

**STATEMENT OF MARCIA G. MADSEN**  
**CHAIR OF THE ACQUISITION ADVISORY PANEL**  
**BEFORE THE**  
**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**  
**UNITED STATES SENATE**  
**JULY 17, 2007**

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**INTRODUCTION**

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

You have asked for an overview of the Panel's Report regarding: competition and adoption of commercial practices; the management and use of interagency contracts; acquisition workforce deficiencies; and the appropriate role of contractors supporting the government – the "blended workforce" issues. I also will talk briefly about the Panel's data recommendations. I am very pleased to tell you that the Panel's Report has been published – you should have copies before you today. A copy of the Report has been provided formally to the Office of Federal Procurement Policy (OFPP). Additional copies are being sent to all Members of Congress and to the Executive Branch this week.

The Panel was established pursuant to Section 1423 of the Services Acquisition Reform Act (SARA) (§ 1423 of the National Defense Authorization Act For FY 2004). Its members were appointed in February 2005, balanced between the public and private sector. (The Panel's duration was extended in § 843 of the National Defense Authorization Act for FY 2006.) The Panel held 31 public meetings and heard the testimony of 108 witnesses representing 86 entities or groups from industry, government, and public interest organizations. The Panel's public deliberations produced approximately 7,500 pages of transcript. In addition, we received written public statements from over 50 sources, including associations, individual companies, and members of the public.

My testimony could not possibly cover the Panel's 100 findings and 80 recommendations in their entirety, but is intended to provide a good overview. I would like to personally thank the 13 Panel members for their dedication over the course of our deliberations. As you know, each of them was a volunteer with a full-time and highly responsible position in "regular" life. The Panel conducted its work under significant constraints with respect to staff and money. We had only one full-time staff member, the Executive Director. We are grateful to GSA and to the Director of Defense Acquisition and Policy for making staff available on a temporary basis to the Panel. The level of participation by the members in the hearings, in developing findings and recommendations, and in writing the Report, was substantial.

The Panel is grateful to the many witnesses and members of the public who helped shape the Panel's Report through their active participation and interaction with the Panel. (There is a complete list of the witnesses in the appendices to the Report.) The insight gained from the exchange with witnesses was invaluable. In many instances, approaches under consideration by the Panel were revised or adjusted based on input from the witnesses who helped the Panel see

many different perspectives. I would like to especially thank those commercial companies that addressed the Panel. We invited large commercial buyers of services to address the Panel in an effort to determine their current best practices for services acquisition. These companies generously shared their expertise with the Panel even though many of them do little or no business with the government. We are grateful for this rare opportunity to learn how they buy services and where they invest in the services acquisition process.

The testimony before the Panel and the research and analysis by its Working Groups helped the Panel formulate what we believe to be a well-balanced set of recommendations that take into account the government's needs for access to the commercial marketplace, the growth in acquisition of services by the private sector and government alike, and the pivotal role of competition in the acquisition process.

## SUMMARY

### Enhance Competition by Investing in Planning

- Commercial buyers invest heavily in planning and requirements analysis to obtain meaningful competition
- Government practice focuses on rapid awards at the expense of planning
- Recommendations to enhance the government's ability to develop/maintain market expertise and define requirements

### Encourage Competition to Produce Fair and Reasonable Prices

- Commercial practice relies on competition for innovation and pricing
- Government practice
  - Interagency Contracting
    - Incentives to compete lacking
    - Recommendations to insert incentives

### Removing Other Obstacles to Achieving Fair and Reasonable Prices

- Current regulatory definition of "commercial services" does not require an efficient market as statutorily intended
- Regulatory guidance unclear about obtaining contractor information to support government determination of fair and reasonable prices
- Recommendations to restore statutory definition of commercial services and clarify regulations on obtaining price information and "other than cost or pricing data"

### Accountability and Transparency Inadequate for Interagency Contracting

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

### The Acquisition Workforce Requires Immediate Attention

- Demands on the acquisition workforce have outstripped its capacity, but assessment not possible
- Recommendations to move toward an expedited assessment of the workforce in order to improve capacity

### Appropriate Role of Contractors Supporting the Workforce

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

## **Enhance Competition by Investing in Planning**

If there is one fundamental lesson to be learned from the Panel's review of commercial practices, it is the critical role requirements development plays in the successful acquisition of commercial services.

