

STATEMENT OF MARCIA G. MADSEN

CHAIR OF THE ACQUISITION ADVISORY PANEL

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION AND

PROCUREMENT OF THE COMMITTEE ON OVERSIGHT AND GOVERNMENT

REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

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Mr. Chairman, Congressman Bilbray and Members of the Subcommittee, I appreciate the opportunity to appear before you to address the Acquisition Advisory Panel's findings and recommendations. Two Panel members have joined me today, Mr. James "Ty" Hughes, Deputy General Counsel (Acquisition), Department of the Air Force, and Mr. Roger D. Waldron, formerly of the U.S. General Services Administration. In addition to chairing this Panel, I am a partner in the law firm of Mayer Brown LLP and I have 20 years of experience in government procurement law.

You have asked for an overview of the recommendations made by the Acquisition Advisory Panel and the progress toward implementation of the recommendations. My testimony could not possibly cover the Panel's 100 findings and 89 recommendations in their entirety. However, I will try to provide a good overview regarding competition and adoption of commercial practices, the management and use of interagency contracts, acquisition workforce challenges, opportunities for small businesses, and the appropriate role of contractors supporting the government – the "blended workforce" issues. I also will talk briefly about the Panel's data recommendations.

The Panel Report was published in draft form in January 2007 and was published in final form by GPO in July 2007. Since that time, many of the Panel's recommendations have been included in proposed legislation originating both in the House and the Senate. Several recommendations addressing competition under multiple award contracts and the acquisition workforce were included in the National Defense Authorization Act for Fiscal Year 2008 (the DoD Authorization Act). Finally, as noted in the Government Accountability Office's (GAO's) December 2007 Report "Oversight Plan Needed to Help Implement Acquisition Advisory Recommendations," the Office of Federal Procurement Policy (OFPP) agrees with almost all the Panel's recommendations and is moving forward to implement many of them through changes in policy or regulation.

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

I again would like to personally thank the 13 Panel members for their dedication over the course of our deliberations. As you know, each of them was a volunteer with a full-time and highly responsible position in "regular" life. The Panel conducted its work under significant constraints with respect to staff and money. We had only one full-time staff member, the Executive Director. We are grateful to GSA and to the Director of Defense Acquisition and Policy for making staff available on a temporary basis to the Panel. The level of participation by

the members in the hearings, in developing findings and recommendations, and in writing the Report was substantial.

The Panel is grateful to the many witnesses and members of the public who helped shape the Panel's report through their active participation and interaction with the Panel. (There is a complete list of the witnesses in the appendices to the Report.) The insight gained from the exchange with witnesses was invaluable. In many instances, approaches under consideration by the Panel were revised or adjusted based on input from the witnesses who helped the Panel see many different perspectives. I would like to especially thank those commercial companies that addressed the Panel. We invited large commercial buyers of services to address the Panel in an effort to determine their current best practices for services acquisition. These companies generously shared their expertise with the Panel even though many of them do little or no business with the government. We are grateful for this rare opportunity to learn how they buy services and where they invest in the services acquisition process.

To summarize, significant observations from the Panel's work:

Requirements Definition and Acquisition Planning Enhance Competition

- Commercial buyers invest heavily in planning and requirements analysis to obtain meaningful competition
- Government practice focuses on rapid awards at the expense of planning, competition and performance
- The Government must invest time and resources to enhance its ability to develop/maintain market expertise and define requirements

Competition Drives Innovation and Fair and Reasonable Prices

- Commercial practice relies on competition for innovation and pricing
- Government practice does not meet the standard commercial practice for competition
 - Interagency Contracting
 - Incentives to compete lacking
 - Improve the ordering process competition and transparency of data

Increased Accountability and Transparency Will Improve Interagency Contracting

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

Multiple Award Contracts Need to Provide More Opportunities for Small Businesses

- Agencies should be authorized to reserve awards to small businesses in full and open competition multiple award procurements not suitable exclusively to small businesses
- Ordering procedures under multiple award contracts, including Federal Supply Schedules, should provide agencies with explicit discretion to limit competition for orders to small businesses

The Acquisition Workforce Requires Immediate Attention

- Demands on the acquisition workforce have outstripped its capacity
- An expedited assessment of the workforce is needed in order to improve capacity
- Human capital planning and investment in the acquisition workforce are imperative

Appropriate Role of Contractors Supporting the Workforce

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

Enhance Competition by Investing in Requirements Definition and Planning

If there is one fundamental lesson to be learned from the Panel's review of commercial practices, it is the critical role requirements development plays in the successful acquisition of commercial services. Sound requirements development is the key to improving contractor performance and saving taxpayer dollars. Sound requirements development increases competition, reduces costs, eliminates time-and-materials contracts, and increases the likelihood of successful contract performance. Commercial buyers do it well. Government buyers need to improve.

