

MULTIPLE AWARD SCHEDULE ADVISORY PANEL

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MEETING

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FRIDAY

SEPTEMBER 19, 2008

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The Advisory Panel met in the Board Room at the American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C., at 8:00 a.m., Elliott Branch, Chairman, presiding.

PRESENT

ELLIOTT BRANCH, Executive Director,
Contracts for Naval Sea Systems Command
LARRY ALLEN, President, The Coalition for
Government Procurement
ALAN CHVOTKIN, Executive Vice President and
Counsel, Professional Services Council

DAVID DRABKIN, Acting Chief Acquisition
Officer and Senior Procurement
Executive, U.S. General Services
Administration

JAN R. FRYE, Deputy Assistant Secretary,
Office of Acquisition and Logistics,
Department of Veterans Affairs

JACQUELINE JONES, Branch Chief and Contracting
Officer, Consolidated and Language
Services, U.S. General Services
Administration

JUDITH NELSON, Industry Specialist, Office of
Acquisition Management, U.S. General
Services Administration

GLENN PERRY, Senior Acquisition Executive,
U.S. Department of Education

PRESENT (CONT.)

LESA SCOTT, Director, IT Schedule Contract
Operations of The Integrated Technology
Service, U.S. General Services

Administration

THOMAS A. SHARPE, JR., Senior Procurement
Executive, Office of Procurement
Executive, Department of the Treasury

DEBRA SONDERMAN, Director, Office of
Acquisition and Property Management,
Department of Interior

THEDLUS THOMPSON, Senior Assistant General
Counsel, U.S. General Services
Administration

ALSO PRESENT

PAT BROOKS, Designated Federal Official

1 P R O C E E D I N G S

2 (8:10 a.m.)

3 MS. BROOKS: I am Pat Brooks. I am
4 the federal official for our panel. And
5 welcome everybody this morning for our
6 meeting.

7 Just the usual administrative
8 announcements. I know we got you out here
9 kind of early this morning, so we've got some
10 coffee to keep you awake. We can really take
11 chairs this morning - I was assigning panel
12 members by their signs and which football team
13 that they liked, so we can do some of that
14 later on with the guests here, so we can
15 figure out, keep it going this morning.

16 Most of you have been here before,
17 so I'd just remind you that the mens and
18 ladies room is out the door and to your right
19 - I'm sorry - yes, to your right. If you do
20 not sign in already please sign in on the sign
21 in sheets there. We do have a couple of sets
22 of material, written statements that were

1 submitted. I should have enough copies there.
2 If there are not enough all of our material is
3 posted on the panel web pages.

4 We did not have any presentations
5 scheduled for today, so all the discussion
6 will be with the panel members, whether you
7 have questions on anything.

8 So now I'm going to turn it over
9 to Elliott.

10 CHAIRMAN BRANCH: Good morning,
11 everyone. I'm glad we are assembled here to
12 deal with issues much less complex than our
13 friends at Treasury and Wall Street.

14 But we are here to spend today and
15 Monday to discuss what recommendations if any
16 we'd like to make to the Administrator with
17 respect to services procurement against the
18 schedule.

19 I have generally reserved the
20 prerogatives during our deliberations, as we
21 have taken presentations, to have the last
22 word. I'm going to reverse that this morning

1 and I guess I'm going to take the first word.

2 We've heard from as number of
3 stakeholders on this issue. We've had very,
4 very good presentations with respect to the
5 effectiveness and the efficiency of the price
6 reduction clause, and the most-favored
7 customer clause with respect to services.
8 We've had customers come in, give us insight
9 into how they use the schedule to buy
10 services. We had several vendors, especially
11 from the IT community, to address how they bid
12 those services.

13 So I think the panel has been
14 provided with a fairly rich source of
15 information to conduct these deliberations
16 this morning.

17 So I will start out with this
18 making some observations from my perspective
19 with respect to services and how they are
20 purchased under GSA schedules and hopefully
21 start a fruitful debate about this.

22 As I've listened to all the

1 testimony, and I've listened to the questions
2 that various panel members have posed to the
3 presenters, and I have digested that
4 information in my own mind; I've come to a
5 conclusion for myself.

6 And I think Mr. Essig, who
7 unfortunately is not with us today, kind of
8 summed up the question for me with respect to
9 certainty. And that is, yes, rates are
10 important, but the quantity and the quality of
11 the services provided are equally important;
12 that while rates are necessary they are not
13 sufficient to meet the customer's need.

14 So as I look at that, my
15 conclusion is that competition at services
16 ought to most likely take place at the
17 ordering level, at the agency, where the
18 agencies can look at their specific
19 requirements, and the agencies can make a best
20 value determination with respect to which
21 vendor offers the solution that they are
22 seeking.

1 So in that spirit I guess I'd like
2 to put a motion on the floor that we would
3 eliminate the price reduction clause from
4 services contracts on the GSA schedule; that
5 we would recommend to the Administrator that
6 the entire federal sector adopt a Section 83
7 approach to service contracting, forcing
8 competition, real competition, at the task
9 order level by requiring agencies to get
10 proposals, against a statement of work, and to
11 do either a technically acceptable low offer,
12 or a best value determination against the
13 proposals forseen.

14 So with that I'll stop and open
15 the floor for discussions.

16 MR. FRYE: Elliott, I'd like to ask
17 GSA how GSA plans to determine a fair and
18 reasonable price on these service contracts.
19 When you initially award the IDIQ contract you
20 use the PRC to help you determine that fair
21 and reasonable price. How would that be done
22 in the future without the price reduction

1 clause?

2 MR. DRABKIN: Actually I don't know
3 that the price reduction clause contributes at
4 all to a determination initially as to whether
5 a price is fair and reasonable. The price
6 reduction clause is a safety mechanism. It's
7 one of those safety mechanisms which we
8 created decades ago during a time when we had
9 a philosophy that the government was basically
10 incompetent and that we had to protect
11 ourselves against the government's
12 incompetence.

13 So we put in the clause that said,
14 no matter what we do, no matter what we
15 determine, if we made a mistake you'll make it
16 right. And quite frankly, that is my personal
17 assessment of the value of the price
18 reductions clause. It's to protect us against
19 our own inability - not necessarily through
20 results of incompetence, mind you, but now in
21 today's marketplace, because of the nature of
22 the market itself. It changes so fast. We

1 have so few people. We no longer have the
2 benefit of the days where we had item
3 managers. Those of us who have been around
4 for awhile may remember, we used to have
5 people who actually followed products; not
6 services, because services weren't really
7 being purchased in that day in that kind of
8 quantity in that way. For people who were
9 experts in a particular marketplace, and a
10 particular segment of the market, and we knew
11 what things cost, and we knew when the price
12 on the market changed, and we followed things
13 like natural resources, labor rates; we
14 followed where production was happening; what
15 was going on with companies, bankruptcies,
16 inventory, all those other things. And we had
17 a much better view of the market back in those
18 days.

19 And in the `90s we eliminated item
20 managers for things, but now since we are
21 primarily talking about services, we never had
22 an item manager or service manager or a market

1 segment manager for services.

2 But again to answer your specific
3 question, I do not believe that the price
4 reduction clause, in my role as the oversight
5 person at GSA, I do not believe that the price
6 reduction clause helps us or detracts from our
7 ability to negotiate a fair and reasonable
8 price at the time we award the basic contract.
9 It is a protection device where if we make a
10 mistake, where if a company intentionally or
11 unintentionally misinforms us, that the
12 government can take advantage of what the
13 price should have been as opposed to what
14 price we negotiated.

15 MR. FRYE: Can anyone from GSA, any
16 of the contracting types, tell me what they
17 use to determine a fair and reasonable price,
18 given that these move-forward IDIQ contracts
19 are exempt from TINA, what methodology is used
20 by GSA to determine the fair and reasonable
21 price on these service contracts.

22 MS. JONES: First of all, David I

1 think your mine is on?

2 MR. DRABKIN: Is my mike on?

3 MS. JONES: Yes.

4 MR. DRABKIN: You want me to turn
5 it off?

6 MS. JONES: Yes.

7 MR. DRABKIN: Makes a lot of noise,
8 huh?

9 MS. JONES: Are they - first of all
10 I'd like to say that we still have centers of
11 expertise when it comes to services
12 acquisitions. You know that GSA is structured
13 with different acquisition centers, and we
14 have the services schedules assigned to maybe
15 it's about four or five acquisition centers,
16 but the centers that we do have.

17 And in the services arena, the
18 centers are managing the service schedules,
19 and they do have the expertise, because there
20 are business managers that are assigned in
21 most cases to these schedules. And when you
22 are repetitively looking at proposals that are

1 sent in by companies within a particular
2 service segment you become knowledgeable of
3 that segment, and are able to see the
4 comparisons and the market pricing for
5 different proposed areas of expertise that
6 companies do have.

7 And so with that said, how do we
8 determine fair and reasonable pricing? One of
9 the methods is, when a company is submitting
10 a proposal for an evaluation, they are
11 proposing a labor mix based on their
12 capabilities and the expertise that they are
13 proposing to GSA. And those labor rates are -
14 well, first of all the labor that they are
15 proposing is evaluated to determine whether or
16 not that mix is within the scope of that
17 particular service segment.

18 Then the companies in turn propose
19 labor rates to us, and preferably fully Burton
20 rates, and the COs take a look at those Burton
21 labor rates and determine if they are fair and
22 reasonable. And one method based on market

1 comparisons for the same or similar labor, the
2 same or similar services, previously awarded
3 contracts.

4 And then we do take a look at the
5 company's best price that they are proposing,
6 or that they are disclosing to us I should say
7 based on the prices that are offered to their
8 most favored customer.

9 The most favored customer pricing
10 is evaluated against the proposed pricing
11 under the proposal to determine whether or not
12 we are buying the same dollar volume if you
13 will, because the most favored customer comes
14 with disclosures such as, what kind of
15 discounts are you giving that most favored
16 customer. What kind of volume are they
17 buying? What type of concessions are you
18 offering them?

19 And then we take a comparative
20 look at that to determine if our prices are
21 either equal to or better than that.

22 So with that said we are comparing

1 basically a dollar volume, and we are
2 comparing a comparable customer if you will.
3 And with that said, the prices are determined
4 fair and reasonable based on several different
5 variables that also compare a most favored
6 customer.

7 MR. FRYE: So right now you are
8 using most favored customer to help you
9 determine fair and reasonable price?

10 MS. JONES: For services
11 definitely, yes.

12 MR. ALLEN: That is not necessarily
13 the same, though as the price reduction
14 clause. The two in the current MAS construct
15 are related, but they are not the same thing.
16 The price reductions clause, as I think David
17 very adequately stated, is something that is
18 used as a mechanism today through the life of
19 the contract to ensure price reasonableness.
20 From a industry standpoint it is a de minimus
21 type of thing that comes into play. Most of
22 the time it's the market that drives the

1 price.

2 The most favored customer is the
3 initial pricing objective. And sometimes it's
4 heard, it's termed that you have to maintain
5 your most favored customer price discount
6 through the term of the contract. That can be
7 true, but it's more accurate to say that you
8 have to maintain the relationship between
9 whatever customer or category of customer is
10 the basis of the award. And that's not always
11 the same as the MFC. So terms get used
12 sometimes, I don't think with the intent of
13 being careless, but in the vernacular, where
14 people kind of understand what it is they are
15 talking about. But just to make clear that
16 those terms are similar but they are not the
17 same.

18 Jan, I would also say that the
19 term, the methods that GSA contracting
20 officers use to determine price reasonableness
21 and award contracts are identical in many
22 cases to what the VA does. The difference in

1 the VA would be in the pharmaceutical realm
2 where there are some separate steps or
3 considerations that start the price
4 negotiations at a certain point.

5 But in terms of med-surge
6 products, and generic drugs, the methodology
7 is identical.

8 MR. FRYE: I was just trying to
9 determine how GSA was going to determine a
10 fair and reasonable price, if David says that
11 it's an outdated method, the contracting
12 officer says they still use it.

13 MR. DRABKIN: Actually I don't
14 think you heard what we said at all. I said
15 the price reductions clause did not contribute
16 to or guarantee a fair and reasonable price.
17 That was the question you asked me.

18 MR. FRYE: I stated most favored
19 customer act.

20 MR. DRABKIN: Actually no you said
21 the price reduction clause initially and
22 that's what I talked about. Most favored

1 customer is a different issue altogether, and
2 it is a basis for determining whether the
3 price is fair and reasonable.

4 But I think at this point,
5 although the chairman has put the price
6 reduction clause on the table for the purposes
7 of this discussion, the better question is how
8 should GSA or anybody under GSA delegation for
9 operating schedules schedule contracts? And
10 I think the better question should be, or at
11 least a question we ought to discuss, is
12 whether we really aren't doing a two-step
13 under FAR Part 14, even though it's really FAR
14 Part 15 that we ostensibly operate under
15 although it doesn't apply to schedule
16 contracts.

17 In other words what we do is a
18 qualifications review, when you stop and do
19 the final analysis. A company comes in, it
20 establishes that it's a real company, that it
21 has sales, that it has a market for goods and
22 services, that it has some past performance in

1 that arena where it's actually sold these
2 goods or services, and then we talk about a
3 price.

4 Currently, make a determination,
5 because all contracting officers are required,
6 at the time they make a contract, to determine
7 that a price is fair and reasonable or not.
8 Yet a contracting officer can make an award
9 and determine the price isn't fair and
10 reasonable under certain exceptions.

11 But either way they make that
12 determination, and then the contractor comes
13 available for us. Elliott's point I think was
14 what we found is, and Tom certainly talked
15 about - Tom Essiq talked about, I think even
16 Tom Sharpe talked about it - is that the real
17 competition on services, and probably for our
18 goods as well, takes place at the point of
19 sale, where the actual buy is going to happen.
20 If it doesn't, it should, because that's the
21 benefit of having these prenegotiated
22 contracts which have one level of competition,

1 and then actual competition when you get ready
2 to buy something.

3 So maybe the question we ought to
4 ask is, is fair and reasonable relevant to the
5 determination at all when a contract is
6 awarded - when any IDIQ contract is awarded,
7 much less a schedules contract. Perhaps that
8 will help inform our discussion on our journey
9 today.

10 MS. SONDERMAN: But David, isn't it
11 accurate that it's only the GSA schedules that
12 have specific coverage in the Federal
13 acquisition regulation among all other IDIQs
14 that say that the price is, by regulation, the
15 prices have been determined to be fair and
16 reasonable, and therefore contracting officers
17 do not have to do any further - are not
18 required to do any further negotiation. They
19 may, but they are not required to, and that is
20 the thing that is troubling me. If we don't
21 have competition in establishing schedules,
22 which it seems to me that we don't, and it's

1 not clear that we actually - well, who knows
2 what fair and reasonable is. It depends on
3 the circumstances. It can vary from day to
4 day. We can look all around us at the economy
5 and look at how things are this week compared
6 to the way they were last week. I am still
7 trying to find out if the home I lived in in
8 Galveston is still standing.

9 MR. CHVOTKIN: It's not, Debra.

10 MS. SONDERMAN: Well, it was a
11 brick house, but it was only one block from
12 Seawall Boulevard. So.

13 I imagine it doesn't look the
14 same. But the price reduction clause has no
15 meaning as - to get back to what I think
16 Elliott's question was, I agree that the price
17 reduction clause has no meaning on services.

18 MR. DRABKIN: Okay, well to your
19 question then specifically, 8.4 is a
20 determination by the administrator of GSA,
21 everything in 8.4 reflects the administrator's
22 determination of what is, or what will apply

1 to the schedules. The schedules authority is
2 separate from the OFPP Act, and we chose to
3 publish an 8.4 for everybody to see what rules
4 we said would apply.

5 It's unfortunate that the language
6 on fair and reasonable prices is reflected
7 there. I'm not sure it's relevant. That
8 language I believe comes directly from CICA,
9 which says by statutory definition without
10 discussion that the schedules, one, are
11 competitive, and their prices therefore have
12 been determined to be fair and reasonable.

13 Now when Congress passed that
14 legislation in '84 I think it was, '83 or '84,
15 '84, the schedules program was sold no
16 services. I think it's fair to say they sold
17 no services. And it was operated in a much
18 different fashion back in '84. In '84 we
19 actually did winner-take-all competitions.
20 Our customers got whatever we bought as a
21 result of those winner-take-all competitions.
22 And most of you as customers got generic

1 products, because that's what we go for, and
2 most of you hated us and didn't want to use
3 us, and many of us even as lawyers in other
4 departments tried to help our customers figure
5 out how to not use the schedules.

6 In '94 - '95 that process changed
7 where the decision was made to move the
8 decision as to whether the price that you were
9 going to pay was competitive and you wanted
10 that product versus another product to the
11 agency itself. The agency would use our
12 vehicle, and the agency that used the vehicle
13 would take on the responsibility, one, of
14 using the product, and two, making sure they
15 were happy with the price.

16 Three, the schedules' instructions
17 do not say, you may ask for more competition;
18 they instruct you to ask for a discount. The
19 fact that you do not do it is a factor of the
20 practical world we live in, but it is not a
21 factor of a programmatic problem that doesn't
22 instruct you when you use the schedules ask

1 for a discount.

2 But again I'm not sure the right
3 question is the price reduction clause. And
4 by the way I'm not defending the price
5 reduction clause at all. As I said to Jan, I
6 don't think it has any meaningful purpose in
7 the initial determination of a price for a
8 scheduled contract. I think it has no
9 meaningful role at all at that point.

10 The only time it becomes an issue
11 is when someone is issued an order against the
12 schedule, and now the question is, is the
13 price that they put on that order consistent
14 with the pricing arrangement we prenegotiated
15 with them? If it is not, we are entitled, our
16 customer is entitled, to get a reduction in
17 price. If it is it has no effect.

18 So going back then to what I think
19 the real question should be is, what is the
20 implication of GSA making an award of a
21 scheduled contract? Is it that we have
22 negotiated a contract, as those of us who were

1 brought up before IDIQs were expressly made
2 legal by FASA, is it really a contract with
3 prices that you know you can live with and use
4 and expect to use the rest of the time. Or
5 really is it a matter of qualifications, a
6 very in depth matter of qualifications where
7 we determine in advance whether the company
8 can and should do business with the
9 government. We negotiate the required terms
10 and conditions. We set a pricing schema, but
11 not a price necessarily that you will pay when
12 you buy the services, because you compete it
13 and you ask for a discount. And should maybe
14 what we need to do in order to be
15 philosophically have some philosophical
16 integrity, maybe we should take the whole
17 question of price as we are discussing it in
18 this context out of that initial award and go
19 where Elliott and Essiq, I know Tom Sharpe
20 talked about it too, which is at the point of
21 sale, when we get ready to have a competition,
22 that is really where price counts.

1 MS. JONES: I disagree with that.
2 And I disagree with that because the agencies
3 are relying on GSA to not only evaluate these
4 companies to determine that they are
5 responsible, but they are also relying on us
6 to set contracts that are within the scope of
7 the services that they are purchasing, and
8 also to determine that the prices are fair and
9 reasonable. They don't have visibility of the
10 marketplace like the centers of expertise do.

11 So a customer would not
12 necessarily know, leaving the competition at
13 the task order level, if a consultant at the
14 rate of \$500 an hour is fair and reasonable or
15 not. They may get - leaving it at the task
16 order level, they go out for example and
17 solicit consulting services, they may get a
18 range of prices from what, \$1,500 an hour to
19 \$500 an hour. They are not buying these
20 services repetitive as we are when we are
21 evaluating and constantly awarding these
22 contracts. So they don't have the visibility

1 of the marketplace.

2 So how will our customer agencies
3 know what is fair and reasonable leaving it at
4 the task order level for the competition?

5 CHAIRMAN BRANCH: Let me just in
6 the interest of I guess moving us along, first
7 of all I will accede to Mr. Drabkin's
8 reframing of the question. I think he did
9 that fairly eloquently.

10 And then Tom Sharpe has been
11 waiting to weigh in on this, and then I think
12 Judith has some observations after Tom.

13 MR. SHARPE: I think this is a good
14 discussion from everything I'm hearing. A
15 piece I would add is, I'm not convinced that
16 GSA has a handle on the pricing. I think the
17 missing piece, if we are going to have prices
18 at the schedule level, is to come up with
19 standard skill descriptions so we know what we
20 are pricing to, if it has to be geographically
21 based because labor has geographic nuances;
22 that there is a rate card that is competed in

1 price, and we have confidence in those prices.

2 Then I agree, the real competition
3 would be at the task order when you then
4 introduce the quantity and quality to it. But
5 we'd have then reliance on the pricing at the
6 GSA level.

7 MS. NELSON: A couple of things to
8 kind of react and then a different issue that
9 I'd like to add in to the mix for us to
10 discuss today. Having looked at a couple fo
11 the other interagency IDIQs type contracts
12 that are out there, a lot of them have labor
13 rates that are priced at their highest level,
14 and get competed at the task order level.

15 And going to Jackie's point, they
16 were - or in opposition to Jackie's point
17 really, they are out there, NAD then when the
18 ordering activity wants to use one of these
19 vendors they will simply put out an RFQ, and
20 put the statement of work there, and they will
21 compete then against them, the same way we
22 would do, an ordering activity would do with

1 us, with our vendors, put out something
2 through eBuy, put the statement of work in
3 there, and solicit three vendors. And the
4 competition will happen there.

5 So they may say that their
6 consultant XYZ is \$500, but they are going to
7 sharpen their pencils all the way down at that
8 competition level. So what is on their rate
9 card commercially or what they put on a
10 published price list is not necessarily what
11 is going to happen at the competition level.
12 And as we've heard from many people it rarely
13 ever happens at the competition level. And
14 then we always heard from the IG, well, how
15 come they are able to reduce it 75 percent
16 every time they go to market? Because
17 competition drives the price.

18 The other thing is, and in
19 response to what Tom has said, and I do
20 understand the notion of standard labor
21 category descriptions, and I've lived both
22 sides of that table, both with doing GSA work

1 and work for many of the other agencies, both
2 from the industry side and now from the
3 government side.

4 And the reality of what happens at
5 this time is you have a consultant or a
6 company, whether it not it be a financial
7 company or a Lotus-type company, and they have
8 42 different labor categories. And call it
9 Project Manager 1, 2, 3, 4, 5. And your
10 agency has a requirement. And that
11 requirement has specific labor categories. So
12 Judith Nelson & Co. Sits down to write a
13 response to your requirement -

14 MR. SHARPE: We actually should
15 have objectives and tasks we want to
16 accomplish.

17 MS. NELSON: Well, that would be
18 ideal, but not everybody does that. In the
19 ideal world, wonderful. But not everybody is
20 using PBSs, okay? And so I sit and in
21 responding to it I map my labor categories to
22 your labor categories, and I do it arduously

1 over five nights trying to figure out what I
2 own to your labor categories.

3 Then I don't know, who else is
4 sitting here, PSAs put out a GWAC, and they
5 have labor categories. And I take my same
6 labor categories, and I map -

7 MR. SHARPE: I think you are making
8 my point that this ought to be common.

9 MS. NELSON: Okay, it should be
10 common. But the bottom line it's not common.

11 MR. SHARPE: I'm suggesting it be
12 common.

13 MS. NELSON: Right, I hear you
14 saying it's common -

15 MR. SHARPE: No, I'm saying it's
16 uncommon; I'm suggesting it be uncommon.

17 MS. NELSON: I agree with you. But
18 GSA cannot do it for the schedules in a
19 vacuum.

20 MR. SHARPE: I'm suggesting it be
21 done; I'm not debating how it get done.

22 MS. NELSON: Okay.

1 CHAIRMAN BRANCH: I would observe a
2 couple of things.

3 MS. NELSON: Wait, one more thing.
4 The other thing that I'd like to put on the
5 table for discussion, both for products and
6 services, and that we not leave it off the
7 services discussion today, and it started to
8 get - the confusion in understanding started
9 to happen already, is the distinction between
10 an award based on most favored customer as it
11 is used, and what is a most favored customer
12 as it is fully explained in the 8.4, and most
13 favored customer and all of the wording that
14 comes out after it, and what is the basis of
15 award.

16 And the question as to whether or
17 not we should look to change the language from
18 most favored customer to basis of award, or
19 whether or not we should look to highlight
20 what is the most favored customer, where and
21 when.

22 CHAIRMAN BRANCH: Yes, I'd make a

1 couple of observations here. When we price
2 services, there is no pricing at the schedule
3 level. It does not exist. Because when we
4 price services, whether we are buying people
5 which we are really not supposed to buy, or we
6 are buying an output or an outcome, the mix,
7 the quantity, the level of expertise, are
8 driven by the statement of work.

9 So at best, the rates in the GSA
10 schedule contracts for a services competition
11 provide the requiring activity, the basis to
12 formulate a government estimate. If the
13 contracting officer is doing his job or her
14 job, then they are putting out a competitive
15 statement of work NAD letting the forces of
16 the market determine what's fair, what's
17 reasonable.

18 My concern is that in some cases I
19 have seen this happen, not in my agency, my
20 current agency, but other places, where we
21 have industry come in and they market the
22 requirements folks on a particular solution or

1 a set of skills that is taken to the
2 contracting officer. The contracting officer
3 is told this company has a GSA schedule.
4 These are the labor categories and the mix I
5 want. Go get it on contract.

6 So what happens then is, the
7 contracting officer, because of pressures of
8 time, and it's because it's expedient, goes to
9 its schedule, selects companies that generally
10 have a higher set of labor rates, allege they
11 have run a competition, and award to the
12 company that has marketed. That has to stop.

13 We need to drive contracting
14 officers to run competitions responsibly
15 against statements of work in which industry
16 determines the best solution with respect to
17 magnitude, mix and rate of the people who are
18 providing those services.

19 MR. SHARPE: I am not sure your
20 suggestion gets to that, Elliott.

21 CHAIRMAN BRANCH: Well, if you
22 force a competition at the task order level I

1 believe it does. If you say to contracting
2 officers, you may use these schedules unless
3 you issue a request for task order proposal,
4 actually get proposals in, evaluate them,
5 provide a basis of evaluation in that task
6 order proposal request, I think you get to a
7 competitive price.

8 MR. SHARPE: You can still have the
9 game plan you suggested.

10 CHAIRMAN BRANCH: Well, if you
11 drive competition, though, if you drive it to
12 competition, then the contracting officer has
13 no ability to restrict it to the hand-picked
14 competitors. It's not an issue of rounding up
15 the usual suspects.

16 MR. SHARPE: I get it.

17 MS. SCOTT: I have a couple of
18 comments to add on to Tom's. In the schedules
19 we tried that, we looked at it, we talked
20 about it. And the closest we could come to
21 any kind of standardize would be where we just
22 set a few baseline definitions. Industry

1 folks that I've talked to about this
2 specifically are adamantly opposed to this
3 because it is too restrictive on their
4 solutions.

5 CHAIRMAN BRANCH: They don't want
6 the transparency.

7 MS. SCOTT: I won't argue with you
8 on that point. I want to speak to them on
9 that.

10 MR. ALLEN: I would, but I'll wait
11 until later.

12 MS. SCOTT: One of the issues is,
13 and I'm like Judith, I've been on both sides,
14 not as much on the outside as she has. And
15 some of the issues with the labor categories,
16 it's a very tough area for us as contracting
17 officers; it's a very tough area. Everybody's
18 definitions are very very different.

19 If we go to something
20 standardized, one of the issues is that the
21 people in industry are very versatile, NAD
22 somebody can qualify in what we would consider

1 a single category, they consider it several
2 different categories. And people can sit in
3 one job one week NAD be a network engineer,
4 and the next week they can go over and be a
5 systems engineer.

6 MR. SHARPE: That is not
7 inconsistent.

8 MS. SCOTT: Exactly, but if we go
9 to baseline, and set up such specific job
10 categories, we are now pushing people into
11 boxes, and we are now driving industry, and
12 that's not our job. We should reflect
13 industry practices; we shouldn't drive
14 industry practices.

15 MS. SONDERMAN: I don't know that
16 we are suggesting that one person only fits -
17 that a particular individual only fits in one
18 box.

19 MR. SHARPE: David for example
20 would also qualify as a GS-13 contracting
21 officer.

22 CHAIRMAN BRANCH: Tom, one mike for

1 the transcriptionist, please.