The common thread connecting commercial buyers and government buyers is the criticality of sound requirements definition and acquisition planning. Sound requirements development increases competition, reduces costs, eliminates time-and-materials contracts, and increases the likelihood of successful contract performance. Commercial buyers do it well. Government buyers need to improve.

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

**Government Practice:** The Panel's work shows that the government fails to invest in this phase of procurement, focusing instead on rapid awards. While at the conceptual level, buyers appear to understand the importance of requirements definition to successful, cost-effective contracts, culture and the metrics focus on "getting to award" rather than contract

results. In testimony, public sector officials and representatives of government contractors expressed frustration that the government is frequently unable to define its requirements sufficiently to allow for fixed-price solutions, head-to-head competition, or performance-based contracts. Defining requirements is critical to establishing evaluation criteria for a competitive procurement – it tells the prospective offerors what requirements will be evaluated in making a selection. Failure to define requirements compromises the competitive process and handicaps the government’s ability to get the best solutions.

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

**Recommendations:** The Panel recommendations are based on current commercial sector practices. For instance, to develop and maintain market expertise, the Panel recommended that agencies establish “centers of expertise” to protect their high-dollar investments in recurring or strategic requirements. The Panel also saw a need for a central source of market research information comparable to that maintained by private companies. We recommended that GSA establish such a capability to monitor services acquisitions by government and commercial

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

buyers, collect information on private sector transactions that is publicly available, as well as obtain information on government transactions, and make this information available government-wide. Under our recommendations for improving Performance-Based Acquisition (PBA), the Panel recommended that OFPP provide more guidance to agencies regarding how to define requirements in terms of desired outcomes, how to measure those outcomes, and how to develop appropriate incentives for contractors to achieve those outcomes. Because defining needs/requirements up-front is one of the most important aspects of a PBA, the Panel recommended that the Federal Acquisition Regulation (FAR) require the government to develop and provide to contractors a “baseline performance case.” The Panel’s Report contains details about what this baseline performance case would entail, but it is essentially a framework to provide discipline in the government’s requirements definition process. We also recommended an educational certification program for contracting officer representatives to help them become effective planners and monitors of PBAs. With respect to the concerns expressed by the Government Accountability Office (GAO) and Inspectors General (IGs) regarding ill-defined requirements for orders under interagency contracts, the Panel recommended criteria for requirements planning by ordering agencies *before* access to an interagency contract is granted. OFPP has begun to implement these recommendations and, for example, in its May 31, 2007 Competition Memorandum has tasked GSA to implement the Panel’s recommendation regarding market research.

### **Encourage Competition to Produce Fair and Reasonable Prices**

**Commercial Practice:** In addition to learning that basic commercial practice involves substantial investment in requirements analysis, the Panel also was advised that commercial buyers rely extensively on competition to produce innovation and fair and reasonable prices. In



fact, competition is fundamental to producing innovation and to determining fair and reasonable prices. Because there is no substitute for competition, commercial companies rarely buy on a sole-source basis. In those rare cases where they do not seek or cannot achieve competition, commercial buyers rely on their own market research and benchmarking, and often seek data on similar commercial sales to establish fair and reasonable pricing. In some cases, they may even obtain certain cost-related data, such as wages or subcontract costs, from the seller to determine a price range. But they generally find these methods far inferior to competition for arriving at the best price. As a result, they monitor non-competitive contracts closely, and eliminate such arrangements as soon as the requirement can be moved to a competitive solution.

**Government Practice:** It is instructive to compare the strong commercial preference for competition to the government's competition statistics. In fiscal year 2004, the government awarded \$107 billion, or over one-third of its total procurement dollars, non-competitively. Over one-fourth, or \$100 billion, was awarded non-competitively in 2005.<sup>2</sup> The number of competitions that result in the government only receiving one offer doubled between 2000 and 2005. Spending on services in both 2004 and 2005 accounted for 60% of procurement dollars with 20% and 24% awarded without competition, respectively.<sup>3</sup>

Interagency Contracting. The Panel believes the amount of non-competitive awards may, in fact, be underreported for orders under multiple award contracts available for interagency use, generally known as "interagency contracts." The Panel's repeated attempts over several months to obtain information about the extent of competition for orders under these types of contracts were frustrated. The government's database on federal procurement spending, the Federal

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

<sup>3</sup> FPDS-NG special reports for the Panel.