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

Government Practice: The Panel's work shows that the government fails to invest in this phase of procurement, focusing instead on rapid awards. While at the conceptual level buyers appear to understand the importance of requirements definition to successful, cost-effective contracts, culture and the metrics focus on "getting to award" rather than contract results. In testimony, public sector officials and representatives of government contractors expressed frustration that the government is frequently unable to define its requirements

sufficiently to allow for fixed-price solutions, head-to-head competition, or performance-based contracts.

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

Recommendations: The Panel recommendations are based on current commercial sector practices. For instance, to develop and maintain market expertise, the Panel recommended that agencies establish "centers of expertise" to protect their high-dollar investments in recurring or strategic requirements. The Panel also saw a need for a central source of market research information comparable to that maintained by private companies. We recommended that the General Services Administration (GSA) establish such a capability to monitor services acquisitions by government and commercial buyers, collect information on private sector transactions that is publicly available, as well as obtain information on government transactions, and make this information available government-wide. Under our recommendations for improving Performance-Based Acquisition (PBA), the Panel recommended that OFPP provide

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

more guidance to agencies regarding how to define requirements in terms of desired outcomes, how to measure those outcomes, and how to develop appropriate incentives for contractors to achieve those outcomes. Because defining needs/requirements up-front is one of the most critical aspects of a PBA, the Panel recommended that the FAR require the government to develop and provide to contractors a “baseline performance case.” The Panel’s Report contains details about what this baseline performance case would entail, but it is essentially a framework to provide discipline in the government’s requirements definition process. We also recommended an educational certification program for contracting officer representatives to help them become effective planners and monitors of PBAs. With respect to the concerns expressed by the GAO and Inspectors General (IGs) regarding ill-defined requirements for orders under interagency contracts, the Panel recommended criteria for requirements planning by ordering agencies *before* access to an interagency contract is granted. OFPP has begun to implement these recommendations - for example, OFPP has tasked GSA to implement the Panel’s recommendation regarding market research. In addition, the Department of Defense is focusing on improving the development, definition and communication of requirements during the procurement process.

Encourage Competition to increase Innovation and Produce Fair and Reasonable Prices

Commercial Practice: In addition to learning that basic commercial practice involves substantial investment in requirements analysis, the Panel also was advised that commercial buyers rely extensively on competition to produce innovation and fair and reasonable prices. In fact, competition is fundamental to producing innovation and to determining fair and reasonable prices. Because there is no substitute for competition, commercial companies rarely buy on a sole-source basis. In those rare cases where they do not seek or cannot achieve competition, commercial buyers rely on their own market research, benchmarking, and often seek data on

similar commercial sales to establish fair and reasonable pricing. In some cases, they may even obtain certain cost-related data, such as wages or subcontract costs, from the seller to determine a price range. But commercial buyers generally find these methods far inferior to competition for arriving at the best price. As a result, they monitor non-competitive contracts closely, and eliminate such arrangements as soon as the requirement can be moved to a competitive solution.

Government Practice: It is instructive to compare the strong commercial preference for competition to the government's competition statistics. In fiscal year 2004, the government awarded \$107 billion, or over one-third of its total procurement dollars, non-competitively. Over one-fourth, or \$100 billion, was awarded non-competitively in 2005.² The number of competitions that result in the government only receiving one offer doubled between 2000 and 2005. Spending on services in both 2004 and 2005 accounted for 60% of procurement dollars with 20% and 24% awarded without competition, respectively.³

Interagency Contracting. The Panel believes the amount of non-competitive awards may, in fact, be underreported for orders under multiple award contracts available for interagency use, generally known as "interagency contracts." The Panel's repeated attempts over several months to obtain information about the extent of competition for orders under these types of contracts were frustrated. The government's database on federal procurement spending, the Federal Procurement Data System-Next Generation (FPDS-NG) only began to collect data on interagency contracts in 2004. Due to a number of factors, including poor reporting instructions, faulty validations, and even DoD policy, the "extent competed" field in FPDS-NG for these orders overwhelmingly reflects the competitive nature of the master contract, rather than the

