GAO-08-515T, a testimony before the House Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

A growing portion of federal spending is related to buying services such as administrative, management, and information technology support. Services accounted for about 60 percent of total fiscal year 2006 procurement dollars. The Services Acquisition Reform Act (SARA) of 2003 established an Acquisition Advisory Panel to make recommendations for improving acquisition practices. In January 2007, the panel proposed 89 recommendations to improve federal acquisition practices.

GAO was asked to testify on how the panel recommendations compare to GAO's past work and identify how the Office of Federal Procurement Policy (OFPP) expects the recommendations to be addressed. This statement is based on GAO's analysis of the advisory panel's report. GAO's analysis is included in its December 2007 report titled, *Federal Acquisition: Oversight Plan Needed to Help Implement Acquisition Advisory Panel Recommendation*, (GAO-08-160).

What GAO Recommends

In its December 2007 report, GAO recommended that OFPP develop an oversight strategy or plan with milestones and reporting requirements to help it ensure the implementation of the SARA Panel recommendations and to gauge how they improve federal acquisition. OFPP agreed in principle with GAO's recommendation.

To view the full product, including the scope and methodology, click on GAO-08-515T. For more information, contact John Hutton at (202) 512-7773 or huttonj@gao.gov.

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What GAO Found

The SARA Panel, like GAO, has made numerous recommendations to improve federal government acquisition—from encouraging competition and adopting commercial practices to improving the accuracy and usefulness of procurement data. The recommendations in the SARA Panel report are largely consistent with GAO's past work and recommendations. The panel and GAO have both pointed out

- the importance of a robust requirements definition process and the need for competition;
- the need to establish clear performance requirements, measurable performance standards, and a quality assurance plan to improve the use of performance-based contracting;
- the risks inherent in the use of interagency contracts because of their rapid growth and their improper management;
- stresses on the federal acquisition workforce and the need for a strategy to assess these workforce needs;
- concerns about the role of contractors engaged in managing acquisition and procurement activities performed by government employees and the proper roles of federal employees and contractor employees in a “blended” workforce; and
- the adverse effects of inaccurate and incomplete federal procurement data, such as not providing a sound basis for conducting procurement analyses.

The panel also made recommendations that would change the guidance for awarding contracts to small businesses. While GAO's work has addressed some small business policy issues, GAO has not made recommendations that would change the guidance to be used for awarding contracts to small businesses.

OFPP representatives told GAO that OFPP agrees with almost all of the panel recommendations and expected that most of the 89 panel recommendations would be implemented through one of the following means: congressional actions; changes to the Federal Acquisition Regulation; OFPP actions, such as issuing new or revised policy; and federal agency actions. OFPP has already acted on some SARA recommendations, while other actions are pending or under consideration. Milestones and reporting requirements are in place to help OFPP gauge the implementation status of some recommendations but not for others. Moreover, OFPP does not have a strategy or plan to allow it to exercise oversight and establish accountability for implementing all of the panel's recommendations and to gauge their effect on federal acquisitions.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our review of the Services Acquisition Reform Act's Acquisition Advisory Panel report. Each year the federal government—the single largest buyer in the world—spends billions of dollars to procure goods and services. In fiscal year 2006, it spent over \$400 billion. A growing portion of this spending is related to buying services, such as administrative, management, and information technology support. Services now account for about 60 percent of total procurement dollars.

Congress passed the Services Acquisition Reform Act of 2003 (SARA), which provided federal agencies an array of tools to improve how they acquire services. The act also established an acquisition advisory panel, which began work in February 2005, to review acquisition laws and regulations and make recommendations to improve federal acquisition practices. The SARA Acquisition Advisory Panel issued its final report dated January 2007, making 89 recommendations to improve federal acquisition in the following seven areas: commercial practices, performance-based acquisitions, interagency contracting, small business, the federal acquisition workforce, the role of contractors supporting government, and federal procurement data. The panel directed most of its recommendations to the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB) for implementation, while the others were directed to Congress and federal agencies.