2 MR. SHARPE: My comment is, a
3 person may qualify in multiple job categories.
4 For example David is an SP, and he probably
5 also qualifies as a GS-13 contracting officer
6 --

7 MR. FRYE: I don't think anybody,
8 at least I don't think anybody around the
9 table would disagree with what you said. We
10 know we are going to get a good price if we
11 compete at the task force level.

12 But I want to go back again, and I
13 may not have heard Dave correctly, but did I
14 hear you say, Dave, that with regard to
15 services GSA could put contracts in place,
16 these multiple award IDIQ contracts, without
17 declaring a fair and reasonable price, that
18 that doesn't matter?

19 And I did hear Elliott say that
20 those prices really don't matter, but I don't
21 know how you are going to put these legitimate
22 multiple work schedule contracts in place at

1 your level without declaring a fair and
2 reasonable price.

3 MR. DRABKIN: Well, Jan, I don't
4 think - if I said that I would have meant to
5 qualify it by saying, without a change in the
6 rules today. Right now the rules require that
7 when you sign a contract, you make a
8 determination either that the price is fair
9 and reasonable or that it's not, and that you
10 want to put the contract in place anyway.
11 That's the current rule in the FAR. You don't
12 have a choice, because you are required under
13 CICA to consider price in every contract.

14 What I think the question is, or
15 should be, is, in contracts like our schedules
16 - and by the way I think it's a very
17 applicable contract question to all IDIQ
18 contracts, at least in the services arena,
19 maybe in today's environment in the product
20 arena as well - shouldn't we be doing a
21 different approach which I think is what
22 Elliott started the whole question on, which

1 is, let's focus on the qualifications. Let's
2 make sure we negotiate the terms and
3 conditions. Then let us have a robust
4 competition where it is going to make a
5 difference to the taxpayer at the order level.

6 Now that makes the contract, at
7 least in the area of services, not as easy as
8 we would have originally liked for it to be.
9 When you get ready to buy televisions - and by
10 the way I did this as an experiment earlier
11 this week, I went online and used GSA
12 Advantage, and then I went and sent an RFQ
13 myself through eBuy, and I will get offers
14 back this afternoon and we will see how it
15 worked.

16 But pretty easy; I didn't have a
17 lot fo things to do. Price is really
18 competitive, NAD it is going to make itself
19 out obviously in the end.

20 But in the area of services, it is
21 more complicated. Admittedly, the schedules
22 and IDIQ contracts take out a lot of that

1 other stuff you have to do, the synopsis, the
2 waiving of 45 days, the publication then of
3 the RFP, a formal source selection under FAR
4 Part 15, although many of our colleagues and
5 many of the agencies shoot themselves in the
6 foot and turn an order into a formal source
7 selection; that's another matter altogether.

8 But I think the very first
9 question we should talk about and resolve is
10 the one Elliott raised. I think the next
11 question is the one Tom raised, which is, once
12 you figured out how the pricing mechanism
13 should work, which is a very important thing,
14 then on the services contract we should look
15 at how in God's name should we if we are going
16 to do this in a central fashion, whether it's
17 GSA or any other agency, do we need to address
18 the issue of, dare I say it, Fed specs for
19 services, where we define for all to see and
20 everybody to understand what it is we mean by
21 a systems engineer. Every other company, I
22 don't care what you call your systems

1 engineer, if you want to bid a systems
2 engineer to us it's got to meet our definition
3 of a systems engineer. Or a senior engineer,
4 or a drafter or an architect. And by doing
5 that give us more opportunity to have head-to-
6 head competitions in these abbreviated formats
7 of the schedules and IDIQ contract.

8 But the very first question that
9 Elliott asked I think is the first question we
10 should resolve. If we could limit ourselves
11 to resolving that question then I think a
12 number of other things flow out of it.

13 I don't know that we could reach
14 agreement.

15 MR. FRYE: Dave, could you just
16 answer my question, though, I'm asking you.

17 MR. DRABKIN: What's that?

18 MR. FRYE: You've skirted around
19 it. I wanted to know -

20 MR. DRABKIN: I said no, Jan, you
21 cannot today make an award of a scheduled
22 contract with a determination that the price

1 is fair and reasonable, and we do it every
2 time we make an award. It's absolutely
3 worthless in my opinion, but you can't do it
4 without one NAD we do it.

5 MS. JONES: I just have a comment.
6 There are GSA fields right now with proposals
7 stacked on their desk, who are sitting and
8 evaluating offers and coming to price
9 reasonableness determinations. When you say
10 that the rule competition is at the task order
11 level, that's based on the labor mix that the
12 company is proposing; that is based on the
13 expertise that they are offering; that is
14 based on the mix that they are proposing to
15 accomplish that job in that statement of work.

16 And I think that that competition
17 is independent of the prices that are on
18 schedule.

19 MR. SHARPE: Does the price change?

20 MS. JONES: Does the price change?

21 Yes, it - well, let's put it this way. I
22 don't think that based on what we see in terms

1 of evaluating offers, I don't think that there
2 are companies who can so deeply discount the
3 labor rates that are on schedule to say that
4 the rates that are on schedule are not
5 competitive. There may be some margins there
6 for a slim discount, but I don't think that
7 the agencies are seeing double digit discounts
8 on a particular labor category let's say.

9 It's the mix that they are
10 proposing that makes the entire task order
11 process competitive.

12 CHAIRMAN BRANCH: I would have to
13 take exception to that based on my personal
14 experience as a contractor. Because I can
15 tell you depending on what was going on in my
16 company with respect to business space, who
17 that particular customer was, how deep that
18 relationship was, what my CEO believed was the
19 real level of competition, I was priced out at
20 between \$145 an hour when we needed to put an
21 instructor in a class, to as much as \$300 an
22 hour when I was being priced out as a

1 nationally recognized expert.

2 Which I think goes to Tom's point:
3 it depends not really on the labor mix but the
4 work.

5 MS. JONES: The scope, it depends
6 on the scope, and you are correct. And that's
7 why again we have centers of expertise who are
8 able to look at the labor mixes that the
9 companies are proposing to determine if a
10 particular price is fair and reasonable based
11 on the scope of what they are proposing, and
12 the field of services that they are providing.

13 MS. NELSON: Jackie, it is more
14 than scope. And Tom - well, particularly
15 Elliott is going to it; it's much more than
16 scope.

17 On an industry basis the job that
18 is going to get you that covers everything
19 including overhead and G&A, that job you can
20 afford to price less, because once you know
21 you have that job in the pocket you can afford
22 to price it, and then every other job is

1 gravy.

2 So when you are a company and you
3 are - don't shake your head at me, because
4 having ran the firm - what I'm saying is, what
5 you can afford to price your people out has to
6 do not only with what the scope of the job is
7 and what you are pricing the person out for;
8 it has to do with what's going on in your
9 company, in other words how many people you
10 have on the bench, and how much you need that
11 job; how much competition it is for the job.
12 So it's not just scope.

13 MR. CHVOTKIN: That I agree with.

14 MS. NELSON: Okay, how much you
15 want to get into that agency, how badly you
16 need - can you break into that agency. Is it
17 a good customer? Is it - so there is a lot
18 more than scope involved in it. So you will
19 see everything from single digit discount to
20 double digit discount, and we do know that
21 based on audits that we have seen in services
22 more - we have seen double digit discounts.

1 MS. JONES: And that is why we have
2 a maximum order clause in the contract that
3 encourage agencies to seek additional
4 discounts for orders that are beyond the
5 maximum order threshold. And that is
6 accepted.

7 But on the smaller jobs, remember,
8 we are servicing customers that are not just
9 big components like DOD, we are also servicing
10 customers that are out in the national
11 forests, who don't have the staff, who don't
12 have the expertise, to run these full
13 competitions without some baseline for
14 pricing.

15 MS. NELSON: It is also why the
16 Price Reduction clause did not apply to the
17 federal government customer, right, because
18 companies in working through the GSA schedule
19 should be able to give any federal government
20 customer the best price that that customer can
21 get for that competition so that the
22 government is able to get the best price for

1 those valves for the U.S. taxpayer, so that
2 when Debra goes out and she does a
3 competition, either through schedule or using
4 that vendor through her own agency's
5 competition vehicle, that she is still able to
6 get the best price going and save the most
7 amount of money, so whether or not they are
8 competing and doing best price through our
9 schedule, or whether or not they are doing it
10 through their own vehicle, there is already no
11 price reduction clause.

12 CHAIRMAN BRANCH: Lisa, you had
13 your light on?

14 MS. SCOTT: Philosophically the
15 same thing happens when you set up the
16 schedules. A company coming in brand new to
17 the schedule sometimes will give us phenomenal
18 pricing because they are trying to break into
19 the federal market, and then as time goes on
20 and they develop a cadre of clients out there,
21 their prices may not adjust as much as I would
22 like necessarily in the out years. But they

1 may choose to do a lot of adjusting at the
2 individual task order level.

3 It's interesting to me to look at
4 the schedule price that we end up setting then
5 look at what does happen at the task order
6 level, and some companies take the philosophy
7 to give us the absolute best price at the
8 schedule level, and others take a philosophy
9 to go for more of a ceiling price so that at
10 the task order level they have room to
11 maneuver and to negotiate.

12 And it's a philosophical issue
13 that is fascinating to watch in operation, but
14 I don't know how to - or which way is the way
15 to capture it, because it flies in the face of
16 what Jan was going after. Do we always have
17 the absolutely best price at the schedule
18 level? Sometimes philosophically no, that's
19 not what that particular company is trying to
20 do.

21 MR. SHARPE: The answer is across
22 the board no, right?

1 MS. SCOTT: No, I wouldn't agree
2 with that.

3 MR. SHARPE: It's not almost always
4 discounted? That's what I learned sitting
5 through all these meetings; it's almost always
6 discounted.

7 MS. SCOTT: I could tell you as a
8 small agency contracting officer, no. On the
9 small deals I did not get good discounts.

10 MR. SHARPE: And that would be the
11 exception, right?

12 MS. SCOTT: I can't say that; we
13 have 250 small agencies.

14 MR. PERRY: I guess trying to bring
15 it back to where you started, it sounds like
16 we could all agree that we don't immediately
17 cut out the price reduction. Are we going to
18 start capturing some of this?

19 CHAIRMAN BRANCH: Pat has started
20 to capture some of this, and we have support
21 doing this. This hasn't been totally free
22 form and undocumented.

1 MR. PERRY: I said this in an
2 earlier session. I've listened to with all
3 due respect to those at GSA who are working
4 very hard on trying to put in place contract -
5 schedule contracts for all of us to use. But
6 if I am at the agency and I am going to use
7 the schedules with which to conduct the
8 competition - and that's what we do, we do do
9 a competition for the requirements to get
10 there for services - I would like to see us
11 come out of here with some recommendations if
12 I'm in the schedule lane, some recommendations
13 to GSA on what we believe would be the minimum
14 expectations we have for maximum -
15 expectations that we have about what GSA has
16 teed up for us to compete amongst.

17 It is clear to me based on earlier
18 remarks and testimony that you can talk about
19 - I'd like to see us clarify for the buyer
20 what the base - I'm using terms now so I'm
21 going to get in trouble - I would like the
22 buyer to know what are the groundrules around

1 what the offeror put the price on the schedule
2 for. I think we need to stop talking about
3 most favored customer and some other things
4 the way we are talking about them, because
5 one, GSA, and it was made very clear to me
6 that GSA has no data, does not get adequate
7 data to even determine whether or not you are
8 getting good pricing from anybody. But I
9 won't take away that you do have some idea
10 that at least you are in the ballpark. Maybe
11 for a particular service labor category, when
12 you don't have the data to tell me that is a
13 really good price.

14 So rather than continuing trying
15 to defend that it's a good price, I'd rather
16 spend our time saying just, okay, what is it
17 that we tell people about that price and make
18 that transparent to the buyer and to the
19 marketplace, what that is, so we know what
20 works ahead of us at the competition, even at
21 the small agency, that those buyers also know
22 how good a price it is up to a point and how

1 much work they have to put in it. Because we
2 make decisions everyday about who to include
3 and who not to, based on some of that
4 information. And I'd like - I don't have this
5 comfort level with knowing about really what
6 I'm going to have on my hands when AI look at
7 the price schedule for any particular service
8 contractor.

9 The other thing is, my experience
10 and granted, sometimes I'm not doing the day-
11 to-day things, but my experience based on
12 feedback is that most of your - a lot of your
13 scheduled contractors on services are not
14 commercial. They are mostly government space
15 in a lot of things we do. I'd like to know
16 what the price represents within the
17 government space, and also based on the
18 feedback we get from commercial vendors about
19 what they are having to do to price it in the
20 government space, and they view it very
21 differently in many cases.

22 I realize there are a whole bunch

1 of variances in there, and a lot of variables
2 in that. So I just want to know what the
3 variables are that I'm having to work with,
4 the we can conduct a conversation based on
5 that amongst the limited set of folks that we
6 would pick to have that competition among, and
7 be able to know that. And then focus -
8 recommendation to focus back on GSA what they
9 would do as part of that competition process,
10 what they would do at that level, and accept
11 the premise that you made originally, the real
12 competition for the requirement happens at the
13 ordering level.

14 And then come out of this with
15 that, because that is the world we are trying
16 to work with. How will it work best using
17 those schedule provisions? Because if it
18 doesn't work well I move to Part 15 and I do
19 my own thing, and I am not - that is not the
20 best thing for everybody. We want some kind of
21 process similar to what we have under the
22 schedules program, but let's make

1 recommendations to make sure we get the best
2 deal at the end at the buyer level.

3 CHAIRMAN BRANCH: Larry.

4 MR. ALLEN: Thank you, Mr.
5 Chairman.

6 I would suggest that I think we
7 have gone way down the path away from your
8 original motion. We have spent the better
9 part of the last 25 minutes discussing most
10 favored customer pricing. And while that is
11 certainly a very valuable discussion to have,
12 the original motion was on the price
13 reductions clause.

14 I would suggest that maybe we move
15 to work on that as amended, proposed to be am
16 ended by Mr. Drabkin, and get something
17 resolute on that form, and then I suspect we
18 will probably have an even more lively
19 discussion on most favored customer, fair and
20 reasonable pricing as well as standardization
21 labor categories.

22 But we need to get something done

1 on the original idea first, then maybe we can
2 move to getting something done on the things
3 we have talking about more lately.

4 CHAIRMAN BRANCH: Let's see, Alan
5 and then Glenn.

6 MR. CHVOTKIN: Thank you. I think
7 we have really discussed in this period of
8 time the three phases of our deliberations
9 over time. We have had a lot of discussion
10 about what happens in the pre-award phase, in
11 the contract formation phase of the schedule,
12 and we ought to probe, but I don't think we
13 need to do so here deeply, on the transparency
14 question that Glenn and Jan have asked about,
15 the price reasonableness. How do we assure
16 that up front? And what is the basis for
17 assuring at the formation stages that we have
18 reasonableness, price reasonableness.

19 The second is at the ordering
20 stage, the competition stage, how do we make
21 sure that we get the kind of competition we
22 want? As Elliott suggested in his original

1 memo, we might look at things like applying
2 803 governmentwide kinds of activities that
3 engender that competition at the order level.

4 And then the third phase is the
5 contract administration, and that is where the
6 price reduction clause comes in. And if we
7 have confidence that there is transparency at
8 the rates and the structure of the contract so
9 that the agency can make an informed decision
10 about what to order and how to order, and
11 there is robust competition, then I think the
12 price reduction clause is a non-factor and
13 probably inappropriate or certainly
14 unnecessary in the services.

15 And I think we can address those
16 three fairly quickly, and I think we will find
17 a lot of - we will certainly find consensus if
18 not unanimity around those three elements as
19 just a way of thinking about the discussion
20 and trying to move us forward.

21 MS. SCOTT: I was just going to
22 touch on the transparency issue. Because what

1 it really boils down to is, is the contracting
2 officer going to want to see the deal that was
3 cut, and we not to have confidence in the deal
4 that was cut.

5 And unfortunately the way things
6 are structured, I realized today that part of
7 the issue lying behind the whole transparency
8 issue is that we, GSA, to some degree, are
9 asking you, everybody out there, to believe us
10 when we say we try to cut a very good deal -
11 notice I'm staying away from all the terms -
12 when we set up those schedules. Was every
13 single one of them absolutely perfect? No,
14 but do we try to do that?

15 So ultimately on the transparency
16 issue we can talk through all the steps and
17 all the stages, but it boils down to, do you
18 trust us to try to do that, is what it boils
19 down to, and that would eliminate the
20 transparency issue.

21 CHAIRMAN BRANCH: You know, let me
22 say this, at least from a native point of

1 view. We trust GSA. That is not our issue.
2 The issue, and I think Lisa, you or Debra may
3 have raised that, the definition of a good
4 deal is highly contextual.

5 So I think to Gwen's point, if we
6 would provide that context with respect to
7 basis of award, in the marketplace, then a
8 contracting officer could say, you know, I can
9 accept the suppositions on which this award
10 was based. I really can run a paper
11 competition if we want to continue to do that,
12 because when I look at the universe of
13 schedule holders in this particular class, the
14 basis fo awards were sufficiently similar that
15 when I look at these rates I'm confident that
16 if I pick this offeror with these rates and
17 apply them to my requirement for labor mix and
18 quantity this is a fair deal.

19 On the other hand if I look at
20 that basis of award, and as a contracting
21 professional I say, the context for my deal is
22 so radically different than I need to issue an

1 RFP and let the competitive forces of the
2 market really shape the pricing on that, then
3 there is that information.

4 So I don't think it's an issue of
5 trust so much as it is an issue of a
6 contracting officer trying to eliminate
7 uncertainty with respect to what that pricing
8 means.

9 MR. DRABKIN: Having now digested
10 what we talked about this morning, it occurs
11 to me that maybe there is even a more
12 fundamental question we ought to be asking.
13 I think I know the answer to the question, but
14 I'm not sure everybody else does.

15 And that is, is it really suited
16 for purchase and sale through an IDIQ program,
17 or are there levels of services which are more
18 suited than others for purchase and sale
19 through this process?

20 We never had this discussion when
21 we added services to the schedule. We
22 actually never had this discussion when we

1 added services to the IDIQ sections on the FAR
2 Part 16. When we went to Congress in '94 to
3 get authority for IDIQ contracts,
4 predominantly our argument was products, and
5 it was coming out of the 800 panel
6 recommendations, and it was to overcome a DOD
7 legal opinion and Ellen's letter that said it
8 violated CICA.

9 But I don't believe our community
10 ever really had a discussion about whether
11 services are amenable, or whether there are
12 categories of services that are or are not
13 amenable to this discussion. Because as we
14 heard everybody talk today, we talked about a
15 lot of different levels of work and effort
16 that have to go into doing a services contract
17 correctly. And of course they are about to
18 hang me in effigy over at GSA for even asking
19 the question, service is the biggest part of
20 our market. But maybe we ought to have our
21 discussion. Because maybe part of Jan's
22 concern about fair and reasonable price, and

1 Tom's concern about definition of what we are
2 buying - my own concern in both of those areas
3 is addressed by articulating whether all
4 services are amenable to this process. If
5 not, what subsection or what sub-market of
6 services really can be done this way, versus
7 others which really need to be done through an
8 open market buy using FAR Part 15 and our
9 traditional processes.

10 MS. SCOTT: I would love to hear
11 somebody from industry discuss it. Because I
12 know I understand on our end at Schedule 70 it
13 was driven by industry, asking and demanding
14 and requiring us to put services on there to
15 do maintenance, and to do the services
16 necessary to implement some product or some
17 software in an environment.

18 So I'd love to know the genesis of
19 that from the industry perspective.

20 MR. CHVOTKIN: I'm not sure I have
21 the entire genesis of it, but it is a
22 combination of where the federal marketplace

1 has transitioned over time, so that as we see
2 in the last oh five to six years a significant
3 shift in demand set from products to services,
4 a desire to continue to use the mechanism of
5 the schedules to satisfy those customer needs,
6 and quite obviously a shift in the market
7 providers who are also addressing those agency
8 requirements.

9 And so those three things coming
10 together, customer demand, supplier
11 availability, and GSA schedules being the
12 interface if you will to build on the
13 schedule's platform to accommodate the
14 evolving customer needs.

15 And to its credit GSA has created
16 the schedules, additional schedule programs,
17 whether it's MOBIS or PES to meet those
18 evolving needs, and we see the contingent
19 value of that when you look at the spend in
20 those categories, the continuing growth in
21 those categories vis-a-vis the more
22 traditional product set.

1 So I suspect even within 70 they
2 haven't broken that category apart in great
3 detail, there is still a higher percentage of
4 the spend in 70 to services than there is to
5 the product mix.

6 MS. NELSON: Some of the genesis
7 was, really, industry and GSA working in
8 partnership. And it's one of the things that
9 I was right in the middle of from our
10 perspective.

11 And it's tough to say who was
12 doing the pushing and who was doing the
13 pulling all the time, because there was a
14 general agreement that this was an area that
15 the schedules program could move in,
16 particularly given the procurement
17 flexibilities that the procurement laws of
18 that day newly provided to buyers and sellers.

19 Alan is absolutely right that
20 there was a movement away towards government
21 buying desktop stand-alone items, just as
22 there was commercially moving more toward a

1 solutions market. The schedules program
2 wanted to be part of that. There were some
3 efficiencies to be gained by adding those
4 types of services to the program.

5 And there was no force feeding I
6 think on either side, but a general agreement,
7 and really an amazing partnership by people
8 inside GSA and industry, that this was the
9 right thing to do, NAD that there would be a
10 lot of benefits in the federal market because
11 of it.

12 And it was believed that the
13 schedules should move and grow in this way
14 because that was reflective of not just where
15 the government market was going but where the
16 commercial market was going, and of course the
17 schedules program was originally set up to try
18 to mirror commercial buying practices. And
19 this was certainly a commercial market trend
20 that the schedules program I think
21 appropriately grew to meet.

22 MR. DRABKIN: If I could add a

1 little perhaps context to the history. I
2 think it actually started out from the
3 perspective of services incident to the
4 purchase of goods, and we cleared that up.
5 Then we began adding a few more services,
6 because where the industry wanted to sell
7 them, we wanted to buy them. It didn't make
8 a difference, there was a market for it.

9 And we are at the point today
10 where we are selling everything from the most
11 complicated R&D type work in the technical
12 fields to the simplest program management
13 support in terms of what we are not supposed
14 to buy but we do personal services.

15 So I mean, and I don't think it
16 serves anybody to try to figure out who pushed
17 what. I mean the bottom line is, it happened;
18 there was a market for it; people wanted it.
19 Industry wanted to sell it, we wanted to buy
20 it, and we are buying and selling lots of it.

21 I think the real question is I
22 think goes back to what I raised, which is, is

1 there a level of service or a type of service
2 or a sector of the services market that is
3 suited or not suited to be purchased through
4 the schedule's contracting method and should
5 be purchased through another method in the
6 FAR? Is the schedules a one-size-fits-all
7 services shop, which most of us tend to try to
8 say things aren't, or is it a tool that is
9 particularly suited to one kind of service and
10 maybe not as suited to another, which may
11 address a lot of the concerns that many of you
12 have about what's being bought.

13 I mean I remember what's his name,
14 Todd Hughes on the panel, going nuts that the
15 Air Force was buying fire control services
16 through a schedule contractor as a commercial
17 item.

18 Maybe that kind of service,
19 although there is an argument to be made that
20 it's not terribly different from others, but
21 maybe that kind of service isn't suited for
22 that kind of vehicle.

1 CHAIRMAN BRANCH: I am going to
2 address your question kind of head on, David,
3 and when I look at GSA as an institution and
4 the schedules program as an initiative, I
5 guess this is what I would compare it to. I
6 would compare it to a stock exchange in the
7 days before we decided money was a product and
8 got ourselves into the current pickle.

9 But GSA really is a market maker.
10 So the value added that you provide as an
11 agency is by bringing a set of people to the
12 table who want to sell to the government; who
13 have a set of goods and services that are a
14 good fit with the needs of the government; as
15 you pointed out, are bonafide contractors,
16 responsible in the sense that they have the
17 capability to pass any credit, business ethics
18 and the will to use it, the past performance
19 to demonstrate that; the willingness to comply
20 with the terms and conditions under which we
21 must buy because we are spending public
22 dollars; and a mechanism to allow agencies to

1 transmit their requirements to that
2 marketplace to be satisfied in the most
3 economically efficient and effective way.

4 So GSA really is a market maker.
5 They are market specialists in the context of
6 the original New York Stock Exchange.

7 I guess what I would observe is,
8 in the world of services, however, the market
9 cannot be made until the incident buy is
10 ready, because we should not be buying labor
11 hours, as you point out. Our contracting
12 community, NAD it is strapped throughout all
13 of the federal government, has an obligation
14 to sit down and look at what we are really
15 buying and to use the tools that we give them
16 to get the best deal for the taxpayer
17 possible.

18 And I would submit that since no
19 services requirement is homogeneous, that
20 requires competition at the task order level.

21 MR. CHVOTKIN: If I might build on
22 your comment, Elliott, I think it is still

1 relevant for GSA to create debt market
2 opportunity. We ought not to look at the
3 schedules as a substitute for an agency's
4 acquisition strategy, and my interactions with
5 my good friend, Todd Hughes, from the Air
6 Force that David referred to in the context of
7 a 1423 panel was to say, where was the
8 agency's experience and decision. Someone
9 made a decision to utilize the schedules, and
10 my hope, but not my knowledge, is that there
11 was some thought behind the decision to go to
12 the schedules.

13 It is unique in the government's
14 numbering system that our Part 8 comes between
15 13 and 15 in the government parlance where we
16 use the schedules a little bit like - Part 14
17 and 15 - a little bit like purchases and a
18 little bit like RFPs. So anything in this
19 discussion, my concern about eliminating parts
20 is that GSA or this panel or some
21 administrator, GSA or OFPP or a congressional
22 staff person would decide that no, we don't

1 want to make the schedules available and
2 therefore deny that tool to the agencies when
3 it's really the agencies at the time those
4 opportunities arise that is in the best
5 position to make the decision of how to
6 acquire the GSA schedules, or not the mandate,
7 the tool.

8 MR. DRABKIN: Just to be clear, it
9 is not my intention to suggest that GSA not
10 continue to make markets and manage those
11 markets. But I think we have to have this
12 discussion because we never had it before.
13 And as we right this NAD address this in the
14 panel, I think it would be important for us to
15 say affirmatively that there is a role in this
16 market and what that role is.

17 I seem to hear no objection to
18 there being such a role for services in GSA,
19 and I think Alan's point is the most
20 important. While I value the business of my
21 colleagues greatly, there is some
22 responsibility still left in my colleagues and

1 the other agencies to use whatever vehicle
2 they choose as a result of their acquisition
3 planning properly.

4 I - GSA is not set up to be a
5 policeman of all the products that it makes
6 available to all its customers. For example
7 we do not send people out in unmarked cars to
8 make sure that people who are driving GSA
9 fleet vehicles are following the rules for
10 driving GSA fleet vehicles. And similarly we
11 don't send them out into the market to make
12 sure that they are using the schedules
13 properly, and I don't think that is our role.

14 Although on the issue of
15 transparency, which somebody touched on, I do
16 think an electronic tool would serve us all
17 better in terms of transparency on orders
18 placed.

19 So lest you finish this
20 conversation thinking that I am opposed to
21 services on the schedule, I am not. I think
22 we should have that discussion, and however we

1 write this up we should make some statement
2 about the role of services and the schedules,
3 whatever we think that role should be
4 collectively.

5 CHAIRMAN BRANCH: I think this has
6 been a very very good discussion. It's gone
7 in a number of ways that we are going to have
8 to address as a panel before we complete our
9 work. But in I guess the spirit of kind of
10 managing this in some sort of orderly way, I
11 have about 9:25. So why don't we take about
12 a 20 minute break, and this is what I would
13 like to do. I'd like you to consider the
14 original motion that I put on the table to
15 begin. I'd like folks to look at that and
16 say, hey, we don't like that, we are not - we
17 don't want to go that way, or to offer
18 modifications to it so that we can kind of
19 move in the direction of setting a framework
20 for recommendations in this area.

