

Interagency Contracting 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 almost exclusively 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 in award efficiencies 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 most of the management challenges in these recent studies were identified 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 multiagency contracts and that “[w]hen properly developed and used,” these vehicles may enable agencies to fulfill their missions.

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 over 20 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

¹ GAO-05-207, February 2005

effective administration, reduced overhead cost, and improved spend analysis insight. Due to their similarities to interagency vehicles and as a result of the growing number being established within agencies, these enterprisewide vehicles may have adverse impacts on the overall administrative efficiencies and cost savings associated with interagency vehicles. Consequently, the working group expanded its review and recommendations to cover these enterprisewide vehicles.

Congress has also passed legislation that could significantly impact the use of interagency vehicles in the future. Section 811 of the National Defense Authorization Act for Fiscal Year 2006 would expand the scope of the current Defense Department Inspector General compliance review into DOD's use of the GSA Federal Technology Service centers to include DOD's use of interagency vehicles generally. Section 812 of the same bill requires the establishment of a management structure within the Department of Defense for the management of services acquisition, including those services procured through interagency contract vehicles. The working group has taken note of these developments in formulating its recommendations, but at this time has refrained from drawing any 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 to assist with disaster preparation and recovery. Beginning with sound agency advance planning, interagency vehicles could provide pre-negotiated line items, 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 from both Government and private sector experience;

Increase the scope of competitive forces in interagency vehicle transactions;

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

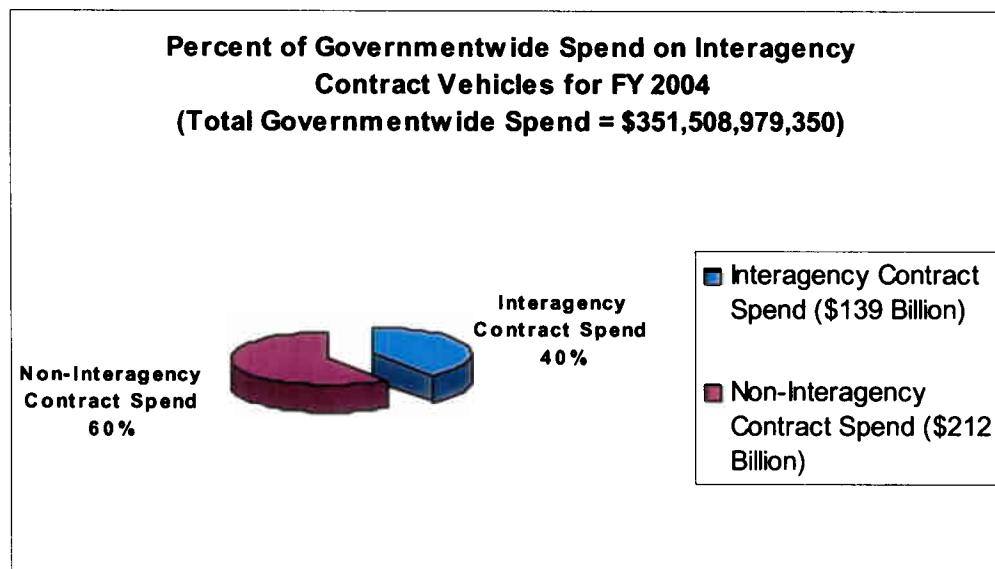
and

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

As will be seen below, the working group's recommendations fall into two broad categories. The first set of issues is 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 by establishing more formal procedural requirements for initially establishing such vehicles and subsequently for authorizing their continued use. The second related set of issues is 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 2005, the two leading programs, the General Services Administration's (GSA) Schedules Program and the GSA's Governmentwide Acquisition Contracts (GWAC) provided approximately \$44.8B of supplies and services to federal agencies (GSA-managed Schedules: \$33.9B; VA-managed Schedules: \$7.5B; GSA GWACs \$3.4B). (see Schedule & GWAC sales chart). 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. Federal Procurement Data System – Next Generation (FPDS-NG), in its first year of reporting the spending under interagency contract vehicles shows that 40% of total Fiscal Year 2004 obligations, or \$139 Billion was spent on these vehicles:



In addition to these interagency contract vehicles, GSA and other agencies, referred to as “interagency assisting entities” were authorized to provide interagency support services 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 existing interagency contract 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 (See e.g., Memorandum from Earl Devaney, Inspector Gen., Dep't of Interior, to Assistant Sec'y for Pol'y, Mgmt. & Budget (July 16, 2004), Page 1, <http://www.oig.doi.gov/upload/CACI%20LETTER3.pdf> (last visited Mar. 9, 2005); Shane Harris, "Bad to Worse," Government Executive (September 15, 2004), available at <http://www.govexec.com/features/0904-15/0904-15newsanalysis2.htm>; "DoD Purchases Made through the General Services Administration," DoD IG (D-2005-096), 7/29/2005; "Franchise Funds Provide Convenience, but Value to DOD is Not Demonstrated, GAO-05-456, July 2005). From a customer agency's perspective, the availability of numerous direct and indirect interagency contract vehicles, along with their multi-layered usage schemes, provides an array of useful tools to better meet agency requirements, but at the same time creates accountability challenges associated with effectively managing contracts and tracking funds.

Due to their heavy usage of interagency contract vehicles, several agencies including 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. In response to this issue, 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. Certain interagency transactions are governed exclusively by the Economy Act and its controls, which most notably involve restrictions on funds transfer and usage. In addition, the Economy Act currently serves as an overarching interagency transactional authority that applies when more specific authority for the transaction does not exist. Increasingly a greater number of transactions are falling outside the control of the Economy Act. Today, most of the widely used interagency contract vehicles such as the GSA Schedules program and GWAC's are not governed by the Economy Act, but by specific statutes and regulations.

Described below are brief overviews of these vehicles and entities.

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 requesting 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 a 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 further amended the Act under the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub.L. 103-355, Title I, § 1074, Oct. 13, 1994, 108 Stat. 3271) to require advance approval by a requesting agency's Contracting Officer (or, as implemented in FAR 17.503(c), an official designated by the agency head) as a condition for using Economy Act authorities, as well as establishment of a system to monitor procurements awarded under the Act. The FASA provided additional specific conditions that must be met before making Economy Act transactions. Namely, unless the servicing agency is specifically authorized by law or regulations, in order to utilize a servicing agency's contract, the requesting agency must document (verify or demonstrate or certify) that the servicing agency has either an appropriate pre-existing contract available for use or that it has specialized expertise that is not resident within the requesting agency. (Ibid. Sec 1074(b)(2))

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 GWAC's established pursuant to the Clinger-Cohen Act, 40 U.S.C. 11314(a)(2) (formerly cited as 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 GWAC's. 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, GWAC's, although a subset of multi-agency contracts, are distinguished from non-GWAC multi-agency contracts in terms of the governing statute. For this reason, GWAC's 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 (i.e., requirement agency) is required to support its action through a written Determination and Finding (D&F) approved by its contracting officer or by another official specifically designated by the agency head. FAR 17.503(c). A D&F is a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions.² Once this D&F is in

² Federal Acquisition Regulation (FAR); Subpart 1.7 – Determination and Findings, 1.701 Definition

place, typical ordering procedures established by the multi-agency contract's host agency include: a) customer agency submits a requirements package, including necessary funding and fees, to the host agency contracting officer; b) the host agency contracting officer requests price/cost and technical proposals 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.diteo.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 a seven-year, two billion dollar ceiling, and the orders are placed by the DISA contracting officers at one percent fees.