As you requested, my testimony will focus on our review of the panel's report. Specifically, I will address (1) how the panel recommendations compare with our past work and recommendations and (2) how OFPP is addressing the recommendations. My statement is based on our report issued in December 2007.¹

Summary

The recommendations in the SARA Panel report are largely consistent with GAO's past work and recommendations. Like the panel report, our past work pointed out

- the importance of a robust requirements definition process;

¹ GAO, *Federal Acquisition: Oversight Plan Needed to Help Implement Acquisition Advisory Panel Recommendations*, GAO-08-160 (Washington, D.C.: Dec. 20, 2007).

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- the need for competition, which is a mandate that runs through the statutes and regulations governing federal procurement;
 - the need for clear performance requirements, measurable performance standards, and a quality assurance plan to improve the use of performance-based contracting;
 - the risks inherent in the use of interagency contracts because of their rapid growth and their improper management;
 - the stresses on the federal acquisition workforce and the need for a strategic approach to assess workforce needs;
 - concerns about the role of contractors engaged in managing acquisition and procurement activities traditionally performed by government employees and the proper roles for contractor employees in a “blended” workforce; and
 - the adverse effects of inaccurate and incomplete federal procurement data, that cannot be relied on to conduct procurement analyses.

Like the panel, we have made numerous recommendations to address many of these issues and bring improvement to government procurement. The panel also made recommendations that would change the guidance for awarding contracts to small businesses. While our work on small business has addressed a number of these policy issues, we have not made recommendations that would change the guidance for awarding contracts to small businesses.

OFPP agrees with almost all of the 89 panel recommendations and has already acted on some of them, while other actions are pending or under consideration. Generally, OFPP expects implementation of the recommendations to fall into the broad categories of (1) legislative action; (2) changes to the Federal Acquisition Regulation (FAR); (3) OFPP actions, such as issuing or revising policy; and (4) federal agency action. OFPP noted that legislative actions and pending FAR cases could address about one-third of the recommendations. OFPP is expected to address most of the remaining recommendations and plans to work with the chief acquisition officer or senior procurement official within each agency to do so.

Based on the information OFPP provided, an overall strategy or plan with milestones and reporting requirements has not yet been established to help provide visibility over the progress and results of implementing the recommendations. Without an overall strategy or plan, it is unclear how OFPP will gauge how the panel recommendations are being implemented and their successes and shortcomings in improving federal acquisitions.

Most SARA Panel Recommendations Are Consistent with GAO's Past Work

The 89 recommendations in the panel report are largely consistent with our past work and recommendations. I will now discuss each of the seven areas the panel reviewed, the general thrust of the panel's recommendations, and our views on them.

Commercial Practices

The first area the panel reviewed was commercial practices. According to the panel, the bedrock principle of commercial acquisition is competition. The panel found that defining requirements is key to achieving the benefits of competition because procurements with clear requirements are far more likely to produce competitive, fixed-price offers that meet customer needs. Further, the panel found that commercial organizations invest the time and resources necessary to understand and define their requirements. They use multidisciplinary teams to plan their procurements, conduct competitions for award, and monitor contract performance. Commercial organizations rely on well-defined requirements and competitive awards to reduce prices and obtain innovative, high-quality goods and services. Hence, practices that enhance and encourage competition were the basis of the panel recommendations. The panel recommended, among other things, that the requirements process be improved and competitive procedures be strengthened.

Our work is generally consistent with the panel's recommendations, and we have issued numerous products that address the importance of a robust requirements definition process and the need for competition. For example, in January 2007, we testified that poorly defined or broadly described requirements have contributed to undesired services acquisition outcomes. To produce desired outcomes within available funding and required time frames, our work has shown that DOD and its contractors need to clearly understand acquisition objectives and how they translate into the contract's terms and conditions. The absence of well-defined requirements and clearly understood objectives complicates efforts to

hold DOD and contractors accountable for poor acquisition outcomes. This has been a long-standing issue.

Regarding competition, we have stated that competition is a fundamental principle underlying the federal acquisition process. Nevertheless, we have reported numerous times on the lack of competition in DOD's acquisition of goods and services. For example, we noted in April 2006 that DOD awarded contracts for security guard services supporting 57 domestic bases, 46 of which were let on an authorized sole-source basis. The sole-source contracts were awarded by DOD despite recognizing it was paying about 25 percent more than previously paid for the contracts awarded competitively.