Procurement Data System-Next Generation (FPDS-NG) only began to collect data on interagency contracts in 2004. Due to a number of factors, including poor reporting instructions and faulty validations, the “extent competed” field in FPDS-NG for these orders overwhelmingly reflects the competitive nature of the master contract, rather than the actual level of competition for orders. This reporting problem skews the data such that it is unreliable. The lack of transparency into the nature of these orders is a significant weakness. FPDS-NG reports spending under contracts available for multi-agency use at as much as \$142 billion, or 40% of procurement spending, in fiscal year 2004.<sup>4</sup>

Despite the Panel’s overarching concern with data reliability<sup>5</sup> and transparency, there certainly appears to be sufficient cause for concern in addition to these statistics. The Panel was well aware that GAO put management of interagency contracting on its High Risk Series in 2005. Since the GAO high risk designation in 2005, more data regarding orders under these contracts has become available. In fact, in a recent audit, the DoD IG found that 62% of reviewed orders, totaling nearly \$50 million, failed to provide a fair opportunity to compete as required by law. In addition, 98 of 111 orders valued at \$85.9 million were either improperly executed, improperly funded, or both.<sup>6</sup>

The Panel’s Report sets forth the history and efforts by Congress to improve competition. The intent of interagency contracts, most of which are assumed to be multiple award contracts, was to lower administrative costs, leverage buying power and provide a streamlined acquisition

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<sup>4</sup> *Id.*

<sup>5</sup> OFPP has begun to address the issue of unreliable data. In its March 9, 2007 Memorandum to Chief Acquisition Officers, OFPP directed them to establish, among other things, requirements for independent validation and verification of FPDS data and to certify data entered into FPDS for accuracy and completeness. Note that the Panel recommended Congress require by statute that Agency Heads be responsible for accurate data.

<sup>6</sup> DoD IG Report No. D-2007-023, “FY 2005 Purchases Made Through the National Aeronautics and Space Administration,” Nov. 13, 2006, at ii.

process -- all well-meaning goals. Such contract vehicles were never intended to permit requirements definition to be short circuited.

Interagency contracts generally are indefinite-delivery/indefinite-quantity type contracts with very broad scopes of work, most of which provide for multiple awardees that will compete with one another for specific orders at a later point when an agency identifies a requirement. Therefore, where services are concerned, the initial competition is based on loosely defined statements of the functional requirements resulting in proposals for hourly rates for various labor categories. The expectation is that once an agency identifies a specific need, a more clearly defined requirement will be provided at the order level allowing the multiple awardees to submit task-specific solutions and pricing. Because this process narrows the number of eligible contractors at the order level, Congress has insisted that these multiple awardees be given a “fair opportunity” to compete for the task orders.

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

*Incentives to Compete Lacking.* There is no government-wide requirement that all interagency contracts provide notification that a task order is available for competition. There is no visibility into sole-source orders, as there is no requirement for a synopsis or public notification for orders under multiple award contracts, regardless of the size of the order. Even where a best value selection is made at the order level, there is no requirement for a detailed debriefing, regardless of the amount of the order or the amount of bid and proposal costs expended by the eligible contractor, thus denying the contractor information that might enable it to be more competitive on future orders/contracts. Further, without regard to size of the order,

there is no option for contractors to protest the selection process under multiple award contracts, reducing the pressure on the government to clearly define requirements, specify its evaluation criteria, and make reasonable trade-off decisions among those criteria. For example, even issues that affect the integrity of the competitive process such as organizational or personal conflicts of interest cannot be protested.