B. GOVERNMENTWIDE ACQUISITION CONTRACT (GWAC)

Governmentwide Acquisition Contracts (GWAC's) 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) [later recodified under §11314(a)(2)]; 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). The Economy Act does not apply to orders under a Governmentwide acquisition contract.

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 government wide 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) was relocated to GSA in June 2004). 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 QAP's to "serve as models that may be adopted and tailored by other agencies that manage a significant amount of interagency acquisitions." (ibid) Due to management controls by OMB over their creation and continuation, existing GWAC programs are well defined when compared to non-GWAC multi-agency contracts.

Accessing a GWAC 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.

The legislation authorizing GWAC's did not provide meaningful guidance with respect to how financial transactions should be accounted for and fees managed under these contracts. As a result, according to GAO, host agencies are left to choose on their own whether these transaction fees would 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

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their GWAC's 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 GWAC's follows: (under development)

Governmentwide Acquisition Contracts (GWAC's)							
CONTRACT	DESCRIPTION	CEILING	# AWARD EE	FEE	FY04 # ORDERS	FY04 SALES	TOP CUSTOMERS
COMMITTS Nex Gen	Entirely small business set-aside; provides a broad spectrum of IT services and solutions	\$8B	55	0.5%-1%	738	\$1,409M	DOC, CDC, GSA
ANSWER	Full IT services	\$25B	10	1%	421	\$389M	Air Force, Army, State
Millennia	Large IT projects	\$25B	9	1%	16	\$177m	EPA, Army, DHS
Millennia Lite	IT Planning; high-end services; mission support; systems migration	\$20B	33	0.75%			
Alliant	Will replace ANSWER & Millennia (projected award 3/2006)	\$50B	20 est.	0.75%	N/A	N/A	N/A
Alliant SB	New, set-aside (projected award 3/2006)	\$15B	20 est.	0.75%	N/A	N/A	N/A
ITOP II	Used to be DOT contract; Sunset in 2006	\$10B	26	0.75%	1	\$0.2M	DOT
HUBZone	Set-aside	\$2.5B	34	0.75%	9	\$161M	DOJ, EPA, Navy
8(a) FAST	Expired 10/2004 w/ sales of \$2B and 14,000 task orders issued				403	\$94.7M	Army, Navy, Air Force
8(a) STARS	Set-aside; Replaced 8(a) FAST	\$15B	432	0.75%	60	\$31M	Air Force, DoD, Army
Smart Card	Security	\$1.5B	4	0.75%	5	\$16M	TSA, NASA, DOT
VETS	New, set-aside			0.75%	N/A	N/A	N/A
IW2nd	Image World 2 New Dimensions; provides a mechanism to meet IT acquisition needs in areas of imaging and document management systems	\$15B	24	1% or less	80	\$12.3M	NIH
CP Leasing	8(a) contract with CPL for leasing IT, medical info, telecommunications, and medial 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	\$6B	65	1%	23,386	\$413m	
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 services	\$19.5B	45	1% or less	61	\$194M	NIH
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	\$4B	12	0%-0.75% (max \$5000)	13,927	\$896M	Navy, DoD, GSA, Air Force, DOJ, NASA, Army

C. GSA SCHEDULES PROGRAM

The GSA Schedules Program is also known as the Federal Supply Schedule 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 took over the 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.

While the GSA's pricing policies and procedures have evolved over time, GSA's core objective has remained unchanged -- "to use commercial terms and conditions and the leverage of the Government's volume buying to achieve the best possible prices and terms for both customers and taxpayers." (FSS Procurement Information Bulletin 04-2) To this end, GSA utilizes Most Favored Customer (MFC) pricing, an approach whereby GSA negotiates with its vendors for the best prices afforded their preferred customers for like requirements of similar scale. Accordingly, the essence of GSA Schedule contract price analysis is comparison of the offered prices to prices paid by others for the same or similar items (including services), under similar conditions. This pricing approach, combined with GSA's Price Reductions clause (GSAM 552.238-75), operates to ensure that a specific pricing relationship is maintained throughout the duration of the contract.

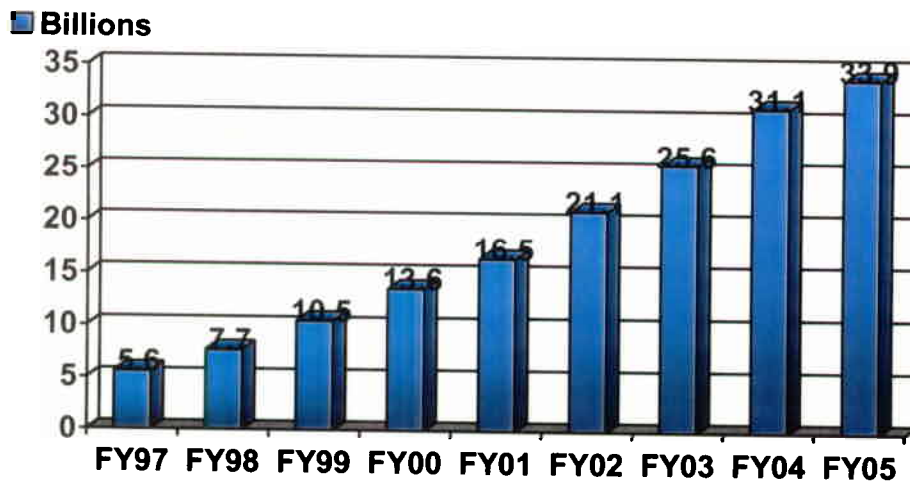
There has been, however, some criticism of MFC pricing, that it tends to inflate prices by forcing contractors to set price based on minimum order quantity. It is argued that, without any firm commitment for a definite order quantity, and to avoid triggering the Price Reductions clause, contractors avoid risk by offering a ceiling price for a single unit rather than the most competitive price. In addition, several witnesses to the panel suggested that the MFC price technique may not be suitable for pricing commercial services. They pointed out that the commercial market, in contrast to the MFC pricing technique, utilizes dynamic pricing for services based on the labor mix for a specific task rather than relying on prearranged standard labor rates.