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

³ FPDS-NG special reports for the Panel.

actual level of competition for orders. This reporting problem skews the data such that it is unreliable. The lack of transparency into the nature of these orders is a significant weakness. FPDS-NG reports spending under contracts available for multi-agency use at as much as \$142 billion, or 40% of procurement spending, in fiscal year 2004.⁴

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

The Panel's Report sets forth the history and efforts by Congress to improve competition. The intent of interagency contracts, most of which are assumed to be multiple award contracts, was to lower administrative costs, leverage buying power and provide a streamlined acquisition process -- all well-meaning goals. Such contract vehicles were never intended to be used to avoid competition.

Interagency contracts generally are indefinite-delivery/indefinite-quantity type contracts with very broad scopes of work, most of which provide for multiple awardees that will compete with one another for specific orders at a later point when an agency identifies a requirement. Therefore, where services are concerned, the initial competition is based on loosely defined

⁴ Id.

⁵ DoD IG Report No. D-2007-023, "FY 2005 Purchases Made Through the National Aeronautics and Space Administration," Nov. 13, 2006, at ii.

statements of the functional requirements resulting in proposals for hourly rates for various labor categories. The expectation is that once an agency identifies a specific need, a more clearly defined requirement will be provided at the order level allowing the multiple awardees to submit task-specific solutions and pricing. Because this process narrows the number of eligible contractors at the order level, Congress has insisted that these multiple awardees be given a “fair opportunity” to compete for the task orders.

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

Incentives to Compete Lacking. The Panel found that there is no government-wide requirement that all interagency contracts provide notification that a task order is available for competition. There is no visibility into sole-source orders, as there is no requirement for a synopsis or public notification for orders under multiple award contracts, regardless of the size of the order. Even where a best value selection is made at the order level, there is no requirement for a detailed debriefing, regardless of the amount of the order or the amount of bid and proposal costs expended by the eligible contractor, thus denying the contractor information that might enable it to be more competitive on future orders/contracts. Further, without regard to size of the order, there is no option for contractors to protest the selection process under multiple award contracts, reducing the pressure on the government to clearly define requirements, specify its evaluation criteria, and make reasonable trade-off decisions among those criteria. For example, even issues that affect the integrity of the competitive process such as organizational or personal conflicts of interest cannot be protested.

However, the Panel also took testimony from agency officials who told us they could not meet their missions without the use of interagency contracts. Therefore, the Panel sought to

achieve a balance in its recommendations that will introduce incentives to encourage more competition while not unduly burdening these tools for streamlined buying. For instance, some of our recommendations only apply to orders over \$5 million. Why this threshold? We found that of the \$142 billion spent on orders under these interagency contracts in fiscal year 2004, \$66.7 billion, nearly half, was awarded in single transactions (at the order level) exceeding \$5 million. The fiscal year 2005 statistics show total spending on these contracts at \$132 billion with \$63.7 billion in single transactions over \$5 million.⁶

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

Recommendations: It is gratifying to see that the Panel’s recommendations in this area are receiving substantial attention. The Panel recommended expanding government-wide the current DoD Section 803 requirements that include notifying all eligible contractors under multiple award contracts of order opportunities. We also recommended that the 803 procedures apply to supplies and services. And while we agreed that a pre-award notification of sole-source orders might unduly burden the ordering process, the Panel recommended post-award public notification of sole-source orders finding that it would improve transparency. For single orders exceeding \$5 million, the Panel recommended that agencies adhere to a higher competitive standard by: 1) providing a clear statement of requirements; 2) disclosing the significant

⁶ FPDS-NG special reports for the Panel.

evaluation factors and subfactors and their relative importance; 3) providing a reasonable response time for proposal submissions; and 4) documenting the award decision and the trade-off of price/cost to quality in best value awards. We also recommended post-award debriefings for disappointed offerors for orders over \$5 million when statements of work and evaluation criteria are used. Concerned that the government is buying complex, high-dollar services without a commensurate level of competitive rigor, transparency, or review, we recommended limiting the statutory restriction on protests of orders under multiple award contracts to orders valued at \$5 million or less. Of course, it should be noted that under existing law, any order under the GSA Schedules may be protested.