21 So my original suggestion was, A,
22 eliminate price reduction clause for services;

1 to drive true competition, and I'm using a
2 shorthand, adopting an 803 approach, but
3 essentially forcing agency contracting
4 officers, if they wish to buy schedules,
5 services on schedules, to issue a request for
6 task order proposal with a statement of work,
7 and to evaluate that on some basis consistent
8 with the way we do that in the FAR, be it best
9 value, low price technically acceptable or so
10 on.

11 So I ask you to consider that,
12 consider whether that's the approach we want
13 to take. And if it is the approach we want to
14 take, what other modifications we would have
15 to make to the system to enable it, and if
16 it's not the approach we want to take, to
17 offer alternatives to that recommendation.

18 So let's break now NAD come back
19 at 9:45, and pick up the discussion there.

20 (Whereupon, the above-entitled
21 matter went off the record at 9:25 a.m. and
22 resumed at 9:50 a.m.)

1 CHAIRMAN BRANCH: Just a reminder
2 for people who are attending the hearing. The
3 meeting, we really like to have a feel for who
4 we have in the room. So if you have not
5 signed in please take an opportunity to sign
6 in either during a break or before you go to
7 lunch.

8 Okay, I asked the panel to
9 consider the original proposition that I had
10 laid on the table, and to think about whether
11 that was one that they were comfortable with
12 or whether we wanted to modify that.

13 So I'll open the floor to
14 suggestions at this point.

15 MS. SONDERMAN: I support
16 eliminating the Price Reduction clause for
17 services.

18 MR. DRABKIN: May I ask, is that in
19 the form of a second of his motion?

20 MS. SONDERMAN: I wasn't here when
21 it was offered, so I didn't know whether it
22 had already been seconded it or not.

1 I will second the first - if that
2 is the motion, if those three things are the
3 motion, I'm seconding the first part of it.

4 CHAIRMAN BRANCH: This is what I
5 will do. Although I think they are of a
6 piece, I will break those up into three
7 components.

8 So I move that the price reduction
9 clause be eliminated from GSA contract -
10 schedule contracts for services.

11 MS. SONDERMAN: I'll second that.

12 CHAIRMAN BRANCH: Discussion?

13 MS. THOMPSON: I have a question.

14 What would you be adding in to replace it?

15 What's going to replace that in terms of

16 maintaining the continuity of pricing?

17 CHAIRMAN BRANCH: Well, I would

18 propose that we replace it with nothing.

19 Because I think the clause in the context of

20 services acquisition is meaningless.

21 MR. SHARPE: My only comment is, I

22 think we should strike it, but my

1 understanding is it's got some limited value,
2 and I thought your motion was to strike it but
3 require competition at the task force level.

4 CHAIRMAN BRANCH: It is, but for
5 purposes of proceeding I'm breaking that into
6 three component parts.

7 MR. SHARPE: I'd be opposed to just
8 approving that stand alone.

9 CHAIRMAN BRANCH: Okay. So I think
10 I'm hearing a friendly amendment to restore
11 Section 2 of that motion. Do I have a second
12 for that?

13 MS. SCOTT: I second.

14 CHAIRMAN BRANCH: I have a second.
15 So the motion has not been amended to have two
16 components to eliminate the price reduction
17 clause and to require all services competition
18 at the task force level.

19 MS. SONDERMAN: But that is not
20 what that says. It says, adopt an 803 process
21 governmentwide. And 803 is a specific type of
22 competition. I'm for competition at the task

1 order level. I just have mixed feelings about
2 these specific rules.

3 CHAIRMAN BRANCH: All right. So
4 I'm willing to entertain another friendly
5 amendment, Debra, if you would like to offer
6 one. How would you rephrase that?

7 MS. SONDERMAN: I think we would
8 say, require competition at the task order
9 level. Now I don't know whether we should say
10 -

11 MR. SHARPE: Or said differently, I
12 mean the prices are no longer fair and
13 reasonable; they can't be relied on. That is
14 why we are getting competition, right?

15 CHAIRMAN BRANCH: I will put my two
16 cents in with respect to the discussion. I am
17 not willing to necessarily say that those
18 prices are not fair and reasonable, but I
19 would phrase it as that fair and
20 reasonableness for service contract in here is
21 a rebuttable presumption to be tested through
22 the operation of competition.

1 MR. SHARPE: Either you can rely on
2 the price or you can't.

3 CHAIRMAN BRANCH: No, what I am
4 suggesting is that whatever reliance on that
5 price has to be tested. So I am suggesting
6 that given market dynamics whether we can rely
7 on that price prima facie is uncertain. But
8 we cannot draw a conclusion that that price -
9 it's kind of like an auditor's no opinion. I
10 can either affirm or state that these books
11 don't fairly represent the position of the
12 company. So what I'm saying is that
13 competition is essentially the test for
14 reliance on that price.

15 MR. SHARPE: But I think we've
16 learned these prices are used in other ways,
17 right? I mean they are used to form
18 estimates. They are used as point of
19 comparisons. Used as a lot of things. And if
20 we don't support the price -

21 CHAIRMAN BRANCH: I think the
22 price should come down. Say it's not fair and

1 reasonable any more.

2 MR. SHARPE: What difference does
3 it make, Elliott, if you are going to compete
4 it?

5 CHAIRMAN BRANCH: Well, I think we
6 just don't - I guess - and I'm talking
7 philosophically now. I do not believe given
8 the market dynamics that we know whether that
9 is a fair and reasonable price or not. It may
10 be a fair and reasonable price.

11 MR. SHARPE: But we've got GSA
12 telling us it is, right?

13 MS. JONES: And it is a fair and
14 reasonable price.

15 MR. SHARPE: That's what we are
16 debating.

17 MS. JONES: I'm stating that it is
18 a fair and reasonable price. When a
19 contracting officer awards a contract and
20 makes that determination that the prices are
21 fair and reasonable, then we support that.
22 It's fair and reasonable.

1 MR. SHARPE: You do. I think what
2 the panel is starting to come to the
3 conclusion is, that is not enough.

4 MS. NELSON: I have heard you make
5 this statement many, many times that it is not
6 a fair and reasonable price, but I have not
7 heard - and I have not heard the panel state
8 over the course of these months that it's not
9 a fair and reasonable price. I've heard
10 several opinions that it's not a fair and
11 reasonable price, but I've not heard the
12 statement from the panel that it is
13 empirically not.

14 So what I'd like to understand in
15 your opinion empirically what makes it not a
16 fair and reasonable price?

17 MR. SHARPE: I don't think I'm
18 trying to say it's not fair and reasonable.
19 I mean that's a term of art in the FAR. I
20 think what I'm coming to the conclusion, it's
21 not a very good price.

22 MS. SCOTT: So sometimes it's not

1 as current as it could be because it's moving
2 dynamically.

3 MS. NELSON: So let me then go back
4 to the FAR. And under the ordering procedures
5 for the FAR what it states, okay, and without
6 reading it. The FAR is extraordinarily -

7 MS. JONES: Please read it.

8 MS. NELSON: Please read it?

9 MS. JONES: Yes.

10 MS. NELSON: Okay. So the FAR
11 says: For the use of - under 8.404(d) - well,
12 let me go back up. Subparagraph d, the
13 contracting officer when placing an order or
14 establishing a BPA is responsible for applying
15 the regulatory and statutory requirements
16 applicable to the agency for which the order
17 is placed or the BPA is established. The
18 requiring agency shall provide the information
19 on the applicable regulatory and statutory
20 requirements to the contracting officer
21 responsible for placing the order. C,
22 acquisition planning, orders placed under FSS

1 contract, one, are not exempt from the
2 development of acquisition plans and
3 information technology acquisition strategy;
4 two, must comply with all FAR requirements for
5 above contracts, dah dah dah dah. Three, must
6 whether placed by the requiring agency or on
7 behalf of the requiring agency be consistent
8 with the requiring agency's statutory and
9 regulatory requirements, applicable to the
10 acquisition of the supply or service. And D,
11 pricing, supplies offered on the schedule are
12 listed at fixed prices. Services offered on
13 the schedule are priced either at hourly rates
14 or at a fixed price for performance of a
15 specific task. GSA has already determined the
16 prices of supplies and fixed price services
17 and rates for services offered at hourly rates
18 under scheduled contracts to be fair and
19 reasonable. Therefore, ordering activities
20 are not required to make a separate
21 determination of fair and reasonable pricing,
22 except for a price evaluation as required by

1 8.405-2(d).

2 By placing an order against a
3 schedule contract using procedures in 8.405,
4 the ordering activity has concluded that the
5 order represents the best value as defined in
6 FAF 2.101, and results in the lowest overall
7 cost alternative considering price, special
8 features, administrative costs, et cetera, to
9 meet the government's needs.

10 Although GSA has already
11 negotiated fair and reasonable pricing,
12 ordering activities may seek additional
13 discounts before placing activity.

14 And it will go to say that the
15 ordering activity must consider - in addition
16 to when an order contains - blah blah blah -
17 in addition to price when determining best
18 value the ordering activity may consider among
19 other - so what the FAR is saying in ordering
20 procedures is that while GSA has determined
21 fair and reasonable pricing, and we have all
22 discussed in the past what is fair and

1 reasonable. What Jackie may consider to be
2 fair and reasonable when doing her
3 determination as a contracting officer with
4 discretion of that warrant, and with the
5 information available to her at the time, may
6 be different from what Lisa determines to be
7 fair and reasonable with the discretion of her
8 warrant with the information available to her
9 at that time, may not be the best value to Tom
10 Sharpe. But he is required through an
11 acquisition plan, and based on his statement
12 of work, as the ordering activity, to make a
13 determination of best value, and that is
14 required by the FAR and ordering procedures of
15 the schedule, and it is already in there.

16 Now if it's not clear to the
17 ordering activities, then we as a panel either
18 have to clarify it or change it. But those
19 are the requirements of the FAR in using the
20 schedule.

21 CHAIRMAN BRANCH: Alan.

22 MR. CHVOTKIN: Thank you, Mr.

1 Chairman. I think it is important to keep the
2 three phases separate. And we talk about, and
3 it's important to talk about, the contracting
4 officer, the GSA contracting officer's
5 determination of fair and reasonable prices at
6 contract formation time and the techniques
7 available. I think the motion however doesn't
8 address the contract formation. The
9 discussion that the chairman put on the table
10 as we've modified it is to look at the time of
11 ordering.

12 So I would almost suggest, Tom,
13 that it's for purposes of this discussion
14 whether the contract price at formation is
15 fair and reasonable we can defer for a little
16 bit, because what we are trying to drive to is
17 a competitive environment at the ordering
18 level, at the time of ordering. And that I
19 think we will know, because we have got
20 meaningful business at a specific point in
21 time, and driving towards meaningful
22 competition that should provide a basis for

1 the ordering activity to be assured that the
2 prices are best value or fair and reasonable
3 at that ordering activity.

4 So we can put aside for another
5 discussion and an important one about what we
6 do in formation for the schedules contract.

7 CHAIRMAN BRANCH: Debra and then
8 David.

9 MS. SONDERMAN: How do you define
10 meaningful?

11 MR. CHVOTKIN: I'm just - I would
12 define it through techniques such as the 803
13 process which says, you solicit all or case of
14 the Defense Department today, they must
15 receive at least three bids to evaluate.

16 But it's a technique. It is not
17 the sole basis of it, but it is one nature of
18 assuring the agency that there is meaningful
19 competition.

20 MS. SONDERMAN: Well, I'm thinking
21 - and I'm not trying to be facetious in asking
22 that. I think that is a really important

1 thing for us to consider. Because reflecting
2 back on the numerous times we've been reminded
3 about the large number of small agencies, and
4 you know it's one thing if I have a
5 requirement that my estimate is \$100,000. But
6 if my estimate is \$4,500, is it - is it really
7 in the taxpayer's best interest to solicit all
8 on eBay and you know put industry through
9 that? I really struggle with that as just as
10 a practical matter. And I acknowledge, I'm
11 one of those - we buy out of 300 offices
12 across the country. We've got a lot of small
13 places where people are placing onesy twosy
14 orders, or come and paint this room or paint
15 this fence or whatever. And so I - that's -
16 that is one of the reasons I'm concerned about
17 imposing the 803 requirements on everything.
18 I don't know whether that is the right thing
19 to do, so that's why I asked.

20 MR. CHVOTKIN: Mr. Chair, if I
21 could maybe start, because I think the best
22 answer I can give, Debra, is that at the time

1 of ordering the acquisition strategy that you
2 adopt will drive the question of how you are
3 going to achieve that meaningful competition.
4 It's not out there on the ethernet, I would
5 not be willing - I am probably not capable of
6 doing it - of defining by regulation or even
7 practice what is effective. But that is a
8 goal we want to achieve, and I would hope that
9 at the time of ordering the agency will set
10 the parameters to assure itself that it can
11 obtain meaningful competition.

12 And that competition would be
13 different and the acquisition strategy might
14 be different for an order of \$4,500 order, or
15 a painting order than it might be for a
16 \$100,000 or a \$5 million activity.

17 That is where the flexibility at
18 the ordering activity, ordering agency, is
19 really critical, and to emphasize, so for that
20 acquisition plan to obtain that effective
21 competition.

22 MR. SHARPE: The way you explain it

1 makes sense to me, Alan. But Elliott, on this
2 narrow one I realize we are not just going to
3 give piecemeal advice to the GSA
4 administrator. What would the advice be, that
5 this panel has deliberated, we are
6 uncomfortable with the pricing, and therefore
7 we are going to require competition.

8 And then how would GSA come back
9 if asked a question, what would we do to raise
10 your confidence with that pricing such not to
11 burden the buying activities.

12 CHAIRMAN BRANCH: Let me give David
13 the floor since he was waiting, and let me
14 come back to your question.

15 MR. DRABKIN: All interesting
16 discussion, but doesn't seem to be very
17 germane to the motion.

18 The motion is as I understand it
19 to eliminate the Price Reduction clause for
20 services and to adopt an 803 approach to
21 governmentwide purchases under IDIQ contracts.

22 There is a second in the current

1 NDAA and now both the Senate and House
2 versions as passed last night which I expect
3 therefore will come out of conference which
4 will apply 803 to civilian agencies.

5 There is a FAR case currently
6 under consideration in which I have instructed
7 the FAR team to add language to include 803
8 rules for all civilian agencies. Whether that
9 passes the FAR council before the statute
10 passes, I don't know. But that issue seems to
11 be getting moved.

12 The GSA administrator does not
13 have the authority to apply 803 governmentwide
14 anyway. He does have the authority under the
15 rules of the schedule to require the 803 rules
16 for use by schedule customers.

17 So if we focus just on that motion
18 then we can get to I think the real discussion
19 we want to be having, which is, how do we make
20 service buying better.

21 So unless someone obviously
22 disagrees with what I just said, I would move

1 that the motion be amended to the second
2 portion to read, adopt 803 approach for all
3 schedules contracts, governmentwide, which the
4 GSA administrator doesn't have, and then I
5 would move the question.

6 MR. ALLEN: I would second that.

7 CHAIRMAN BRANCH: The question has
8 been called.

9 So the question on the table is to
10 eliminate the Price Reduction clause for
11 services, and to adopt an 803 approach for all
12 scheduled contracts, for all users of schedule
13 contracts.

14 Did I frame that accurately, Mr.
15 Drabkin?

16 MR. DRABKIN: Yes, sir.

17 CHAIRMAN BRANCH: Okay.

18 MS. JONES: So that is not an
19 either/or; it's and?

20 CHAIRMAN BRANCH: Yes, that is the
21 motion on the table.

22 MS. JONES: Well, I disagree with

1 that motion.

2 MS. SONDERMAN: Can you articulate
3 the full motion again please?

4 CHAIRMAN BRANCH: The motion would
5 be to eliminate the Price Reduction clause for
6 services, and to adopt an 803 approach for use
7 in schedule contracts by all agencies using
8 schedule contracts.

9 MS. JONES: Elliott, the reason
10 that I am objecting to that motion is because,
11 one, is the contract formation stage, and the
12 other one is at the ordering stage of the
13 process. The Price Reduction clause has
14 nothing to do with the customer agencies, and
15 the competition.

16 CHAIRMAN BRANCH: Well, let's talk
17 about objecting to the motion. So do you
18 simply disagree with the motion? Or do you
19 believe the motion is out of order because
20 it's not germane? Because if it's simply that
21 you disagree with the motion I guess you will
22 have an opportunity to vote on the motion. If

1 you believe that the motion is being
2 inappropriately considered, that is a
3 different issue. I'm just trying to get
4 clearer on that.

5 MS. JONES: Yes, I believe that it
6 is inappropriate.

7 CHAIRMAN BRANCH: Can I ask you to
8 articulate why you think it is inappropriately
9 considered? Is it out of the bounds of our
10 charter? What issue causes that to be
11 inappropriately considered?

12 MS. JONES: Well, the Price
13 Reductions clause is applicable to the
14 negotiation and awarding of the schedule
15 contract when you are determining the prices
16 at the contract level. The competition by the
17 ordering agencies is competing the schedule
18 prices or the contract prices that have
19 already been awarded.

20 Price reductions is a technique, a
21 negotiation technique for evaluating and
22 awarding prices at the schedule level. It's

1 an apples and oranges mix.

2 CHAIRMAN BRANCH: Okay.

3 MR. CHVOTKIN: Mr. Chairman, I
4 think we discussed earlier, while the Price
5 Reductions clause exists at the contract
6 formation, it's operation only comes in
7 through contract administration. It's only
8 triggered by behaviors after award.

9 MS. JONES: And it's not relative
10 to the customer agency.

11 CHAIRMAN BRANCH: Let's go to
12 process here. There are really two issues,
13 and they are, one, whether you like the motion
14 or not; and that is an issue of substantive
15 debate. The other issue is one of process
16 which is, is the motion germane, i.e. within
17 the scope of our charter.

18 So the motion has been advanced.
19 If you are objecting because you believe it's
20 outside the scope of our charter, I will have
21 to make a procedural ruling on that. If you
22 simply disagree with the motion then you get

1 an opportunity to voice your disagreement when
2 the panel takes a vote.

3 So I am just trying to see for
4 clarity, is it a substantive issue or is it a
5 process issue?

6 MS. SCOTT: Or is it a procedural
7 issue in terms of how we would actually apply
8 it in the real world? I think we could
9 probably live with it, Jackie, for the
10 purposes of the meeting here today in the
11 panel discussion.

12 MR. ALLEN: Or what I suggest is
13 perhaps splitting the motion into two.

14 (Laughter.)

15 MR. ALLEN: There is some
16 legitimacy I think in the point that there are
17 two issues here. One is do we eliminate the
18 Price Reductions clause, which can be
19 discussed and entertained separately and
20 discretely from the issue of whether to apply
21 Section 803 practices to all schedules.

22 CHAIRMAN BRANCH: I guess I am

1 still trying to get a read on my original
2 question, so I will go back to it.

3 Do we have a procedural issue with
4 respect to the governance of this panel? Is
5 this motion not germane to the work fo the
6 panel? If the motion is germane to the work
7 of the panel, then the chair rules that the
8 motion is in order, and I will proceed to take
9 a vote on it.

10 MS. JONES: I believe it is
11 appropriately considered.

12 CHAIRMAN BRANCH: All right, so
13 all in favor of the motion as written, which
14 is to eliminate the Price Reduction clause for
15 services, and adopt an 803 approach for all
16 schedule contracts by agency users.

17 Signify by raising your hand?

18 (Show of hands.)

19 CHAIRMAN BRANCH: All those
20 opposed?

21 (Show of hands.)

22 CHAIRMAN BRANCH: It appears that

1 the ayes have it. The motion carries.

2 (Nine in favor, three against.)

3 So we have agreed that our
4 recommendation to the administrator will be to
5 eliminate the Price Reduction clause, and to
6 adopt an 803 approach for schedule contract
7 users -- or for services.

8 Okay. So I'd like to take the
9 discussion in a - I guess what I believe is
10 the logical direction from there. So if we
11 are to do that, what other enabling steps must
12 we take to ensure that the GSA can efficiently
13 and effectively enter into the process of
14 contract formation and that agency users can
15 execute orders under these contracts in a way
16 that is not burdensome. So I will open the
17 floor for comments on that.

18 MR. ALLEN: If I could take the
19 second one first, because I think that there
20 were some good points made about small
21 agencies and small buying figures.

22 I think whatever we put in our

1 report ought to be reflective that if in fact
2 it's the case that there is some sense among
3 the panel members that different competition
4 levels would be in order completely given
5 different dollar volumes being purchased, that
6 is in fact entirely consistent not just with
7 existing schedule purchasing guidelines but
8 also with other federal procurement rules that
9 propose more and more layers of formal process
10 the higher the dollar volume.

11 So to get to what I think was
12 Debra and Lisa's point, we would want to make
13 sure that that is in our report; that it's our
14 sense that in developing any rules on 803 that
15 there would be some acknowledgment given to
16 different purchasing levels.

17 CHAIRMAN BRANCH: So would someone
18 like to frame that as a motion?

19 MR. ALLEN: Oh, boy, I'm not the
20 best motion framer. That doesn't always mean
21 I'm succinct.

22 I would move that the panel put in

1 its report an acknowledgment that the rule
2 writers have discretion to implement tiered
3 competition level requirements based on dollar
4 volume, the dollar volume being purchased at
5 the time relevant to using 803-like
6 procedures.

7 CHAIRMAN BRANCH: I will offer a
8 friendly amendment now that I've gotten what
9 you said. So I would offer an amendment that
10 in implementing competitive rules for use of
11 schedules that contracting officers at the
12 agency level be allowed to determine the
13 proper competitive methods depending on the
14 scope and complexity of the requirements.

15 Is that an acceptable amendment to
16 you?

17 MR. ALLEN: Yes.

18 MS. NELSON: Can I ask a clarifying
19 question?

20 David, would the statute as passed
21 by the House and Senate for the NDAA allow for
22 that?

1 MR. DRABKIN: Allow for what?

2 MR. ALLEN: That discretion?

3 MS. NELSON: That discretion?

4 MR. DRABKIN: The way it's written
5 it's silent as to dollar thresholds. And
6 since I happen to know the persons that wrote
7 it they did not contemplate that it would be
8 broken down by thresholds. They contemplated
9 it would be just exactly the way it was done
10 for DOD and apply to all dollar thresholds.

11 MR. ALLEN: Those things don't kick
12 in until above the simplified acquisitions.

13 MS. NELSON: I am just thinking
14 this out. So in the use of the schedules DOD
15 would use it above the simplified acquisition
16 threshold because I too had read last night
17 that the House and Senate bills - I just want
18 to be cautious that the recommendations that
19 we put forward are in light of what I strongly
20 believe will become statute in short order,
21 just keeping that in mind.

22 MR. DRABKIN: Senator Levin will be

1 very happy to hear that you believe his law
2 will become law.

3 (Laughter.)

4 MS. THOMPSON: In light of the
5 fact that the bills have not been enacted as
6 law yet, I have a few suggestions.

7 One I think it would be
8 appropriate to delete mention of Section 803
9 and just revert back to our previous
10 suggestion of just requiring competition.
11 That would not preclude the use of Section 803
12 when and if it becomes law.

13 The other suggestion is in regards
14 to the discretion that we had mentioned in
15 regards to the different tiered competition.
16 In order to provide for that, if we do retain
17 803 perhaps we could say something to the
18 effect of, adopt an 803-like approach which
19 would provide for that flexibility that we
20 were hopefully going to have in our
21 recommendation.

22 MS. NELSON: I think - you know,

1 going, trying to play both sides, David has
2 said GSA is not the policeman for how the
3 agencies use the ordering contract vehicle.
4 On the other side is the ordering contracting
5 agencies who want to ensure that they are
6 getting the exact value for their money and
7 for the taxpayer, and Elliott saying that we
8 have to make sure that we actually are seeking
9 competition and not allowing an ordering
10 activity to simply go after the one contractor
11 that they want.

12 So I'd like to, while we look for
13 those thresholds to allow for discretion, I'd
14 like to be able to allow for some thresholds
15 to be able to allow the smaller agencies in
16 the smaller volume, but careful in the use of
17 discretion. Because wherever you allow for a
18 little bit of latitude a lot of latitude will
19 be used.

20 CHAIRMAN BRANCH: I guess I'm
21 hearing us get to a little bit of complexity,
22 so I'm going to parse this out into two

1 pieces. I guess the first thing that you kind
2 of got to deal with structurally is, I've
3 heard Thedlus essentially move to amend our
4 previously adopted recommendation to strike
5 the words, well, to either add the word "like"
6 after 803 or to strike reference to 803 and
7 substitute in lieu of 803 "competitive
8 procedures." Is that a fair statement?

9 MS. THOMPSON: Yes.

10 CHAIRMAN BRANCH: So that is the
11 motion on the table I think we must consider
12 before we get to the discretion issue, because
13 we are starting to unwind what we previously
14 agreed on a little bit.

15 So the motion on the table is to
16 amend the second part of the previously
17 approved recommendation to either insert
18 "like" after Section 803, or to remove all
19 reference to Section 803 and simply refer to
20 competitive procedures.

21 Do I have a second for that?

22 MR. SHARPE: Second.

1 CHAIRMAN BRANCH: Okay, second.

2 Any discussion on the motion?

3 David?

4 MR. DRABKIN: 803 has a meaning.

5 It has had a practice and an experience now
6 for almost four years. I think this attempt
7 to try to make some distinction between it is
8 not fruitful.

9 Seventy-five percent of what goes
10 through the schedules now today is subject to
11 Section 803 exactly as it is written and
12 interpreted, and for us to argue that the
13 remaining 25 percent is somehow so different,
14 which in fact it's not, that it deserves some
15 sort of special treatment or different
16 treatment to me does not make sense. So I
17 will oppose this motion.

18 MR. PERRY: My concern - I
19 understand the issues with the smaller buys in
20 the smaller agencies. But my concern about
21 what we are proposing to amend this with, and
22 maybe 803 isn't the right thing either, is

1 that I would not want the revised
2 recommendation to be construed with what I
3 feel is still a confusing issue for people as
4 to what - when you say competitive procedures,
5 I believe we've come to the point where
6 whatever is going on at the contract formation
7 level is not adequate, even though you could -
8 people can use that as a basis for saying
9 there are competitive procedures in this
10 process.

11 And I'm a little concerned that we
12 will be left with something where we still
13 don't get what I believe 803 was trying to get
14 at as to what needs to happen at the ordering
15 level as far as competition.

16 CHAIRMAN BRANCH: Thank you. Any
17 other discussion on the amendment?

18 MS. THOMPSON: Just one other
19 issue. It seems like we haven't really
20 discussed 803, so to me - and it's
21 applicability to the schedule's progress. So
22 it just seems a little premature to, after a

1 few minutes of discussion. Granted, yes, we
2 do have a couple things that we are going to
3 be discussing.

4 It just seems a little premature
5 for us to be including a recommendation citing
6 Section 803 when heretofore we haven't really
7 even discussed it and its import on the
8 schedule.

9 MR. ALLEN: Well, Schedule 803, or
10 Section 803 rules are already a schedule fact
11 of life and have been for several years. They
12 have been - they are effective now, mainly for
13 DOD - or only for DOD purchases. But as David
14 points out, those are the great majority of
15 schedule transactions.

16 So Schedule 803 rules are the rule
17 of the land for contractors and DOD customers
18 already I think. All we are saying here now,
19 and I support generally, and that's why I make
20 my original motion, 803-like procedures for
21 all schedules, because I think that gives any
22 GSA rule writers some flexibility to adopt

1 commonsense procedures for the schedule.

2 But 803 is not a new concept.

3 It's been on the books for awhile, and it's
4 something people have lived with for a number
5 of years.

6 CHAIRMAN BRANCH: Debra.

7 MS. SONDERMAN: 803 indeed has been
8 on the books and is being used. But this
9 panel did not request nor have we heard any
10 specific testimony about the impact of
11 implementing 803 on getting better prices,
12 getting more competition. We haven't gotten
13 any feedback about that.

14 So I think back to Thedlus' point
15 that we don't really - we haven't had any
16 information that's been presented to the panel
17 to say, you know, yes, and it's working great,
18 or it's not working great.