As of January 2006, GSA administers 43 Schedules providing more than 11.2 million different commercial services and products through its 17,495 contracts. Within each Schedule, supplies and services are categorized by what is referred to as Special Item Numbers (SINs). SIN 132-51 for "Information Technology Services" under Schedule 70 (General Purpose Commercial Information Technology Equipment, Software, and Services) is one of the most widely used SINs in the entire Schedules program. There are 1,322 SINs under the 43 Schedules.

The significance of the GSA Schedules Program in today's federal contracting landscape is easily seen by looking at the sales figures in recent years. In Fiscal Year 2005, sales under the program were \$41.4B (GSA-managed Schedules: \$33.9B; VA-managed Schedules: \$7.5B (estimated)). GSA-managed Schedule sales grew by 9.0 percent from Fiscal Year 2004 (note: this is a significant drop from 21.5 percent growth during the previous year). During the last eight years, GSA-managed Schedule sales have grown on average 25.6 percent annually.

Within the GSA Schedules Program, the Services Acquisition Center, offering the 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 Fiscal Year 2005 sales were \$3.5B. During the last three years, its sales have grown by 164 percent, indicating a growing demand for professional services. In comparison, after rapid growth in the late 1990's, the sales under the IT Acquisition Center, featuring the IT Schedule (Schedule 70), have shown signs of continued but less dramatic growth. Its sales grew by a mere one percent during Fiscal Year 2005. Still, the IT Schedule sales in Fiscal Year 2005 were \$17.2B, accounting for approximately 50.8 percent of total Schedule sales. As of January 2006, total Fiscal Year 2006 sales for the GSA Schedules Program were \$17.9B, representing a 4.5 percent increase over the same period the previous year.

Sales under GSA Schedules Program (excluding VA Schedules)



As of December 2005, approximately 17,500 Schedule contracts were in place. About 81 percent of those were awarded to small businesses. Small business received 37.7 percent or \$12.8B of the \$33.9B Schedule sales in Fiscal Year 2005. Compared to Fiscal Year 2004 sales by small businesses of 36.8 percent (\$11.4B) or Fiscal Year 2003 sales of 35.6 percent (\$9.1B), the small business participation in the Schedule program has grown steadily stronger.

The 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. The operating assumption is that the price for such supplies and services has been tested in the market, and that a price can be established as fair and reasonable without an initial price competition among multiple offerors. Schedule contracts allow for orders to be issued on a firm-fixed-price, fixed-price with economic price adjustment, or time-and-materials basis. The contracts are known as “evergreen” and are typically awarded with a 5-year base period and three 5-year options. They include conditions under which a contractor may offer a price discount to authorized users without triggering mandatory across-the-board price reductions. Under the GSA Schedule Program’s continuous open solicitation policy, offers for commercial supplies or services may be submitted at any time. Similarly, contractors may request to add supplies/services to their contracts at any time during the term of their contract.

Prior to awarding a Schedule contract, GSA determines the contractor to be 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

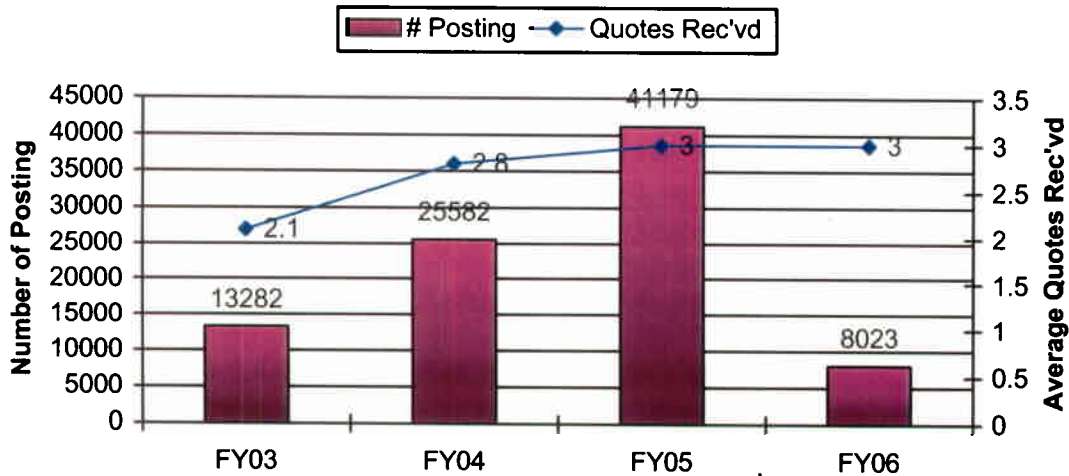
of the up-front work, agencies then benefit from a streamlined ordering process. A study conducted by the GSA indicates that, notwithstanding the difference in the items being acquired, it takes users an average of 15 days to issue an order under a Schedule contract compared to an average of 268 days to put a stand alone contract in place (“Impact of FAR 8.4 Comparison Analysis of Customer-Elapsed Time Savings” (1998) as quoted on p41, Chierichella & Arnie, Multiple Award Schedule contracting, 2002, Xlibris Corporation).

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 (it is also available for GSA GWAC’s). When using the e-Buy system, ordering agencies first prepare a simple RFQ or a detailed RFQ including Statement of Work and evaluation criteria (FAR 8.405-2(c)). The agencies then select one or more appropriate Special Item Numbers (SINs) under applicable Schedules. Among the list of vendors under the selected SINs, the agencies select the ones to send e-mail notifications. The rest of the vendors within the selected SINs can still 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-Mission Oriented Business Integrated Services (MOBIS). The e-Buy system will show the list of 3,966 vendors available under SIN 132-51 and 1,703 vendors under SIN 874-1 (as of 1/13/2006). The agency will then select the vendors to whom to send e-mail notifications about the RFQ (“select all vendors” is also available). However, the rest of the vendors within the two SINs may still view the RFQ in the bulletin board and submit quotes. Under, FAR 8.405-2(d), the ordering agencies must evaluate all responses received. The agency can determine a reasonable response time.

Postings on e-Buy have been continually increasing since its inception in August 2002. In Fiscal Year 2003, 13,282 solicitations were posted. Postings increased to 25,582 in Fiscal Year 2004. In Fiscal Year 2005, there were 41,179 postings. Finally, as of January 2006, there have been 8,023 postings representing an approximately 17 percent increase over the same period in Fiscal Year 2005. On average, three quotes have been received per closed RFQ during Fiscal Year 2005 while the number of vendors invited to quote per RFQ was 55.



