

Interagency Contract Vehicles Introduction

Among the specific requirements for the Acquisition Advisory Panel outlined in Section 1423 is the review of the performance of acquisition functions across agency lines of responsibility and the use of Governmentwide contracts. A working group from the panel was formed in March 2005 to undertake a detailed review. The membership of the working group and the staff who assisted in the preparation of this section of the report are listed in Appendix ____.

The performance of acquisition functions across agency lines is accomplished through the use of so-called interagency contract vehicles described in detail in the next section. The significant increase in the use of these vehicles by agencies over the last 10 years has raised a number of complex policy issues and has been the subject of extensive oversight by Congress, the Government Accountability Office (GAO), the inspectors general (IG) of various federal agencies, outside organizations and the media. This attention has highlighted significant benefits these vehicles provide to the federal Government and the taxpayer. It has also uncovered past deficiencies in their administration and continuing risks associated with their use.

Several critical observations have been made on the creation and use of interagency contract vehicles. In its January 2005 High Risk Update, GAO observed that a number of factors contribute to making these vehicles high risk in certain circumstances: 1) they are attracting rapid growth of taxpayer dollars; 2) they are being used and administered by some agencies with limited expertise in this contracting method; and 3) they contribute to a significantly more complex environment in which accountability has not always been clearly established (GAO-05-207).

In light of these recent studies, the working group found it interesting that similar observations had been made over eight years ago in “the Multiagency/GWAC Program Managers Compact” signed by the major federal program managers in September 1997. In this document entitled, “a Consensus on Principles Applicable to the Acquisition of Services under Multiagency Contracts and Governmentwide Acquisitions,” federal program managers set forth and agreed to a series of principles that would guide their business conduct (“The Multiagency/GWAC Program Managers Compact,” Sep. 9, 1997- see Appendix A). The “Compact” recognized that federal agencies, in the interest of economy and efficiency, are placing increased emphasis on the use of multi-agency contracts and that “[w]hen properly developed and used,” these vehicles may enable agencies to fulfill their goal.

Given the volume of material and the diversity of issues that have been generated in connection with the use of interagency contract vehicles in the federal Government, the working group sought to bring order to its review by meeting extensively and following a structured process. Over a period of seven months, the working group met 15 times in

addition to receiving presentations and material during the public meetings of the full panel. The working group's first task was to identify all of the relevant laws, regulations and policies applicable to interagency vehicles and then to assemble relevant GAO and IG audits. The group also identified other studies, reviews, hearing testimony, data, and information available on interagency contracts and similar enterprisewide vehicles as well as their use by interagency assisting entities. In addition, the working group interviewed key federal managers involved with these vehicles and entities. The document identifying the relevant laws, regulations, and policies is posted on the Acquisition Advisory Panel website (www.acqnet.gov/aap). The matrix of issues identified by the working group is located in Appendix B.

After receiving stakeholder input and reviewing the relevant source material, the working group concluded that interagency contract vehicles have played an important role in streamlining the federal Government's acquisition process. The 2005 GAO High Risk Update mentioned above concluded that when managed properly these vehicles serve an important purpose. The report stated that, "these contracts are designed to leverage the Government's aggregate buying power and provide a much-needed simplified method for procuring commonly used goods and services."¹ The report went on to say that, "these contract vehicles offer the benefits of improved efficiency and timeliness; however, they need to be effectively managed." The working group agrees with the GAO's view that interagency contract vehicles are of significant value when managed properly.

Based on the growing challenges being faced by the acquisition community, the working group determined that interagency contract vehicles play a critical role in allowing agencies to accomplish their missions. The working group focused its recommendations on maintaining the value and efficiencies created by interagency contracts while responding to key management challenges that have arisen from their increased use.

As the working group conducted its review, there was a great deal of activity concerning interagency contract vehicles in Congress and the Executive Branch. In response to internal reviews and congressional oversight, the General Services Administration (GSA) embarked on a major reorganization of its schedules and assisted purchasing programs. The reorganization was intended to address some of the issues raised in the audit and oversight reports considered by the working group. Concurrently, individual federal agencies, such as the Department of Homeland Security and elements within the Department of Defense, began the establishment of internal, enterprisewide purchasing programs for specific types of services that are offered under the GSA schedules program and through other interagency vehicles and programs. These programs, such as the Navy's Seaport-E program for engineering support services, are touted as offering similar support to buying activities as the schedules, but with more effective administration, reduced overhead cost, and improved spend analysis insight.

¹ GAO-05-207, February 2005

Because of their similarities to interagency vehicles and due to the growing number being established within agencies, the working group expanded its review and recommendations to cover these enterprisewide vehicles.

Congress is also considering legislation that would significantly impact the use of interagency vehicles. These proposals would expand the scope of the current Defense Department Inspector General review into DOD's use of GSA Federal Technology Service centers to a review of the DOD's use of interagency vehicles generally. Congress is also reviewing legislation to consolidate the authority and management of all services procurement to dedicated centers in the Defense Logistics Agency and each of the military departments. The working group took note of these developments in formulating its recommendations, but refrained from drawing any premature conclusions about the specific proposals and actions.

Finally, criticism of the Federal response to the Hurricane Katrina disaster has led to discussions about the degree to which interagency contract vehicles may be among the most useful tools for allowing Federal agencies to acquire goods and services for national emergencies. Interagency contract vehicles, such as the General Services Administration Schedules program, can potentially offer a broad range of goods and services and, coupled with sound agency advance planning, could provide pre-negotiated special terms and conditions that would allow for rapid deployment of assistance to affected communities.

Although the identification of sources and issues continued to the end of the review process, the working group gradually shifted its focus to identifying the scope of the issues it would consider in making its recommendations to the full panel. In the view of the working group four basic questions concerning interagency contract vehicles need to be answered:

What are they?

Why do agencies use them?

How do agencies use them?

How should agencies use them?

The working group also believes that there is no privileged perspective from which to answer these four questions. There are a number of valid stakeholders with disparate points of view that must be considered. These stakeholders are identified in the next section.

In sorting through the various audits, studies, reviews, presentations and commentaries, the working group strove to avoid duplicating the audit work of the GAO or the agency inspectors general. The working group attempted to look at higher level

policy issues of a systemic nature appropriate for review by an independent panel. The working group also sought to avoid duplicating efforts being made by the other working groups, specifically those concerned with commercial practices, small business, and acquisition workforce, and to limit its consideration to issues unique to interagency contract vehicles and their use. The working group attempted to use the source material to identify systemic issues of sustained importance. In following the Section 1423 charter, the Panel has developed recommendations for changes to laws, regulations, and policies to:

Establish overarching goals and acquisition planning mechanisms to balance competing policy mandates;

Address systemic issues identified in GAO, IG and other reports;

Foster restructuring and consolidation of programs and vehicles where appropriate;

Import applicable best practices and from private sector experience;

Address acquisition workforce issues related to the use of interagency vehicles;

and

Establish reliable and meaningful data collection to allow effective management and oversight.

As will be seen below, the working group's recommendations fall into two broad categories. The first is the issues clustered around the creation and continuation of interagency vehicles and the organizations that use them to provide acquisition assistance across the federal Government. The working group concluded that some of the most fundamental issues associated with interagency and enterprisewide vehicles could be best addressed in establishing more formal procedural requirements for initially establishing such vehicles and subsequently for authorizing their continued use. The second related category is for issues associated with the use of such vehicles by federal agencies. This category includes issues associated with: competition, pricing, acquisition workforce requirements, and the methodology of choosing the most appropriate vehicle for a specific procurement action.