19 I know it's working, but how well
20 is anyone's guess.

21 CHAIRMAN BRANCH: Other discussion?

22 Hearing none the motion on the

1 table is to amend the previously approved
2 motion, and I guess Thedlus, I'll ask you to
3 pick 803-like or competitive procedures.
4 Which are your druthers?

5 MS. THOMPSON: Probably the 803
6 like.

7 CHAIRMAN BRANCH: All right, to
8 amend the previously approved motion to insert
9 the word, like, after 803.

10 Hearing no discussion we'll call
11 for a vote. All those in favor of the
12 amendment, raise their hand? Keep your hands
13 in the air.

14 (Nine in favor.)

15 CHAIRMAN BRANCH: The motion
16 carries. So we have amended the previously
17 adopted motion to insert the word -

18 MR. DRABKIN: Mr. Chairman, could
19 you record the negative votes please.

20 CHAIRMAN BRANCH: All right, then
21 I'll ask for a roll call.

22 Ms. Seonderman.

1 MS. SONDERMAN: In favor.

2 CHAIRMAN BRANCH: Ms. Scott.

3 MS. SCOTT: In favor.

4 CHAIRMAN BRANCH: Mr. Drabkin.

5 MR. DRABKIN: Opposed.

6 CHAIRMAN BRANCH: Ms. Thompson.

7 MS. THOMPSON: In favor.

8 CHAIRMAN BRANCH: Mr. Allen.

9 MR. ALLEN: Mr. Allen, aye.

10 CHAIRMAN BRANCH: Ms. Nelson.

11 MS. NELSON: Opposed.

12 CHAIRMAN BRANCH: Mr. Sharpe.

13 MR. SHARPE: In favor.

14 CHAIRMAN BRANCH: Mr. Perry.

15 MR. PERRY: Aye.

16 CHAIRMAN BRANCH: Mr. Chvotkin.

17 MR. CHVOTKIN: Aye.

18 CHAIRMAN BRANCH: Mr. Frye.

19 MR. FRYE: Oppose.

20 CHAIRMAN BRANCH: Ms. Jones.

21 MS. JONES: In favor.

22 CHAIRMAN BRANCH: And the chair

1 votes aye.

2 The ayes have it. The motion
3 carries.

4 Okay, now that we have sorted that
5 out, I guess the question for discussion would
6 be, do we need to go any further with this
7 recommendation with respect to providing
8 enabling guidance for this recommendation?

9 MR. ALLEN: I will start off,
10 although I suspect it will be the last word
11 since there was virtually no motion to amend
12 it, I think having added the word, like, to
13 the standing motion, that probably indicates
14 enough discretion that it's the intent of the
15 panel to use some appropriate guidance and
16 commonsense. So I don't know that we need to.

17 CHAIRMAN BRANCH: Other comments?
18 Debra?

19 MS. SONDERMAN: Can we go back to
20 your original motion. It had three sections,
21 and we dealt with the first two. Can we go
22 back to the third; I don't know what it was.

1 CHAIRMAN BRANCH: Yes, it was to
2 make a word based on either best value or
3 technically acceptable low offeror. At the
4 order level.

5 MS. NELSON: I would - my opinion
6 is, having just read some of the FAR to the
7 panel, I think that the FAR already covers
8 quite adequately the ordering activities
9 responsible all the way from acquisition
10 planning to the - how they need to make their
11 best value decision and what to consider.

12 I'd like to see better education
13 at the ordering activities level, and I think
14 there are some things GSA can do to help that,
15 and I think that ordering activities who use
16 the schedules have a responsibility to their
17 ordering activities - I mean agencies who have
18 - having a responsibility to their ordering
19 activities to educate them on 8.4 and how to
20 do that.

21 But I think that the FAR is
22 already quite explanatory on that.

1 CHAIRMAN BRANCH: I would agree,
2 and therefore I withdraw the third part of my
3 motion.

4 MS. SCOTT: I second it.

5 MR. CHVOTKIN: Mr. Chairman, just
6 so there is no ambiguity, let me urge, I think
7 the panel has agreed, that the FAR is clear on
8 that, so I think that we - just so there is a
9 common understanding, nothing in the motion we
10 just adopted, or the two actions we have
11 already taken, is intended to change in anyway
12 the other requirements of the FAR imposed
13 either on GSA or on the federal agencies with
14 respect to the ordering activity.

15 So as Judith said it does run from
16 acquisition plans all the way through contract
17 administration. As long as our report is
18 clear on that, I think that will help, then
19 the third part has not been sustained.

20 CHAIRMAN BRANCH: Other comments?
21 Judith?

22 MS. NELSON: I do - I would like to

1 see us discuss if we are taking out the Price
2 Reduction clause, then at the contract
3 formation in making a determination of if we
4 are sticking with reasonable pricing, I go
5 back to the point that I would like to see us
6 make a recommendation around whether or not we
7 should look at most-favored customer or basis
8 of award class of customer, customer, and how
9 that should be viewed, whether or not the
10 panel sees that as within the purview of the
11 scope or doesn't. But I would like to hear
12 some discussion on that.

13 CHAIRMAN BRANCH: I'll entertain a
14 motion framing that question.

15 MS. NELSON: I am trying to figure
16 out how to phrase it.

17 CHAIRMAN BRANCH: We will give you
18 an opportunity to frame that, and go to Mr.
19 Frye. Or I'm sorry, Glenn Perry.

20 MR. PERRY: If it doesn't come out
21 very well, it's you.

22 (Laughter.)

1 I'm kind of on the same - I wanted
2 to say yes. I think now that we have taken,
3 and listened to Jackie the way you reacted
4 initially to this, I think the fact we did
5 this, we've got to go back and work on - I
6 sense that we just took away something from
7 GSA that they felt was used in contract
8 formation that was important to them. And I
9 think we need to talk about what that is, what
10 the role was, NAD we need to maybe provide
11 some input NAD some recommendations on what we
12 think could be done or should be done at the
13 contract formation level, and maybe still get
14 you at the GSA level as to what you think you
15 are doing for the agency, how we can - what we
16 can recommend to happen at that level.

17 We need to go back and do that,
18 because we obviously took away something I
19 think that folks think they were doing, and
20 they thought had an impact. And we sort of
21 said, no, and we got to replace it with
22 something.

1 CHAIRMAN BRANCH: Let's go to Mr.
2 Sharpe and Ms. Nelson and back to Mr.
3 Chvotkin.

4 MR. SHARPE: I don't have a motion,
5 just a question. If we are going to require
6 competition, I guess in my mind what's the
7 value now of the price now at the schedule
8 level? It's a question; it's not an opinion.

9 If we are going to require - the
10 recommendation is to compete all this. I'm
11 not sure what the usefulness of the price is
12 at the schedule level, which gets to Judith's
13 question, right. If you value the price, how
14 do you do the price? But if you don't value
15 the price -

16 MR. FRYE: Is this going to become
17 just an approved vendor list?

18 MR. SHARPE: To me, if I'm tracking
19 the bidding here, if we are going to require
20 competition, I think the value of the price
21 has dramatically diminished, maybe to the
22 point where the next recommendation there is

1 no price.

2 MS. JONES: Then it becomes full
3 and open.

4 MR. DRABKIN: Actually, let me
5 remind you that CICA absolutely requires, in
6 order to have a contract, that you must have
7 a price. So I think Jan's question really is
8 the underlying question: do we plan to
9 recommend to the administrator that he have
10 contracts, which means that somehow they've
11 got to figure out something that is negotiated
12 as a price when the contract is awarded. Or
13 is it a blue ribbon panel or - that's what the
14 Air Force called them when they had
15 prequalified vendors, or it's something more
16 than that, because you have negotiated
17 everything except price. So it's something
18 more than just an approved vendor list; it's
19 everything except price.

20 CHAIRMAN BRANCH: It's a basic
21 agreement essentially.

22 MR. DRABKIN: Almost, yes.

1 CHAIRMAN BRANCH: Who's next?

2 Judith.

3 MS. NELSON: Okay, this is the
4 thought I have. See if it makes any sense to
5 anyone.

6 One of the things we've talked
7 about, we talk about internally at GSA, we've
8 talked about it with our contractors and with
9 our customers, God knows we've talked about it
10 with our inspector general's office, the
11 pricing that goes on schedule is that pricing
12 that is offered with no requirements, right.
13 There is no statement of work.

14 Yet it's the one unit price, and
15 some discount off of that. And then that
16 happens at the task order level, right. And
17 that, I think we have all come to some
18 agreement there.

19 And so as Tom has said, it's very
20 hard to get - I'm not going to say a fair and
21 reasonable price, because I do believe you get
22 a fair and reasonable price based on the

1 information you have for that one unit, what
2 can they give you for that one unit when there
3 is no specific job, no specific statement of
4 work.

5 MR. SHARPE: I think I agree. A
6 quick question: Is it a unit of one? Or I
7 thought it was supposed to be most favored
8 based on the expected federal volume?

9 MS. NELSON: How do you determine
10 expected federal volume?

11 CHAIRMAN BRANCH: It is not one.

12 MS. NELSON: It is not necessarily
13 one, but it's their best - based on the
14 estimated value of the contract, based on
15 something. It's not specifically based on
16 one, and there may be some dollar volume built
17 into it as well.

18 So if we are looking - if we take
19 the previous motion into mind, and we say,
20 using an 803-like approach. So then we've set
21 a stat ceiling, okay, \$100,000 ceiling. What
22 if we were to say that the negotiations -

1 what? What if we were to say that GSA
2 contract goal, their negotiations goal, was
3 for \$100,000? Which is a reasonably - in
4 services for the most part a reasonably low
5 level. So rather than going for a million
6 dollars, my negotiation for fair and
7 reasonable was at \$100,000.

8 So I'm looking for a fair and
9 reasonable price at that level. What is my
10 basis of award there?

11 CHAIRMAN BRANCH: I guess my
12 concern with that is, across a schedule how
13 would you ever get to anything that was a
14 meaningful mix to do that. So let me offer a
15 suggestion of an alternative.

16 I think what GSA does to determine
17 fair and reasonable prices, okay, within the
18 meaning of 8.4 is likely entirely adequate.

19 But I would also submit that fair
20 and reasonable pricing is highly contextual.
21 So what is fair and reasonable in the abstract
22 when I as a small business owner and sitting

1 on a certain business base in a certain point
2 in time, and then six months down the road
3 conditions change, and I may be unwilling to
4 discount my rates, or willing to discount my
5 rates, to get business on the schedule, may
6 well be different.

7 So I would suggest in the
8 alternative that we recommend that every
9 schedule contract contain the basis of award,
10 and that basis of award be publicly disclosed.

11 And I think that does a couple of
12 things. Number one, it certainly gives the
13 contracting officer some insight into what
14 thought process the GSA CO went through at
15 contract formation to determine that that set
16 of rates was fair and reasonable. And the
17 other thing that I think it does is, it
18 probably puts some sunlight on the competitive
19 strategies of schedule holders which will
20 drive probably more efficient rates and less
21 gaming.

22 MR. SHARPE: Elliott, just so I

1 understand, and they would disclose that?
2 That information would be provided to the
3 ordering activities?

4 CHAIRMAN BRANCH: That is what I am
5 recommending happens. So in the award time,
6 in the document, or whatever ordering guide
7 the agencies would use, let's say Booz Allen
8 Hamilton, I'll just pick a name. So what the
9 contract would say is, hey, the basis of award
10 customer for Booz Allen have the tracking
11 customer for Booz Allen Hamilton was
12 electronic data systems, or if that is a
13 proprietary issue, it was a mid-sized IT firm
14 with an annual anticipated volume under the
15 scheduled contract of 50,000 man hours
16 annually. Then as a CO who is going out to
17 say buy support for Navy next generation
18 Internet, who is going to buy 200 people this
19 year to go figure out what we are going to do,
20 I can look at that and I can say, you know,
21 that deal that that tracking customer got with
22 respect to labor rates really isn't good

1 because my requirement is so much bigger.
2 Then I'm encouraged to seek a discount,
3 perhaps use more complex competitive
4 procedures in terms of best value and so
5 forth.

6 On the other hand if I look at
7 that and I am just trying to buy a man year of
8 a systems analyst, then I'm going to use a
9 much less complex set of competitive
10 procedures, because I know that the basis of
11 award customer was a good basis of award
12 customer, and if I get a discount off of that
13 rate, I'm probably doing pretty well.

14 So the alternative I would
15 suggest, the basis of award customer be
16 disclosed to the ordering activities in some
17 way, not to compromise any proprietary
18 information with respect to who that customer
19 is, that you disclose the size of that
20 customer; the industry segment of that
21 customer; and what that sales forecast was for
22 that customer.

1 MS. NELSON: I can support that in
2 part, absolutely positively that we are
3 talking about your second recommendation,
4 which is, it only be defined in terms of what
5 type of customer it was. If it crosses into
6 who the customer was is a cross into
7 proprietary -

8 CHAIRMAN BRANCH: Yes.

9 MS. NELSON: - that cannot be
10 revealed. If that is the case then I would
11 like to - if we were to say that a vendor with
12 the basis of award customer, right, I'm just
13 trying to think this through now. Now I'm
14 trying to map the information on the
15 contractor, how to track it.

16 The thing I would strongly
17 recommend in that case, in the world of
18 reality and how to do this, is that the GSA
19 contracting officer who is forming this
20 contract with the offeror were to form the
21 tightest basis of award as possible. In other
22 words it is not unusual to find a basis of

1 award on a very large class, all commercial
2 customers. Well, that is almost an impossible
3 tracking methodology, and something like that
4 does not serve an agency contracting officer
5 well to be able to make any kind of
6 determination.

7 So if the panel were to recommend
8 something like this, I think hand in hand with
9 that we should recommend that the contracting
10 officer where feasible look to find a basis of
11 award that is the most succinct and
12 appropriate for the contract.

13 CHAIRMAN BRANCH: Jackie and then
14 Allen and then Tom.

15 MS. JONES: I understand the
16 concept here. But that ties into the price
17 reductions clause. So are you suggesting
18 using it for the basis of competition, and not
19 replacing some sort of mechanism for which the
20 basis of award customer applies as a
21 substitution for the price reduction clause?

22 CHAIRMAN BRANCH: No, I'm - well,

1 first of all I guess I disagree with your
2 premise. It has absolutely nothing to do with
3 the Price Reduction clause. What it has to do
4 with is giving the contracting officer some
5 sense of a context in which this - the GSA CO
6 made an original determination of fair and
7 reasonable price. And with that information
8 the agency contracting officer can then
9 formulate the proper acquisition strategy to
10 fulfill his requirement. And that is what I'm
11 suggesting. Simply the disclosure of that
12 will give both the industry side of the house
13 some insight into how this market space is
14 constituted, and on the government side of the
15 house give the agency contracting officer some
16 sense of the logic by which the GSA CO said,
17 you know, I believe this to be a fair and
18 reasonable price so that they can either rely
19 on that in formulating a competitive strategy,
20 either less or more complex for their
21 particular requirement.

22 MR. CHVOTKIN: Mr. Chairman, I

1 wholeheartedly agree with what you said. I'd
2 put it in the context of transparency at the
3 competition phase and not at the contract
4 formation phase. And this is a very important
5 element. I think both Tom Sharpe and Tom
6 Essiq, Tom Sharpe today and tom Essiq in the
7 past, has focused on this, what was the basis
8 for the decision that GSA made. This is not
9 how GSA got there, but where they got.

10 And at the appropriate time I
11 think there is a second element to this
12 transparency that would aid the ordering
13 activity, and either now is a modification or
14 next recommend that we also direct, encourage,
15 recommend GSA address the purchasing
16 experience of actual awards.

17 So I think when you combine the
18 determination of price reasonableness at the
19 formation side, that information is available
20 to the agencies, you couple that with actual
21 experience in purchasing activities, you know
22 have really empowered the buying activities,

1 the ordering activities, to have meaningful
2 information, information at the acquisition
3 strategy phase to determine how best to
4 proceed, and it may be under the schedules,
5 and it may be through some other mechanism.
6 But that's where the right decision, the right
7 timing comes, for the decision.

8 So I fully support the motion on
9 focusing on the description. I would not
10 support Judith's recommendation that we try to
11 narrow in anyway or bound the GSA contracting
12 officer's decision to a narrow phrase or a
13 narrow - let that marketplace for the
14 individual schedule's program play out. I
15 think we will see this vary by industry, vary
16 by company, and didn't want to impinge that
17 much on the contracting officer, the GSA
18 contracting officer's decision. But I fully
19 support looking at the methodology used by GSA
20 to award that contract, coupled with - in my
21 view coupled with the information on the
22 pricing experience.

1 CHAIRMAN BRANCH: Jackie.

2 MS. JONES: Okay. I'm afraid this
3 is having a little bit of the opposite effect.
4 Because if you have a basis of award customer,
5 and you disclose that to the ordering
6 activities, and allow the ordering activities
7 to use that as a method for seeking price
8 reductions and there is no mechanism in the
9 GSA contract in order to track with those
10 prices, or achieve the lower pricing that is
11 being produced in the marketplace without
12 something substituting for the Price
13 Reductions clause to assure that our prices
14 are also lowered on the contract, then we are
15 going to have overinflated prices on a
16 contract, and the prices that are out there in
17 the ordering activity community aren't going
18 to be relative at all to what is on contract.

19 CHAIRMAN BRANCH: Tom and then
20 Larry.

21 MR. SHARPE: I think maybe what is
22 emerging in my mind, it's not the Navy - at

1 least I don't fully understand - I understand
2 what we just voted for, so we are going to
3 recommend the Price Reductions clause go, and
4 we impose competition. I support that.

5 Maybe what I don't understand is
6 what's left at GSA, and what was the reliance
7 on the Price Reduction clause to support their
8 pricing problem, their pricing, and support
9 fair and reasonableness.

10 I don't think we fully understand
11 that. I think what we are trying to figure
12 out is what is the remaining value of price at
13 the contract level, and I think I agree with
14 you said, Elliott. That information after you
15 take out PRC what's left, what would be shared
16 to the ordering activities might be useful.

17 But I think only to the extent
18 that we see value in having a contract form
19 instead of a vendor list. I think the most
20 valuable information to come off the schedule
21 to an ordering activity would be to see actual
22 prices paid. And I understand, you'd have to

1 understand the nuances of that order, but I
2 think that would be most valuable.

3 So I don't understand what's left
4 at GSA now when you take away PRC. What does
5 that do to their pricing program? Because
6 it's gone, right? The recommendation, the
7 motion, the recommendation - it's not gone?

8 (Voices say "no").

9 MR. SHARPE: Okay, what did I
10 understand then? I thought we had a motion to
11 take that down.

12 MR. CHVOTKIN: We took away the
13 Price Reduction Clause, but at least my
14 interpretation, my understanding, the Price
15 Reduction clause first of all doesn't apply at
16 the federal customer level at all, so that is
17 really looking at a contract administration
18 over the life of the execution if there is a
19 change in the commercial marketplace or the
20 non-federal marketplace, the way the vendor
21 treats that basis of award customer, that is
22 what triggers the Price Reduction clause

1 today.

2 So take out any federal activity
3 completely, and I'd be surprised, I heard
4 earlier from the discussion that the Price
5 Reduction clause has no effect at the contract
6 formation. It may come into effect in the
7 decision to award an option, whether the
8 client has maintained a consistent - but
9 certainly for a new vendor and a new
10 opportunity Price Reduction clause is a
11 downstream risk, not a contract formation
12 issue.

13 MR. ALLEN: If I may try to add
14 some clarity to the comments here. Allen is
15 right, Price Reductions clause plays no role
16 in contract formation. GSA contracting
17 officers have under this panel's
18 recommendation or to be implemented
19 contracting officers would have exactly the
20 same capability that they currently have to
21 negotiated most favored customer pricing, fair
22 and reasonable pricing, at the contract

1 formation level.

2 And they still have not only the
3 ability but the obligation to do so pending
4 any other recommendations we might make; but
5 that's where it is today.

6 So in emphasis, the only thing
7 that we said in this vote was that we
8 recommend that for services the Price
9 Reductions clause, which served as one, and I
10 would argue overall a relatively minor tool to
11 ensure that outgoing pricing on the schedule
12 program remained consistent.

13 I think there are lots of other
14 factors going forward that ensure price
15 reasonableness on schedule.

16 The basis of award issue, I'm
17 still trying to get my arms around whether or
18 not I would support disclosing basis of award.
19 But it's important to note that existing
20 schedule pricing - existing schedule rules,
21 whether or not they are followed is another
22 matter, specifically states that the basis fo

1 award customer should be a customer or
2 category of customer - there is a procurement
3 information bulletin, which is kind of the
4 direction to contracting officers, that has
5 some weight to it, that specifically says that
6 the basis of award customer shall not be all
7 customers. Tell that to contracting officers,
8 but that is what the rule says.

9 So when you form these contracts,
10 if you are a GSA contracting officer, you look
11 at all classes of customer, you as a
12 contractor are required to disclose the sum
13 and total of your existing pricing practices
14 to all types of customers.

15 So up front you disclose it all,
16 the national accounts, the other government
17 customers, the dealers, everything you got,
18 you disclose.

19 And then you and the contracting
20 officer, during the course of negotiations,
21 are supposed to select a customer that buys
22 most like the government contemplates to buy

1 on the schedules program, and make that your
2 basis of award customer.

3 There are of course nuances to it,
4 but let's try to keep it simple.

5 So you end up with a basis of
6 award customer that is predicated on the way
7 the government is most likely to buy from you
8 via the schedule contract. That is supposed
9 to be one class of customer, or even one
10 customer. It is not supposed to be all
11 customers.

12 What Judith was saying is that you
13 look at everything. You don't look. You look
14 at everything. But she was saying and I agree
15 with this part of it, is that if you come up
16 with a schedule contract that is based upon
17 discounts given to all customers, that piece
18 of data were to be made available to buyers
19 would be irrelevant. It's so broad as to be
20 meaningless. I would also argue that when you
21 have a basis of award customer, being all
22 customers, it is meaningless and irrelevant

1 for the intention of today's price reductions
2 clause. However it does not mean that
3 contracting officers - contractors are off the
4 hook in having to abide by it. 9:15:50.

5 MR. DRABKIN: Could I suggest that
6 in our discussion of this issue, first, over
7 two years ago GSA agreed with DOD to disclose
8 all the terms and conditions of our schedule
9 contracts. We are not quite there yet; we are
10 getting close. We never really talked about
11 whether pricing and the basis of award was a
12 term and condition that we would disclose. I
13 think we all of us working on it principally
14 looked at the clauses, all the clauses. But
15 it seems to me in the context of that
16 discussion we had with DOD that there is no
17 harm that I can possibly see from disclosing
18 the basis of award customer for our
19 contractors. It's not a proprietary matter.
20 Even if it is, if you want to do business with
21 us, you agree to do it. If you don't want to
22 do business with us, you don't.

1 I'm not sure, though, and in the
2 interests of transparency, I think I could
3 easily champion that issue.

4 The question I have is, what good
5 is it? The basis of award customer is used to
6 determine whether or not the price that we
7 think we have negotiated is fair and
8 reasonable. You could argue that it actually
9 makes no difference because that is not the
10 price anybody pays, or at least shouldn't be
11 the price anybody pays, because in the area of
12 services, as we have heard from many of our
13 colleagues, it really is the mix of services
14 you buy, and what you buy and when you buy it,
15 and in which locality you buy it that
16 determines the price you ought to be paying.
17 The basis of award is just some way for us to
18 comply facially with the requirement in CICA
19 that we negotiate an award price.

20 So I'm not exactly sure what value
21 the disclosure has, but the disclosure in and
22 of itself shouldn't be offensive to anyone.

1 And third and last, but not least,
2 and Tom, the price reductions clause
3 elimination, although my colleague from the
4 state of Washington seems to believe it does,
5 has absolutely nothing to do with whether a
6 price is fair and reasonable. It is our
7 catchall. It is our prophylactic measure to
8 make sure that if we screwed up in our
9 negotiations we get covered in the back end.
10 If somehow we have failed to negotiate well,
11 or we didn't press the contractor hard enough,
12 or we didn't understand what the basis of
13 award was, or if we didn't set the price right
14 when we negotiated, or if the customer didn't
15 disclose to us, on purpose or by accident, all
16 of the prices it had for customers who met the
17 basis of award customer, that we would be
18 protected, and we would be able to go back in
19 and get a price reduction for all of our
20 customers based on that. But it doesn't
21 affect the negotiations for services.

22 MR. SHARPE: Is that in our motion?

1 MR. DRABKIN: Our motion was to
2 eliminate the Price Reductions clause.

3 MR. SHARPE: I got confused
4 earlier. That was my understanding.

5 CHAIRMAN BRANCH: Yes, that was it,
6 to eliminate the Price Reductions clause, and
7 to establish an 803-like procedure to price
8 it.

9 MR. SHARPE: So it's gone?

10 CHAIRMAN BRANCH: It's gone.

11 MR. DRABKIN: Based on our
12 recommendations. Understand, the GSA
13 administrator may take this and say you guys
14 are all nuts and this is not happening.

15 CHAIRMAN BRANCH: Let me respond to
16 David's observations, since I raised the issue
17 of disclosing the basis of award, and let me
18 tell you what I think the benefit would be.

19 As I understand the basis of
20 award, it goes to two things: one is if you
21 will the volume of business that that
22 particular vendor would anticipate doing under

1 the schedules. He's basically saying I do
2 this volume with this customer, and this
3 customer is most like you. And what category
4 of customer that is.

5 So if I'm doing my required due
6 diligence, fulfilling the requirement for
7 market research, and I see that my particular
8 requirement might result in an anomalous
9 quantity of services to be bought, across this
10 range of potential contractors, then that is
11 going to shape my acquisition strategy
12 potentially to be more - much more complex,
13 and perhaps much more aggressive with respect
14 to negotiating this particular requirement
15 with a vendor.

16 On the other hand if I see that I
17 have a fairly simple requirement, a fairly
18 straightforward requirement, and this is
19 simply one of the inputs to this large
20 aggregation over the course of the contract
21 life and what other government agencies might
22 wish to order, then I have a fair degree of

1 confidence in the schedule price that that is
2 a good price, and I may well be less complex,
3 no less diligent but certainly less complex
4 and less aggressive in seeking those
5 discounts.

6 And I think that is information
7 that would be of benefit to the agency
8 contracting officer, because it simply helps
9 him gain a better understanding of the market
10 space.

11 MS. NELSON: In contrast to my two
12 earlier statements, I actually have two
13 concerns about it. The first is, even by
14 leaving the name off, short of making it very
15 much a protected dot gov dot mil availability,
16 I do believe that there are proprietary
17 issues, and there are issues of other
18 commercial vendors getting information
19 regarding it, even when you leave who the
20 actual name of the basis of award was, I think
21 that it is an issue for industry, and I do
22 think it is actually an unfair practice for

1 them.

2 MR. ALLEN: I agree. I think it
3 also establishes a precedent.

4 MS. NELSON: The other thing that I
5 have an issue with is, while the intention
6 would be as you are stating would be to use it
7 to see what kind of discounting a contracting
8 officer could look at for - to expect, or how
9 hard to push, I believe a contracting officer
10 or COTR would begin to start to use it to see
11 whether or not that company has the technical
12 capacity, or - and they would use it as a way
13 to filter.

14 Oh, they have done business, they
15 are this this and this. And even before, you
16 know, I'll put out - or I'll put out this way,
17 but if they didn't - if there wasn't - if they
18 didn't hit this list, and it would become an
19 unintentional or intentional filter mechanism,
20 not just a pricing tool.

21 I think that it has - I think it
22 has capacity to become a problem more than it

1 does to become helpful. And there may be
2 other ways GSA can help our customers seek
3 good pricing.

4 I'll go back to what I said at the
5 very beginning of the panel, I think that
6 better transparency quite frankly at the
7 agency level, when those at the agency levels
8 are able to be able to tell the ordering
9 activities what they paid for Booz services,
10 and what kind of mixes at their own agency
11 levels for their ordering, then we are getting
12 some place.