Improving Implementation of Performance-Based Acquisition

The second area the panel reviewed was improving the implementation of performance-based acquisitions. The panel reported that performance-based acquisition (PBA) has not been fully implemented in the federal government even though OMB has encouraged greater use of it—setting a general goal in 2001 of making performance-based contracts 40 percent or more of all eligible service acquisitions for fiscal year 2006. The panel reported that agencies were not clearly defining requirements, not preparing adequate statements of work, not identifying meaningful quality measures and effective incentives, and not effectively managing the contract. The panel noted that a cultural emphasis on “getting to award” still exists within the government, an emphasis that precludes taking the time to clarify agency needs and adequately define requirements. The panel recommended that OFPP issue more explicit implementation guidance and create a PBA “Opportunity Assessment” tool to help agencies identify when they should consider using PBA contracts.

Like the panel, we have found that agencies have faced a number of issues when using PBA contracts. For example, we reported in April 2003 that there was inadequate guidance and training, a weak internal control environment, and limited performance measures and data that agencies could use to make informed decisions on when to use PBA. We have made recommendations similar to the panel's. For example, we have recommended that the Administrator of OFPP work with agencies to periodically evaluate how well agencies understand PBA and how they can apply it to services that are widely available in the commercial sector, particularly more unique and complex services. The panel's concern that agencies are not properly managing PBA contracts is also consistent with our work on surveillance of service contracts. In a March 2005 report, we found that proper surveillance of service contracts, including PBAs, was

not being conducted, leaving DOD at risk of being unable to identify and correct poor contractor performance. Accordingly, we recommended that the Secretary of Defense ensure the proper training of personnel in surveillance and their assignment to contracts no later than the date of contract award. We further recommended the development of practices to help ensure accountability for personnel carrying out surveillance responsibilities. We have also found that some agencies have attempted to apply PBA to complex and risky acquisitions, a fact that underscores the need to maintain strong government surveillance to mitigate risks.

Interagency Contracting

The third area the panel reviewed was interagency contracting. The panel found that reliance on interagency contracts is significant. According to the panel report, 40 percent of the total 2004 obligations, or \$142 billion, was obligated through the use of interagency contracts. The panel also found that a significant reason for the increased use of these contracts has been reductions in the acquisition workforce accompanied by increased workloads and pressures to reduce procurement lead times. Accordingly, the panel made numerous recommendations to improve the use of interagency contracts with the intent of enhancing competition, lowering prices, improving the expertise of the acquisition workforce, and improving guidance for choosing the most appropriate interagency contract for procurements.

Our work is generally consistent with the panel's recommendations on interagency contracting. In fact, 15 of our reports on interagency contracting were cited in the panel report. These included numerous recommendations that are consistent with the panel's recommendations. Our reports recognize that interagency contracts can provide the advantages of timeliness and efficiency by leveraging the government's buying power and providing a simplified and expedited method of procurement. However, our prior work has found that agencies involved in the interagency contracting process have not always obtained required competition, evaluated contracting alternatives, or conducted adequate oversight. A number of factors render the use of interagency contracts high risk; these factors include their rapid growth in popularity, their use by some agencies that have limited expertise with this contracting method, and the number of parties that might be involved. Taken collectively, these factors contribute to a much more complex procurement environment—one in which accountability is not always clearly established. In 2005, because we found that interagency contracts can pose risks if they are not properly managed, we designated the management of interagency contracting a governmentwide high-risk area.

Small Business

The fourth area the panel reviewed was small business. The panel made recommendations to change the guidance to contracting officers for awarding contracts to small businesses. These recommendations are intended to improve the policies and, hence, address the socioeconomic benefits derived from acquiring services from small businesses. OFPP has taken the position that all but one of the recommendations requires legislation to implement. While our work on small business has addressed a number of policy issues, we have not made recommendations for statutory and regulatory changes when arguments for such changes are based on value judgments, such as those related to setting small business contracting goals.

Federal Acquisition Workforce

The fifth area the panel reviewed was the federal acquisition workforce. The panel recognized a significant mismatch between the demands placed on the acquisition workforce and the personnel and skills available within the workforce to meet those demands. The panel found, for example, that demands on the federal acquisition workforce have grown substantially while at the same time, the complexity of the federal acquisition system as a whole has increased. Accordingly, the panel made a number of recommendations designed to define, assess, train, and collect data on the acquisition workforce and to recruit talented entry level personnel and retain its senior workforce.