*Balance incentives with need for “bite-sized” orders.* However, the Panel also took testimony from agency officials who told us they could not meet their missions without the use of interagency contracts. Therefore, the Panel sought to achieve a balance in its recommendations that will introduce incentives to encourage more competition while not unduly burdening these tools for streamlined buying. For instance, some of our recommendations only apply to orders over \$5 million. Why this threshold? We found that of the \$142 billion spent on orders under these interagency contracts in fiscal year 2004, \$66.7 billion, nearly half, was awarded in single transactions (at the order level) exceeding \$5 million. The fiscal year 2005 statistics show total spending on these contracts at \$132 billion with \$63.7 billion in single transactions over \$5 million.<sup>7</sup>

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

**Recommendations:** The Panel recommended expanding government-wide the current DoD Section 803 requirements that include notifying all eligible contractors under multiple

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<sup>7</sup> FPDS-NG special reports for the Panel.

award contracts of order opportunities. We also recommended that the 803 procedures apply to supplies and services. And while we agreed that a pre-award notification of sole-source orders might unduly burden the ordering process, the Panel recommended post-award public notification of sole-source orders finding that it would improve transparency. For single orders exceeding \$5 million, the Panel recommended that agencies adhere to a higher competitive standard by: 1) providing a clear statement of requirements; 2) disclosing the significant evaluation factors and subfactors and their relative importance; 3) providing a reasonable response time for proposal submissions; and 4) documenting the award decision and the trade-off of price/cost to quality in best value awards. We also recommended post-award debriefings for disappointed offerors for orders over \$5 million when Statements of Work and evaluation criteria are used. Concerned that the government is buying complex, high-dollar services without a commensurate level of competitive rigor, transparency, or review, we recommended limiting the statutory restriction on protests of orders under multiple award contracts to orders valued at \$5 million or less. Of course, it should be noted that under existing law, any order under the GSA Schedules may be protested.

Specific to the GSA Federal Supply Schedules program, the Panel recommended a new services schedule for information technology that would *require* competition at the task order level and reduce the burden on contractors to negotiate up-front hourly labor rates with GSA. The Panel sees the exercise of negotiating (and auditing) labor rates as producing little in the way of meaningful competition given that solutions are project-specific and the price depends on the actual labor mix applied. In such cases, analyzing labor rates contributes little to understanding the price that the government will pay for the project. Much time and effort are wasted by GSA

and contractors in providing, monitoring, and auditing labor rates that do not provide useful information about the costs of a project.

I am pleased to note that S.680 includes almost all of the Panel's recommendations regarding enhancements to competition.

### **Removing Other Obstacles to Achieving Fair and Reasonable Prices**

**Definition of Commercial Services:** The Federal Acquisition Streamlining Act (FASA) defined commercial services as those offered and sold competitively in substantial quantities in the commercial marketplace. When commercial services are sold competitively in substantial quantities, commercial market forces determine both the price and the nature of the services offered. The statutory definition was designed to allow such services to be purchased using the more streamlined commercial buying procedures of FAR Part 12. Unfortunately, the regulatory implementation of the statutory definition allowed services not offered and sold in substantial quantities in the commercial marketplace, or those "of a type," to nonetheless be classified as commercial and, therefore, eligible for the streamlined procedures of FAR Part 12. These streamlined buying procedures, while effective in an efficient market, become problematic in circumstances where the services are not offered and sold in substantial quantities. In that situation, the government is placed at a significant disadvantage with respect to pricing when there is limited or no competition, leaving it with too few tools to determine fair and reasonable prices.

**Recommendations:** The Panel recommended revising the FAR to be consistent with the statutory definition of commercial services. This recommendation has been inaccurately portrayed by some who claim it will prevent the purchase of cutting-edge technology. However, restoring the statutory definition in the FAR would not preclude the government from purchasing

services that are not offered and sold in substantial quantities in the commercial marketplace. Rather, it would require that such services be purchased using FAR Part 15 procedures, giving the government tools for determining fair and reasonable prices absent an efficient market.

The Panel also recommended specific regulatory revisions that would clarify and provide a more commercial-like approach to determining price reasonableness for commercial items in cases where a competitive acquisition is not used. These revisions, which apply to commercial items generally, clarify the contracting officer's right to ask for information "other than cost or pricing data," and provide an order of precedence for the type of information a contracting officer should seek. This recommendation is based on testimony received by the Panel from government and contractor representatives. Both groups complained that the current regulatory treatment of "other than cost or pricing data" was confusing. On the one hand, government representatives complained that they cannot obtain necessary information because contractors argue that it is not required. On the other hand, contractor representatives complained that the government presses for inappropriate information. The Panel's proposed regulatory change is consistent with the testimony we received from commercial buyers regarding the types of pricing information that they receive and the circumstances under which they ask for limited types of cost data such as wages and subcontractor costs. On April 23, 2007, the FAR Councils issued a proposed rule also intended to address the types of data the government may require as "other than cost or pricing data" to determine whether prices, including prices for commercial services, are fair and reasonable. (FAR Case 2005-036.) This proposal takes the opposite approach to the Panel's recommendations by expanding dramatically the types of data than can be required as "other than cost or pricing data," to include even judgmental information.