13 But if you can't tell - you know,
14 if there is no transparency at Booz - I'm just
15 picking on Booz because they are not in the
16 room. Where is Booz? Oh, hi. But if you -
17 Company A, Judith Nelson & Co, if you have
18 five ordering activities that are using Judith
19 Nelson & Co for two-year engagements, but they
20 are not sharing information as to how and what
21 they are doing within the same ordering area,
22 then there is not much that GSA can do for you

1 in putting it in contract formation or not in
2 contract formation.

3 So I think that there has to be a
4 keen solution to the problem.

5 CHAIRMAN BRANCH: Jacqueline and
6 then Debra.

7 MS. JONES: I was just going to
8 say, and I am questioning whether or not - we
9 are talking about retaining the basis of award
10 customer and eliminating the Price Reductions
11 clause, because they work together. They
12 don't have to, but they do.

13 So we will have to address -

14 CHAIRMAN BRANCH: Well, from what
15 we've heard they might.

16 MS. JONES: Well, we will have to
17 address the basis of award issue if we are
18 going strike the Price Reductions clause.

19 MR. SHARPE: I think that is right.
20 I don't think we really understand what this
21 does to the GSA pricing program. I'd like to
22 know that. And everything I've heard so far,

1 and I'm still not convinced we need a price on
2 the schedule at all.

3 CHAIRMAN BRANCH: Debra has been
4 waiting patiently.

5 MS. SONDERMAN: My esteemed
6 colleague immediately to my right earlier
7 today said that some vendors in their
8 negotiation strategy, or in their price-
9 setting strategy look at their schedule price,
10 essentially, as a ceiling, and their
11 philosophy is that they like to offer
12 discounts.

13 Other vendors have a philosophy
14 that they go in with the lowest possible offer
15 and, you know, that's their price, or they
16 pretty much stick to that price.

17 Who those vendors are is a piece
18 of information that we at the ordering level
19 don't know. And I think that's the area that
20 we are trying to address. At above the
21 simplified acquisition level, I'm going to
22 compete it, but that - it's material in my

1 negotiation strategy, I mean exactly what you
2 were talking about earlier, Elliott, how hard
3 am I going to go after that? How much effort
4 am I going to put into that? How much time am
5 I going to devote to it? Because we all know,
6 all of us, or I doubt if any of us have enough
7 people to do all the work we already have, and
8 - well, I don't. So we want - we want better
9 competition. We want better pricing. We want
10 to be sure we are doing the right thing for
11 our agency and for the taxpayers, so it is
12 material to me in planning how to structure an
13 acquisition.

14 MR. ALLEN: I think having a basis
15 of award - I don't know that we necessarily
16 need to discuss basis of award. We can decide
17 to if we want to, but it's not inextricably
18 linked to the Price Reductions clause. The
19 basis of award is a mechanism fundamentally
20 used to ensure that GSA ends up with
21 competitive prices based to something going on
22 in the commercial market. And that is true at

1 contract formation.

2 Now under the current way the
3 schedules operate, you then have a kind of
4 add-on that says that the Price Reductions
5 clause is going to be based upon what you do
6 to your basis of award customer, realizing
7 that there are sometimes exceptions; but
8 fundamentally that's it.

9 But doing away with the Price
10 Reductions clause does not obviate the ability
11 for GSA to identify a customer or class of
12 customers upon which the schedule price can be
13 based. It leaves that part fundamentally
14 intact. In that essence, we haven't done
15 anything, let me repeat, at all to GSA's
16 ability to negotiate for pricing, nor have we
17 exonerated them from their need to do so.

18 CHAIRMAN BRANCH: I am going to go
19 to Lisa and then Jackie, and then I'm going to
20 take the liberty of inserting myself in the
21 queue.

22 MS. SCOTT: To answer Debra's

1 question, revealing the basis of award will
2 not answer the question about whether that
3 vendor chose either one of those strategies.
4 It won't answer that question.

5 What will answer that question is
6 if we had an accurate history of what is
7 happening at the task order level to see that
8 a company has been - EDS is here, I'll use
9 them - is proposing high on schedule, I'm just
10 making this up, relatively high on schedule
11 setting a ceiling knowing that their
12 philosophy and strategy is to get the instant
13 requirement and really work their deal at that
14 level, or the other strategy.

15 That is something we wouldn't know
16 unless we get the history of what happens at
17 the task order level and have that then to
18 compare back to the results of the comparison
19 to the ceiling prices that are in the
20 schedule.

21 What I am concerned about is the
22 prices that we publish are the result of the

1 negotiation; they are the way we show you the
2 results. The basis of award is still not
3 going to answer the question other than it
4 sets the place for the contracting officers at
5 the task order level who are working to look
6 at NAD say whether or not they resemble
7 whatever customer might have been used.

8 I think it actually will undermine
9 their confidence in their ability to work a
10 better deal, if they look at an order that
11 comes in, an offer that comes in from an EDS
12 company, and we used as a basis of award
13 something that was humungous, because that's
14 what they disclosed to us, and the agency
15 looks at it and goes, oh, well, I'm a little
16 pea pod compared to this. I'm not going to be
17 able to get anything out of them. So I'm
18 afraid that actually revealing the basis of
19 award could in fact undermine the agencies
20 having confidence in actually pursuing some
21 reasonable negotiations on their particular
22 action.

1 CHAIRMAN BRANCH: Jackie.

2 MS. JONES: Okay, the basis of
3 award is directly related to the Price
4 Reductions clause, and I'm going to say that
5 again, because if you don't have the Price
6 Reductions clause then the basis of award
7 customer is meaningless. And it's used as a
8 negotiation tool in achieving pricing at the
9 schedule level.

10 So when we go again, I'm going to
11 say this, when we throw out the Price
12 Reductions clause, we are throwing out the
13 basis of award customer at the same time. And
14 so that leaves us with no real solid
15 foundation for achieving pricing at the
16 schedule level, so it is taking away something
17 from the negotiation process.

18 CHAIRMAN BRANCH: I reserve the
19 right to insert myself in the queue.

20 MR. SHARPE: Have we exhausted
21 this? Jackie actually does this work. You
22 guys have reliance on it, and this really guts

1 your pricing -

2 MS. JONES: Well, and Jan agrees.

3 He is sitting and agreeing with us.

4 (Simultaneous speakers.)

5 CHAIRMAN BRANCH: I guess I don't
6 agree, okay. There is no law of physics that
7 links the Price Reductions clause with the
8 basis of award. This is not like Mother
9 Nature where you don't get a ticket it simply
10 won't work. What I'm suggesting is, we are
11 proposing to restructure the use of basis of
12 award to not include the Price Reductions
13 clause.

14 So let me articulate my
15 understanding of basis of award, and I look to
16 my colleagues on this panel from GSA to
17 correct any misconceptions I may have about
18 how this works.

19 But I solicit a vendor or a vendor
20 submits a proposal for a schedule contract,
21 and he submits a list of prices, and we are
22 talking services now, so he submits a set of

1 labor categories, and a set of labor rates for
2 those.

3 And I as a GSA contracting officer
4 ask the question, on what are you basing these
5 labor rates, and to whom have you sold these
6 labor categories? And that company then says,
7 I sold these to this category of purchaser in
8 the private sector, and I've looked at my
9 sales over some period of time and I generally
10 sell something on the order of 10, 20, 50,000
11 man hours or man-years depending on size of
12 service to these guys. And that is the
13 customer on which this pricing is predicated.

14 I am basing my rate pricing on
15 selling these volumes into the federal sector.
16 Is that an accurate description of how that
17 works?

18 MS. JONES: No.

19 CHAIRMAN BRANCH: Okay, so how does
20 it work?

21 MS. NELSON: And Jackie may
22 disagree with me -

1 MS. THOMAS: Who is doing this
2 work?

3 MS. JONES: I am.

4 MS. NELSON: Wait. Let -

5 MR. DRABKIN: She may not be doing
6 the work the way we told her to.

7 (Laughter.)

8 MS. NELSON: Okay, I will only
9 speak for the Office of Acquisition
10 Management, which is the policy office for
11 FASS, and that is the only office for which I
12 can speak.

13 The way that the solicitation
14 ends, in all solicitations of products or
15 services or otherwise, goes like this. Very
16 much but with a little bit of a twist. Every
17 solicitation calls out that you must among
18 other things submit what is called a CSP-1
19 which is a commercial sales practices form,
20 along with proposed pricing. So you submit
21 here are my labor categories, and here are
22 what I charge for them. Our preferred

1 methodology within the schedules for
2 professional services is commercial pricing.
3 If you have commercial pricing then we prefer
4 that.

5 It is only if you do not have
6 price will we then go to cost, okay. That is
7 always the case, because we are based on
8 commercial pricing.

9 So you submit what you currently
10 charge, okay, and you submit then your
11 commercial sales practices. And the
12 commercial sales practices should be a full
13 disclosure, not just what you want your basis
14 of award to be, but a full disclosure of what
15 you do. So I sell to in the commercial market
16 space I sell to the following types of
17 customers. I sell to these little guys. I
18 sell to these big guys. I never discount to
19 these little guys. I do discount to these
20 little guys, you know, whatever it is. I sell
21 to state and local governments. I sell to
22 educational; I sell to nonprofits; I sell to -

1 well, I wouldn't use the word, reseller or
2 distributor, because I am talking services
3 here. I sell to integrators, okay.

4 This kind of thing. Now I am Just
5 talking services. If there were products,
6 then we're talking resellers, dealers,
7 distributors, OEMs, this kind of thing. And
8 I give everything.

9 Now my contracting officer sits
10 down with me over the telephone or in person,
11 goes through the whole thing.

12 CHAIRMAN BRANCH: Can I ask a
13 clarification? When you say, discloses
14 everything, so is that some big category or
15 does that include volume by category?

16 MS. NELSON: There is actually -
17 there are spreadsheets, and they will say, who
18 is the class of customer, or the customer, and
19 they'll ask for the discount, and some of the
20 samples that they give out, the actual form
21 out of the FAR does not give the volume, but
22 most of the contracting officers and some of

1 the samples will ask for a volume.

2 They will also, if it's products,
3 they will also ask for FOB by the way, they
4 will also ask for concession, and these kinds
5 of things.

6 And they will go through the whole
7 thing. Now it's the contracting officer's job
8 to say, well, what did you do on Tuesday?
9 What did you do when it was the end of the
10 fiscal year? I mean to really push that
11 through, and to really find out.

12 At the end of those discussions,
13 okay, now you've - or at this point
14 clarifications, now you really begin to narrow
15 it down to who is their most favored customer.

16 Now the most favored customer may
17 not - this is where we get the distinction -
18 the most favored customer may not end up being
19 the basis of award. And I am just going to
20 clarify here for some of the people who don't
21 get it. The most favored customer may end up
22 being a customer that had a five-year contract

1 that was worth \$2.7 billion, and employed YZX,
2 and the contracting officer and the company
3 come to an agreement that that is not what
4 they are negotiating for here.

5 So that is how sometimes MFC and
6 basis of award are not the same thing.

7 So then they choose a basis of
8 award that is in terms and conditions very
9 much similar to what the government is
10 negotiating for, and that becomes the
11 negotiation stance.

12 And that pricing, then, or not
13 necessarily that pricing but a relationship to
14 that pricing - you are never negotiating on
15 schedule for a price; you are negotiating for
16 a relationship between that basis of award
17 price and a GSA price. So let's say the basis
18 of award customer got \$100, I'm negotiating
19 for a 10 percent discount off that price, and
20 that's what I have.

21 Now what Jackie is saying, without
22 the Price Reductions clause, if commercially

1 you then lowered the price from \$100 to \$90
2 then there would be no trigger to reduce your
3 GSA price. But in order to find a fair and
4 reasonable price nothing changes. I still go
5 through those full disclosures, find out what
6 is most favorable to the government, look at
7 everything they do and find out what my most
8 favored price should be. What is in the best
9 interest of the government based on what they
10 have done. I can still find a relationship to
11 that price, and negotiate for that.

12 MR. SHARPE: This strikes me as
13 very complex, very burdensome, and it's going
14 to produce little value if we are going to
15 compete this work.

16 CHAIRMAN BRANCH: Tom, Jackie.

17 MS. JONES: Really, like I said,
18 without the Price Reductions clause, there is
19 no need for a basis of award customer. The
20 basis of award customer is the tracking
21 customer in which our schedule prices, the
22 prices at the contract level, are relative to.

1 And what we do, we maintain - we negotiate and
2 agree upon a discount relationship upon which
3 we will maintain our schedule contract prices.
4 So that is the relationship.

5 Now sometimes it can be the most
6 favored customer, or it can be a customer that
7 the contractor has that they are providing the
8 same or similar services to with the same
9 types of concessions. So is it always the
10 contractor's best price? Well, that's a part
11 of the fair and reasonable determination that
12 the CO makes.

13 But getting back to the point
14 where if we throw out the Price Reductions
15 clause, we have to address the basis of award
16 customer issue because that is the mechanism
17 that triggers the price reduction, and they
18 work together.

19 MS. SCOTT: They work together in
20 administration; they don't have to work
21 together for award.

22 CHAIRMAN BRANCH: Jan, and then

1 Alan and then I'm going to insert myself back
2 in the queue.

3 MR. FRYE: You know, Judith, I'm
4 probably one of those guys that don't get it.
5 But here's what I think I do get. We are
6 really taking good care of industry here, and
7 I'm sure it's music to the lobbyists' ears and
8 to industry sitting in the audience. What are
9 we doing to take care of the government?

10 MR. CHVOTKIN: I guess I'm lucky
11 I'm next. I will leave Jan's question on the
12 table for a fist fight later, maybe. And I
13 apologize for having to discuss - I hope I
14 didn't miss this discussion.

15 But going with you, Mr. Chairman,
16 your recommendation on transparency, the terms
17 matter. And we know, because of our expertise
18 that the phrase, basis of award, is a special
19 term within the schedules program.

20 So for me in the transparency
21 side, what I've heard us talk about, what I've
22 heard the ordering agencies who have testified

1 before this panel discuss is, they'd like to
2 know the determination, how GSA determines
3 that the prices on the schedule are fair and
4 reasonable.

5 Basis of award is one technique
6 that the GSA contracting officer uses to make
7 that determination of fair and reasonable. It
8 is not the exclusive one. And I think that
9 if we drive too narrowly to a basis of award
10 rather than to the determination of fair and
11 reasonable pricing, I think we will
12 necessarily have to answer 50 subsidiary
13 questions.

14 So I might propose to modify your
15 recommendation for this first part to task
16 GSA, to recommend that GSA provide a greater
17 description of the methodology GSA used to
18 determine the price of any scheduled contract
19 that is fair and reasonable.

20 CHAIRMAN BRANCH: And I can accept
21 that, because this is what I am simply trying
22 to get at. Whether you talk about a

1 determination of fair and reasonable pricing,
2 and clearly the terms, basis of award and most
3 favored customer are fraught with emotion that
4 I dare not tap. What they represent is the
5 characteristics of that vendor dealing with a
6 specific customer that we believe is analogous
7 to how that vendor will behave in dealing with
8 us.

9 And I am simply suggesting that
10 that information is useful to an agency
11 contract or an officer in formulating his
12 negotiation strategy. Because while I am
13 certainly willing to let the marketplace set
14 the price, if I am going to enter discussions
15 I have in fact an obligation under, when we do
16 this under 15, to tell an offeror I believe
17 his price to be either too low or too high.

18 So if I have a benchmark, if I
19 have insight into how the GSA CO has set that
20 price, I can now start to formulate my
21 negotiation strategy at the time that we go to
22 place an order, even in a competitive

1 environment.

2 Furthermore, I believe that level
3 of transparency will drive a different set of
4 market behaviors. It will level the playing
5 field in that it will make industry more
6 sensitive to the fact that the government will
7 aggressively pursue fair and reasonable prices
8 at the order level regardless of what the
9 initial pricing strategy was.

10 Now as much as I hate to bring
11 this up, it's like the nuclear proliferation
12 that professional services industry started
13 with uncompensated overtime. You draw the
14 convergence on prices, and then you asked us
15 to stop, to help you stop hurting yourselves.
16 Well, you know, the taxpayer benefited from
17 that. The market got more efficient, and it
18 got more efficient because at that level of
19 transparency.

20 Other discussion?

21 MR. DRABKIN: Maybe we should
22 approach this from a different perspective.

1 Since obviously there is some disagreement
2 here. Although I have to tell you, I continue
3 to believe firmly that in fact the Price
4 Reductions clause is a crutch that protects
5 us, not a tool we need to get a better price.
6 Most favored customer's price is something
7 that we added to that Price Reduction clause
8 through good contract administration, and to
9 market observation. The truth of the matter
10 is, we don't have the time to do it. Nobody
11 does. So we come up with crutches one after
12 another to make it easier for the government
13 to do its job, and lower the burden on the
14 private sector. And plaintively, sounds great
15 for the contractor; what about the government.

16 There is some requirement on the
17 government to act responsibly by not shifting
18 all of the burden.

19 Having said all those things, what
20 perhaps will help more is what Chris Ukins
21 talked about, and somebody else mentioned
22 earlier in the discussions, let's talk about

1 transparency, the prices that are being
2 obtained on schedules for these services,
3 let's make that available to everybody who is
4 doing buying, so that when we do our market
5 research and our acquisition and we are trying
6 to decide what vehicle to use, we can see
7 those prices that are currently being paid by
8 government customers for similar services, and
9 we can use that to decide whether or not the
10 schedules is the right vehicle, and then how
11 do we develop our pricing strategy when that's
12 where we decide to go. That transparency
13 would actually do far more to reduce prices.
14 That transparency is not subject to
15 interpretation. What they paid is what they
16 paid. The only difficulty with getting that
17 transparency is, we lack a systems approach to
18 getting it. Because even if we could in GSA
19 put all of our schedules on line, still the
20 ordering process used by our customer agencies
21 is internal to them, and FPDS does not gather
22 enough data on that transaction to allow that

1 transaction to be meaningful to us.

2 But on the other hand, I mean
3 "with revenue" Dee Lee used to say regularly
4 "comes responsibility." GSA does get revenue
5 from doing this, and perhaps a vital
6 recommendation, not just for the health of
7 schedules program, but the health of the
8 government buying program as a whole is to
9 develop a solution that allows us to have the
10 transparency so we can do the market research,
11 and then the price competition, which makes
12 sense. So that these companies who offer one
13 price to this person and offer another price
14 to that person, often without any explanation
15 as to why the prices are different, but they
16 are within the maximum price that they are
17 allowed to charge, so that we can when we sit
18 down to the table, hold their feet to the fire
19 and have a real negotiation. It's what they
20 do when they do business with their private
21 sector suppliers. Why don't we do the same
22 thing?

1 MR. CHVOTKIN: I agree with David,
2 and my suggestion earlier was that we focus on
3 this purchasing experience. But I use the
4 word, purchasing experience, not price,
5 because of the concerns that others have
6 expressed about the variables of quantity and
7 quality NAD business mix that go into that.
8 So simply disclosing price without those other
9 elements I think doesn't add the value.

10 So I talked about in my earlier
11 discussion, and whenever it is appropriate I'm
12 happy to make the motion to recommend that GSA
13 develop a mechanism to capture that purchasing
14 experience which includes those various
15 elements in it.

16 MR. DRABKIN: And of course my
17 colleague, Mr. Chvotkin, is always correct,
18 and I misused the term; please forgive me,
19 sir.

20 CHAIRMAN BRANCH: All right, it is
21 11:32, and I think that we've had an even
22 richer discussion on this issue than we may

1 have had on the Price Reductions clause.

2 So I'd like to do this. Why don't
3 we break for lunch until 1:00 o'clock, and
4 while people are mulling over our discussions
5 over their salad and super sandwich, whatever,
6 come back at 1:00 with an idea how they might
7 want to frame recommendations with respect to
8 this. Because I think, we have a key
9 recommendation here, the Price Reduction
10 clause, we will recommend that it be retired
11 honorably with respect to services.

12 We need to make recommendations to
13 the administrator with respect to then what
14 tools are in the toolbox to allow GSA to
15 establish and convey to its agency customers
16 information about the fairness of a price.

17 So let's take an hour and a half
18 for lunch and start thinking about how we
19 might want to frame those recommendations.

20 Mr. Chvotkin?

21 MR. CHVOTKIN: Mr. Chairman, at the
22 risk of agitating the chairman, I haven't

1 missed a meal since 1987, so I appreciate the
2 break for lunch. But I just wonder whether 90
3 minutes is necessary. We've been able to do
4 so more quickly, and I think - I wouldn't want
5 to lose - I'd rather earn some time at the end
6 of the day than carry later in the evening.
7 And I know Mr. Perry has a commitment that
8 he'd like to meet.

9 CHAIRMAN BRANCH: So do we want to
10 say - what is good for folks? I'm just trying
11 to make allowances for the fact that we are
12 downtown. 12:30, 12:45? What is the sense of
13 the panel?

14 All right, I think the consensus
15 has formed around 12:30, so let's be back at
16 12:30 to continue this discussion.

17 (Whereupon, the above-entitled
18 matter went off the record and
19 resumed at 12:40 p.m.)

20 CHAIRMAN BRANCH: We can start
21 again. We had as we were going out the door
22 and they were a potential recommendation for

1 GSA to disclose the basis on which the
2 contracting officer, the GSA contracting
3 officer, determined that the price on the
4 scheduled contracts was fairly reasonable and
5 the second one that GSA developed a
6 methodology and a process to correct and
7 report on the purchasing experience of the
8 buying activities including quantity and
9 quality considerations as well as price.

10 So I think that's where we had
11 thought and I will just observe that I agree
12 with Mr. Drabkin philosophically on his
13 suggestion. I guess my concern as somebody
14 responsible for an organization that really is
15 focused on execution as that might be a bridge
16 too far for us now. So I'd like to just kind
17 of ask him to lay out his thinking about how
18 we might migrate from the as-is state, very,
19 very decentralized repositories of that kind
20 of data to a to-be state where that would be
21 transparent for the community as a whole so we
22 can deal with proper consideration for his

1 recommendation.

2 MR. DRABKIN: Thank you for the
3 opportunity. I know I haven't said much
4 today.

5 (Laughter.)

6 The to-be state in my mind is an
7 external solution, external to the legacy
8 systems we all have, in which the actual
9 transaction takes place which would then allow
10 the capturing of all the data associated with
11 the transaction in a way that's transparent to
12 the user of the system to ask individual
13 agencies to modify their legacy systems to
14 accommodate the need we have for this kind of
15 information and then to push it to some place.
16 Logically, one might argue it's FPDS or some
17 new place.

18 It would be so cumbersome and so
19 costly and so dependent upon the vagaries of
20 the budget process that it's unlikely to
21 happen. Our experience in FPDS in (g) I think
22 probably proves that out.

1 We began in 1999 with a commitment
2 to build a centralized database to which all
3 agencies would push data, that it would be
4 done machine to machine, that it would be
5 built to a standard and that all agencies
6 would modify their systems to interface with
7 that standard which was that was the vision
8 that we all agreed to in CAS, at that time,
9 the SPE community. DOD and OFPP led the
10 charge collectively. I think Stan Salloway
11 (phonetic) chaired it for DOD and Dee Lee who
12 was then the administrator of OFPP and they
13 built it and it didn't work. And it didn't
14 work not because they didn't have the right
15 idea. It's because it's dependent upon each
16 agency modifying its existing systems so that
17 they would then be able to push that data on
18 the centralized standard end. So that
19 solution just wouldn't work.

20 It might seem obvious to
21 everybody. We'll just tell everybody to do it
22 and they'll do it and it just won't work.

1 Others might argue that this idea about this
2 centralized, virtual, new solution would be
3 that possibly something new that's never been
4 done before and the answer is quite frank it
5 is not.

6 In fact, there are a number of
7 commercial solutions already in the
8 marketplace being used by industry and by
9 other governments all over the world for
10 ordering and that's all we're talking about
11 right now. We're not talking about end-to-end
12 solution. We're not talking about develop
13 your requirements and do your market. We're
14 talking about a solution just where the order
15 of the transaction takes place and we capture
16 the data for the transaction. If we build it
17 right, if we do it modularly and build it
18 right, it won't be very expensive and we can
19 add on to it over time to get other
20 capabilities.

21 But when you say "a bridge too
22 far" it would be a bridge too far to say

1 "Let's go ahead and build this acquisition
2 solution" which I and others have spoken about
3 over the last couple of years. But it's not
4 a bridge too far to focus just on a virtual
5 ordering solution just for the schedules which
6 will have all the schedules in there loaded,
7 which would capture the actual transaction and
8 then allow us to look at that transaction,
9 those people who have complete -- it wouldn't
10 be public information, but it does allow some
11 of those things which are proprietary. But it
12 will even give the public more information
13 because at last for the first time ever we'd
14 actually have an accurate picture of what is
15 going through the schedules and there are many
16 who argue that the current data through FPDS
17 doesn't give us that kind of accuracy today.

18 It's not bad by the way. It's
19 over 90 percent accurate. But this would give
20 us 100 percent accuracy and we would know
21 exactly what was in there. That's what I
22 propose and it wouldn't cost a lot of money

1 and it doesn't have to be built to a scale of
2 \$450 billion. It could be built at the scale
3 of \$39 billion or \$33 billion, whatever it is
4 that you did in the schedules last year.
5 That's what I was kind of presenting.

6 CHAIRMAN BRANCH: Thank you. Any
7 discussion on that concept that's laid out?
8 Alan?

9 MR. CHVOTKIN: Mr. Chairman, thank
10 you. I agree with David on the concept and I
11 think by the words that that you read this is
12 not necessarily that we build a complete
13 system or nothing. It certainly could be
14 modular, it certainly could be base, at the
15 rate some of us were talking about that the
16 importance around a stemmed analysis by the
17 agencies where they're spending money. So the
18 system may ultimately choose never to capture
19 the single purchases that Debra was talking
20 about because it's unlikely that they'll be
21 replicated. Whereas in the schedules,
22 Schedule 70 or some other schedules, there

1 might be greater utilization.

2 From the spent data we have of the
3 schedules themselves we know that there is a
4 big skewing of work among certain schedules
5 and many of them have very little transaction
6 under them. That may be an opportunity for
7 GSA to take another look at those schedules
8 and whether there's complete reliability
9 around them, but in any event looking at where
10 the payoff comes for the replicability so that
11 information is useful, if that can be done, a
12 phase manner or some other like it so that we
13 don't have to wait forever until the perfect
14 system to be put in place.

15 CHAIRMAN BRANCH: David, you can
16 have some comments on it if you want.

17 MR. DRABKIN: No.

18 CHAIRMAN BRANCH: Any other
19 discussion on this issue?

20 (No verbal response.)

21 Okay. So hearing no other
22 discussion, I will frame Mr. Drabkin's

1 recommendation as a motion. So I move to be
2 one of the recommendations of this panel that
3 GSA develop a methodology and implement the
4 process to collect and report on the
5 purchasing experience of buying activities
6 including quantity and quality considerations
7 as well as price. Does that adequately frame
8 what you were conceiving?

9 MR. DRABKIN: Sir, I yield to a
10 greater rhetorical ability.

11 CHAIRMAN BRANCH: You'll have to
12 pass those kudos to Mr. Chvotkin, a fellow
13 member of the bar.

14 Judith?

15 MS. NELSON: I am fine with how
16 you're framing it. Can I just add one thing
17 to the discussion?

18 CHAIRMAN BRANCH: Absolutely.
19 Discussion is called for at this point.

20 MS. NELSON: I am very pleased
21 with actually the motion. The one thing that
22 I would put on the table for discussion or for

1 consideration by the panel or the motions the
2 panel made of not just obviously GSA but
3 procurement and our position experts from
4 across the agencies. In order for GSA to be
5 able to achieve such a recommendation would
6 require the cooperation and participation of
7 the buying agencies.

8 So I would like to see the motion
9 and recommendation note that "with the
10 cooperation " or "with the participation of"
11 or something because GSA cannot achieve. We
12 don't have access to that information without
13 the agencies' participation.

14 MR. ALLEN: Further to go along
15 with that, I think it's on the right track
16 here. Inevitably, when this type of
17 requirement comes down, it ends up many times
18 being funded and maybe a data collection
19 requirement of contractors. Ergo, I think
20 that while this is a laudable goal, this is
21 something that every effort should be made to
22 have it be GSA and the customer agencies that

1 work on developing this, not be the sense that
2 contractors have to regularly provide this
3 type of information making it another part of
4 having a scheduled contract.