Our work is generally consistent with the panel's findings and recommendations on the acquisition workforce. On the basis of observations made by acquisition experts from the federal government, private sector, and academia, we reported in October 2006 that agency leaders have not recognized or elevated the importance of the acquisition profession within their organizations. The agency leaders further noted that a strategic approach had not been taken across government or within agencies to focus on workforce challenges, such as creating a positive image essential to successfully recruit and retain a new generation of talented acquisition professionals. In September 2006, we testified that while the amount, nature, and complexity of contract activity has increased, DOD's acquisition workforce, the largest component of the government's acquisition workforce, has remained relatively unchanged in size and faces certain skill gaps and serious succession planning challenges. Further, we testified that DOD's acquisition workforce must have the right skills and capabilities if it is to effectively implement best practices and properly manage the goods and services it buys. In July 2006, we reported that in the ever-changing DOD contracting environment, the acquisition workforce must be able to rapidly adapt to increasing

workloads while continuing to improve its knowledge of market conditions, industry trends, and the technical details of the goods and services it procures. Moreover, we noted that effective workforce skills were essential for ensuring that DOD receives fair and reasonable prices for the goods and services it buys and identified a number of conditions that increased DOD's vulnerabilities to contracting waste and abuse.

Contractors Supporting the Federal Government

The sixth area the panel reviewed was contractors supporting the federal government. The panel reported that, in some cases, contractors are solely or predominantly responsible for the performance of mission-critical functions that were traditionally performed by government employees, such as acquisition program management and procurement, policy analysis, and quality assurance. Further, the panel noted that this development has created issues with respect to the proper roles of, and relationships between, federal employees and contractor employees in the "blended" workforce. The panel stated that although federal law prohibits contracting for activities and functions that are inherently governmental, uncertainty about the proper scope and application of this term has led to confusion, particularly with respect to service contracting outside the scope of OMB's Circular A-76, which provides guidance on competing work for commercial activities via public-private competition. Moreover, according to the panel, as the federal workforce shrinks, there is a need to ensure that agencies have sufficient in-house expertise and experience to perform inherently governmental functions by being in a position to make critical decisions on policy and program management issues and to manage the performance of contractors. The panel recommended (1) that the FAR Council consider developing a standard organizational conflict-of-interest clause for solicitations and contracts that sets forth a contractor's responsibility concerning its employees and those of its subcontractors, partners, and any other affiliated organization or individual; (2) that OFPP update the principles for agencies to apply in determining which functions government employees must perform; and (3) that OFPP ensure that the functions identified as those that must be performed by government employees are adequately staffed.

On the basis of our work, we have similar concerns to those expressed by the panel, and our work is generally consistent with the panel's recommendations on the appropriate role of contractors supporting the federal acquisition workforce. We have testified and reported on the issues associated with an unclear definition of what constitutes inherently governmental functions, inadequate government experience and expertise for overseeing contractor performance, and organizational conflicts of

interest related to contractor responsibilities. We found that there is a need for placing greater attention on the type of functions and activities that could be contracted out and those that should not, for reviewing the current independence and conflict-of-interest rules relating to contractors, and for identifying the factors that prompt the government to use contractors in circumstances where the proper choice might be the use of government employees or military personnel. In our recent work at DHS, we found that more than half of the 117 statements of work we reviewed provided for services that closely supported the performance of inherently governmental functions. We made recommendations to DHS to improve control and accountability for decisions resulting in buying services that closely support inherently governmental functions. Accordingly, our work is consistent with panel recommendations to update the principles for agencies to apply in determining which functions government employees must perform; and to ensure that the functions identified as those that must be performed by government employees are adequately staffed.

Report on Federal Procurement Data

Finally, the seventh and last area the panel reviewed was federal procurement data. The Federal Procurement Data System-Next Generation (FPDS-NG) is the federal government's primary central database for capturing information on federal procurement actions. Congress, Executive Branch agencies, and the public rely on FPDS-NG for a wide range of information including agencies' contracting actions, governmentwide procurement trends, and how procurement actions support socioeconomic goals and affect specific geographical areas and markets. The panel reported that FPDS-NG data, while insightful when aggregated at the highest level, continue to be inaccurate and incomplete at the detailed level and cannot be relied on to conduct procurement analyses. The panel believes the processes for capturing and reporting FPDS-NG data need to be improved if that data is to meet user requirements. As a result, the panel made 15 recommendations aimed at increasing the accuracy and the timeliness of the FPDS-NG data. For example, the panel recommended that an independent verification and validation should be undertaken to ensure all other validation rules are working properly in FPDS-NG.