Background

Interagency contracting has been recognized as one of the fastest growing fields in federal acquisition. In Fiscal Year (FY) 2004, the two leading programs, the General Services Administration's (GSA) Schedules Program and the GSA's Governmentwide Acquisition Contracts (GWAC) provided approximately \$35.7B of supplies and services to federal agencies (GSA Schedules \$31,090,698,000; GWACs \$4,628,139,683). These and other interagency contract vehicles, offered by other federal agencies under GWAC or multi-agency contract authorities, have been gaining increasing popularity due to the ease of use associated with streamlined ordering and the apparent value afforded by volume purchase (see Schedule & GWAC sales chart).

In addition to GSA's authority to establish and administer interagency contracting vehicles, other agencies, referred to as "interagency assisting entities" were authorized to develop and maintain interagency support services contracts based on enactment of the Government Management Reform Act (GMRA) of 1994 or other "intragovernmental revolving" (IR) fund authority. According to the 2003 GAO study, thirty-four IR funds were created to provide common support services to meet federal agency requirements (GAO-03-1069). Twelve of these IR funds, including five franchise fund pilots specifically authorized by GMRA, have "explicit authority" to charge and retain fees for an operating reserve (GAO-03-1069). To fulfill customer requirements, these interagency assisting entities either utilize direct ordering vehicles such as GSA's Schedules Program or other multi-agency contracts, or establish their own contracts utilizing Federal Acquisition Regulation (FAR) procedures. Recently, several of these IR funds have come under scrutiny because of improper use of the GSA Schedules Program and for questionable retention of expired customer funds (citation). From a customer agency's perspective, the availability of numerous direct and indirect interagency contract vehicles, along with their multi-layered usage schemes, provided an array of useful tools to better meet agency requirements while at the same time created accountability challenges associated with effectively managing contracts and tracking funds.

Several agencies, because of their heavy usage of interagency contract vehicles, particularly elements of the Department of Defense (DoD), have become increasingly cognizant of the aggregate amount of the fees charged by GSA and IR funds for use of their vehicles and services. Recently, in response, a trend has emerged where agencies have chosen to bring requirements in-house by establishing their own enterprisewide contracting vehicles. The U.S. Navy's SeaPort and SeaPort-e are examples of this enterprisewide acquisition strategy.

When examining federal interagency transactions, the Economy Act provides important insight in classifying the type and authority associated with the transactions. On one side, there are interagency transactions that are governed by the Economy Act and its control, notably involving the restrictions on funds transfer and usage. On the

other side, because the Economy Act currently remains as an overarching interagency transactional authority and applies only when a more specific authority for the transaction does not exist, increasingly greater number of transactions fall outside of the control of the Economy Act. Today, most of the widely used interagency contract vehicles such as the GSA Schedules program and GWACs are not governed by the Economy Act.

Described below are brief overviews of the interagency contracting vehicles.

I. TYPES OF INTERAGENCY CONTRACT VEHICLES

A. MULTI-AGENCY CONTRACT

The authority for interagency acquisitions comes from specific statutory authority (e.g., Government Employees Training Act) or, when specific statutory authority does not exist, the Economy Act. The Economy Act of 1932, as amended (31 USC 1535), authorizes an agency to place orders for goods and services with another Government agency when the head of the ordering agency determines that it is in the best interest of the Government and decides ordered goods or services cannot be provided as conveniently or cheaply by contract with commercial enterprise. The Congress amended the Act in 1942 to allow military servicing agencies the authority to contract and extended the authority to the civilian agencies in 1982. The Congress also amended the Act under the Federal Acquisition Streamlining Act of 1994 to provide for FAR revisions to include approval of the contracting officer to purchase goods and services under contracts entered into or administered by other agencies and the establishment of system to monitor procurements.

Executive agencies, pursuant to 41 U.S.C. 253h, may enter into a task or delivery order contract for procurement of services or products. According to the FAR, multi-agency contract means “a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act.” Multi-agency contracts include GWACs established pursuant to the Clinger-Cohen Act, 40 U.S.C. 1424(a)(2), for information technology. As stated in the 1932 House Report of the 72d Congress, the legislative intent behind the creation of multi-agency contracts was the administrative efficiency and cost savings associated with the utilization of an existing contract by other agencies with similar needs.

Out of this broad interagency contracting authority evolved several more targeted initiatives such as statutory authorities providing for the GSA Schedules program and GWACs. Today, the Economy Act remains the overarching interagency contracting authority and applies only when more specific statutory authority does not exist (FAR 17.500(b)). In this regard, GWACs, although a subset of multi-agency contracts, are distinguished from non-GWAC multi-agency contracts in terms of the governing statute. For this reason, GWACs are often referred to as separate interagency contract vehicles throughout this report.

When using those multi-agency contracts that are governed by the Economy Act, the ordering agency is required to support its action by a Determination and Finding (D&F). Once this D&F is established, typical ordering procedures established by the multi-agency contract's host agency include: a) customer agency submits a requirement package, including necessary funding and fees, to the host agency contracting officer; b) the host agency contracting officer requests price/cost and technical proposal from contractors in the program; c) customer and contracting officer evaluate proposals and make a best value determination; d) the host agency contracting officer awards a task/delivery order to the winning vendor; e) the order is jointly administered by the host agency contracting officer and the customer agency's technical managers (see e.g. DISA ENCORE multi-agency contract ordering process at <http://www.ditco.disa.mil/hq/contracts/encorchar.asp>). The solicitation and evaluation of proposals for task/delivery order must be consistent with the fair opportunity requirement of FAR 16.505(b)(1).

Due to a lack of Governmentwide coordination and relative ease of creation provided by the enabling statute, it is not known how many non-GWAC multi-agency contracts are currently in place or how many purchases have been made via the vehicles (although FPDS-NG gathers such information, the reliability of the data has yet to be verified.). Several of the relatively well known multi-agency contracts are managed by the Defense Information Systems Agency (DISA), which features thirteen multiple award Indefinite Delivery Indefinite Quantity (IDIQ) contracts available for both internal and external agency customers (see <http://www.disa.mil/main/support/contracts/idiq.html>). Its "ENCORE" contracts provide Information Technology (IT) solutions to the Department of Defense (DoD) and other federal agencies. The multiple award IDIQ contracts have seven-year two billion dollar ceilings and orders are placed by DISA contracting officers at a one percent fee.

B. GOVERNMENTWIDE ACQUISITION CONTRACTS (GWACs)

Governmentwide Acquisition Contracts (GWACs) are a subset of multi-agency contracts. However, unlike non-GWAC multi-agency contracts, they are not subject to the requirements and limitations of the Economy Act. The FAR defines a GWAC as follows (FAR 2.101(b))--

- A task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—
- (1) By an executive agent designated by the Office of Management and Budget pursuant to section 5112(e) of the Clinger-Cohen Act, 40 U.S.C. 1412(e); or
 - (2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by the Brooks Act, 40 U.S.C. 759 (repealed by Pub. L. 104-106).

From 1965 until 1996, GSA was the sole authority for the acquisition of IT and telecommunications across the entire federal Government. The authority was set forth in Section 111 of the Federal Property and Administrative Services Act of 1949 and was referred to as the Brooks Act. The Brooks Act was repealed in 1996 by the Clinger Cohen Act which vested governmentwide responsibility for IT in Office of Management and Budget (OMB). Having been delegated IT procurement authority from GSA prior to the enactment of Clinger-Cohen Act, GSA's Federal Technology Service (FTS) operated under the previously granted authority, but beginning in the year 2000, all agencies offering GWAC programs were required to report revenues and costs in accordance with OMB guidance and federal financial accounting standards.