5 MR. DRABKIN: For whatever it's
6 worth what I thought I just described involved
7 the contractors not doing anything.

8 MR. ALLEN: That's good. You're
9 right.

10 MR. DRABKIN: What I described --
11 I mean not doing anything extra because they
12 still have to register with CCR. We still
13 have to get their catalogs loaded. It's a
14 long process.

15 What I described was a program
16 that captures the transaction that the
17 Government makes and would relieve contractors
18 from that reporting requirement. If I didn't
19 make that clear, then I erred.

20 MR. PERRY: There are only two of
21 us here.

22 MS. NELSON: And yet we still have

1 a quorum.

2 MR. PERRY: I would say I think
3 what was left that I was thinking about saying
4 but I didn't say anything your recommendation
5 does imply that the agencies have to provide
6 the data. There would have to be requirement
7 that the agencies are going to provide the
8 data to it if you build something that they
9 can go to.

10 MR. DRABKIN: No, actually my
11 contemplated end state is the agency will
12 leave whatever writing system it has
13 internally, go to this place, place their
14 order. Now I mean when they show up we have
15 them identify like Enterprise and NAPTA to get
16 the warrant level, all these kinds of things
17 have to be captured. But the agency provides
18 no data on the transaction itself. The agency
19 occurs in the portal. The agency gets
20 information back, but doesn't have to put in
21 any information other than they're forwarding
22 the person who is going to make the

1 transaction, the fund site or fund codes that
2 are associated with making the transaction,
3 etc. It would reduce the amount of labor
4 currently required on everybody and take
5 advantage of the technology.

6 CHAIRMAN BRANCH: Yes, I think we
7 run the danger probably of trying to engineer
8 the solution here. I would rather move away
9 from that because one of the first spots I had
10 is this discussion that's going on and there
11 are many ways to feed the portal. So it could
12 be direct entry with smaller agencies who do
13 not have contact readiness structure. It
14 could be an XML feed for those of us who have
15 it.

16 So there are clearly solutions out
17 there. But what I would like to offer is an
18 amendment to that motion based on the
19 discussion up to this point. So the motion
20 would be amended to read "GSA, with the
21 consent and active participation of the
22 ordering agencies, develop a methodology and

1 implement a process that would enable ordering
2 activities to collect and report on purchasing
3 experiences or buying activities including
4 quantity and quality considerations as well as
5 price."

6 MR. DRABKIN: If I understood what
7 you just said, I think we're changing the very
8 nature of what we're talking about. My
9 thought wasn't that the agencies would do
10 anything except coming to us. They bring the
11 money. They bring the abilities. They go to
12 this place.

13 Let's say you want to buy a
14 television. You go into this portal and you
15 say, "I need a 52" television, 1080 DPF." You
16 go in. You find it. You buy it and you
17 leave. And when you buy it, we capture your
18 order and forward it, etc. It's kind of like
19 what GSA Advantage does now and not so well.
20 It's the next step. But in that process the
21 agency gets back the transaction data if it
22 wants it. But we have it all in one place.

1 We know not only did you buy something on
2 NAICS Code X and in SIN Code Y but we know
3 that you actually bought a 52" inch Toshiba
4 television and you paid \$1,922 for it or if
5 you're buying services, we know that not only
6 did you buy services in NAICS Code Y but
7 actually purchased the development a financial
8 system and you paid this much money for it and
9 whatever other transactional information gets
10 captured in that transaction. That's what I
11 was contemplating.

12 I was not contemplating the fact
13 that agencies would have to gather in data of
14 their own and submit it. I would
15 contemplating that all the data will occur in
16 this portal where we can then capture it.
17 It's captured and we can share it any way we
18 want. The agency can have it. OFPP can have
19 it. Congress can have it. It's all there and
20 it's much more discreet than any of the data
21 that the current contract writing systems
22 provide which is pretty much limited to the

1 NAICS Code level, the name of the contractor
2 and the pro-contract price.

3 CHAIRMAN BRANCH: Yes, it
4 certainly wasn't my intention to modify the
5 recommendation to go away from the spirit of
6 what you were advancing conceptually. I guess
7 I was trying to use words that give us
8 flexibility and institution and again I don't
9 want to design solution. But I will give an
10 example.

11 You know, the Navy is an
12 enterprise that's going to ERP and we have
13 basically told everybody that once we go live
14 across that enterprise that will be the system
15 of record. I think we might have a tough time
16 engineering a policy with the Navy to suck
17 that data back in to ERP rather than to push
18 that data out of ERP into your portal system.

19 So again I want to engineer the
20 problem, but I think we need to allow some
21 flexibility for the fact that the agencies are
22 doing things with their own business practices

1 and that while for some, especially smaller
2 agencies, centralized portal may be a great
3 way to go if they're using typewriters and
4 word processors. But for some larger
5 agencies, you're going to run into the reality
6 of their systems.

7 MR. PERRY: Okay. I will support
8 you on that because we have the same situation
9 that it's closely coupled and linked with the
10 financial information behind it.

11 The point I was making I think
12 there was a subtle point that David had made.
13 This is based on a recommendation that
14 agencies will, in fact, provide that data some
15 place whether it's to their own or to a tool
16 that GSA would have available to them which
17 they're not, some agencies are not, currently
18 doing. But they may very well have the
19 capability but they don't do it. They only
20 capture the bottom line and they're not doing
21 -- They're not providing that data. This is
22 contingent upon them. Whether you do it in

1 our thing or whether we do it in your thing,
2 I still am going to be required to say three
3 of this. Okay.

4 (Off the record discussion.)

5 I'm saying we do have the
6 capability. We just don't -- As Dave said,
7 the FPDSNG we're not going to -- we don't have
8 the wherewithal to make that a place to
9 accommodate that data and there are reasons
10 why we don't use GSA Advantage to be the point
11 of a sale record. So that's what's implied in
12 the recommendation is that we would all do
13 that.

14 MR. DRABKIN: I think again keep
15 in mind that problem we're trying to solve and
16 I don't think I'm arguing with you, Glenn. I
17 don't think I am.

18 What will enhance our ability to
19 satisfy both our stakeholders and our
20 customers and the taxpayer is our ability to
21 tell them that we got good pricing. That
22 seems to be a big issue. Are you getting good

1 pricing or not?

2 If you ask somebody to define what
3 good pricing is, I suspect you'll get many,
4 many different definitions. There is
5 certainly is no standard definition in the
6 community and that's because services are
7 generally tailored to the nature of the
8 requirement of the buyer. But what we can do
9 for them is expose them to the prices we pay
10 and give them a better description other than
11 IT Services for the thing that we bought and
12 allow them to see those prices and those more
13 discreet descriptions of services across the
14 enterprise so that they can themselves make a
15 determination by whatever definition they're
16 going to have to use of whether we got a good
17 price.

18 And I think our own buyers seeing
19 that I would hope, it's not going to happen
20 often, because they're so busy, we don't have
21 enough of them, but they would call somebody
22 up and say, "I see where you just bought the

1 engineering of a new financial system. I'm
2 getting ready to buy one. I see that you paid
3 this much money for it. Can you tell me a
4 little bit more about that? What kind of
5 prices did the companies bring to the table as
6 I build my price negotiation memorandum for
7 the negotiation?" And that's something else
8 that can't happen today because we can't give
9 people real time information about that
10 transaction or who made it or that it's really
11 similar enough for them to waste their time to
12 get on the telephone and ask those questions.

13 That's kind of what I thought we
14 were solving and I thought it went to Jan's
15 concern and Tom's concern and my own concern
16 about pricing and where it makes sense to
17 track it. Tracking it at the contract level
18 is never going to make anybody happy. We have
19 to track it at the order level in order to
20 demonstrate what we actually paid for what we
21 got.

22 CHAIRMAN BRANCH: Jackie.

1 MS. JONES: So what is your
2 recommendation for formulating pricing at the
3 schedule level?

4 MR. DRABKIN: I would say nothing
5 at this point and focus on what's really going
6 to make a difference because there is no way
7 we can get a statutory requirement which is no
8 longer relevant but was passed in the 1980s
9 that says you cannot have a contract without
10 a price and we can spend all day talking about
11 whether or not that makes sense or not but
12 it's the law and I doubt seriously Congress
13 will ever change it.

14 So let's focus on where we can
15 make a difference which is at the transaction
16 level which is where we are all really
17 concerned because that's where the taxpayers'
18 dollars get obligated. When you award a
19 schedule contract, we obligate a minimum
20 amount of \$2,500 as a guaranteed minimum and
21 that guaranteed minimum in most cases is paid
22 in the first year by anybody who gets

1 contracted and you never have to worry about
2 it again.

3 I think pricing at the contract
4 level is irrelevant in services and that's why
5 I focus on the task order level which is where
6 the rubber meets the road. It's where the
7 taxpayer's dollar gets spent. It where we can
8 really measure for value and we're trying to
9 operate this new market from the context of
10 the 1980 construction which no longer has
11 relevance for how people do business.

12 MS. JONES: Okay. The contracting
13 officers have to evaluate pricing because
14 pricing has to be on a contract. So what do
15 you propose as a basis for determining fair
16 and reasonable pricing, now not that the
17 pricing reductions clause was solely that
18 basis? Of course, there was the competitive
19 pricing in the marketplace. COs has
20 visibility and can also use that as a basis.

21 So my question to you is then on
22 what basis are we going to say that the prices

1 at the contract level are fair and reasonable
2 if we are solely relying on the competition at
3 the task order level to determine that.

4 MR. DRABKIN: At the risk of
5 sounding glib and I really hope this does not
6 appear in the papers who cares? I mean
7 seriously, who cares?

8 PARTICIPANT: We do.

9 MR. DRABKIN: No, we don't. The
10 people here who are responsible for the day-
11 to-day buying don't care what price you've
12 cited in that contract. They care what price
13 they pay on the order.

14 CHAIRMAN BRANCH: Let me -- What
15 Mr. Drabkin said was that GSA contracting
16 officer took the time of contract information,
17 would continue the tools and techniques that
18 they currently use to establish price resale
19 buying

20 Now having said that, I'd like to
21 extend his remark because I think I'm going to
22 kind of address what I'm hearing is one of

1 Jackie's concerns. So as I roll through the
2 set of transactions before I had the Price
3 Reduction clause and we can argue its value as
4 a practical tool, but before I had that
5 clause, it had put an affirmative burden on
6 industry to disclose to me when those
7 practices have changed.

8 But in listening to David roll out
9 his concept of this market pricing, I would
10 argue that at the time of option exercise or
11 at the time of traumatic behavior by a
12 particular offeror in the execution of a
13 schedule contract that GSA CO now has
14 beautiful trend data to go back to that
15 company and say, "Wait a minute. You are not
16 behaving consistently with the basis of award
17 and I am going to ask you to address your
18 schedule pricing to reflect what you do in the
19 marketplace."

20 MS. JONES: And getting back to
21 the rhetorical argument before lunch without
22 the Price Reductions clause there's no need

1 for basis of the work.

2 MS. SCOTT: We agree to disagree.

3 MS. JONES: That's fine.

4 MR. DRABKIN: I appreciate you in
5 trying to protect me from being myself which
6 is just telling it like it is.

7 (Laughter.)

8 And recognizing that we have to
9 live with a structure in our environment which
10 is no longer relevant to how we're operating.
11 Elliott does make an excellent point, but even
12 there on the exercise of options I'm not so
13 sure five years into the contract given the
14 nature of how the services' market changes and
15 given the fact that there would be additional
16 changes.

17 I'm not even sure at that point a
18 price in the schedule contract will have any
19 real meaning to VA when they get really to go
20 and buy a service that they've identified as
21 peculiar to them. It's of a type that's sold
22 in the commercial marketplace, but it's

1 peculiar to them and they want to get that
2 price.

3 What would be much more relevant
4 to them is trying to find examples where other
5 people bought something similar or alike and
6 how is that price so they can sit down at the
7 table and negotiate it which is vastly
8 different from the product side of the house
9 where the differences on the product side of
10 the house are virtually nonexistent by
11 comparison to the services side of the house.

12 And I realize, Jackie, that this
13 really poses for you some conceptual problems
14 and it challenges the whole basis of the way
15 in which you've worked in the past. But we're
16 trying to figure out how to go forward in a
17 marketplace with rules we didn't make
18 ourselves but we have to follow to get to
19 where we want to go which is good prices that
20 we can all sleep with at night after we've
21 made the award.

22 When Congressman X calls up and

1 asks us to explain why you spent this much
2 money with Company Z to do X, you can sit down
3 and say, "This is what we bought. Three of
4 these similar projects were done in other
5 places in the Government. This is what they
6 paid for it. This is how we came to a price
7 when we actually spent the taxpayer's dollar"
8 versus "How did you figure out the contract
9 price for IBM, for IBM Consulting, for," who
10 else was there today, "EDS, whoever, Booz
11 Allen, all these others? And by the way, the
12 prices in your contract are incredibly
13 different. How did you figure out those were
14 fair and reasonable," much more difficult to
15 answer than "How did you figure out the actual
16 price of the service was reasonable?" Does
17 that make any sense to you?

18 MS. JONES: David, this isn't a
19 Jackie problem. I'm here on this panel
20 representing contracting officers within GSA.
21 Okay. So when you're asking COs to sign a
22 contract and do a price analysis and to

1 determine that a price is fair and reasonable
2 on that contract, somebody should care what
3 that price is and the person that's signing
4 that contract should care what that price is.

5 So we have in turn taken a
6 negotiation technique, a price analysis
7 method, away from the STURGUS (phonetic)
8 program and I'm not saying that the price
9 reductions is an end-all to be all. I'm
10 trying to explain that a replacement
11 negotiation technique needs to be put in place
12 so that the prices at the schedule level can
13 be said to be fair and reasonable because
14 that's our responsibility.

15 MR. DRABKIN: What I'm saying to
16 you is the world's changed. I can't change
17 the rules we have to play by. The GSA
18 administrator can't change those rules and
19 we're all very glad to hear that you care and
20 the people that you represent care when they
21 do that.

22 But let's be realistic. We need

1 to find a way to do business because if we
2 don't the Government can't get its job done
3 and that's very real. The Government buys
4 more services today than it buys goods.
5 There's virtually not a Government office that
6 can open its door without contractors
7 performing services to keep that agency
8 running. If we spend our time trying to do it
9 by a set of rules that don't work and pay a
10 lot more time and attention to them instead of
11 making the system work and complying with what
12 Congress intended for us to do we would have
13 a lot of form and very little substance which
14 is what my colleagues I thought were
15 complaining about.

16 They're asking what's the
17 relevance of a GSA price. Jan, I think you
18 asked that question in one of our first
19 meetings. I know that Tom Essig asked that
20 question several times for sure.

21 MR. FRYE: But let me put it in
22 context. I've lost or I'm starting to lose

1 faith and we're rabid fans of GSA. It means
2 a lot to us and I'm starting to lose faith
3 that the prices mean anything. Absolutely,
4 I'm starting to think in listening to this
5 conversation maybe we should start going open
6 market and I think all we're going to end up
7 with is an approved vendor list if prices mean
8 nothing and go with that and we'd save a
9 couple things on the GSA schedule but maybe
10 it's just smarter to go open market.

11 CHAIRMAN BRANCH: Let me express a
12 slightly different view in all this. I want
13 to say three things, the first of which is I
14 think we need to be careful because I think
15 Allen laid it out very, very well. There is
16 contract formation. There is order formation.
17 And there is contract administration.

18 So as I understand this, please
19 anyone who can correct me as I am incorrect,
20 the Price Reduction clause which is what we're
21 really talking about is an issue of contract
22 administration and basically it serves the

1 purpose of, if you will, continuing the
2 underpinning of the contracting officer's
3 determination that the pricing at the schedule
4 level continues to be fair. Is that an
5 accurate assessment?

6 MR. ALLEN: I think you're
7 absolutely accurate.

8 CHAIRMAN BRANCH: Okay. So if we
9 go there, then I would argue that there is
10 value in GSA pricing and I don't mean to
11 trivialize this by using this example but GSA
12 pricing for services, and let me make it clear
13 I'm talking about services not hardware,
14 serves the same function as Wikipedia does for
15 a scholar. It is the first place you start to
16 get an idea of what the market looks like, but
17 it is not the last place you end up. So the
18 pricing serves an important purpose of being
19 economic signal as to who's in the market,
20 what are the order of magnitudes that first
21 was generally in charge for this skill mix and
22 so forth.

1 I believe that if we adopt David's
2 recommendation you have a much stronger tool
3 than the Price Reduction clause to actually
4 aggressively go after reductions in that
5 signal price because that's really all it is.
6 It's a signal price as economists would define
7 it because you would have actual data to
8 compare to your expectation of the common
9 contract formation.

10 Let me get a little bit
11 theoretical here and having sat in Professor
12 Defembocks' Econ 1A class at 8:00 a.m. Things
13 were pounded into me and one of them was pure
14 competition. So anyone tell me whether they
15 believe that pure competition exists in this
16 market.

17 The first criteria is all products
18 have to be equal. In services, we go best
19 value because there are discriminators in the
20 market. Secondly, firms are price takers. So
21 they are taking inputs for either consumption
22 or investment and not gains by trading.

1 All firms have a relatively small
2 market share. No one is large enough to
3 predominate. Buyers know the nature of the
4 product that they are buying and the prices of
5 the product that they are buying and lastly
6 the barriers of entry and exit to those
7 marketplaces are relatively low.

8 Now when I look at the Government
9 market space in services, we need almost none
10 of those criteria for pure competition. So it
11 is the challenge of this panel to formulate a
12 buying process that results in a fair outcome
13 for both parties since we cannot take the
14 benefits of the competitive system as a
15 economist would define it in its purest form.

16 And I think key to that is
17 something David has put on the table which is
18 the transparency of pricing to the buyer and
19 perhaps to some degree to the seller.

20 MS. SCOTT: I take it that the
21 system that David is talking about would allow
22 us to get another, a major, pricing format

1 such that when we get to the point of option
2 exercise we would be looking at what are CSP
3 data was/is, the basis of the award's data
4 was/is, and then what is reality in the
5 Federal space, the third major price point
6 that we don't presently have access to
7 overall.

8 MR. ALLEN: I think you're
9 absolutely right about that. That would be a
10 tremendously valuable pricing tool for GSA
11 and, at least, one answer to the question that
12 Jan asked earlier this morning, "What do we
13 get out of this?" That's a heck of a deal that
14 you have moving forward than what you have now
15 if you could put this thing together.

16 MR. PERRY: Plus you would be
17 enabling the agency to working that throughout
18 the five years up until the time you relooked
19 at the pricing going forward. They would be
20 actively working those prices for all the
21 time.

22 MS. SCOTT: I'd say I think it

1 would actually allow us at the schedule level
2 to revisit the prices more often to us.

3 MR. PERRY: Yes.

4 CHAIRMAN BRANCH: Further
5 discussion on this recommendation?

6 (No verbal response.)

7 Hearing none, then we'll put the
8 motion to a vote. The motion is as stated on
9 the board there that "GSA, with the content
10 and active participation of the ordering
11 agencies, establish a process that will enable
12 the ordering agencies to collect and report on
13 the purchasing experiences of the buying
14 activities including quantity and quality
15 considerations as well as price."

16 MS. SCOTT: Could I amend it? Do
17 we need to stick the word "system" in there?
18 I'm not exactly sure where to put it because
19 I can't see the board from here. Are we
20 talking about a system?

21 CHAIRMAN BRANCH: I think that in
22 that and what I would suggest that you might

1 want to substitute the word "system" for
2 "process."

3 MR. DRABKIN: Why don't we leave
4 "process" there and let GSA decide whether
5 it's a system or a series of systems or some
6 kind of process?

7 MS. SONDERMAN: I agree
8 completely. Systems aren't nearly as using --
9 if anybody even seems to think that they are.

10 MS. SCOTT: So we're talking about
11 technology systems.

12 MR. PERRY: Those of us that don't
13 use systems -- No one ever makes the
14 distinction. So let's leave it out.

15 CHAIRMAN BRANCH: All right.
16 That's Mr. Drabkin's motion. It's amended.
17 Do I hear a second for that?

18 MS. SONDERMAN: Second.

19 CHAIRMAN BRANCH: All those in
20 favor of the motion raise their hands please.

21 (Show of hands.)

22 The ayes have it unanimously.

1 This will be a recommendation of the panel.

2 So where we seem to have --

3 MR. CHVOTKIN: There's a second
4 element to that which is capture the -- I'm
5 sorry.

6 MR. DRABKIN: The disclosure.

7 MR. CHVOTKIN: The disclosure.

8 CHAIRMAN BRANCH: Okay. So we
9 have a second recommendation to consider on
10 the table. I've split them. One was David's
11 and one is mine which was the GSA, the
12 recommendation that GSA, disclose the basis on
13 which the GSA contracting officer determined
14 that the price in each schedule contract was
15 done. Do I hear a second on that?

16 MS. SONDERMAN: Second.

17 CHAIRMAN BRANCH: Discussion?

18 (No verbal response.)

19 Okay. Hearing none -- Mr.

20 Drabkin.

21 MR. DRABKIN: Just so I make sure

22 I understand what do we mean. Do we have a

1 specific meaning about the basis for it or do
2 we have a meaning?

3 CHAIRMAN BRANCH: Let me rephrase
4 it because we've taken out the basis of award
5 that says, "the basis on which the contracting
6 officer determined that the prices were fair
7 and reasonable."

8 MR. DRABKIN: So I ask again. Do
9 we have a meaning in which we all understand
10 to what that means?

11 CHAIRMAN BRANCH: Since we're all
12 not speaking one story, when I made that
13 recommendation, I contemplated that not for
14 public disclosure, that there be a short
15 summary available to each ordering agency
16 essentially documenting in summary form the
17 basis on which that contracting officer
18 determined the price was fair and reasonable.

19 So just to kind of spin that out,
20 you know, we reviewed the commercial sales
21 price data and we determined that the best
22 tracking customer for the Government did a

1 volume of XYZ hours across a wide labor mix
2 and we negotiated a discount to this
3 commercially advertised rates of ten percent
4 which is consistent with the discount given to
5 the customer used for comparison purposes.
6 Therefore, I consider the price to be fair and
7 reasonable.

8 And that way if I'm looking at a
9 firm and that particular customer that we've
10 linked to our pricing does significantly more
11 or significantly less units that I want to do
12 in a given order, then I now have a basis to
13 formulate my negotiation, my acquisition
14 strategy, and negotiate with that vendor or a
15 range of vendors. Because frankly when it
16 comes to price negotiation, if I have a
17 competitive order depending on the company, it
18 may be a different strategy for each one of
19 the offerors.

20 So my concept of this was just a
21 short summary, certainly no more than one
22 page, that said, "Hey, this is how we got the

1 fair and reasonableness in this price. Here
2 are the general basic characteristics of the
3 offeror that we used as a comparator for price
4 analysis."

5 MS. SCOTT: I have a lot of
6 trouble finding the value in that. I'm not
7 getting there. I'm not getting the concept
8 that you're trying to put forth. The same
9 thing would be accomplished if we put the
10 retail price on the list schedule. We say,
11 "Here's the retail suggested price. Here's
12 the discount." And you get the same thing
13 without all the narrative. I'm trying to be
14 practical how to get there in practical way
15 what --

16 CHAIRMAN BRANCH: And I can live
17 with that so long as you're willing to tell me
18 why you believe that's a good benchmark, why
19 that volume and why the characteristics of
20 that particular vendor constituted a good
21 benchmark. Because if you'd want to give that
22 information in a table and give me a paragraph

1 on why that's a good benchmark, I'm good to
2 go.

3 But what I need to understand is
4 what was the intellectual process that the
5 contracting officer at GSA went through to
6 say, "Yes, that's a good benchmark for that
7 particular -- and price."

8 MS. SCOTT: Can I get that on your
9 big contract, your Seaport-e?

10 CHAIRMAN BRANCH: My Seaport-e
11 contract has no rates in it and there's a
12 reason for that.

13 MR. CHVOTKIN: That's another
14 panel meeting. A completely different panel
15 to delve into that one. And if I may here.
16 And I think you're absolutely right. The
17 contracting officer brings a skill set to the
18 table. There are some tools and techniques
19 that the schedule program provides and one of
20 them is the CSP data. But we know the
21 contracting officers will use their own market
22 research. They will Wikipedia. They will use

1 a variety of techniques, whatever those
2 techniques are and we don't have to create new
3 ones. They already exist. And every
4 contracting officer that uses those skill sets
5 to make that determination ought to know a
6 little bit more about it. And so if the two
7 price quotes are sufficient and actually where
8 those price quotes came from, then I think we
9 will have satisfied the transparency question
10 as the whole discussion over the last couple
11 of hours has been. If you know a little bit
12 more about how that price was formed on the
13 front end and you get a little bit more data
14 of the transaction on the back end, that will
15 help the buying activities, the ordering
16 activities, make it better and the market
17 research for the ordering activity, it doesn't
18 drive to a schedule. It doesn't drive to any
19 acquisition strategy, but is market
20 information and that makes better order.

21 MS. THOMPSON: It sounds like to
22 me that the basis of award that you were

1 suggesting would be the tracking customer from
2 a price reductions clause if we have one. I
3 mean, you're coming all the way out using the
4 same procedures and techniques but we're just
5 not using that customer for the price
6 reduction clause. That's what it sounds like
7 to me unless someone else can give me another
8 conclusion here. But that's what it sounds
9 like to me.

10 CHAIRMAN BRANCH: I'm only making
11 the assumption. So let me state the
12 assumption. My assumption is that the tools
13 and techniques that a GSA contracting officer
14 uses to determine price reasonableness at the
15 schedule level won't change.

16 Frankly, I don't care if they
17 change or not. If they change, just tell me
18 what they are so I can use that in market
19 research to determine what my acquisition
20 strategy and my negotiations approach is. So
21 if you tell that instead of using a tracking
22 customer I got out my Ouija board, my snake

1 skin and my chicken, I'm good with that. So
2 now I have enough data to know how that
3 contracting officer reasoned to the conclusion
4 that that was a fair and reasonable price for
5 signal purposes and I know what I'm going to
6 do with that price or not do with that price
7 as I formulate my acquisition strategy for the
8 order.

9 MS. THOMPSON: This was easier for
10 me to conceptualize it as that tracking
11 customer.

12 MS. SCOTT: I'm trying very hard
13 to get into the practical real sense of what
14 will happen. I'm afraid that what we'll end
15 up with is, for example, a list of did you do
16 this, did you do this, did you do this and I'm
17 afraid that what you'll get is a yes, yes, yes
18 and I'm not sure what the value of it is going
19 to be.

20 So I'm trying to figure out how
21 folks will physically do this when they go to
22 log it into some place or put it up in some

1 portal. What I'm concerned is how to
2 guarantee it's going to have the value you're
3 looking for.

4 CHAIRMAN BRANCH: I think to some
5 degree that's an internal issue to GSA. I
6 would tell you how I'd do it and maybe I could
7 demand a narrative explanation and you
8 wouldn't get a contract award through me
9 unless I saw what I believe was a sufficiently
10 clear and rigorous summary of how you reached
11 that conclusion. So I think to some degree
12 that's a policy determination internally.

13 MS. NELSON: I was going to say
14 without going back on your words, without
15 trying to engineer the solution, taking of the
16 recommendations of the panel and taking them
17 forward to the administrator, if the
18 administrator chooses to move forward on those
19 recommendations I would imagine they would
20 come over to the Office of Acquisition
21 Management and it goes to acquisition policies
22 that were to be fleshed out and moved on.

1 But to try and figure out exactly
2 how those policies would be effected at this
3 moment I think we're overreaching. There
4 would be complex policies that have to take
5 into account governance and have to take into
6 account multiple different types of oversight,
7 multiple different types of services,
8 documentation, all kinds of things. So the
9 recommendation is a strong one, but trying to
10 create solution at the moment might be more
11 than --

12 CHAIRMAN BRANCH: I would agree.
13 I appreciate your bringing this up.

14 MS. SCOTT: I concur with the
15 vision. I'm just worried about the
16 implementation.

17 CHAIRMAN BRANCH: Further
18 discussion on that recommendation? Anyone?

19 (No verbal response.)