D. ENTERPRISEWIDE CONTRACT VEHICLES

An emerging contract vehicle that is modeled after interagency vehicles is the so-called enterprise wide contract. As these vehicles are intended to serve as an alternative to interagency contracts, they share certain features with those vehicles, but their use is generally confined within the boundaries of a single agency. Because of their similarities to interagency vehicles and due to the growing number being established within agencies, the working group has expanded its review and recommendations to cover these enterprisewide vehicles.

Enterprisewide contract vehicles are intra-agency contracts established solely for use by an agency's major internal constituent sub-organizations. The agency creates these vehicles for a variety of reasons to include: ability to tailor requirements for agency-unique purposes, improved consistency of processes and requirements across the enterprise, ability to establish and enforce inclusion of tailored terms and conditions, perception of reduced administrative overhead, availability of better spend analysis information, ability to aggregate requirements, and avoidance of incurring the fees that would otherwise be sent to the GSA or another outside 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. NAVSEA claims that SeaPort-e offers many of the same advantages as interagency contract vehicles, such as streamlined acquisition of services, while also providing for improved collection of business intelligence data,³ additional competition, and the ability

³ According to the testimony to the Panel on August 18, 2005 from Jerry Punderson, SeaPort-e program manager, relevant business intelligence data includes information on spending by individual activities under specific task orders for specific engineering services.

to measure performance in such 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.

The SeaPort-e program awarded 654 prime contracts with a yearly rolling admissions process. SeaPort-e is described as the Virtual SYSCOM's⁴ "mandatory acquisition vehicle of choice," meaning that SYSCOM customers must obtain Senior Executive Service (SES) or Flag Officer level approval to use an interagency assisting entity.⁵ Even if a SYSCOM contracting officer executes an unassisted award, they must obtain business case approval to use a vehicle other than SeaPort-e, such as GSA's Federal Supply Schedules program. But the stated goal of SeaPort-e is to eventually ensure that all Virtual SYSCOM work within its scope falls under SeaPort-e when it makes business sense. In these cases, existing contracts will be allowed to expire and the work will be migrated into SeaPort-e. According to NAVSEA's witness at the panel meeting on August 18, 2005, all the business intelligence data lacking when they use an outside interagency contract is available under SeaPort-e, facilitating more strategic purchasing in the Virtual SYSCOM. SeaPort-e's witness stated to the Panel that no additional personnel were added to manage the SeaPort-e program.⁶

E. INTERAGENCY ASSISTING ENTITIES

Interagency assisting entities, such as the franchise funds, are not interagency vehicles but are part of the interagency contracting landscape. The working group decided to include consideration of assisting entities in its review and recommendations for several reasons. An agency's use of an assisting entity involves relying on an outside organization for performance of contracting functions. Assisting entities also rely to a large extent on interagency vehicles to meet customer agencies' needs. Use of an assisting entity also involves the transfer of funds from one agency to another.

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 intraovernmental revolving (IR) funds at the agency level describe the funds' purpose and authorized uses, and detail the receipts or collections the agency may credit

⁴ The Virtual SYSCOM was described by Seaport-e's Program Manager, Jerry Punderson, as including NAVAIR, NAVFAC, NAVSUP, SPAWAR, and NAVSEA (testimony from August 18, 2005).

⁵ The phrase and its description provided by Jerry Punderson in his testimony from August 18, 2005

⁶ Testimony to the Panel on August 18, 2005 from Jerry Punderson, SeaPort-e Program Manager.

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”⁷.

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 funds for the acquisition of capital equipment and financial management improvements⁸.

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, Interior, and 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”⁹. 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 are provided in many cases with explicit or implicit authority to retain up to four percent of total annual income, providing great operating flexibility to those six agencies that are granted such authority. This flexibility is bounded in that the use of the 4 percent reserve is limited by statute to the acquisition of capital equipment, and for the improvement and implementation of capital improvements in financial management, IT, and other support systems reserve.

From a contract administration standpoint, this arrangement creates unique challenges. A typical transaction may involve multiple parties including -- the customer agency's program office, its contracting officer, its finance office, the assisting entity's contracting officer, the assisting entity's finance office, and the contractor. A recent GAO report pointed out that the customer agency and the franchise fund, who "share responsibility for ensuring value through sound contracting practices such as defining contract outcomes and overseeing contractor performance," had not adequately defined requirements and delineated responsibilities. (GAO-05-456, "Franchise Funds Provide Convenience, but Value to DOD is Not Demonstrated" quote from section titled "What GAO Found.") The GAO report concluded that two franchise funds, GovWorks and FedSource, had failed to coordinate with DOD customers to adequately "define

⁷ GAO-03-1069, p15

⁸ Ibid. p19.

⁹ Ibid. p3.

outcomes," "establish criteria for quality," and "specify necessary criteria for contract oversight" resulting in these entities not being able to demonstrate value. Ibid, pgs 21-24.

Listed below are several well-known Interagency Assisting Entities:

(CHART WILL BE UPDATED)

AGENCY	INTERAGENCY ASSISTING ENTITY	STATUTORY AUTHORITY	FY2005 SALES	TOP CUSTOMERS	PROGRAM TYPE
DOI	GovWorks	GMRA			Franchise Fund
DOI	National Business Center	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 includes the oversight organization within the Executive Branch, as well as Congress, charged with protecting the interest of the ultimate stakeholder, the taxpayer.

Creation and Continuation in Interagency Contracting

I. BACKGROUND

Existing Requirements for Creation and Continuation

Several types of interagency contract vehicles, as well as enterprisewide contracts, provide for varying levels of internal procedural uniformity and monitoring with respect to their creation. While these procedures and types of monitoring vary in their effectiveness, it is important to review the current landscape.

GSA's Schedules Program. GSA has established a formal written policy for both the establishment and continuation of schedules and Special Item Numbers (SIN). The policy, contained in "GSA Form 1649 - Notification of Federal Supply Schedule Improvement Process" requires business case approval for establishment of new schedules and SINs. This policy also requires that existing schedules and SINs must meet certain annual revenue criteria to continue in the program.

GWAC's. 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.