As of September 2005, there were four executive agents with GWAC authority: the Department of Commerce (DOC), GSA's newly created Federal Acquisition Service, the National Aeronautics and Space Administration (NASA), and the National Institute of Health (NIH) (The ITOP GWAC program previously managed by the Department of Transportation (DOT) has been relocated to GSA). As part of its executive agent designation, OMB requires that these agents submit annual activity reports and a quality assurance plan (QAP) covering, among other things, training of executive agent staff and customers, order development and placement, procedures for implementation of orders including contract administration responsibilities, and management review (OMB Executive Agent Designation Additional Provisions). OMB stated that it intended the GWAC QAPs to "serve as models that may be adopted and tailored by other agencies that manage a significant amount of interagency acquisitions." (ibid) Because of this management control by OMB over their creation and continuation, relative to non-GWAC programs are better defined and duplication within the program is limited when compared to non-GWAC multi-agency contracts.

Accessing GWACs is done in two different ways. In a typical situation, a customer agency chooses an appropriate GWAC program to use and forwards a requirements package, including project funding and fees, to the host agency for assisted contracting service. Upon acceptance, the host agency contracting officer issues a solicitation among the contractors within the program and, with the assistance of the customer agency, evaluates the proposals received. A task or delivery order is then issued by the host agency's contracting officer and the resulting order is managed jointly by the technical representatives of the customer agency and the host agency's contracting officer. In contrast, when direct order and direct billing authority is available, the customer agency may choose to manage its own project and funding after receiving the delegation of authority from the host agency. In this scenario, a customer agency follows the ordering procedures set forth by the host agency to solicit proposals and make award directly to the contractor, and thus, no interagency transfer of funds is needed.

One of the issues concerning GWACs is the management of fees. The legislation authorizing GWACs did not provide meaningful guidance with respect to how financial transactions should be accounted for under these contracts. As a result, according to GAO, host agencies are left to choose on their own whether these transaction fees would

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be accounted for through existing revolving funds or in stand-alone accounts (GAO-02-734, p9). As of July 2002, GSA and NIH operated under revolving funds, while NASA and Department of Commerce operated their GWACs in stand-alone reimbursable accounts (ibid). This issue of fee management is discussed in more detail in a later section of this report.

A closer look into each of the GWACs follows: (under development)

Governmentwide Acquisition Contracts (GWACs)					
CONTRACT	DESCRIPTION	FEE	CEILING	# AWARDEE	TOP CUSTOMERS
Department of Commerce (DOC)					
COMMITTS Nex Gen	Entirely small business set-aside; provides a broad spectrum of IT services and solutions	0.5%-1%	\$8B	55	
General Services Administration (GSA)					
ANSWER	Full IT services	1%	\$25B	10	
Millennia	Large IT projects	1%	\$25B	9	
Millennia Lite	IT Planning; high-end services; mission support; systems migration	0.75%	\$20B	33	
Alliant	Will replace ANSWER & Millennia	0.75%	\$50B	20 est.	
Alliant SB	New, set-aside	0.75%	\$15B	20 est.	
ITOP II	Used to be DOT contract; sunset in 2006	0.75%	\$10B	26	
HUBZone	Set-aside	0.75%	\$2.5B	34	
8(a) STARS	Set-aside	0.75%	\$15B	432	
ACES	Provides digital certificates and Public Key Infrastructure (PKI) services; will expire on 10/5/2005 and transition into the Federal Supply Schedule (Schedule 70)	5%		3	
Smart Card	Security	0.75%	\$1.5B	4	
VETS	New, set-aside	0.75%			
National Institutes of Health (NIH)					
IW2 nd	Image World 2 New Dimensions; provides a mechanism to meet IT acquisition needs in areas of imaging and document management systems	1%	\$15B	24	NIH DOT Nat. Archives
CP Leasing	8(a) contract with CPL for leasing IT, medical info, telecommunications, and medical equipment needs	1%			
MEG	Medical Equipment Group; provides medical equipment	1%			
ECS III	Electronic Commodity Store III; provides desktops, laptops, handhelds, software, networking equipment, and related warranty, maintenance, support services	1%		65	
CIO-SP2i	Chief Information Officer Solutions & Partners 2 Innovations; allows agencies to customize IT services and solutions; covers hardware, software development, systems integration, and technical support		\$19.5B	48	NIH HHS Army

Governmentwide Acquisition Contracts (GWACs)					
CONTRACT	DESCRIPTION	FEE	CEILING	# AWARDEE	TOP CUSTOMERS
	services				
National Aeronautics and Space Administration (NASA)					
SEWP III	Scientific and Engineering Workstation Procurement; specializes in providing advanced technology UNIX, Linux, and Windows-based workstations and servers, along with peripherals, network equipment, storage devices, and other IT products	0%-0.75% (max \$5000)	\$4B	12	Air Force Army Navy

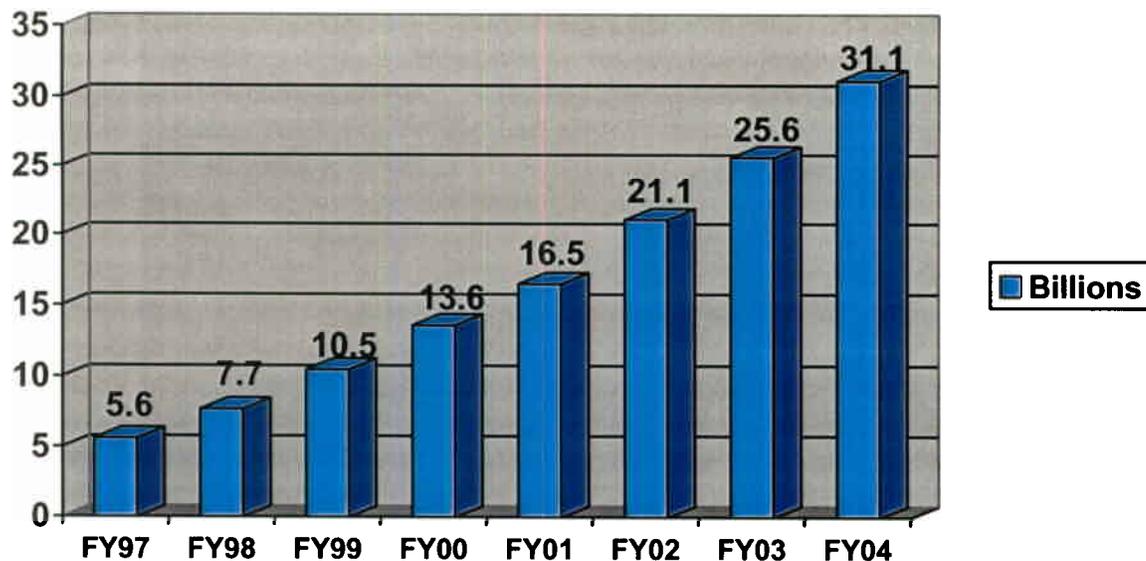
C. GSA SCHEDULES PROGRAM

The GSA Schedules Program is also known as the Federal Supply Schedules Program or the Multiple Award Schedules (MAS) Program. The primary statutory authority for the GSA Schedules Program is derived from both Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, et seq.) and Title 40 U.S.C., Public Buildings, Property and Works. Pursuant to the authority granted by the legislation as a centralized Federal procurement and property management agency, the GSA assumed management of the “General Schedule of Supplies” from the Department of the Treasury, and this evolved into what is now known as the GSA Schedules Program.

The significance of the GSA Schedules Program in today’s federal contracting landscape is easily apparent by looking at the sales figures in recent years. In FY 2004, sales under the program (excluding VA Schedules) were \$31.1B, a 21.5% increase over the preceding fiscal year. During the last seven years, Schedule sales have grown by at least 21% compared to the previous year.