Specific to the GSA Federal Supply Schedules program, the Panel recommended a new services schedule for information technology that would *require* competition at the task order level and reduce the burden on contractors to negotiate up-front hourly labor rates with GSA. The Panel sees the exercise of negotiating (and auditing) labor rates as producing little in the way of meaningful competition given that solutions are project-specific and the price depends on the actual labor mix applied. In such cases, analyzing labor rates contributes little to understanding the price that the government will pay for the project. Much time and effort are wasted by GSA and contractors in providing and auditing labor rates that do not provide useful information about the costs of a project.

The DoD Authorization Act adopted the Panel's recommendations requiring enhanced competition requirements and post award debriefings for task orders exceeding \$ 5 million. The DoD Authorization Act also authorized bid protests for task orders exceeding \$10 million (the Panel had recommended a \$5 million threshold). In addition, S. 680 and HR 6069 would extend the Section 803 ordering procedures for the Federal Supply Schedules, government-wide. At the

same time OFPP has opened FAR Cases implementing several of the Panel competition recommendations.

Accountability and Transparency Inadequate for Interagency Contracting

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

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

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

S.680 includes Panel recommendations regarding management of interagency contracts. At the same time, OFPP is working toward implementing management policies and procedures for the creation, continuation and operation of interagency contracts.

Providing Opportunities for Small Businesses Under Multiple Award Contracts

Although not included in the topics specified in Section 1423 of SARA, the Panel decided early on that because its recommendations likely would impact small businesses it needed to include an examination of small business issues in its work. The growth in multiple award contracts has created particular challenges for small businesses. The Panel recognized the positive efficiencies of multiple award contracts, especially those available for multi-agency use. However, the goal of efficiency must be balanced against the negative impact these contracts can have on small business opportunities. The Panel found that multiple award contracts often have a broad scope of work, geographically, functionally, or both, and that these broad scopes of work make it extremely difficult for small businesses competing against large businesses under full and open competition for multiple awards. Further, when small businesses do receive awards under a multiple award contracts, there is no specific statutory or regulatory authority for agencies to reserve orders under multiple award contracts for small business competition to achieve agency small business goals.

Recommendations: The Panel recommended specific statutory amendments that would allow contracting officers to reserve, for small business competition only, a portion of the

multiple awards in a full and open competition not suitable for a total small business set-aside. The Panel also recommended express statutory or regulatory authority to reserve orders, at the explicit discretion of the ordering agency, under multiple award contracts for competition among the small business multiple awardees only. These authorities will provide contracting officers with greater flexibilities in using multiple award contracts to meet agency small business goals. To date, there has been little movement in addressing these recommendations.

The Panel considered mandatory reserves or set-asides of orders but instead recommended providing agencies with the discretion to reserve orders in order to meet small business goals. Agency discretion is consistent with the flexibility and inherent efficiency of multiple award contracts. That discretion, when combined with the flexibility of multiple award contracts can create an effective tool for creating opportunities for small business. For example, the Panel considered the record of the Federal Supply Schedule program, which has been one of the most successful contracting programs for small businesses programs, with small businesses receiving over 36 % of the dollar value of orders over the last five years. The Federal Supply Schedule does not have mandatory set-asides for orders. However, under the Federal Supply Schedule, agencies do have the discretion to consider socio-economic status during the ordering process.

A related issue is contract bundling. The Panel found inconsistent implementation of contract bundling requirements across the government. The Panel recommended additional training and the creation of an interagency group to develop best practices and strategies to unbundle contracts and mitigate the effects of contract bundling. S. 2300 adopts this recommendation requiring a report on best practices to reduce bundling, followed by the issuance of additional policies to reduce bundling.

The Acquisition Workforce Requires Immediate Attention

The Panel determined that a quantitatively and qualitatively adequate workforce is essential to the successful operation of the acquisition system. But the demands on the acquisition workforce have outstripped its capacity. Just since 9/11, the dollar volume of procurement has increased by 63 %. While the current workforce has remained stable since 2000, there were substantial reductions in the 1990s accompanied by relatively little new hiring. Compounding the problem, while a variety of simplified acquisition techniques were introduced by the 1990s acquisition reforms for low dollar value procurements, higher dollar procurements require greater sophistication by the government buyer due to the growth in best value procurement, the emphasis on past performance, and the use of commercial contracting. Accompanying these trends is the structural change in what the government is purchasing, with an emphasis on high dollar, complex technology related solutions. However, due to the lack of a consistent definition of the workforce and lack of ability to measure the workforce, as well as the lack of competency assessments and systematic human capital strategic planning, determining the needs of this workforce is difficult. The Panel was very frustrated by the lack of useful and meaningful data regarding the federal acquisition workforce and undertook its own study – dating back to the 1960s in an effort to obtain information on the size, composition and skills of the workforce.