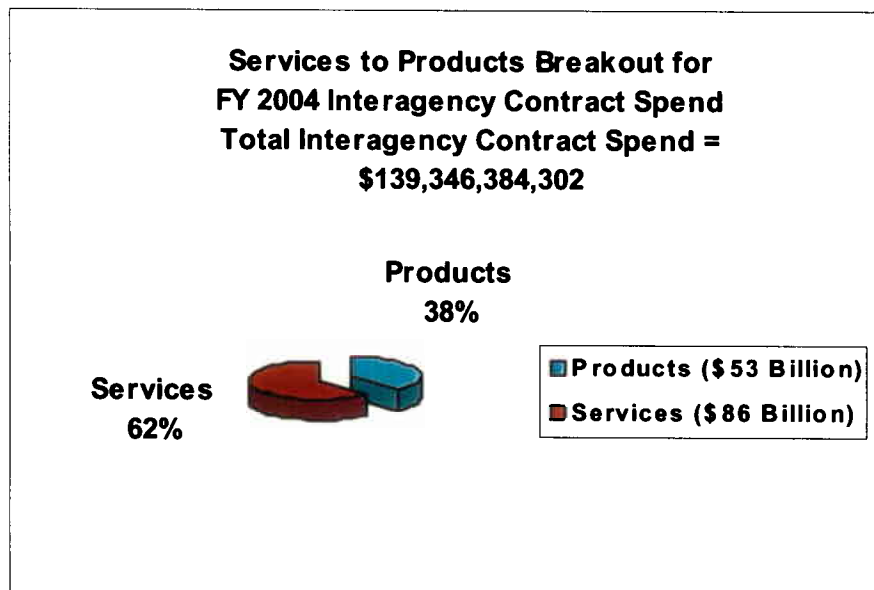
Franchise Funds. The initial application process, issued by the Office of Management and Budget (OMB) in 1996 required agencies to address criteria to help OMB determine agency suitability and capacity to manage a franchise fund (Appendix *). The franchise funds are required, through the budget process, to report on specific financial management elements including, but not limited to those relating to contracting practices. Because franchise funds were not created specifically for performing acquisition functions, such elements do not focus solely on sound contracting practices recently identified as lacking by the GAO (GAO-05-456). Further, to the extent that such performance measures disproportionately focus on customer satisfaction and revenue, franchise funds are susceptible to many of the misuse issues identified with interagency contracting by GAO and the IGs (GAO-05-456).

Enterprisewide Contracts. There is no uniform process for establishing or monitoring these vehicles. According to the SeaPort-e Program Manager's testimony to the Panel, the decision to make SeaPort-e an 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 fulfill requirements. SeaPort-e reports a

number of performance metrics to include cycle time to award, business volume, small business participation and workload.¹⁰

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.¹¹ 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 the Government's yearly contract spending.¹² In response to a Panel request for data, FPDS-NG provided the following breakout of supplies and services purchased in Fiscal Year 2004 using interagency contracts:



A number of factors have led agencies to turn to interagency contract vehicles to meet demands for services. The major factors are summarized below.

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 lead-times.¹³ In its testimony on the High Risk Update in February 2005¹⁴, GAO stated that "These types of contracts have allowed customer agencies to meet the demands for goods and services at a time

¹⁰ NAVSEA presentation slides for public testimony to Panel, August 18, 2005

¹¹ GAO-02-449T, March 7, 2002

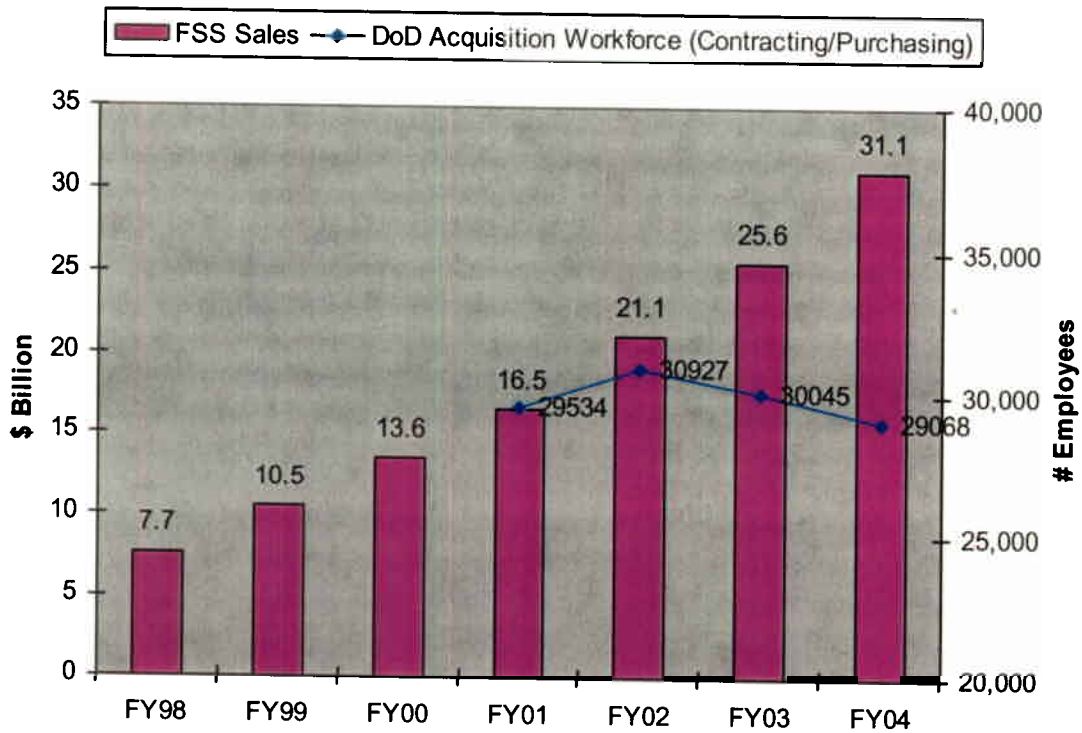
¹² For FY 2004, services accounted for 60% of total spending or 80% if weapons systems are excluded from the base.

¹³ GAO-02-179T, November 1, 2001

¹⁴ GAO-05-350T, February 2005)

when they face growing workloads, declines in the acquisition workforce, and the need for new skill sets.” Interagency contracts allow requiring agencies to meet mission needs while focusing human capital resources on core mission rather than procurement. For instance, the chart below shows the interrelationship of the DoD workforce reductions mapped against overall growth in GSA’s Federal Supply Schedules program. Although the Department of Defense and NASA have recently issued guidance on procedures activities to follow for using interagency vehicles, agencies have no issued general guidance or procedures for reviewing and determining the best vehicles for meeting agencies’ mission needs.