Within the GSA Schedules Program, the GSA Services Acquisition Center, which offers Professional Engineering Services (PES), Financial and Business Solutions (FABS), and Advertising and Integrated Marketing (AIMS) Schedules, has shown a notable increase in sales. The Services Acquisition Center’s FY 2004 sales were \$2.9B dollars. During the last 3 years, its average yearly growth has been approximately 60%, a reflection of growing demand for professional services. In comparison, after rapid growth in the late 1990’s, the sales under the Information Technology Acquisition Center, featuring the IT Schedule (Schedule 70), has shown signs of continued, but less rapid growth. Its average sales growth during the last three years was 18.4%. Still, the IT Schedule sales in FY 2004 were \$17B, accounting for approximately 54.7% of total Schedule sales. As of August 2005, total FY 2005 sales for the GSA Schedules Program were \$33.8B.

Sales in Dollars under the GSA Schedules Program



At the end of FY 2004, approximately 16,500 Schedule contracts were in place. About 80% of those were awarded to small businesses. Small business received 36.8% or \$11.4B of the \$31.1B Schedule sales in FY 2004. Compared to FY 2003 sales by small businesses of 35.6 percent (\$9.1B), the small business participation in the Schedules program has grown.

The Schedules Program is intended to provide Federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. Using commercial item acquisition procedures in FAR Parts 12, 15, 16, and 38, GSA awards indefinite delivery contracts to commercial firms to provide supplies and services at stated prices for given periods of time. Schedule contracts allow for orders to be issued on a firm fixed price, firm fixed price with economic price adjustment, or time-and-materials basis. They are typically evergreen (awarded with a 5-year base period and three 5-year options) and include conditions under which a contractor may offer price discounts to authorized users without triggering mandatory across-the-board price reductions. Under the GSA Schedules Program's continuous open solicitation policy, offers for commercial supplies or services may be submitted for consideration at any time. Similarly, contractors may request to add supplies/services to their existing contracts at any time during the term of their contracts.

Prior to awarding a Schedule contract, GSA determines if the contractor is responsible in accordance with FAR Subpart 9.1, negotiates and approves an acceptable subcontracting plan for large businesses, and negotiates and awards fair and reasonable pricing based on the firm's Most Favored Customer rates. Because GSA performs much

of the up-front work, agencies are able to benefit from a streamlined ordering process. A study conducted by the GSA indicated that it takes users an average of 15 days to issue an order under a Schedule contract compared to an average of 268 days to put a stand alone contract in place (Johnson & Johnson study on “Impact of FAR 8.4 Comparison Analysis of Customer-Elapsed Time Savings” (1998)).

COMPETITION AND THE USE OF E-TOOLS

e-Buy is an online Request for Quotation (RFQ) tool designed to facilitate the request for submission of quotations under the Schedules program though it is also available for GSA GWACs. When using the e-Buy system, an ordering agency first prepares a simple RFQ or a more detailed RFQ including Statement of Work and evaluation criteria (FAR 8.405-2(c)(4)). The agency then selects one or more appropriate Special Item Numbers (SINs) under the applicable Schedules. From among the list of vendors under the selected SINs, the agency selects vendors to send e-mail notifications of the RFQ. Non-selected vendors within the selected SINs are still able to view the RFQ under the bulletin board and submit quotations.

For example, an ordering agency with a requirement for an IT business improvement task may choose SIN 132-51, IT Services, under the Schedule 70-Information Technology and SIN 874-1, Consulting Services, under the Schedule 874-Management, Organization, and Business Improvement Services (MOBIS). The e-Buy system will display the entire list of 3,329 vendors available under SIN 132-51 and 1,450 vendors under SIN 874-1 (as of 9/25/2005). The agency may then select the vendors to whom it wishes to send e-mail notification of the RFQ. The option to “select all vendors” is also available. However, all vendors within the two SINs may view the RFQ in the e-Buy bulletin board and submit quotations. Under, FAR 8.405-2(d), ordering agencies must evaluate all responses received. The agency determines what constitutes reasonable response time.

Postings on e-Buy have been continually increasing since the system’s inception in August 2002. In FY 2003, 13,282 RFQs were posted. In FY 2004, the number of postings had grown to 25,582. As of August of FY 2005, 33,218 RFQs had been posted, an approximate 70% increase over the same period in FY 2004.

D. ENTERPRISEWIDE CONTRACT VEHICLES

An emerging contract vehicle that is modeled on interagency contract vehicles is the so-called enterprisewide contract vehicles. As these vehicles are intended to serve as an alternative to interagency vehicles, they share certain features with interagency contract vehicles, but their use is generally confined within the boundaries of a single agency. An example of such a vehicle is the SeaPort-e program administered by Naval Sea Systems Command (NAVSEA). SeaPort –e is a program intended to improve the acquisition of services across 22 functional areas using indefinite-delivery, indefinite quantity contracts awarded in seven regional zones covering the United States. The

intent is that the Navy System Commands will transition to using SeaPort-e as the “mandatory acquisition vehicle of choice” rather than interagency contract vehicles for the procurement of services. NAVSEA claims that SeaPort-e offers many of the same advantages of interagency contract vehicles, such as streamlined acquisition of services, with better procedures to collect business intelligence data, improve competition and improve the measurement of performance in such as areas as customer satisfaction. Other agencies, such as the Department of Homeland Security, and the United States Postal Service have established additional enterprisewide vehicles as alternatives to existing interagency contract vehicles.

E. INTERAGENCY ASSISTING ENTITIES

While interagency funds transfer is generally prohibited by law, the Economy Act of 1932 provides a broad exception by allowing an agency to enter into an agreement to provide goods or services to another federal agency. Under the Economy Act, the payment from the client agency must be based on the “actual cost of goods or service” provided and the client agency is required to deobligate fiscal year funds at the end of the period of availability to the extent that these funds have not been obligated by the performing entity (GAO-03-1069, p2). However, when an interagency agreement is based on specific statutory authority other than the Economy Act, funds availability and retention are governed by the specific legal authorities. These specific legal authorities creating intragovernmental revolving (IR) funds at the agency level describe the funds’ purpose and authorized uses, and detail the receipts or collections the agency may credit to the fund. In general, compared to the Economy Act, they provide “more flexibility by allowing client agency funds to remain obligated, even after the end of the fiscal year, to pay the performing IR fund” (GAO-03-1069, p15).

According to the study conducted by GAO in 2003 (GAO-03-1069), there were 34 IR funds operated by various federal agencies providing common administrative support services on a reimbursable basis to other agencies (GAO-03-1069, Appendix III). While most of these funds operate under similar legal authorities providing “advances and reimbursements, as well as the carryover of unobligated balances to recover the costs of accrued leave and depreciation,” twelve of these IR funds, including five of the six franchise fund pilots, have explicit authority to charge for an operating reserve and/or to retain a for acquisition of capital equipment and financial management improvements (ibid, p19).

The Government Management Reform Act of 1994 authorized OMB to designate six franchise fund pilots, and OMB subsequently designated pilots at the Departments of Commerce, Veterans Affairs, Health and Human Services, the Interior, and the Treasury, and at the Environmental Protection Agency. As a subset of IR funds, these franchise funds were designed to be “self-supporting business-like entities providing common administrative services on a fully reimbursable basis” (ibid, p3). With the exception of the EPA which has permanent authorization, these franchise funds are to expire unless ~~extended~~.