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

to the Panel by the private sector buyers and the consulting firms that support them for comparison.

Recommendations: An accurate understanding of the key trends about the size and composition of the federal acquisition workforce cannot be obtained without using a consistent benchmark, and none is currently available for such an assessment. The Panel recommended that OFPP prescribe a consistent definition and methodology for measuring the workforce. The urgency of this task is reflected in another recommendation that OFPP collect data using this definition and measuring methodology *within one year* of the Panel's final report. Consistent with this, OFPP should be responsible for creating and maintaining a mandatory government-wide database for members of this workforce. The Panel noted that the Commission on Government Procurement recommended just such a system over 30 years ago - in 1972. While there are a great many recommendations for workforce improvement in the Panel's report, one of the key recommendations is that each agency must engage in systematic assessment and human capital strategic planning for its acquisition workforce. Without such plans, it is impossible to know how and to what extent a given agency's workforce is deficient. It is also difficult to know to what extent and how efficiently agencies are using contractors to support the acquisition function. In support of these recommendations, the Panel has also suggested that these plans be reviewed by OFPP for trends, best practices, and shortcomings as part of an agency's overall human capital planning requirements. Finally, the Panel recommended an SES level position be established within OFPP responsible for acquisition workforce programs, a government-wide intern program, as well as the reauthorization of the SARA training fund. I am pleased to note that the DoD Authorization Act included a number of these recommendations that are now law. Most importantly, the DoD Authorization Act requires the Chief Acquisition Officers for each agency, in consultation with OFPP, to develop human capital succession plans for the acquisition

workforce. DoD is already in the midst of a comprehensive assessment of its acquisition workforce, an assessment that will be used in developing a strategic human capital plan for its acquisition workforce.

Over the past year OFPP, also conducted a government-wide competency survey assessing the skills of the civilian acquisition workforce. OFPP received over 5,400 responses to the survey, approximately half the civilian acquisition workforce. OFPP has communicated the results of the survey to the respective agency Chief Acquisition Officers for human capital strategic planning purposes and closing skill gaps. Planning requires investment and I am pleased to note that two important steps have been taken to invest in the future of the acquisition workforce. The DoD Authorization Act created the Defense Acquisition Workforce Development Fund for the recruitment, training, and retention of acquisition personnel. The DoD Authorization Act also made permanent the Acquisition Workforce Training Fund managed by OFPP and GSA. The Acquisition Workforce Training Fund supports government-wide training of the acquisition workforce through the Federal Acquisition Institute.

Appropriate Role of Contractors Supporting the Workforce

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

Blurring the Distinctions. During the 1990s, the federal acquisition workforce was reduced substantially. For example, DoD’s acquisition workforce was reduced by nearly 50 % during that time. The structural changes in what and how much the government is buying since 9/11 have left agencies with no alternative to using contractors to deal with the pressures of meeting mission needs and staying within hiring ceilings. Agencies have contracted for this capability and contractors are increasingly performing the functions previously performed by

federal employees. To a significant degree, this has occurred outside of the discipline of OMB Circular A-76, with the result that there is no clear and consistent government-wide information about the number of people and the functions performed by this growing cadre of service providers.

While the A-76 outsourcing process provides a certain discipline in distinguishing between “inherently governmental” and commercial functions, it is less clear if and how agencies apply these concepts to the blended or multi-sector workforce that has arisen outside of the A-76 process. The challenge is determining when the government’s reliance on contractor support impacts the decision-making process such that the integrity of that process may be questionable. A second challenge that arises is how the government effectively manages a blended workforce given the prohibition on personal services.

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

Recommendations: The Panel recommended that OFPP update the principles for agencies to apply in determining which functions must be performed by federal employees, so that agencies understand that such principles apply even outside the A-76 process. Agencies need to identify and retain core functional capabilities that allow them to properly perform their missions and provide adequate oversight of agency functions performed by contractors.

Agencies must ensure that the functions identified as those which must be performed by government employees are adequately staffed with federal employees.

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

Conclusion

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

This concludes my prepared remarks. My colleagues and I are happy to answer any questions you might have.