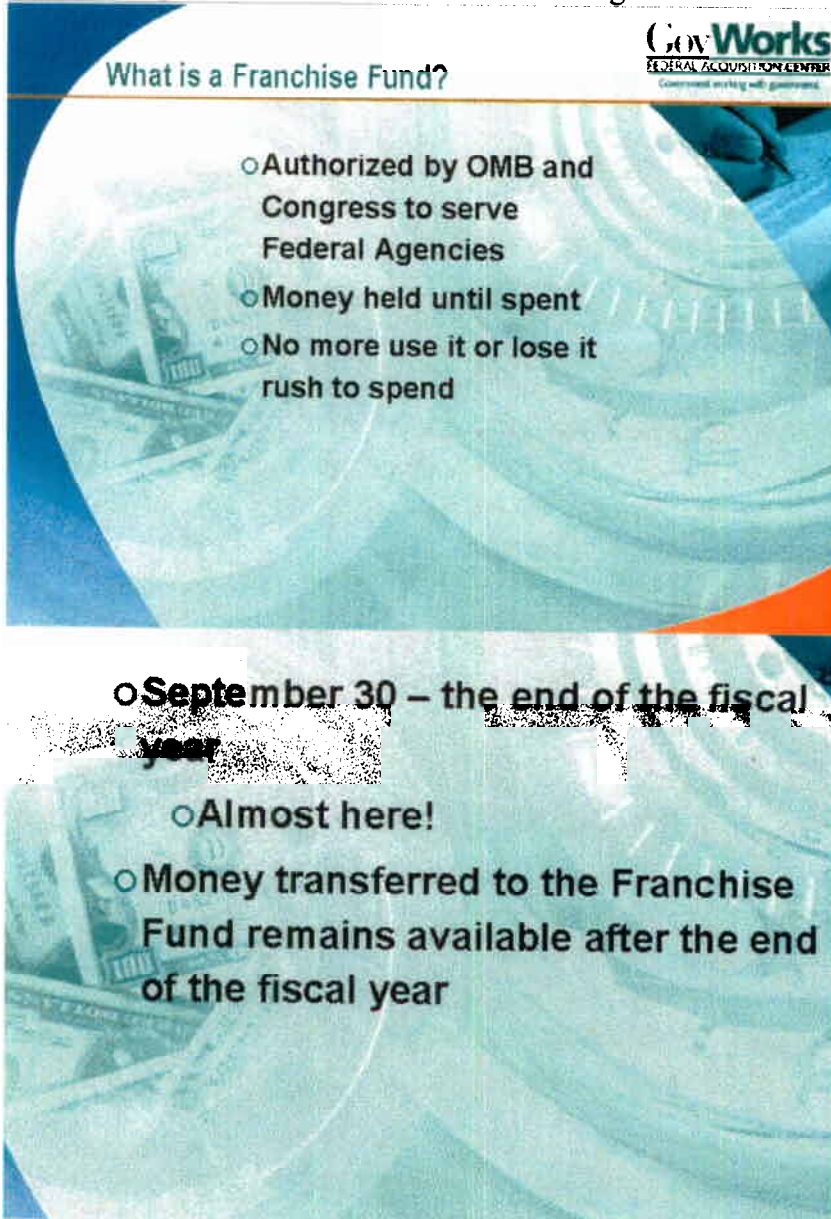
Federal Schedules Use – DoD Workforce Comparison*



Funding Constraints. 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 can offer the benefit of extending the use of customer funds into a subsequent fiscal year.¹⁵ Franchise funds offer the ability to retain funds beyond an appropriations period to customers if they are

¹⁵ Testimony of Lisa Akers (GSA) and Timothy Tweed (DoD) on 6/14/05.

able to demonstrate a bona fide need for the acquisition during the period in which the funds are available. In fact, at the Department of Interior (DOI) GovWorks franchise fund website (<http://www.govworks.gov>), a slide presentation on a link called “The Right Choice” emphasizes this benefit in its marketing material.



Perceived Flexibilities. Agencies have also used interagency vehicles to avoid and waive competition in order to retain the services of incumbent contractors (GAO-05-207). This is most likely probably due to the fact that public synopsis is not required on these vehicles. Also, multiple award contracts are viewed as desirable because they are perceived to provide for a reduced basis for oversight through the protest process. Current management and oversight systems enforce laws, regulations, and policies that clarify

requirements regarding proper use of the flexibilities associated with these vehicles, but agencies have recognized the need for improvements in such systems.

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 expand 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.¹⁶

Incentives to Create Interagency Contract Vehicles

Interagency contracts also provide significant benefits to those agencies that create and manage the vehicles. 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 2001.¹⁷ The agencies collecting the fees not only use these revenues to support the operational costs of the interagency contract, but excess revenue from these vehicles has funded other agency programs. For instance, GAO found that those agencies operating GWAC's 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."

II. OVERSIGHT CONCERNS

The lack of internal controls over the use and management of interagency contracts has been at the core of the recent GAO and IG findings on the misuse of these contracts in particular, and services contracts in general. Recent 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

¹⁶ GAO-05-229, February 2005, p. 5

¹⁷ GAO-02-734, July 2002

the responsibility for oversight lies (GAO-05-350T). GAO's High Risk Series Update (GAO-05-207) notes that interagency contracts are increasingly being used for the purchase of services. 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.

III. TRANSPARENCY

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, through a tool known as the Interagency Contract Directory (ICD). The Federal Register notice on the proposed rule identified the purpose for the directory as twofold: first, to provide a source for market research for Government program managers and contracting officers; and second, to provide OFPP with visibility into the Governmentwide coverage of requirements provided by the vehicles. The ICD was implemented through the Federal Acquisition Regulation (FAR) under Federal Acquisition Circular 2001-15. However, within a year's time of its launch, the Acquisition Committee for E-Gov (ACE) cut the project's funding due to funding constraints of the Integrated Acquisition Environment (IAE) under the E-Gov initiatives.

The next attempt to collect data on interagency contracts came in fiscal year 2004. While not designed to accomplish the same purpose as the ICD, the Federal Procurement Data System – Next Generation (FPDS-NG), began collecting data on the award and use of interagency contract vehicles. Beginning with Fiscal Year (FY) 2004, FPDS-NG required identification of these contracts and assigned delivery and task order obligations to the contracts by type (e.g., GWAC's, GSA Federal Supply Schedules, Blanket Purchase Agreements (BPA's), Basic Ordering Agreements (BOA's), and Indefinite Delivery Contracts (IDC's) 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." Along with this limitation, there is significant evidence that orders reported by agencies in FPDS-NG, may be incorrectly reported. This is most likely caused by the improper coding of orders which results from a lack of understanding of the differences between various types of interagency contracts. The working group bases this conclusion on OFPP's and IAE's discovery of obvious errors in agency classification of contracts during development of the now defunct ICD. For example, many non-GWAC contracts were improperly classified as GWAC's and there was a misunderstanding of when the Economy Act applied to multi-agency contracts. . Additionally, traditional problems with incorrect coding will impact the accuracy of the information in FPDS-NG. For instance, data obtained from DoD indicates that from 2001-2005 nearly \$185 Million has been spent by the Department on soybean farming or establishments that produce soybean seeds. A DoD representative stated that they

believe this large dollar value is attributable to those inputting the award data simply selecting the first NAICS code in the list, 111110 for soybean farming, rather than selecting the correct code. 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. The working group believes that neither significant education programs nor clear guidance have been provided to address these issues and insure that data on interagency contracts is properly entered into FPDS-NG