Because of the reasons described above, most of the Interagency Assisting Entities provide contract support services under IR fund authorities rather than the Economy Act. In particular, franchise funds, with their explicit authority to retain up to four percent of total annual income, provide great operating flexibility to those six agencies that are granted such authority. Listed below are several well-known Interagency Assisting Entities:

DOI	GovWorks	GMRA	Franchise Fund
	National Business Center	GMRA; 43 USC 1467, 1468; Economy Act	Other Intragovernmental Revolving Fund
Treasury	FedSource	GMRA	Franchise Fund
VA	BuyIT.gov	GMRA	Franchise Fund
GSA	FEDSIM	40 USC 501; 40 USC 11302(e)	Other Intragovernmental Revolving Fund
HHS	Program Support Center	42 USC 231	Other Intragovernmental Revolving Fund
Library of Congress	FEDLINK	2 USC 182c	Other Intragovernmental Revolving Fund

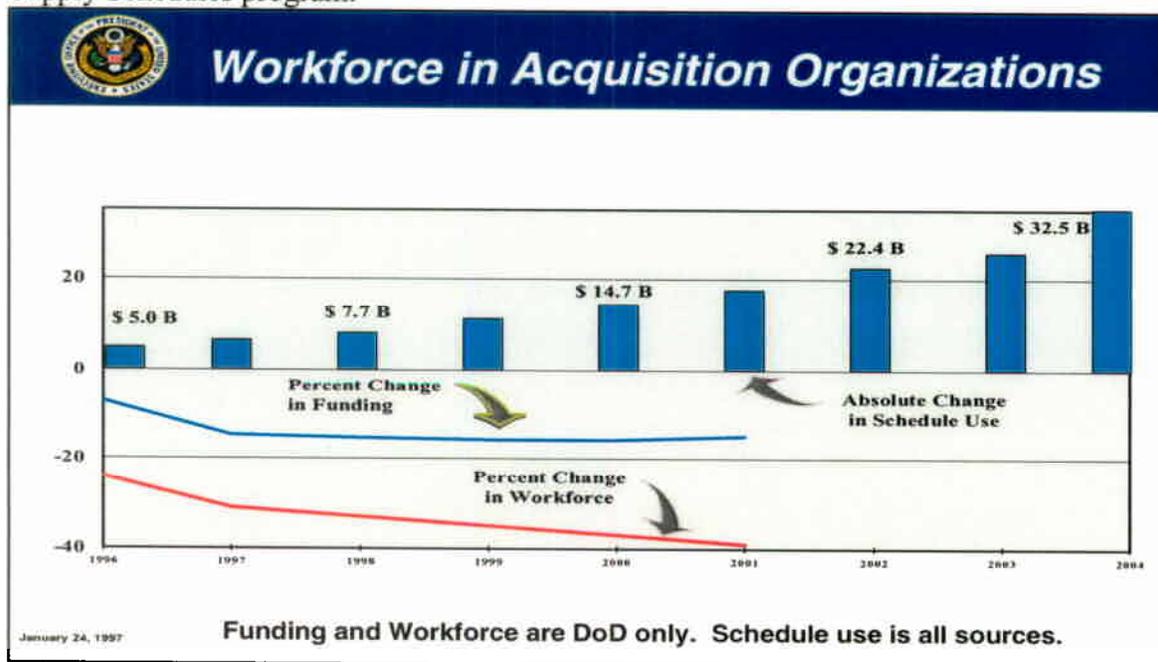
II. PARTIES INVOLVED IN INTERAGENCY CONTRACTING

The working group has identified four groups or stakeholders involved with interagency contract vehicles who have distinct and different sets of interests and perspectives. The first group includes the holders of the requirements within the agencies. The second includes the holders of the vehicles as well as the assisting entities who use the vehicles as a means of satisfying the acquisition needs of the holder of a requirement in another agency or activity. The third group consists of the contractors with the federal Government under the vehicles. The fourth group is comprised of the oversight organizations within the Executive Branch as well as Congress.

III. INCENTIVES TO USE INTERAGENCY CONTRACT VEHICLES

While acquisition reform streamlined the process for purchases under the simplified acquisition threshold, purchasing above that threshold remains complex and technical.² This is particularly true of services contracting which has become increasingly more sophisticated and complex especially in the areas of information technology and professional and management support. Services now account for between 60%-80% of yearly Government contract spending.³ A number of factors have led agencies to turn to interagency contract vehicles to meet demands for services.

Workforce. The reliance on interagency contracts and their proliferation has been driven to a significant degree by reductions in the acquisition workforce accompanied by increased workloads and pressures to reduce procurement leadtimes.⁴ In its testimony on the High Risk Update in February 2005⁵, GAO stated that “These types of contracts have allowed customer agencies to meet the demands for goods and services at a time when they face growing workloads, declines in the acquisition workforce, and the need for new skill sets.” Interagency contracts provide improved efficiency and timeliness allowing requiring agencies to meet mission needs and focus human capital resources on core mission rather than procurement. The chart below shows the interrelationship of DoD workforce reductions mapped against overall growth in utilization of GSA’s Federal Supply Schedules program.



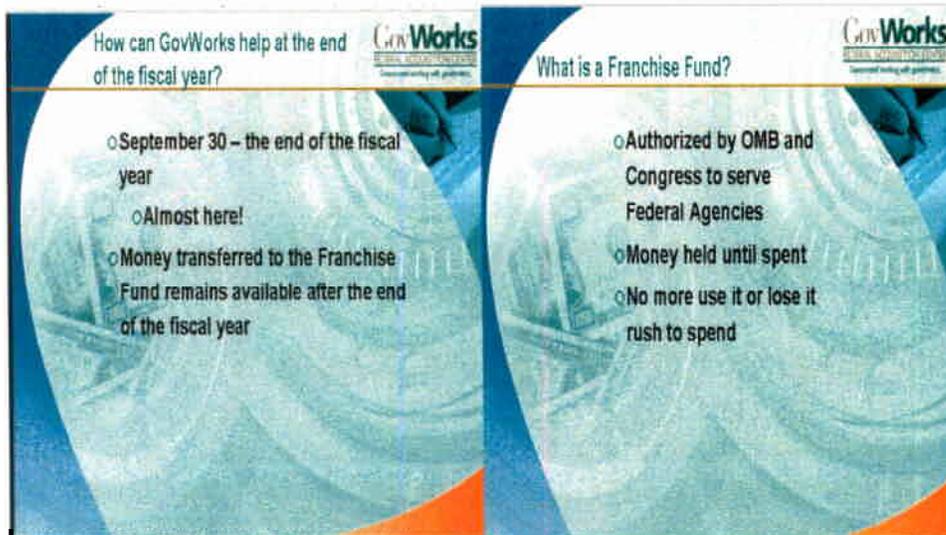
² GAO-02-449T, March 7, 2002

³ For FY 2004, services accounted for 60% of total spending or 80% if weapons systems are excluded from the base.

⁴ GAO-02-179T, November 1, 2001

⁵ GAO-05-350T, February 2005)

Funding Constraints. However, workforce pressures alone have not fueled the increased use of interagency contracts. The Panel heard testimony from Government witnesses that the funding profiles have placed significant pressures on requiring agencies that can lead them to “park” one year money with holders of vehicles that are able to offer the benefit of extending the use of customer funds into a subsequent fiscal year.⁶ Franchise funds offer this feature to customers. In fact, at the DOI GovWorks franchise fund website (<http://www.govworks.gov>), a slide presentation accessible at a link called “The Right Choice” advertises this benefit.



Perceived Flexibilities. Users have also used these vehicles to avoid and waive competition requirements in order to retain the services of incumbent contractors (GAO-05-207), most likely because public advertisement of requirements through a synopsis is not required when using these vehicles. Also, multiple award contracts provide for a reduced basis for protest by unsuccessful offerors.

According to a report by the GAO (GAO-05-229), holders of the vehicles also added value to their offerings, attracting both contractors and consumers.