20 Okay. Hearing none, the motion is
21 that GSA disclose the basis on which the
22 contracting officer determines that the prices

1 in each schedule contract are fair and
2 reasonable. Okay. All those in favor of the
3 motion raise your hand please.

4 (Show of hands.)

5 All those opposed?

6 (Show of hands.)

7 Okay. It appears the ayes have
8 it. The recommendation is adopted.

9 So just to kind of recount on
10 where we are, we seem to have come to
11 consensus on a recommendation that the Price
12 Reduction clause can be moved from services
13 contracts, that GSA with the consent and
14 active participation of the ordering agencies
15 desire a process that would allow ordering
16 agencies to collect and report purchasing
17 experiences of the buying activities including
18 quantity and quality considerations and price
19 and, thirdly, the GSA disclose the basis on
20 which the contracting officer determines that
21 the prices on each schedule contract is fair
22 and reasonable.

1 MR. CHVOTKIN: Mr. Chairman,
2 there's an important addition to the first
3 one. We also focused on the competition.

4 CHAIRMAN BRANCH: Sorry. Yes,
5 you're absolutely right. So price reduction
6 clause and the adoption of an 803 like process
7 to compete orders for that acquisition. Thank
8 you for bringing that to my attention. So I
9 think that is the sum and substance to this
10 point.

11 So I guess I would open it up to
12 say is there anything else that we would need
13 to build into this structure to support both
14 GSA in determining the response of price at
15 the contract level as well as assisting
16 ordering agencies in getting the best value
17 for the Government. Are there any other
18 recommendations we forgot to put forward for
19 services specifically?

20 MR. DRABKIN: I think we need to
21 at least or I need to ask a question and get
22 your answers. Are there services which

1 shouldn't be serviced in schedules?

2 MS. JONES: I think that services
3 that involve service contract -- and wage
4 determinations are difficult to price at a
5 national level.

6 MS. NELSON: In response to that,
7 I think that's being handled outside the scope
8 of this panel. There's currently a working
9 group being held through the Office of
10 Acquisition Management within FAS working on
11 a consistent policy on Pricing Service
12 Contract Act and Davis Bacon actually has an
13 RNA coming out. So that's actually being
14 dealt with outside the scope of this.

15 (Off the microphone comment.)

16 But I'm answering your particular
17 --

18 MR. DRABKIN: I mean, the reason I
19 asked the question is because we never asked
20 the question before. We just did it and stuff
21 grew and was added to it and never got --
22 Didn't Comp Base (phonetic) come talk to us?

1 Yes, they did and I know they've been back in
2 my office since then and I know that the A&E
3 community believes that A&E service is subject
4 to the Brooks Act (phonetic). They believe
5 either shouldn't be sold on the schedules or
6 should be sold in a different manner through
7 the schedules. As an example, I'm not saying
8 I agree with them. As a matter of fact, I
9 could say that I don't agree with them. But
10 that's another matter.

11 Should we be -- As we advise the
12 administrator to look at this issue, are there
13 services that GSA should disclose? I'm not
14 saying there are, but we didn't ask the
15 question before. And I'm also saying that's
16 my argument as well.

17 CHAIRMAN BRANCH: I will rephrase
18 your question. I'll answer a slightly
19 different question. I think any services that
20 are sold through the schedule have to have a
21 fairly definitive statement of words that call
22 out deliverables and, if possible, objective

1 criteria by which those deliverables will be
2 accepted.

3 I think one of the issues that we
4 get into with schedule contracts and IDIQs in
5 general is the elephant in the room. We want
6 to buy capacity in terms of human resources
7 but we are not always very, very good at
8 describing exactly what we want and I think
9 given the fact that the schedules are fairly
10 easy to use, that GSA had done a good deal of
11 due diligence of problems with respect to
12 responsibility of offerors, that compliance
13 with required terms and conditions as well as
14 signal pricing as I would call it, that we in
15 the ordering agencies have an obligation not
16 to abuse what they've done.

17 MS. NELSON: I would just note two
18 substantial exceptions to that, actually, the
19 full solicitation that represents acceptance
20 of that. Under the VA FSS program, there is
21 the medical services and that would be for
22 doctors and nurses. So they're really not --

1 They are actually people on standby often.

2 And the other is under the GSA
3 program, specifically under FAS. There is a
4 solicitation called the TAPS which is the
5 Temporary Administrative -- Okay. So those
6 two actually are literally for bodies for a
7 period of time. So there are those
8 exceptions.

9 CHAIRMAN BRANCH: Yes. And I
10 think that's a good point and those are
11 exceptions I think that are well recognized
12 and elaborate relations for very specific
13 reasons. TAPS would only advise you to work
14 eight months out of the 24-month period and
15 docs, you know, medical personnel, there's
16 clearly an element of personal accountability
17 that takes them out of the ambit against
18 nonpersonal services. But I think as best we
19 can we have an obligation to make it clear
20 that we expect all ordering agencies to follow
21 the policy of buying nonpersonal services
22 where the Government isn't directly

1 supervising, where we are looking for products
2 and deliverables and not effort in the context
3 of direct supervision of contract employees by
4 Federal personnel.

5 MR. PERRY: Thank you for the
6 thought-provoking proposition on -- and
7 strapping.

8 CHAIRMAN BRANCH: And the horse
9 you rode in on.

10 (Laughter.)

11 MR. PERRY: My experience and
12 granted I've only been out of school like a
13 year or so, but my experience is I don't think
14 -- We've never really had -- I've never seen
15 any issue with the services that were on the
16 schedule. We do probably have issues with how
17 they sort of have whatever the CLINs are
18 within the -- and the categories what gets
19 glommed into them and I personally don't know
20 how when you do the contract formation, it has
21 to be extremely complicated to try to come up
22 with justification based on the reasonableness

1 and some of the categories for the service,
2 the pricing, what that really represents.

3 For example, take the financial
4 services area. If you go into any of the sub-
5 CLINs you get into who has said they are in
6 those and I'll tell you that there are some
7 very distinct differences between the talent
8 and the skill sets that are on the table for
9 you to consider and there is no -- You can't -
10 - It's very hard to figure out what the
11 commonality is for consistency of the pricing
12 that comes to the table.

13 So if I were to make a
14 recommendation because I think it's a little
15 out of where we are right at this point.

16 PARTICIPANT: No, recommend it.

17 MR. PERRY: Then I would say GSA
18 should -- I think it is probably time to go
19 through some of those and either re-chunk them
20 up or re-categorize or in some cases delineate
21 more between some of those categories so you
22 have a better, I have to stay away from basis

1 and there are a bunch of words you have to
2 stay away from now, pricing that's within any
3 of those labor categories, for example, that
4 they're a little more consistent and are based
5 on the same, more similar, skill sets, in
6 particular, sectors that you could make a
7 better tradeoff comparison in the best value
8 versus what you have now which is sort of a
9 mishmash in many of the categories because
10 you've just been adding people because they
11 said one little piece might be a connection
12 and you add them in to give them a place to do
13 business within.

14 But when you're doing the
15 competition, the awards, it's not there.
16 They're off someplace else. So you have to go
17 through this process of trying to segregate
18 them and get rid of them or whatever the right
19 word is. But it's a lot of work to do that
20 and it seems to me we could work around
21 putting them in different or move them or
22 separate them or do something with them.

1 MS. NELSON: Glenn, as long as
2 we're here, can I ask a question?

3 MR. PERRY: Yes. You can ask, but
4 I don't know how you're going to answer.

5 MS. NELSON: No because you're
6 right there. So I want to know the answer or
7 I want to know an opinion. You're talking
8 about the labor categories that fall within
9 what you're referring to when you say sub-
10 CLINs or what we refer to as SINS. It's hard
11 to forget the word.

12 (Laughter.)

13 MS. SONDERMAN: I have a
14 recommendation also about that.

15 MS. NELSON: Okay. So I'm asking
16 now because I'm going yeah, yeah, yeah
17 recommend. Let's put the motion on the table.
18 You're talking about the labor categories or
19 fields of that labor category. Are you
20 talking about the distinction also of the
21 description of the SIN and what is available
22 under that SIN or only of the labor categories

1 that are available under that SIN?

2 MR. PERRY: Yes.

3 (Laughter.)

4 PARTICIPANT: Good job.

5 MR. PERRY: My answer is probably
6 both.

7 MS. NELSON: I have a motion.

8 CHAIRMAN BRANCH: Judith has a
9 motion.

10 MS. NELSON: No, Debra wanted to.

11 MS. SONDERMAN: I was just going
12 to recommend that we recommend a different
13 acronym because we have lots of opportunity to
14 SIN.

15 (Laughter.)

16 (Off the record comments.)

17 CHAIRMAN BRANCH: All right. Do
18 we have a recommendation around the table?

19 MS. NELSON: I would make a
20 recommendation that GSA or that all of the GSA
21 schedules that the SINS, the special item
22 number, description be dilated to be better

1 current to the market and the needs of our
2 Government customers in their descriptions and
3 I guess there's a subset of that for Glenn's
4 issue to see where or not those labor
5 categories which are being awarded under those
6 SINS would fit into the description of the
7 SINS.

8 MS. SCOTT: I would add forward-
9 looking.

10 MS. NELSON: Pardon?

11 MS. SCOTT: You said "current." I
12 would add forward-looking.

13 (Off the record discussion.)

14 CHAIRMAN BRANCH: Sorry. I only
15 caught part of that. I caught the first part
16 I think. So you're moving that we evaluate
17 SINS to see if they are consistent with
18 customer needs and market offerings. That's
19 the first piece.

20 And then the second piece I
21 missed. Could you restate that?

22 MS. NELSON: The second piece

1 would be if whether or not the labor
2 categories offered under those SINS are
3 consistent with the descriptions of those
4 SINS.

5 CHAIRMAN BRANCH: Okay. So to do
6 two things and is that a single motion or
7 would you care to -- Okay. So the
8 recommendation is to evaluate SINS to see that
9 they are consistent with customer needs and
10 market offerings as well as evaluating SINS to
11 determine whether the labor categories offered
12 under those SINS are consistent with the
13 descriptions of those labor categories.

14 MS. NELSON: The description of
15 the SINS.

16 CHAIRMAN BRANCH: I'm sorry. The
17 description of the SINS.

18 MS. NELSON: I think Lesa wanted
19 to say also that the SINS -- What did you say?

20 MS. SCOTT: Were forward-looking.

21 MS. NELSON: Were forward-looking,
22 not only current.

1 CHAIRMAN BRANCH: So continuously
2 evaluate, is that really what you're getting
3 at?

4 MS. SCOTT: As technology
5 converts, we need to be able to collapse and
6 rearrange those SINS much more expeditiously.

7 CHAIRMAN BRANCH: All right. So
8 we'll put the word "continuously" in front of
9 "evaluate."

10 MS. SONDERMAN: Maybe
11 "continuously" and " a lot."

12 CHAIRMAN BRANCH: "Periodically."

13 MS. SONDERMAN: So maybe right the
14 word "periodically."

15 CHAIRMAN BRANCH: All right.
16 "Periodically evaluate," is that --

17 MS. SONDERMAN: And I guess as I
18 recall from one of our early meeting we
19 actually got some data about which SINS had
20 awards against them and which didn't and there
21 were as I remember going through that very
22 detailed data a lot that had no awards at all.

1 So I think this point just reiterates the
2 point you're trying to make. Some of them are
3 just appear to be out-of-date and so it
4 appears that there is data available that
5 could help prioritize and guide that analysis.

6 MS. NELSON: It may also be
7 sometimes they're out-of-date or sometimes
8 everything glommed that gets glommed together
9 because the descriptions are out-of-date and
10 so it goes here because it's better than
11 there.

12 MS. SONDERMAN: Right.

13 MS. NELSON: And if the
14 description is more suitable --

15 MS. SONDERMAN: Like 0.99?

16 MS. NELSON: Yeah.

17 MS. JONES: Judith, is that
18 something that Acquisition Management can
19 handle internally? Should that be coming from
20 the panel?

21 MS. NELSON: The work would be
22 done, but I don't think that would be done

1 solely by Acquisition Management.

2 MS. JONES: Is it outside the
3 scope of the panel or what the panel --

4 MS. NELSON: To make a
5 recommendation? Elliot can put that to the
6 panel of whether or not it's procedurally out
7 of scope. Where it gets done within GSA if it
8 goes forward, everything within the entire
9 management doesn't land within the Office of
10 Acquisition Management.

11 MS. JONES: No, I mean --

12 CHAIRMAN BRANCH: One of our
13 working models has been to parse this into
14 services, goods, solutions as a subset of
15 services and if you recall when we set out a
16 plan of work we would also collect
17 recommendations that were related to, but not
18 necessarily within, the scope of panel.

19 So I would suggest that as we
20 craft the report, the real question is not
21 whether that's a good recommendation, but in
22 what section of the report it might belong.

1 So I would recommend that we keep that with
2 the understanding that as we compose the
3 report we made a determination as to whether
4 we believe that's directly pertinent to the
5 piece of the charter that addresses the price
6 reduction clause and pricing or whether that
7 is an issue that while not directly pertinent
8 is critically related to the work of the
9 panel.

10 Are folks comfortable with that
11 approach to the question?

12 (No verbal response.)

13 Okay. So we have a motion for
14 recommendation on the table. Mr. Chvotkin.

15 MR. CHVOTKIN: Thank you, Mr.
16 Chairman. I want to take this discussion up
17 a level to the schedules themselves because I
18 think simply looking at the special item
19 numbers -- We ought not just look at the
20 special item numbers, but GSA ought to do at
21 least a one time evaluation of what are the
22 current schedules across the board that have

1 continued relevance and value to the customer.
2 There may be some old schedules as Debra
3 alluded to that were created for a valid
4 reason years ago and have since lost their
5 vitality and simply looking at the SINS would
6 miss the opportunity to reevaluate the
7 schedules and to look at whether there is
8 quite honestly competition in the schedules.

9 And as was noted the Office of
10 Federal Procurement Policy back in June has
11 proposed the methodology for looking at
12 interagency contracting generally and looking
13 for duplication and overlap, I think this all
14 ought to be part of that comprehensive view
15 and I don't think it's a GSA unique task but
16 certainly a significant role for GSA to look
17 at the schedules and the other WACS and other
18 multiple award contracts that GSA manages.

19 Secondly, I want to be sure that
20 as your discussing be evaluating the labor
21 categories for consistency that we're talking
22 about, the consistency within the schedules,

1 and not looking at it as a compliance question
2 which ought to be dealt with somewhere else.
3 But this is really that the labor categories
4 that are listed in the special item numbers
5 match the description of the special item
6 numbers. But this is not when we're talking
7 about current and go for that is a different
8 evaluation than contract compliance evaluation
9 so that you agree with me that the goal here
10 is not to do a contract compliance but a
11 programmatic review.

12 MS. NELSON: I'm talking here
13 specifically about a programmatic review of
14 what our offerings are to our customers. A
15 compliance review would be on a contractor-by-
16 contractor basis that's currently being done
17 by the industrial operations analysts and that
18 is always ongoing. This is a programmatic
19 review which we have not done except for when
20 a specific center or portfolio would come in
21 with a request to alter a special item number
22 or add a special item number.

1 MR. CHVOTKIN: Judith, I
2 appreciate that. I thank you for that
3 clarification.

4 The last clarification I want to
5 be clear on, we had a discussion earlier and
6 we came to no resolution on it and properly so
7 this morning about the standard labor category
8 description and, just for my own mind, I'm not
9 yet ready to support creating standard labor
10 category descriptions. But I don't want -- I
11 don't interpret this recommendation of
12 evaluating the labor categories consistent
13 with the SINS as necessarily driving to
14 standardization of labor categories, though I
15 welcome that discussion. But I don't
16 interpret this action to compel creation of a
17 standard labor category within in any SIN or
18 within any schedule or across the schedules.
19 Is that a fair interpretation of the motion?

20 MR. PERRY: I wanted to ask if
21 there's standardization in.

22 MS. NELSON: Again, from my

1 perspective when I put the motion forward, no.
2 This was only a description of the SIN. As it
3 exists right now, there's generally a brief
4 description of the scope to be performed
5 within that SIN and then for the second part
6 that Glenn had pointed out and my
7 understanding was, when we take a look at what
8 type of labor categories are being awarded
9 under the SIN that they fall specifically
10 within the scope of the new description.

11 CHAIRMAN BRANCH: I guess there
12 are a couple of issues and I certainly
13 understand your second point as it relates to
14 the motion on the table. The first one is a
15 little broader. So do I hear a friendly
16 amendment to revise the motion on the table to
17 kind of bring out the level of that extraction
18 or should we consider that as a separate
19 recommendation?

20 (Off the record comments.)

21 MR. CHVOTKIN: If you want to
22 modify your motion, that would be great or

1 I'll help you, either way.

2 MR. PERRY: I think as far as the
3 motion I think it could be one at sort of a
4 cascade level down. It just could be handled
5 that way.

6 MS. NELSON: I would in the most
7 pleasant way ask to disagree. We had just
8 gone through at FAS an incredible exercise in
9 the area of security conversions. We over
10 multiple schedules and different contract
11 vehicles offered solutions to the government
12 buyer for areas of security and they cross
13 over several schedules, they cross over
14 several WACS and working to find what was the
15 best solution and how to bring those to the
16 government customer in the best manner was an
17 arduous task.

18 So I can say that it is not the
19 fastest and to revise SINs and look at how to
20 bring them closer up to date is a reasonable
21 task and can be done schedule by schedule
22 without some of the implications that come up

1 when you're talking about revising
2 solicitations and perhaps taking offices and
3 moving SINS across schedules.

4 When you start moving SINS across
5 schedules, there are incredible financial
6 issues and political with a small p issues.
7 So I really would segregate them as far as --

8 CHAIRMAN BRANCH: So what I'm
9 hearing from the person who offered that
10 motion that she would not accept a friendly
11 amendment to it. So I guess you're invited to
12 offer that as a separate recommendation and we
13 can take that up.

14 Any more discussion on the motion
15 as drafted?

16 (No verbal response.)

17 Hearing none, let's put the
18 recommendation to a vote. All those in favor
19 of a recommendation to evaluate SIN
20 descriptions to determine if they are
21 consistent with customer needs and market
22 offerings and that labor categories within

1 SINS be evaluated for consistency with the
2 item description raise their hands.

3 (Show of hands.)

4 Opposed?

5 (Shoe of hands.)

6 It appears that the ayes have it.

7 Mr. Chvotkin, would you like to
8 offer a motion that takes up the level of that
9 abstraction?

10 MR. CHVOTKIN: I'll take it up a
11 little. The abstraction, I want to take it up
12 a level of attention. I recommend that GSA
13 undertake a one time evaluation of the current
14 schedules to ensure their current reliance and
15 utility to the ordering agency or something
16 like that.

17 CHAIRMAN BRANCH: We have a motion
18 and we have a second.

19 (Off the record comment.)

20 Okay.

21 MR. CHVOTKIN: I move that GSA
22 undertake a one-time evaluation of the current

1 schedules to ensure their continued
2 applicability and relevance to the ordering
3 agencies or words to that effect. I just
4 scribbled it out. But my point here is to
5 take it up one level so that as we look at the
6 experience and the data that we've gotten from
7 GSA over the past couple of years there are a
8 large number of SINS and a large number of
9 schedules that have minimal value and I think
10 that that reflects the determination of the
11 buying activities that those schedules don't
12 provide much value to the ordering activities.
13 So simply looking at the subpart may miss the
14 larger picture.

15 You could align the moving, the
16 one that came to mind, I forget the whole
17 title of that schedule, but there didn't
18 appear to be any activity in that schedule
19 over the past three or four years. So having
20 perfect alignment of the SINS and the labor
21 categories underneath that seems to me to be
22 a waste of time because nobody is using it.

1 So I want to get up one level and
2 look at the continued vitality, viability,
3 application of each of those schedules and we
4 may find that the 80/20 rule applies in the
5 schedules. But if there is no current need,
6 no agencies have a present need or foresee a
7 future need, put it on the shelf. Don't waste
8 your time doing an evaluation that Judith was
9 talking about if nobody needs it.

10 MS. SONDERMAN: I think this gets
11 to the question -- This would help answer the
12 question that our esteemed colleague, Mr.
13 Drabkin, asked. Are there services that
14 shouldn't be or don't need to be on the
15 schedule?

16 (Off the record comment.)

17 CHAIRMAN BRANCH: I would offer a
18 friendly amendment to your motion which is
19 that GSA undertake a periodic evaluation
20 because we can do this once. But we know that
21 market spaces are dynamically changed almost
22 faster than our capability to absorb and this

1 is a product example. But if you had told
2 anybody even five years ago there would be a
3 robust federal demand for personal digital
4 assistance or Blackberries in the telecom
5 people would have looked at you like you were
6 crazy.

7 So to do this just once isn't
8 sufficient. I think the recommendation needs
9 to be to do this on a periodic basis to be a
10 method determined by the agency so that we
11 always have a set of fresh and relevant
12 services offerings to the federal market.

13 MS. THOMPSON: And could I make
14 one additional friendly amendment? Instead of
15 saying "evaluation" which implies that we
16 ourselves, GSA, would be conducting it. It's
17 more like a survey. We are looking external
18 to GSA to see what the needs are. So I see it
19 more as a survey than an evaluation per se.

20 CHAIRMAN BRANCH: So you've had
21 some suggestions on that.

22 MR. CHVOTKIN: Mr. Chairman, both

1 of them are friendly amendments and I
2 appreciate the spirit in which they were
3 offered from my esteemed colleagues and the
4 horse you rode in on.

5 (Laughter.)

6 But I would love to have it done
7 once and then the second time at some future.
8 Now I've put in there the single evaluation
9 only because I know that it will be an arduous
10 task not only for GSA but for the agencies and
11 I think having it done once there'll be some
12 lessons experienced. I was cautioned about
13 using lessons learned but I think there will
14 be some lessons experienced and there are
15 external factors.

16 Nonetheless, I think the concept
17 is absolutely right. These schedules need to
18 continue to maintain relevance in the
19 marketplace and so I accept the amendment on
20 periodic because I think it is from the
21 panel's perspective the right thing to do.
22 But the schedules need to continue to maintain

1 a market relevance.

2 As to the second amendment on the
3 evaluation, the change in the evaluation,
4 again I agree with the concept that this is a
5 participatory discussion. This is not a
6 unilateral GSA decision. But ultimately it is
7 GSA that owns the schedules and ultimately it
8 is GSA that is the agency that is responsible
9 for putting them in place and terminating them
10 when they no longer have that use.

11 So maybe if I could adopt it with
12 a modification that says, "GSA in consultation
13 with the ordering agencies" so that you
14 clearly solicit and seek their view. Survey
15 sounds sort of avoids decision making. I do
16 want some decisions to come out of this and so
17 if the evaluation is undertaken by GSA in
18 consultation with the ordering agencies it
19 would at least address the concern that your
20 properly raise and yours as well.

21 MS. SONDERMAN: I guess I would be
22 -- The problem with getting more specific is

1 that -- Well, anyway, we all know that. I am
2 quite sure that industry has quite a bit of
3 wisdom to inform on this topic as well. It's
4 not unusual for me certainly for businesses to
5 come to me with new services that they have to
6 offer or things that I don't know about and so
7 I think in trying to be forward-looking
8 there's some merit in not only consulting with
9 customers but in consulting with industry in
10 some way or another to see what's on the
11 horizon that we should be thinking about
12 setting up schedules for or other ways to help
13 customers.

14 MR. CHVOTKIN: I would certainly
15 accept that friendly amendment as well,
16 consultation with ordering federal agencies
17 and industry.

18 MS. NELSON: Trust me, Debra.
19 Industry knows everything. You should sit in
20 our office.

21 MS. SONDERMAN: I know.

22 MS. NELSON: There is one pilot

1 listed out of these 547 million that has a
2 designation that it is XYZ and it's not.

3 I want to get some clarification
4 as to what exactly that my esteemed colleague
5 is asking for because clearly it's not just to
6 find out whether or not sales are going
7 through the schedule because give me an hour
8 on my Blackberry and we can all get the answer
9 for the entire program and who is making the
10 sales and a little bit of time in Pat Brooks'
11 office and I can tell you that more agencies
12 are doing them, too. So that information, I
13 know that's not what you're looking for.
14 Right?

15 And the previous motion was
16 already to look at the SINS and if the SINS
17 are blah, blah, blah. So what I'm looking for
18 clarification when you're saying to evaluate
19 the actual schedules, I'm wondering if that
20 means that we're going to look and see whether
21 or not these lighting fixtures belong under
22 the 56 or the 51(b). Does that mean -- I want

1 a little bit more understanding of what it is
2 that you're asking for so that I understand
3 what it is I am voting for or not voting for.

4 MR. CHVOTKIN: I had not intended
5 that this be a movement within or that might
6 be an outcome but simply to take a step back
7 from the focus at the special item number and
8 look at the totality and GSA ask itself the
9 question, GSA ask the ordering agencies the
10 question and evaluate the input of industry
11 about whether the schedule itself and I'll
12 take the ludicrous.

13 Does Schedule 70 have continued
14 relevance in the marketplace today? Are there
15 agencies that want to acquire information
16 technology and are there vendors who want to
17 sell information technology to the Government?
18 If the answer is yes, decision over. It may
19 very well be that in professional
20 administrative services this is a growing
21 marketplace. Is that the right schedule for
22 GSA to be offering?

1 And then as you look at the two
2 dozen or so that have had minimal activity,
3 create a threshold question. Is that the kind
4 of service that the Government's continuing to
5 buy and that vendors want to continue to sell
6 when they have 82 vendors on a schedule with
7 zero sales over the past three or four years?
8 What is it about that schedule that's driving
9 no orders and no sales?

10 The industry is in marketing. The
11 agencies aren't buying that service anymore.
12 I don't mean to minimize the degree of
13 difficulty of the evaluation. But I think it
14 is a pretty high level kind of discussion
15 rather than looking to see whether the right
16 boxes are simply in the right schedule,
17 looking for something else.

18 MR. DRABKIN: Before I begin to
19 offer a friendly amendment, let me suggest
20 that if Alan's question were to be taken yet
21 one more step to ask, "Is this something that
22 really should be sold through the schedules

1 program as opposed to something which should
2 be done through open market through that
3 extended process that's set up?" It's another
4 question I think that we might ought to ask
5 and at least I want to put it out there before
6 I suggest it to you, Alan, as -- It's more
7 than just "Are there any sales?" There is an
8 economic question that should be asked and if
9 there are no sales or there are very few
10 sales, why should we spend your money because,
11 no your money, the other government's agencies
12 money in maintaining those schedules?

13 But then, secondly, I think from a
14 perspective of the fact that something could
15 be sold on the schedules does not mean to me
16 that it necessarily should be sold on the
17 schedules and there may be some services who
18 by their very nature we need to have a full
19 up, formal source selection. We need to use
20 the time to solicit all the sources that are
21 available and we need to go through that
22 extended process.

1 So if you think I'm the same area
2 where you are, then I would offer to you that
3 we amend yours to include that as one more
4 criteria to be applied against that test.

5 CHAIRMAN BRANCH: Let me interject
6 here for a minute because I think I can
7 articulate a couple of things that might help
8 illustrate what you intended with the motion.
9 Historically, somehow the typewriter repair
10 schedule died. How did we kill it and I think
11 that's to the question. And what Alan is
12 suggesting is we need to come up with a
13 structured process of looking at agency needs
14 and offerings in the marketplace to decide
15 when it is no longer in the interest of this
16 piece of the acquisition system to maintain
17 that as an offering. In other words, there's
18 no point for whatever reason in making a
19 market there.

20 Another example where you might
21 bear some fruit here is I look at the MOBIL
22 schedule and again turn to my own experience

1 as a contractor. We were in the acquisition
2 training and consulting business and VA. took
3 a lot of that load of the Defense agencies and
4 our particular market niche was to provide
5 those kinds of services, often customized,
6 often in a mass customized way, extensive
7 reuse of the material, to civilian agencies.
8 Until FAR started to come on line and enter
9 into agreements with VA. to provide standard,
10 clear training at which point those training
11 requirements migrated to Schedule 69 and out
12 of MOBIL. So again, another example is where
13 is the structured process to look at how the
14 market is changing, how customer needs are
15 changing and how we optimize the delivering of
16 value to both our commercial partners as well
17 as Federal agencies through the schedules. So
18 I'm thinking that's kind of what you were
19 thinking about as you offer things.