Our work has identified similar concerns as those expressed by the panel. In fact, the panel cited our work numerous times in its report. Like the panel, we have pointed out that FPDS-NG data accuracy has been a long-standing problem and have made numerous recommendations to address this problem. As early as 1994, we reported that the usefulness of federal procurement data for conducting procurement policy analysis was limited.

More recently, in 2005, we again raised concerns about the accuracy and timeliness of the data available in FPDS-NG. We have also reported that the use of the independent verification and validation function is recognized as a best business practice and can help provide reasonable assurance that the system satisfies its intended use and user needs.

OFPP Plans to Address Most SARA Panel Recommendations

OFPP representatives told us the office agrees with almost all of the 89 panel recommendations and has already acted on some, while potential actions are pending on others. OFPP identified legislative actions and FAR cases that could address over one third of the recommendations. OFPP expects to address at least 51 of the remaining recommendations and plans to work with the chief acquisition officer or senior procurement official within each agency to do so. In some cases, OFPP has established milestones and reporting requirements to help provide it with visibility over the progress and results of implementing the recommendations. Although OFPP has taken some steps to track the progress of selected recommendations, it does not have an overall strategy or plan to gauge the successes and shortcomings in how the panel's recommendations are implemented and how they improve federal acquisitions. Table 1 shows how OFPP expected the 89 recommendations to be implemented.

Table 1: OFPP Expectations for SARA Panel Recommendations as of October 2007

	Number of recommendations
Legislative action	23
Changes to the FAR	9
OFPP actions	51
Agency actions	6
Total	89

Source: GAO analysis of OFPP data.

In October 2007, OFPP representatives noted that while the panel directed 17 recommendations to Congress, legislative actions could address as many as 23 panel recommendations. Panel recommendations directed to Congress include potential legislative changes such as authorizing the General Services Administration to establish a new information technology schedule for professional services and enacting legislation to strengthen the preference for awarding contracts to small businesses. An example of the latter is amending the Small Business Act to remove any statutory provisions that appear to provide for a hierarchy of small

business programs. According to the panel, this is necessary because an agency would have difficulty meeting its small business goal if any one small business program takes a priority over the others. Since October 2007, some panel recommendations have been addressed by legislative actions. For example, the panel recommended that protests of task and delivery orders valued in excess of \$5 million be permitted. Section 843 of the National Defense Authorization Act for Fiscal Year 2008 allows for such protests, but raised the dollar threshold to orders valued in excess of \$10 million.

For those recommendations that were expected to be addressed by legislative actions but have not yet been the subject of congressional action, OFPP representatives told us the office could take administrative actions, such as issuing a policy memorandum or initiating a FAR case, to implement most of them.

Conclusions and Recommendation

In closing, the SARA Panel, like GAO, has made numerous recommendations to improve federal government acquisition—from encouraging competition and adopting commercial practices to improving the accuracy and usefulness of procurement data. Our work is largely consistent with the panel's recommendations, and when they are taken as a whole, we believe the recommendations, if implemented effectively, can bring needed improvements in the way the federal government buys goods and services. OFPP, as the lead office for responding to the report, is now in a key position to sustain the panel's work by ensuring that panel recommendations are implemented across the federal government in an effective and timely manner. To do this, we recommended in our recent report that OFPP work with the chief acquisition officers and senior procurement officials across all the federal agencies to lay out a strategy or plan that includes milestones and reporting requirements that OFPP could use to establish accountability, exercise oversight, and gauge the progress and results of implementing the recommendations.

Mr. Chairman and members of the subcommittee this concludes my statement. I would be pleased to respond to any questions you might have.

For questions regarding this testimony, please call John P. Hutton at (202) 512-4841 or huttonj@gao.gov. Contact points for our Office of

Congressional Relations and Public Affairs may be found on the last page of this testimony.

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