In August 1997, GSA revised its acquisition regulations to allow for expanded access to commercial products and services and to implement greater use of commercial buying practices and streamline purchasing for customers. GSA believed that these changes would lead to more participation in the MAS [multiple award schedules] program by both large and small businesses—procedures more consistent with commercial practice would increase competition and thereby provide federal agencies a wider range of goods and services at competitive prices. Beginning in the late 1990s, MAS program sales increased significantly.

⁶ Testimony of Lisa Akers (GSA) and Timothy Tweed (DoD) on 6/14/05.

Incentives to Create

Interagency contracts also provide significant benefits to those who create and manage the contracts. These contracts allow the holders of the vehicles to collect fees for both assisted and unassisted buying. The GAO found that most of the interagency contracts they reviewed reported excess revenues over costs for at least one year between 1999 and 2001.⁷ The agencies collecting the fees not only use them to support the operational costs of the interagency contract, but excess revenue from these vehicles has funded other programs. For instance, GAO found that those agencies operating GWACs under revolving funds used excess revenue to maintain fund operations or support other programs under the revolving fund. GSA's Federal Supply Schedules Program, also a revolving fund, realized revenue in excess of costs in the amount of \$210.8 million from 1997 to 2001. The majority of these earnings financed vehicle purchases for GSA's fleet program and offset 2000-2001 losses in its stock program. GAO noted in 2005 that this "...fee-for-service arrangement creates an incentive to increase sales volume in order to support other programs of the agency that awards and administers an interagency contract. This may lead to an inordinate focus on meeting customer demands at the expense of complying with required ordering procedures."⁸

Inconsistent Oversight

The lack of internal controls on the use and management of interagency contracts has been at the core of the recent GAO and IG findings on misuse of interagency contracts in particular and services contracts in general. These reports have been particularly critical of Interagency Assisting Entities, such as DOI's GovWorks Franchise Fund and GSA's Federal Technology Service's Customer Support Centers. In its High Risk Update Testimony in February 2005, GAO asserted that it is not always clear where the responsibility for oversight lies (GAO-05-350T). GAO's High Risk Series Update (GAO-05-207) notes that interagency contracts are being used more for the purchase of services than ever. Their concerns regarding services contracts were also highlighted in 2002 when GAO warned that millions of service contract dollars were at risk at both defense and civilian agencies because acquisitions were poorly planned, not adequately competed, or poorly managed (GAO-02-499T). And again, in 2003, GAO stated that the lack of internal controls and guidance not only increases the agency's procurement risk, but also leads to reduced public confidence.

⁷ GAO-02-734, July 2002

⁸ Ibid

Creation and Continuation of Interagency Contract Vehicles

I. Background

Several types of interagency contracts, as well as enterprisewide contracts, provide for varying levels of internal procedural uniformity and monitoring with respect to their creation. While some of these procedures and types of monitoring have been questioned as to their appropriateness and adequacy, it is worth briefly reviewing them.

GSA's Schedules Program. GSA has established a formal written policy for both the establishment and continuation of schedules, contracts, and Special Item Numbers (SIN). The policy, called the "GSA Form 1649 - Notification of Federal Supply Schedule Improvement Process" requires business case approval for establishment of new schedules, contracts, and SINs. This policy also requires that retention of existing schedules, contracts, and SINs meet certain revenue criteria calculated on a yearly basis.

GWACs. OMB's Executive Agent Designation and Redesignation process requires GWAC holders, or Executive Agents, to submit business cases and yearly reports to OMB for review and approval or redesignation. Approved Executive Agents are required to submit a business case (Appendix *) that addresses the agency's continued suitability, the amount and source of demand, value to the Government including performance metrics, contracting practices (e.g., fair opportunity, small business participation, and performance-based contracting), management structure, and the division of roles and responsibilities between the Executive Agent and its customer agencies.

Franchise Funds. The initial application process, issued by the Office of Management and Budget (OMB) in 1996 required agencies to address criteria to help OMB determine agency suitability and capacity to manage a franchise fund (Appendix *). The franchise funds are required, through the budget process, to report on specific financial management elements. This process, however, does not focus on sound contracting practices recently identified as lacking by the GAO (GAO-05-456). Performance measures focus on customer satisfaction and revenue and franchise funds have been plagued by many of the misuse issues identified by GAO and the IGs with other interagency contracts (GAO-05-456).

Enterprisewide Contracts. There is no uniform process for establishing or monitoring these vehicles. The Navy's SeaPort-e program had no formal process for its establishment. According to its Program Manager's testimony to the Panel, the decision to make SeaPort-e and enterprisewide contract was driven by the need for business intelligence data not readily available through the various interagency contracts that had previously been used to satisfy requirements. SeaPort-e reports a number of performance

metrics to include cycle time to award, business volume, small business participation and workload.⁹

Lack of Transparency

This inconsistency in oversight and accountability is exacerbated by the lack of transparency on both the use and management of these vehicles due to inconsistent, limited or suspect data.

Data on Use. In 2003, the FAR Council implemented a long-standing Office of Federal Procurement Policy (OFPP) request to identify the universe of interagency contracts, known as the Interagency Contract Directory (ICD). An OFPP Memo dated May 6, 2003 states that in addition to providing a tool for acquisition planning, the ICD will "...help senior managers to get a better picture of the number of inter-agency contracts that their agencies are managing. This information could be used, for instance, as part of a "spending analysis," to rationalize contracting efforts and eliminate unnecessary duplication of effort."¹⁰ The ICD was implemented through the Federal Acquisition Regulation (FAR) under Federal Acquisition Circular (FAC) 01-15, July 24, 2003. However, within [x] months of its launch, the Acquisition Committee for E-Gov cut the project's funding due to the expectation that ICD functionality would become part of Federal Procurement Data System – Next Generation (FPDS-NG). The next attempt to collect data on these interagency contracts came in FY 2004. While not *initially* designed to accomplish the same purposes as the ICD, FPDS-NG began collecting data on the award and use of these vehicles. Beginning with FY 2004, FPDS-NG requires identification of interagency contracts and assigns delivery and task order obligations to these contracts by type (e.g., GWACs, GSA Federal Supply Schedules, Blanket Purchase Agreements (BPAs), Basic Ordering Agreements (BOAs), and Indefinite Delivery Contracts (IDCs) that do not fall under any other category). However, the FPDS-NG data element was not implemented to specifically assign order obligations by type of interagency contract if the contract was awarded prior to FY 2004 but rather can assign such obligations as "Other." There is significant evidence that orders, when reported by agencies in FPDS-NG, may be being incorrectly reported. A lack of understanding of the differences between varying types of interagency contracts may contribute to incorrect coding. The working group bases this on OFPP's and Integrated Acquisition Environment (IAE) experiences with the now defunct ICD. OFPP and the IAE program office noted obvious errors in agency classification of contracts. For instance, many non-GWAC contracts were classified as GWACs and many did not understand when the Economy Act applied to a multi-agency contract. The working group does not believe that significant education programs or clear guidance have been provided to ensure this lack of understanding is not currently reflected in the FPDS-NG 2004 data. Additionally, traditional problems with incorrect coding will impact the accuracy of the information in FPDS-NG on interagency contract use. For instance, various working group members have heard a number of anecdotes that those inputting data will select the first supply

⁹ NAVSEA presentation slides for public testimony to Panel, August 18, 2005

¹⁰ OFPP Memo "Roll-Out of the Inter-Agency Contract Directory," Attachment, May 6, 2003.

or service code in the list rather than determining the correct supply or service code. This same problem exists with other coding elements such as funding agency code, making it difficult for agencies to determine the amount of spending on interagency contracts. While inaccurate contract reporting is not unique to interagency contracts, the absence of reliable and timely data contributes to the problem of linking use and accountability.