Data on Management. Agencies that hold interagency contract vehicles also 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 consistent approach across the government for collecting and reporting performance data on interagency contracts. Additionally, 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 the GWAC programs they were managing. This precluded GAO from discerning if the fees collected were a reflection of costs incurred by the vehicle holder (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). 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.”(GAO-05-201 pg. 16)

Data and Transparency

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

Findings - Creation and Continuation

Given the increased amount of taxpayer dollars flowing through these vehicles for the fulfillment of 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.¹⁸

There is little doubt that interagency contracts can and do provide significant benefit and efficiencies, but these efficiencies have been narrowly viewed primarily as transaction efficiencies such as reduced pre-award lead time and protest risk. 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.¹⁹ However, this focus on transaction-based value hides the even greater efficiencies to be gained if employed toward the goal of creating strategic Governmentwide efficiencies. Unfortunately, the lack of readily available, reliable and timely data on the use and management of interagency contracts has hampered 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.

The working group believes that the Panel can achieve meaningful improvements to interagency contracting practices by focusing its efforts on a sound and consistent process that provides oversight during the creation and the continuation (or reauthorization) of these contracts. Many of the issues identified by the GAO and agency IGs dealing with the misuse of these vehicles are related to the internal controls, management and oversight, and division of roles and responsibilities between the vehicle

¹⁸ 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.

¹⁹ 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, ****

holder and ordering agency. 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 remedy these problems at the point of use. The current lack of an established process and limited transparency 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. The panel and the working group received testimony from government witnesses who stated that interagency vehicles are often utilized when an agency does not have ample time to fully define its acquisition requirements. Establishing guidelines for the creation and continuation of these vehicles will help to ensure they are used as an effective tool for enterprisewide and Governmentwide strategic sourcing.

A. Proliferation

The pressures and incentives to create and use these vehicles, coupled with inconsistent or lacking oversight and little transparency has created an environment biased towards the uncoordinated proliferation of interagency contracts. GAO has noted that they are attracting rapid growth of taxpayer dollars (GAO-05-207) with Fiscal Year 2004 FPDS-NG data showing total obligations of \$139 Billion or 40% of the total Governmentwide spend for the year.²⁰ In addition, the working group is concerned about the emerging trend of a proliferation of enterprise-wide contracts such as the Navy's Seaport-E and the Department of Homeland Security's (DHS) Enterprise Acquisition Gateway for Leading Edge (Eagle) for IT Services and First Source for IT commodities.

An uncoordinated proliferation of these vehicles has consequences on the stakeholders that include requiring agencies, holders of the vehicles, industry, and those agencies responsible for oversight. That is why the working group has determined that it is necessary to include both interagency and enterprise-wide contracts in its recommendations. Addressing only interagency contracts in the working group's recommendations could have the unintended consequence of even greater enterprise-wide contract proliferation, exacerbating the negative consequences for stakeholders.

The working group believes that this proliferation of fee-for-service contacts coupled with lack of transparency creates incentives for the holders of the vehicles to focus on customer satisfaction at the expense of compliance with statutes and regulations, including those, such as competition, designed to improve value. These contract vehicles encourage customers to make decisions based on convenience and ease over performance metrics that ensure taxpayers receive the best value. In addition, holders of interagency contracts and their customer agencies must have the necessary expertise to award and manage orders under these interagency contracts. The GAO and IGs have noted that curtailed investments in human capital have produced an acquisition workforce that often

²⁰ Data was reported as of November 2005 in a report prepared in response to a Panel request.

lacks the training and resources to function effectively ²¹ in an environment of more complex contracting vehicles and service requirements. GAO testimony stated that contracting personnel are expected to have greater knowledge of market conditions, industry trends, and technical details of the commodities and services they procure.²² They also note that the use of interagency contracts requires a higher degree of business acumen and flexibility. One of the risks GAO cited with respect to interagency contracts is that they are being administered and used by some agencies that have limited expertise with the contracting method (GAO-05-207). In its testimony, GAO noted that some of DoD's problems with the use of interagency contracts stems from increasing pressures on the acquisition workforce and insufficient and inadequate training (GAO-05-350T). Insofar as holders of the vehicles are concerned, GAO noted that while the number of GSA's Federal Supply Schedule contracts increased, the contract specialist workforce remained relatively stable in terms of numbers (GAO-05-229).

Certainly, uncoordinated proliferation without adequate transparency into the establishment or use of these vehicles creates serious challenges for those organizations responsible for oversight. While GWACs, franchise funds, and schedules are readily identifiable, the significant number of other interagency vehicles such as non-GWAC multi-agency contracts and the emerging trend in the proliferation of enterprise-wide contracts presents an obstacle for oversight both in terms of sheer numbers and difficulty in identification. Lack of transparency in both the use and management of these vehicles severely hampers the government's ability to maximize their effectiveness.

Lastly, the burden on industry, both large and small, has been clearly documented with respect to the rapidly increasing number of interagency vehicles. These burdens include increased bid and proposal costs in order to obtain contracts for similar work under numerous interagency and now, enterprise-wide contracts. This proliferation is especially burdensome to small business. In reaction to the preference for multiple award contracts (the primary form of interagency contracts) and GSA's Federal Supply Schedule program, Washington Technology's James Fontana has stated that "The problem is you invest heavily in the right to hunt, only to find there isn't enough game for everyone to bring home."²³ Proliferation of interagency contracts and enterprise-wide contracts exacerbates this problem by increasing the number of "hunting reservations" that industry must seek out while the amount of potential business across the government remains unaffected. Vic Avetissian, Chairman of Public Policy Council for the Contract Services Association of America (CSA), in his testimony before the House Government Reform Committee on March 16, 2005 cited an inefficient overlapping of contracts for similar products and services responsible for increased costs to industry to prepare separate proposals.

²¹ GAO-03-443, April 2003, GAO-01-1074R, August 22, 2001, GAO-05-350T, February 2005, GAO-02-179T, November 1, 2001, GAO-05-274, March 2005, GAO-03-556T, Testimony of Vic Avetissian, Committee on Government Reform, March 16, 2005, GAO-05-207, January 2005, IG reports/testimony (May 17, 2005 before the AAP)

²² GAO-02-499T, March 7, 2002.

²³ Washington Technology, "Multiple Awards: A Protest-Proof Process," James Fontana, 12/10/98.

B. Inconsistent Oversight

1. Lack of Transparency

Increased transparency into this creation and continuation process, on a Governmentwide basis, is an essential element in properly implementing interagency vehicles. It will provide for the eventual rationalization of the numbers of interagency and enterprisewide contracts with the outcome of ensuring these vehicles are meeting the goals 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.