### **Accountability and Transparency Inadequate for Interagency Contracting**

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

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



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

Again, I was pleased to note that S.680 includes Panel recommendations regarding management of interagency contracts.

### **The Acquisition Workforce Requires Immediate Attention**

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

dating back to the 1960s in an effort to obtain information on the size, composition and skills of the workforce.

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

**Recommendations:** An accurate understanding of the key trends about the size and composition of the federal acquisition workforce cannot be obtained without using a consistent benchmark, and none is currently available for such an assessment. The Panel recommended that OFPP prescribe a consistent definition and methodology for measuring the workforce. The urgency of this task is reflected in another recommendation that OFPP collect data using this definition and measuring methodology *within one year* of the Panel's final Report. Consistent with this, OFPP should be responsible for creating and maintaining a mandatory government-wide database for members of this workforce. The Panel noted that the Commission on Government Procurement recommended just such a system over 30 years ago -- in 1972. While there are a great many recommendations for workforce improvement in the Panel's Report, one of the key recommendations is that each agency must engage in systematic assessment and human capital strategic planning for its acquisition workforce. Without such plans, it is impossible to know how and to what extent a given agency's workforce is deficient. It is also difficult to know to what extent and how efficiently agencies are using contractors to support the

acquisition function. In support of this recommendation, the Panel has also suggested that these plans be reviewed by OFPP for trends, best practices, and shortcomings as part of an agency's overall human capital planning requirements. Finally, the Panel recommended a government-wide intern program, as well as the reauthorization of the SARA training fund. In this area as well, S.680 has picked up significant portions of the Panel's recommendations.

### **Appropriate Role of Contractors Supporting the Workforce**

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

Blurring the Distinctions. During the 1990s, the federal acquisition workforce was reduced substantially. For example, DoD's acquisition workforce was reduced by nearly 50 percent during that time. The structural changes in what and how much the government is buying since 9/11 have left agencies with no alternative to using contractors to deal with the pressures of meeting mission needs and staying within hiring ceilings. Agencies have contracted for this capability and contractors are increasingly performing the functions previously performed by federal employees. To a significant degree, this has occurred outside of the discipline of OMB Circular A-76, with the result that there is no clear and consistent government-wide information about the number of people and the functions performed by this growing cadre of service providers.

While the A-76 outsourcing process provides a certain discipline in distinguishing between “inherently governmental” and commercial functions, it is less clear if and how agencies apply these concepts to the blended or multi-sector workforce that has arisen outside of the A-76 process. The challenge is determining when the government's reliance on contractor

support impacts the decision-making process such that the integrity of that process may be questionable. A second challenge that arises is how the government effectively manages a blended workforce given the prohibition on personal services.

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

**Recommendations:** The Panel recommended that OFPP update the principles for agencies to apply in determining which functions must be performed by federal employees, so that agencies understand that such principles apply even outside the A-76 process.

The Panel also recommended lifting the prohibition on personal services contracts. The Panel heard a great deal of testimony about how this prohibition is either effectively ignored or how agencies use awkward and inefficient work-arounds to ensure they do not direct the work of contractor employees. The GAO has acknowledged the need to rely on contractors to meet government missions. Panel witnesses have confirmed the necessity of contractors in the workplace. Therefore, the Panel finds the prohibition to be akin to a “myth.” OFPP should develop new policy guidance on the appropriate and ethical use of service contractors that would allow appropriate government employees to direct the substance of their work, but not perform supervisory functions such as hiring, firing, disciplinary actions, etc.

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

Finally, a general comment about the Panel's recommendations: while most of them can be implemented through policy or regulation, some will require legislation.

### **Conclusion**

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

This concludes my prepared remarks. I am happy to answer any questions you might have.