Data on Management. The problem with data is not confined to the users. Holders of interagency contracts maintain differing levels and types of post award data. For instance, while GWAC holders report yearly to the Office of Management and Budget (OMB) using uniform reporting elements on performance and financial management and Franchise Funds report to the Chief Financial Officer's Council (CFOC), there is no uniform consistent approach to collecting and reporting performance data on interagency contracts Governmentwide. And the data that has been collected and reported has been identified by GAO as lacking or inaccurate. In 2002, GAO found that agencies were not accurately identifying or reporting the full cost of GWAC programs they were managing, precluding GAO from discerning if the fees collected were a reflection of costs (GAO-02-734). In its High Risk Series Update testimony, GAO stated that the fee-for-service feature of these interagency contracts creates an incentive to increase volume to support other programs and leads to focusing on meeting customer demands at the expense of complying with regulations (GAO-05-350T). And again, in a report on DoD's use of franchise funds, GAO states that while the franchise funds business-operating principles require that they maintain and evaluate cost and performance benchmarks against their competitors,

“...the franchise funds did not perform analyses that DOD could have used to assess whether the funds deliver good value. The funds' performance measures generally focus on customer satisfaction and generating revenues. These measures create an incentive to increase sales volume and meet customer demands at the expense of ensuring proper use of contracts and good value.”

II. Issues

The working group believes that the Panel can achieve maximum leverage for improving interagency contracting by focusing its efforts on a sound and consistent process for the creation and monitoring process for the continuation (or reauthorization) of these contracts. Many of the issues related to the misuse of these vehicles identified by the GAO and IGs relate to roles and responsibilities, internal controls, and management and oversight. These issues can best be addressed with a Governmentwide policy that requires agencies to specifically and deliberately address these matters at the point of creation and continuation rather than attempting to fix these problems at the point of use. The current lack of process and visibility allows for the proliferation of these vehicles in a largely uncoordinated, bottom-up fashion, focusing attention on the short term, transaction-based benefits of reduced procurement lead time instead of on their ultimate benefit as a tool for effective enterprise wide and Governmentwide strategic sourcing.

Lack of Consistent Governmentwide Policy on Creation and Continuation. Given the increasing amount of taxpayer dollars flowing through these vehicles to satisfy mission-critical requirements, the lack of a consistent Governmentwide policy on the creation and continuation of interagency contracts is notable. There are no uniform standards for their creation and no Governmentwide measures to support their continuation based on desired performance. Certainly industry witnesses have told the Panel repeatedly that aligning incentives is essential for success.¹¹ The working group believes that aligning incentives, or interests to produce desired behaviors and outcomes can only effectively be achieved at the point of creation and monitored at continuation.

Data and Transparency

But greater transparency into this creation and continuation process, on a Governmentwide basis, is essential to Governmentwide efficiencies. It would provide for the eventual rationalization of the numbers of interagency and enterprisewide contracts with the outcome of ensuring these vehicles are meeting the goal of reduced administrative costs and efficient competition. This will benefit all stakeholders. Therefore, the working group believes that a sound process for creation and continuation requires equally sound and transparent data. Such data would support effective decision-making for users and holders of the vehicles, effective oversight, and the eventual use of these vehicles for more strategic sourcing.

There is little doubt that interagency contracts can and do provide significant benefits and efficiencies but, to date, these efficiencies have been narrowly viewed, namely, as transaction efficiencies such as reduced pre-award lead time and more limited risk of protest. Witnesses speaking on the subject before the Panel identified the benefits of interagency contracts and several remarked that they viewed them as essential for meeting mission needs.¹² However, this focus on transaction-based value hides the even greater efficiencies to be gained if employed toward the goal of strategic Governmentwide efficiencies. Unfortunately, the lack of readily available, reliable and timely data on the use and management of interagency contracts continues to hamper the Government's ability to realize the more strategic value of these contracts. This lack of data is a barrier to strategic planning as well as oversight, on both an enterprisewide and Governmentwide basis.

As we begin to think in more strategic terms, we also note that procurement data reporting through FPDS-NG and its predecessor system dating back to the 1970s, has been exclusively transaction-based. But the system is capable, with enhancement, of

¹¹ Testimony from Todd Furniss, Everest Group, March 30, 2005; Peter Allen, TPI, April 19, 2005; Rober Zahler, Pillsbury Winthrop Shaw Pittman, LLP, April 19, 2005; Daniel Masur, Outsourcing Attorney, September 27, 2005.

¹² Testimony, Scott Amey for the Project on Government Oversight (POGO), May 17, 2005, Ashley Lewis for the Department of Homeland Security (DHS), June 14, 2005, David Sutfin for Department of the Interior, June 14, 2005, Martin Johnson for the Department of the Treasury, July 12, 2005, ****

providing data that can inform strategic decision-making both during the creation and continuation phase as well as at the point of use. OMB's Memorandum "Implementing Strategic Sourcing," dated May 20, 2005 states that strategic sourcing is a

"...collaborative and structured process of critically analyzing an organization's spending and using this information to make business decisions about acquiring commodities and services more effectively and efficiently. This process helps agencies optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total life cycle management costs, improve vendor access to business opportunities, and otherwise increase the value of each dollar spent."

Before an agency creates or continues an interagency or enterprisewide vehicle and applies the resources necessary to manage such a vehicle, access to data on similar vehicles would provide essential market research for informing a cost-benefit analysis. Data on the costs and performance measures of such vehicles would also inform rational decisions on their use, driving the market to more efficiently 'cull' the numbers of such vehicles to only the highest performing and most cost-effective.

Competition

BACKGROUND

The issue of competition on interagency contract vehicles (ICVs) applies to both the basic ICV award and individual orders placed against an ICV. Governmentwide acquisition contracts (GWACs) and multi-agency contracts have different competition standards at both levels than do Federal Supply Schedules (FSS), and a brief discussion of these differences is appropriate to introduce the issues. Competitive standards and procedures apply regardless of whether the acquisition is direct or assisted.

Contract Award

Award of GWACs and multi-agency contracts is subject to the Competition in Contracting Act (CICA) of 1984 requirements, as implemented in Federal Acquisition Regulation (FAR) Part 6. CICA requires, with limited exceptions, full and open competition in which all responsible sources are permitted to compete. GWAC and multi-agency contract solicitations specify firm, objective requirements whenever possible (e.g., IT hardware commodities), but have at least a general scope of tasks (e.g., some support service contracts) against which all offerors compete.

For most Government solicitations, this competitive procedure results in a single award, “winner take all” outcome. This definitive competitive result is often not present in GWAC and multi-agency contract competitions because these vehicles often result in multiple, rather than single, awards. Further, anecdotal evidence suggests that awards are sometimes made to most, and even all, offerors responding to a GWAC or multi-agency contract solicitation. In such cases, competitive pressures do not always come to bear fully at the initial award, and the true competitive benefits are expected to be realized through the orders subsequently awarded via competition among the GWAC and multi-agency contract awardees.

FSS contracts are awarded pursuant to GSA’s separate authorizing statute identified in a previous section of this report. For the FSS program, GSA maintains an open solicitation under which any contractor may submit an offer for award of an FSS contract. Unlike the competition standard described above for GWAC and multi-agency contract solicitations, offerors under an FSS solicitation do not compete against other offerors, but against a standard of a fair and reasonable price for the products and services of a responsible contractor. Although GSA attempts to ensure that the prices and labor rates of an FSS contract are reasonable, competition among contractors is deferred until the orders being placed against the FSS contracts.

Orders

The fair opportunity procedures in FAR Subpart 16.5 apply to orders placed against multiple award GWACs and multi-agency contracts. The intent of fair opportunity is to preserve the competitive benefits inherent in the CICA full and open

competition standard, but in a less formal manner that recognizes the prior CICA-based competition for the underlying contract and the limited number of awardees under a GWAC or multi-agency contract.