As discussed earlier in the *Data on Use* section of this report, FPDS-NG required the separate identification of indefinite delivery vehicles beginning in Fiscal Year 2004. The system was designed to accumulate cost by contract and is capable of identifying GWAC's, Federal Supply Schedules, Blanket Purchase Agreements (BPAs), Basic Ordering Agreements, and non-GWAC multi-agency contracts. The system is also able to separately identify contracts available for multi-agency use from those available for use by a single agency. The Working Group has been unable to verify the data provided but intends to propose that individual agencies to verify their data once received from FPDS-NG. However, this data is contract specific and, therefore, transaction-based; there is no transparency into the creation of interagency or enterprise-wide contracts or information available to users sufficient to assist them in making well-informed decisions about which vehicles are most appropriate to their needs. Nor does this transaction-based collection system provide sufficient transparency to support a rational governmentwide system for creation of these contracts or monitoring their performance and relevance.

2. Little Systematic Coordination among Vehicles

The Working Group has found that aside from the processes internal to a particular type of interagency vehicle, such as the OMB Executive Agent designation process for GWAC's, there is little or no coordination among the various types of vehicles. The inefficiencies created by such a lack of coordination were, in part, the impetus for the GSA Federal Supply Service and Federal Technology Service restructuring. In GAO's testimony on the subject of GSA's restructuring, the impact of inefficient overlap of similar IT products and services is cited as increasing the costs to GSA to administer the programs as well as the costs to industry to compete (GAO-04-132T, GAO-02-560T).

3. No Consistent Standards for Creation and Continuation

There are no consistent governmentwide standards for the creation of interagency and enterprisewide vehicles and no performance standards to justify their continuation or relevance. As discussed earlier, the GWAC's, schedules, and franchise funds have specific processes in place, but each focuses on different elements of a business case. And there is no process at all for the creation and continuation of non-GWAC multi-agency contracts and enterprise-wide contracts. The GAO's High Risk Update stated that effective management of interagency contracts is needed to realize their intended benefits, namely leveraging buying power and providing a simplified procurement method.²⁴ The working group would add that mission accomplishment should be the most important determinant in any contracting transaction.

Given the amount of taxpayer dollars spent on interagency contracting, it is notable that there is no governmentwide policy focusing on rational business cases for creation and performance measures that align incentives with desired behaviors and key management agenda initiatives. For instance, business cases should require the identification of the mission need to be fulfilled, management and governance structure, including the resources and tools that will be applied by a servicing agency to manage an interagency contract. Proper business planning requires management deliberation and accountability and identify the roles and responsibilities of the requiring and servicing agency and the means by which this is communicated. Currently, there are no consistent procedures or policies for allocating roles and responsibilities among the stakeholders in transactions using these vehicles. Measures that focus on competition, performance-based contracting and small business goals would drive desired behaviors. Clearly identifying those responsible for these measures would drive agencies to allocate responsibility. But key to having such standards and measures is a system for the governmentwide monitoring of vehicle performance and relevance. Again, while individual programs such as GWAC's have such a system, interagency and enterprise-wide contracts, on a governmentwide basis, have no such process.

4. No Procedures for Aligning Vehicles to Leverage Government Purchasing Power

The lack of oversight and governmentwide attention to these contracts precludes the ability to manage them to leverage the government's purchasing power. There is no process or procedure in place and no systematic data report on the vehicles and their use to provide this benefit. Even within agencies, the dilution of buying power has been noted. For instance, GSA's Federal Supply and Federal Technology Services were competing for the same work from the same customers and have only recently begun to

²⁴ GAO-05-207, February 2005

address these inefficiencies through their restructuring. With the emergence of enterprisewide vehicles, such as SeaPort-e with 654 prime contractors, the impact goes well beyond diluting buying power. In addition to the increased costs to industry and taxpayers, proliferation and lack of vehicle alignment also ignores one of the fundamental purposes of interagency contracts, namely, to drive down the administrative and operational costs of procurement on a governmentwide basis. The Working Group acknowledges that these costs are not currently known, but believes that they must be known to responsibly and efficiently manage interagency contracts.

5. No Central Data Base or Consistent Methodology to Help Agencies Select Appropriate Contract Vehicles

Too many choices without transparency into the performance and management of these contracts makes the cost-benefit analysis and market research needed to select an appropriate acquisition vehicle impossible. None of the witnesses to the Panel were able to clearly articulate an answer to Panel questions about how agencies select a particular vehicle over another. In fact, there is no guidance or methodology for selection. Certainly, the GAO, IGs, and recent testimony to the House Government Reform Committee have asserted that the decisions are not well-reasoned and seem to be based largely on ease and convenience, with little thought into whether the vehicle is actually appropriate for requiring agency needs.²⁵ The proliferation of these vehicles with little data available to help requiring agencies make a well-informed decision clearly impacts the quality and value of the outcome.

C. Incentives for Creation Don't Always Translate Into Benefits for the Taxpayer

GAO noted in 2005 that the fee-for-service arrangement of interagency contracts "...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." With the potential emerging trend toward enterprisewide vehicles, the competition for customers may create greater pressure on owners of interagency contracts and interagency assisting agencies to focus on meeting demands that are counter to the interests of taxpayers, such as waiving competition to retain incumbent contractors (GAO-05-207).

²⁵ DoD IG Report D-2002-189, Multiple Award Contracts for Services, September 30, 2001. GAO's High Risk Series Update Testimony GAO-05-350T. GAO-04-874, Contract Management: Guidance Needed to Promote Competition for Defense Task Orders. Testimony of Vic Avetissian, Northrup Grumman Corporation, Chairman of Public Policy Council for the Contract Services Association of America (CSA), testimony before Committee on Government Report, Hearing on General Services Administration Operations, March 16, 2005.

D. Some Diversity is Desirable

While the Working Group believes that proliferation dampens the potential benefits of interagency contracts, it does not find that administrative monopolies are beneficial either. Some competition among vehicles is seen as desirable and even fundamental to maintaining the health of interagency contracts. Armed with the necessary information on how many interagency and enterprise-wide vehicles exist, and institutionalizing standards for their creation and continuation, the government can make informed decisions on how many vehicles provide for appropriate leveraging and which vehicles are best managed to obtain maximum taxpayer value. Agency contracting officials should have reasonable alternative contracting vehicles available for meeting agency mission needs coupled with meaningful data and information about the different options for contracting within their own agencies and through other entities.

E. Focus on Process of Creation and Continuation will Improve Use of the Vehicles

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 of these vehicles along with a monitoring process for the continuation (or reauthorization) of them. 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 at reduced administrative costs.*