The FAR procedures were established pursuant to the statutory requirement to provide each awardee a fair opportunity to be considered for each order exceeding \$2,500 (10 U.S.C. 2304c(b) and 41 U.S.C. 253j(b)). In providing fair opportunity, the FAR gives contracting officers broad discretion in developing appropriate order placement procedures. Within this discretion, contracting officers are advised to keep submission requirements to a minimum and use the appropriate streamlined procedures, including oral presentations. Contracting officers are not required to contact each of the multiple awardees if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

Although the CICA competition requirements do not apply to the ordering process, contracting officers must:

- (A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;
- (B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;
- (C) Tailor the procedures to each acquisition;
- (D) Include the procedures in the solicitation and the contract; and
- (E) Consider price or cost under each order as one of the factors in the selection decision.

In developing the fair opportunity procedures to be used on a given contract, the FAR advises contracting officers to consider the following:

- (A) Past performance on previous orders.
- (B) The potential impact on other orders placed with the contractor.
- (C) The contract's minimum order requirements.
- (D) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.
- (E) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—
 - (i) Seeking comments from two or more contractors on draft statements of work;
 - (ii) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (e.g., requirements are complex or need continued development), where all contractors are initially considered on price considerations (e.g., rough estimates), and other considerations as appropriate (e.g., proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the

Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

The FAR fair opportunity coverage also requires contracting officers to document the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision.

FAR 16.505(b)(2) lists the following exceptions to the fair opportunity process specified in 10 U.S.C. 2304c(b) and 41 U.S.C. 253j(b):

(A) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(B) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(C) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(D) It is necessary to place an order to satisfy a minimum guarantee.

Contracting officers must justify and document the use of any of these exceptions.

GSA has established ordering procedures for FSS schedules that are codified in FAR subpart 8.4. While limited source orders are permitted under certain conditions (just as they are under CICA), the FSS ordering procedures require consideration of at least three FSS contractors when placing an order exceeding \$2,500. The ordering procedures for services requiring a statement of work include a request for quotation process for orders above \$2,500. Under this process, ordering offices must provide a quasi-solicitation to at least three schedules contractors. The intent is to realize the benefits of a “winner take all” competition, albeit *among a defined number of sources*.

CONTRACT RETENTION

In addition to awarding contracts and placing orders, the working group believes there is another significant issue related to competition: whether ICVs should continue to include contractors indefinitely when they have not demonstrated their competitiveness by earning a certain level of business under the contract over a reasonable period of time. Although not often used, a GSA procedure exists for removing contractors from the FSS schedules when they fail to meet specified transaction levels. There is no standardized similar process for GWACs and MACs.

CONCERNS AND CONGRESSIONAL ACTION

A number of GAO and IG reports have expressed concerns about competition at the order level. These concerns range from agency failure to follow fair opportunity and FSS ordering procedures to manipulation of the process to ensure award of orders to favored contractors or incumbents. For example, GAO-04-874, "Guidance Needed to Promote Competition for Defense Task Orders" identifies a number of representative issues. Although the GAO reviewed only DoD orders, the working group has no reason to conclude that the deficiencies are unique to DoD. GAO found, among other things, that:

1. Competition requirements were waived to favor incumbents.
2. Documentation of the waivers was insufficient.
3. Higher level approval of the waivers was lacking.

Congressional concern about these and other issues predates the GAO report discussed above. In an attempt to ensure that DoD achieved higher levels of competition on multiple award contracts, Congress passed Section 803 of the FY2002 Defense Authorization Act required that DoD, for services exceeding \$100K, solicit offers from all contractors offering the required services under multiple award contracts. Section 803 applied this requirement to DoD purchases using task and delivery orders under interagency contract vehicles, but allows DoD contracting officers to waive the requirement under limited circumstances. Even in cases in which Section 803 permits waivers, contracting officers are not permitted to award a task or delivery order unless three offers have been received or the contracting officer determines that no additional qualified contractors can be identified. DoD implemented the statute in the Defense Federal Acquisition Regulation Supplement (DFARS), but no similar standard applies to non-DoD agencies.

Pricing

GSA SCHEDULE PRICING

Recently, increased attention has been paid in the pricing and audit of the Schedule contracts. In a report released in February 2005, GAO found that nearly 60% of the Schedule contracts reviewed lacked sufficient documentation needed to clearly establish the prices were effectively negotiated (P3, GAO-05-229). The report stated that the contract files did not establish that the negotiated prices reflected adequate price analyses and reasonable negotiations based on accurate, complete, and current vendor information. GAO further stipulated that the “significant decline” in the number of pre-award and postaward audits of Schedule contracts may have hindered GSA’s efforts to ensure most favored customer (MPC) pricing. In response, GSA agreed to place a strong emphasis on the adequate documentation of contract pricing, analysis, and negotiation, and to increase the number of pre-award audits while reviewing the policy on post award audits (p45, GAO-05-229). GSA also pointed out that its goal is to obtain a “fair and reasonable price as measured against the vendor’s commercial customers who purchase in a manner similar to the Government” and that the prices established at the contract level provide a “starting point from which agencies can leverage their own requirements seeking price reductions through competition at the order level.” (p36, GAO-05-229).

Another important aspect of GSA Schedule pricing that the working group identified is the viability of current MFC pricing model in services area. With services representing almost two-thirds of the sales generated through the Schedules program in the FY 2004, several witnesses have pointed out to the working group that the current Schedule pricing model is predicated upon a product-based market and may not work well in negotiating prices for services. Often, labor categories and skills are not uniformly defined and commercial companies are reluctant to publish their labor rates in catalog format as is required by the Schedules program. The witnesses have pointed out that the published hourly rates for services do not provide accurate pricing information for a particular task as the mix of labor and time allocated for fulfill the task may vary among the Schedule contractors. The working group found a brief attempt by Congress to test a pilot program on this subject where negotiation of the terms and conditions for certain Schedules for IT was “limited to terms and conditions other than price” (40 U.S.C. 11701, repealed).

A Panel witness managing a major Schedule operation named Mission Oriented Business Integrated Services (MOBIS) also pointed out that one of the most difficult obstacles is working with contractors whose primary source of sales is to the Government. Though the services they offer may fit the definition of a commercial service, under current FAR 2.101(b) definition of commercial items, their sales and pricing data is not considered commercial. The witness contemplated whether it would be feasible to allow non-commercial sales in Schedule price determination criteria if it could be demonstrated that those prices utilized were able to be determined to be fair and

reasonable in accordance with FAR requirements. The issues surrounding pricing of services in the GSA Schedules program will be addressed in the section of the report dealing with commercial item acquisition.

Workforce Issues

Background

Acquisition workforce training can be viewed as a secondary level item, as the main purpose of training is to provide the acquisition workforce the needed skills and tools they need to do their jobs. In the context of the work of the Interagency Working Group, workforce training would address any deficiencies or needed requirements identified in the Working Group's review of interagency contract vehicles, as well as any other related training requirement identified by the Section 1423 Acquisition Advisory Panel as a whole. Having said that, acquisition workforce training is of prime importance because it is the basis for implementing change, for renewal, in the acquisition workforce.

Many reports by the Government Accountability Office (GAO) and Department of Defense (DoD) and other departmental Inspectors General (IG) have identified significant shortcomings in the development and use of interagency contract vehicles during the last several years, and have again and again recommended training to provide the workforce with the right skills and tool sets. It is the role and mission of the Government's training organizations, particularly the Defense Acquisition University (DAU) and the Federal Acquisition Institute (FAI), to develop the skills and tools needed by the acquisition workforce to effectively and efficiently use interagency contract vehicles.