20 To David's point, I'm not sure we
21 need to go much past where Alan is simply
22 because if you decide that they're not a part

1 of the schedule program, then that sends a
2 signal to the contracting officer that he's
3 going to have to use some other method of
4 procurement, whether it be his own IDIQs,
5 whether it be a classic Part 15 or even a Part
6 14 solicitation and that what we really need
7 to do here is to send a clear message to the
8 administrator that criteria around this review
9 need to be developed and perhaps to suggest
10 some possible criteria such as relevance, such
11 as scope complexity and type of services and
12 so forth. But I think that's a conclusion
13 that's best reached by the GSA, industry and
14 its agency partner.

15 MR. DRABKIN: I'm glad I didn't
16 offer an amendment.

17 MR. CHVOTKIN: Mr. Chairman, if I
18 could address that? I think you actually
19 identified yet another function. I was taking
20 the current state that we know the 37
21 schedules and I would just like to take a look
22 at them. It's been one of the goals I know of

1 for the agency to do that. As part of the
2 task reorganization, there were
3 recommendations that Mr. Allen made to
4 collapse all schedules into one. I didn't
5 think that was a very good idea then. I still
6 don't.

7 But I think it makes some sense to
8 reevaluate what we have today. Your
9 suggestion, Mr. Chairman, is that, a good one,
10 in many cases GSA adds new schedules based on
11 making the market when the customer buying
12 trends and needs are such that they can fill
13 a void and I think that that's important that
14 GSA continue to be on the lookout for agency
15 buying behaviors and finding where they can
16 add value, where the schedule mechanism can
17 add value.

18 So I started out a one-time review
19 of just current state to a periodic review
20 because I think we need to agree that that
21 ought to be refreshed with buying activity and
22 industry involvement and mindful of the nature

1 of the friendly offer to also look at
2 maintaining this continued opportunity
3 evaluation. So I'm happy to accept this
4 amendment just with my own view that we're
5 going further and further down a continuum of
6 a review at the schedules level from where I
7 started 18 minutes ago.

8 CHAIRMAN BRANCH: Just for the
9 record, I'm not suggesting we amend that
10 statement. I'm good with that except to say
11 perhaps that the administrator needs to really
12 establish the criteria for this review. Again
13 I think we are probably stepping close to
14 starting to engineer the solution here and, if
15 anything, the only thing you really would need
16 to add to that is say, "You have to establish
17 some criteria for review."

18 But I think that's implicit in
19 your motion clearly. For them to do a review,
20 you have to have some standards and since GSA
21 owns the schedules, then they are the logical
22 ones to do that. So I'm fine with the

1 amendment or the recommendation as stated.

2 MR. CHVOTKIN: I'll renew the
3 motion that's on the board.

4 CHAIRMAN BRANCH: Further
5 discussion?

6 (No verbal response.)

7 Hearing none, we'll put the motion
8 to a vote. So the motion is to recommend that
9 GSA undertake a periodic review or periodic
10 evaluation and consultation of ordering
11 activities and industry of the current
12 schedules to determine their relevance to the
13 marketplace and determine their relevance to
14 the marketplace and their applicability to
15 meet agency needs.

16 Okay. All those in favor of the
17 recommendation.

18 (Show of hands.)

19 Opposed?

20 (Show of hands.)

21 Okay. It looks like the ayes have
22 it.

1 Anything else that we need to do
2 in this particular area? Do we have a fairly
3 good set of recommendations, Mr. Drabkin?

4 MR. DRABKIN: You say this almost
5 resignedly, sir, as well you should be.

6 I'm sorry Mr. Sharpe isn't here at
7 the moment to join me in this next level of
8 discussion but I believe Alan pointed out even
9 though he's not in favor of it that there may
10 be some reason for us to look at for purposes
11 of competition and pricing some
12 standardization of services, perhaps not all
13 of them, along a mil spec, fed spec type line
14 so that when we compete apples we can make
15 sure we're competing apples to apples.

16 I believe Tom in one of our
17 earlier sessions mentioned that when he was
18 with IBM that, in fact, they did that
19 themselves when they were buying things. They
20 defined what certain labor categories were and
21 had people bid to those labor categories, not
22 to their labor category which might be

1 somewhat different and for purposes of those
2 services which are commoditizable and there
3 are some that are in that environment that are
4 commoditizable.

5 MS. SONDERMAN: Is that a word,
6 David?

7 MR. DRABKIN: It is not a word. I
8 just made it up and it's added to Wikipedia
9 tonight. I don't have the wherewithal to
10 actually challenge it.

11 But I do think that we need to
12 have that discussion and GSA as the center, if
13 you will, of the sale of those kinds of
14 services which are commoditizable ought to be
15 directed to look at (1) how does one do that
16 and (2) either itself or by encouraging
17 industry to create in that area services which
18 are commoditizable descriptions which all
19 companies will bid to. Regarding of what they
20 call of what they have, they will bid to what
21 we say a systems engineer three years or a
22 senior systems engineer or a architect 2 or

1 whatever it is.

2 It's something for the Government
3 to take on and there's a responsibility to
4 maintain it. But it will allow us to get
5 head-to-head competition when we start talking
6 about this apples and oranges and everybody
7 uses it as an excuse for why they can't really
8 price what they're buying.

9 So I move that we recommend to GSA
10 that GSA undertake (1) a study to determine
11 that those services which are sort of similar
12 to commodities that they can be priced like
13 commodities (commoditizable) and then (2)
14 either itself or through cooperation with
15 industry define those categories so that (3)
16 they can price and offer those services on the
17 schedules program.

18 CHAIRMAN BRANCH: Do I hear a
19 second?

20 MS. SCOTT: Second.

21 CHAIRMAN BRANCH: All right.

22 Hearing a second, the motion is on the table.

1 I have a feeling that this is going to be a
2 very rich discussion and as it is 20 minutes
3 after two why don't I suggest before we embark
4 on it that we take a 15 minute break so folks
5 can get comfortable for what I'm sure is not
6 going to be an easy issue. So let's be back
7 at 2:35 p.m. Off the record.

8 (Whereupon, a short recess was
9 taken.)

10 CHAIRMAN BRANCH: On the record.
11 If we can get started. Let me propose we're
12 getting late in the day. We do have a Monday
13 meeting scheduled hopefully to wrap this area.
14 So that will be the plan. So let me recommend
15 that this is the last recommendation we'll
16 deliberate on today with the goal to either
17 reaching a quick consensus on it or the
18 understanding that we may need to meditate on
19 this one over the weekend and come up and pick
20 up on Monday.

21 So since we've now gotten them
22 strung around the outside, I'll ask Pat to

1 read the motion back.

2 MS. BROOKS: The last one that I
3 captured was the one --

4 CHAIRMAN BRANCH: This was the one
5 I think on the standard rate card.

6 MS. BROOKS: I didn't capture the
7 one that David --

8 CHAIRMAN BRANCH: Yes.

9 MR. DRABKIN: You didn't capture
10 it?

11 CHAIRMAN BRANCH: Mr. Drabkin,
12 could I ask you to restate the motion?

13 MR. CHVOTKIN: David, can I help
14 on that?

15 MR. DRABKIN: Please.

16 (Off the record comments.)

17 MR. CHVOTKIN: That GSA undertake
18 a study of services similar to commodities so
19 as to (1) define those categories where
20 commoditization of pricing is possible. There
21 was a second element that I didn't capture and
22 a third is to base the price and offer on

1 those standard prices.

2 MR. DRABKIN: The first was to
3 determine services that are sold in the
4 marketplace in a manner similar to
5 commodities. The second was to work with
6 either internally or in conjunction with
7 industry or to get industry to define a
8 standard set of services of these commodities,
9 the word I used, commoditizable services. And
10 then the third was what Alan said.

11 MR. CHVOTKIN: The pricing offer.

12 MR. DRABKIN: The pricing offer so
13 that you have apples to apples comparison when
14 you're doing a competition for this segment of
15 the service marketplace and by example which
16 I did not offer but I offer now only because
17 my colleague to the left suggested one that
18 came right away to mind help desk services
19 have become so similar in nature that one
20 might argue you could sell them by the hour as
21 a commodity as opposed to buying the
22 individual labor rates that might make up a

1 help desk.

2 Similarly, there may be the
3 capability in certain IT worlds to define what
4 a systems engineer is and price that systems
5 engineer across the industry giving deference
6 to locality issues, but I'm talking about the
7 actual definition of what a senior systems
8 engineer is and then price senior systems
9 engineer by way of example.

10 CHAIRMAN BRANCH: All right.

11 Discussion on that?

12 (No verbal response.)

13 I guess I will start then.

14 I guess I have some problems,
15 fundamental problems, with this idea and it
16 goes first of all to the idea that we
17 expressed when we worked the criteria perfect
18 competition that all firms sell identical
19 product. Well, I'll draw an analogy here.

20 Mr. Allen and I may both be
21 golfers and charitably classified as such, but
22 neither of us are in Kentucky right now

1 playing in the Ryder Cup and there is a reason
2 for that. Because our technique as golfers is
3 not as sufficiently high level to provide
4 excellence. I think when we commoditize
5 services, (1) we send mixed signals which are
6 counter to the law of the land in which
7 Congress established a very strong and clear
8 preference for performance-based services. We
9 enable essentially our agencies to walk away
10 from that mandate.

11 Secondly, my concern is that when
12 we commoditize things, we drive our industry
13 intertakers. If there is a commodity and it's
14 all about price, then those people who can
15 bring those leaps in innovation, those leaps
16 in technology, those leaps in methods and
17 matters of performance, will walk away from us
18 because this is not an area in which they get
19 a sufficient return on investment.

20 I think some of the feedback that
21 I as if you will the advocate for SEAPORT here
22 is a trumpet because while SEAPORT has been of

1 great benefit to us in obtaining the types of
2 services that one would call routine and then
3 extremely efficient set of rates, some of the
4 feedback I'm starting to hear from industry
5 and I think that this is probably an issue
6 that should be open for discussion in doing
7 that when we try to do more complex work on
8 SEAPORT that business model allows for a fair
9 return.

10 So my concern here is that as we
11 drive to commodization --

12 MS. THOMPSON: Could you repeat
13 the business model?

14 CHAIRMAN BRANCH: Yes, whether
15 that's a business model for that type of
16 services. I mean, I will certainly allow that
17 there are some services as we buy them at a
18 critical mass you can say these are almost
19 commoditized. But my fear is when you do that
20 you drive the innovation in that particular
21 sector out of the sector.

22 MR. DRABKIN: And I agree with you

1 actually about the possible consequences. But
2 given that we buy services that are centrally
3 employees even though I know we're all
4 prohibited from buying personal services and
5 you pointed out to me that the Navy doesn't do
6 that, but I suspect I can go under any major
7 program office in the Navy or for that matter
8 any agency in Government and I will find a
9 host of different people doing essentially the
10 same function who are not being purchased on
11 a performance base who are essentially being
12 purchased as employees and we are pricing them
13 on a material basis and we are not getting
14 competition on what it is they do and it is to
15 that sector of this broad market that I would
16 think our initial focus would turn.

17 It is true that we are all
18 committed to moving to performance-based
19 services, but that presumes that the services
20 we buy are nonpersonal in nature and to the
21 extent that we are going to continue to buy
22 personal services and we are, then I think in

1 that arena to get competition which is what I
2 think we would want to be studied of what
3 services are more commoditizable the
4 administrative assistant who sits outside the
5 program manager's office is a commoditizable
6 service. What they do is they answer
7 telephones and make copies. They run a
8 calendar. They do some other things and when
9 I compete for those things I ought to have a
10 head-to-head competition for those services
11 and not have multiple different descriptions
12 and try to figure out how do I get to a
13 competitive price amongst them.

14 So while I accept what you say in
15 a world in which we buy nonpersonal services
16 and I agree that our goal should be to get to
17 performance base and I propose we'll not get
18 to there, reality of our world is we buy many,
19 many services that are personal and that are
20 commoditizable and we need to be able to price
21 those in the real world in a head-to-head
22 competition.

1 CHAIRMAN BRANCH: Judith and then
2 Larry.

3 MS. NELSON: Well, I am going to
4 go -- it's funny that you use the example of
5 an administrative assistant. That one I can
6 easily take exception to because on schedules
7 there's only two ways to buy them. One is on
8 TAPS which has very limited time and the
9 second would be through a service contract
10 unless they are mislabeled or you're buying
11 them outside of scope. But if you're misusing
12 the vehicle that's a different issue. But to
13 use the vehicles correctly, those are the
14 only two ways to be had.

15 I used to say when I was on the
16 industry side of the world that in some ways
17 it's the way that the schedules are set up
18 through the various different vehicles in
19 being divided between a FABS and a MOBIL and
20 a Log World or something like that because
21 they have distinct scopes where either the
22 scopes within the distinct SINS within one

1 solicitation that GSA had created an
2 artificial environment. We're sort of the UN
3 of scopes. You are now a nation here and you
4 are a nation here because it is not
5 necessarily the way that business is conducted
6 in the commercial world.

7 If I am a commercial vendor, I
8 provide those financial assistants, project
9 management assistants, IT assistants and I
10 don't necessarily have different units within
11 my company to do that and it turns out that
12 the customer in order to accomplish a project
13 or a goal needs often all of those things to
14 get it done. But to do that through a
15 schedule, I have to use this schedule, that
16 schedule, team this schedule and it's often a
17 very convoluted way in order to get it done
18 which is sometimes why Mr. Perry when looking
19 at a SIN will find these very bizarre looking
20 labor categories in order to jimmy things in
21 and get things done which is not necessarily
22 the best way but sometimes the only way to get

1 things done.

2 I say all of this to get around to
3 David's suggestion about commoditizer, if you
4 would, standardized labor category
5 descriptions which I believe goes exactly to
6 the same thing. When you start to standardize
7 against what is done already by the vendor
8 supplying the solution and the customer buying
9 the solution you are creating an artificial
10 world that doesn't exist for either the
11 supplier or the customer and it is neither
12 world. And in the end what you have is not a
13 good solution and something that everybody
14 needs to work around creating a more complex
15 situation that everyone needs to work around
16 in order to meet their needs rather than
17 creating a situation that helps everyone meet
18 their needs.

19 In addition to which, I think that
20 the premise of much of our discussion for some
21 of us at least, I don't want to presume what
22 everybody's premise has been, is that for

1 solutions a great deal of the large buys, not
2 the \$100,000 buys, not the \$150,000 buys, but
3 the large buys under the services have been
4 for solutions. Now a solution is going to
5 take into account not just how many bodies did
6 I buy. Tom Essig spoke about this last time
7 he was here when the OIG was here, GSA's OIG
8 was here. Is the amount of labor hours I buy?
9 Is it the price of each body that I buy? Or
10 is it the quality of what I get at the end of
11 the day? Is it five people? Is it five
12 hours? Or is it getting the solution done and
13 that's sort of the whole notion of the PBA.
14 We don't want to take that out of the hands of
15 the CO or the COTR to be able to figure out
16 how to get the job done. What is the best
17 solution in that acquisition --

18 And we don't want to -- I think
19 that comparing apples to apples or apples to
20 oranges at the end of the day even though I
21 know what a project manager is and they say
22 that they're the same thing and they're always

1 going to be \$155 an hour what I need to buy,
2 the solution I need to buy, the scope, the mix
3 of labor categories, and then what I'm going
4 to add in the mix of products that I need to
5 buy to go along with it, almost having this
6 description is going to be irrelevant to the
7 price that I want to put together. So it's
8 not really a head-to-head competition as David
9 had described it.

10 My biggest concern aside from
11 actually which I hadn't thought about which
12 Elliot brought up as the innovation is that
13 you're creating an artificial world which is
14 not what the buyer wants. It's not what the
15 industry has and it will evolve into something
16 that everyone uses to get around rather than
17 something that everybody uses as a tool.

18 CHAIRMAN BRANCH: I think Larry
19 and then Lesa.

20 MR. ALLEN: I agree with what you
21 have just said. I think that I understand
22 that the frustration with doing business in a

1 services world like this. I really do. But
2 I also believe in the same breath that this is
3 an issue that is transcendent of the multiple
4 award schedule program. This has to be an
5 issue I would imagine in buying services
6 anywhere in government or at least a lot of
7 places.

8 The schedule program is based on
9 commercial like and commercial activities and
10 commoditizing and standardizing service
11 categories is not really a commercial
12 practice. My concern is if you get that then
13 the next thing we hear is that services on
14 schedule aren't commercial. Therefore, we
15 need to take services off and this is a very
16 popular way for federal agencies to meet their
17 services-based needs. So I want to avoid us
18 going there.

19 Judith also mentioned and Elliot
20 mentioned the innovation factor. Industry is
21 constantly coming up with new service
22 categories involving commercial needs, ergo

1 any standardization attempt I think would
2 always be a value behind. This gets into
3 Judith's point a little bit that people will
4 then find some way to get around or through an
5 artificial classification in order to get what
6 they need and that alone begs a situation
7 where you have a headline reading "Federal
8 Buyers Not Following Service Purchasing
9 Guidelines" not "Services Purchasing
10 Guidelines Make No Sense to Begin With" or
11 ill-advised to begin with. You know run into
12 the situation where you're setting up a
13 construct that is destined to cause more
14 problems than you had intended them to.

15 So I think that we're better
16 letting the commercial market decide what the
17 services categories are, allowing contracting
18 officers to make decisions based on what their
19 actual need is, allowing for the continued
20 evolution of services in their arena and
21 looking for ways -- I'm all in favor and I
22 think the only resolutions that we have to get

1 us there I'm all in favor of providing
2 guidance to agencies and ensuring that we keep
3 SINs structures robust, schedule offerings
4 robust. I think those make sense to do. But
5 I think that trying to commoditize and
6 standardize services is a -- While I
7 understand the frustration, I think this is a
8 method that will ultimately not get you where
9 you want to go and will cause a lot of
10 headache in the interim.

11 CHAIRMAN BRANCH: Ms. Scott.

12 MS. SCOTT: I absolutely
13 understand your concerns. I offer as a
14 counter to that there are places and times
15 where we are being approached that say we are,
16 I'm not going to use the word `commoditizing',
17 I'm going to use the product, turning services
18 into a product such as network printers and
19 let's make the assumption that you have five
20 network printers and you go out and say, "I'm
21 buying five network printers." Automatically
22 implicit in that price for that product is X

1 number of hours of maintenance. Instead of
2 having to go out and buy five printers plus
3 extra maintenance on a time and material
4 basis, it comes to me and David has used the
5 word "commoditized" as for every five printers
6 you get implicit in that X amount of service
7 and we don't have to actually go out there and
8 evaluate it separately. So those places and
9 times where it had been done or it is being
10 done, I would like just to have the option to
11 recognize those and capture that, not to make
12 it happen but to have the flexibility to
13 recognize it when it does exist and to be able
14 to capture it and convert it into a product
15 line as opposed to having to go out and
16 constantly redefine a service that's clearly
17 already out there and practiced in a product
18 fashion routinely now such as help desks are
19 now coming in as a fairly standard kind of a
20 package. It's so many people and so many
21 hours and you get such level of service and
22 tiers and then it's performance-based. You're

1 going to get this level of performance and if
2 you're not, you're going to incentives and
3 disincentives and at that point you're not
4 buying the individual work labor category.
5 You're buying it as a product and behind the
6 scenes it's built up by X number of people
7 doing Y number of phone calls.

8 CHAIRMAN BRANCH: Judith and then
9 I'm going to insert myself into here.

10 MS. NELSON: Lesa, we can talk
11 about it offline, but actually the schedules
12 allows that we be able to do that already and
13 we can talk about some examples and some ways
14 in which you can structure that for multiple
15 type services like that.

16 I want to give you an example or
17 the panel a couple of examples to think about
18 that represent some problems when you try and
19 standardize the labor categories. First of
20 all, if you're trying to standardize on the
21 labor category, of course comes the pricing
22 behind that. So, for example, let's say

1 you're talking about a subject matter expert
2 in whatever and you have one subject matter
3 expert who you take it and you say this is the
4 subject matter expert in whatever and the
5 description is must have a PhD, must have 20
6 years experience and the functional
7 description is YZX and so the price along with
8 this is \$300 an hour or that's what somebody
9 proposes is \$300 an hour.

10 Now that could be -- What is that
11 now? The baseline. We say that's the minimum
12 requirement. But it turns out that in San
13 Francisco to retain this kind of person, he's
14 being highly sought after in San Francisco,
15 and to retain that person it's much more
16 difficult or let's say that person is only 25
17 years old and he's got all of this stuff going
18 for him. So he has more than that.

19 In other words, when you get into
20 the real world, there's an ivory tower of what
21 this should be. But when you get into the
22 real world, industry doesn't function

1 according to like a set. We would love it to
2 work like this, but when you get into the real
3 world you need to retain these people, what
4 costs accompanied to living in Dade, Florida.,
5 that's my best example because they have the
6 lowest rates in the world or in the country,
7 hat it costs to own this person, retain this
8 person, in Dade, Florida versus what it costs
9 to retain this person in Seattle are very,
10 very different. But then you are based on
11 this labor category description going to put
12 them in a head-to-head competition and that
13 becomes a big problem.

14 Another thing about these
15 descriptions and going to Larry's thing about
16 the government rate card or the government
17 description card lagging behind is I can
18 remember years ago just having apoplectic fits
19 not only on the industry side but on the
20 government side because those who would
21 negotiate for a interpreter, sign language
22 interpreter, who had security clearance, very

1 high level security clearance. The only
2 problem was could not be indicated. So you
3 think that has greater -- It costs more,
4 right? Higher price than someone who didn't.
5 But because of regulations, the way things
6 were set up, you could not indicate on the
7 price list that this person had security
8 clearance.

9 Okay. Now Day 1 you write these
10 descriptions and the description says that X
11 or Y or Z and so now you're negotiating.
12 Three days later, there's a different meaning
13 in the labor category description. Who keeps
14 up with this? In other words, how do you
15 manage this set of descriptions that you come
16 up?

17 So I have significant issues with
18 this.

19 CHAIRMAN BRANCH: I understand
20 what Dave is saying. There is a reality out
21 there that we have been given conflicting
22 mandates by our board of directors with

1 respect to how we buy people. But I guess
2 philosophically I do not believe we should use
3 the schedules to enable behavior that runs
4 clearly counter to public policy even if it
5 doesn't run counter to the reality.

6 Secondly, as I listen to this
7 conversation, maybe the energy shouldn't be
8 around standard labor categories. Maybe the
9 energy should be around standard work packages
10 and I think, for example, to my world where we
11 do overhaul and conversion of ships all the
12 time and we have something we call "a ship
13 work breakdown structure" and when we go do
14 repair, when we go do alternation and
15 maintenance of those, we say, "This is the
16 work package."

17 Now we know that that work package
18 is going to consist of a certain set of skills
19 to accomplish the work. We also know that
20 depending on how the companies manage their
21 workforce they may indeed be able to seal a
22 cost advantage.

1 So let's talk about the
2 receptionist we're only supposed to buy on the
3 temporary help schedule. What's the objective
4 there? The objective there is really to
5 maintain the efficient operation of a front
6 office or whatever, to respond to certain
7 calls, to respond to correspondence, to do
8 this, that or the other. As long as the
9 objectives are met and there are met within a
10 set of necessary conditions, do we really care
11 how the contractor staffs that solution? I
12 would submit to you not.

13 I would also submit to you that
14 that work package could possibly be
15 standardized across government, that maybe
16 what we ought to look at is not
17 standardization of labor categories, but we
18 ought to do some task analysis and say, "You
19 know, if you want to buy a solution in this
20 space, here are a set of standard tasks that
21 you can pull from and put in your statement of
22 work" and those are what get priced as opposed

1 to standard labor categories. So then the
2 comparison is apples to apples because the
3 agency is exercising their judgment and they
4 are saying "For this standard work item I am
5 convinced I get a better value from this
6 vendor who has resourced that and approached
7 that technically this way as opposed to this
8 vendor this way." So I would propose that we
9 maybe focus on standard work items rather than
10 standard labor categories.

11 MR. DRABKIN: And if we were
12 talking about those circumstances where we
13 were either buying on a cost type basis, a
14 true cost type basis, or a fixed price type
15 basis I would be right with you. My motion
16 addresses these where we're buying on T&M.

17 And to address first Larry's
18 comments about the rate card not being a
19 commercial practice, however, he does
20 represent the commercial industry, that is not
21 what I heard when I was on the 1423 panel nor
22 is what I heard from one of our colleagues who

1 came from a commercial company where they
2 required rate cards. So I'm not at all sure
3 it's not a commercial practice when they are
4 buying from each other and trying to
5 standardize it, but, more importantly, whether
6 it is or is not.

7 The question really becomes when
8 you're buying time and materials, not when
9 you're trying to get a fixed price which we
10 all would like to get and when you are
11 comparing in a time and materials quote, one
12 group people versus another group of people,
13 the way we currently provide for that pricing
14 we have no way of knowing that the people
15 being compared and their respective offers
16 have, say, competencies and skills, have the
17 same levels of experience. All we know is
18 that one company calls them X and another
19 company calls them X+1 or X times 2. And that
20 doesn't allow you to really do a price
21 comparison if you're really doing a price
22 comparison on a time and materials contract.

1 I fully subscribe to where I'd
2 like to be as fixed price. It clearly doesn't
3 apply to solutions because in the end when you
4 buy a solution, you buy the solution. How the
5 contractor gets to the solution not really any
6 of my business, although there's a confidence
7 issue. But I leave it up to them. I'm
8 talking about when you're just buying butts
9 and seats and you're trying to have a
10 competition on a butts and seats contract.
11 How do you do that if you don't start with the
12 premise that you're competing an apple to an
13 apple so you know whether \$1.50 is a good
14 price and someone else's \$1.55 is a bad price.
15 That's all I'm talking about.

16 CHAIRMAN BRANCH: Let me suggest
17 that we have to separate a couple issues here,
18 David. So one is the issue of evaluation and
19 the other is the issue of contract pricing.
20 I would submit to you that I could get to
21 disparate estimates for a standard piece of
22 work. I could evaluate the risk inherent in

1 those estimates. I could make a best value
2 judgment and then when I structure pricing I
3 could do that on a time and material basis and
4 I would be no worse off than when I'm on a
5 cost reimbursement basis.

6 So if Offeror A says, "I can do
7 this for you and I can do this for you with
8 this grade of labor, but because of their
9 experience level, it's going to take this many
10 hours." And Offeror B says, "I'm going to
11 offer you much more upscale labor and because
12 I'm offering you much more upscale labor, it's
13 going to take you fewer hours" and I decide to
14 go with Offeror B. I evaluate that as the
15 best value solution and when I structure the
16 order, I buy those labor categories at those
17 labor hours on a not-to-exceed basis and
18 that's essentially not any different than what
19 I do on a cost reimbursement contract except
20 for that I take the risk of having to pay
21 additional profit at T&M.

22 MR. DRABKIN: And to the extent,

1 Elliot, that we have every buyer in the
2 government be you, that would be great. But
3 the truth of the matter is we don't. They're
4 in a big hurry. They're doing T&M. They're
5 comparing a quote to quote and they're not
6 doing an analysis. They're not doing the Brad
7 review. They're not treating it as if it
8 would be a fixed price and in the end even
9 though they're going to pay a T&M. And so to
10 help them get to a comparison, we need to have
11 a basis for doing an apple-to-apple bake-off
12 on price.

13 CHAIRMAN BRANCH: I guess I'm
14 going to have to respectfully disagree because
15 shame on us because that's a leadership issue.
16 If we were to construct policy to direct our
17 folks to engage in a different way of
18 evaluation, that is on the senior leaders of
19 the community. If we're not willing to do
20 that, shame on us.

21 MR. DRABKIN: No, Elliot. It's a
22 workforce issue and it's a reality of the

1 workforce we have and you and I can sit and
2 you and I agree actually on this issue. We
3 don't have enough people to do the work. They
4 use T&M as a shortcut in many cases to get
5 there and if that's going to happen and if we
6 can't stop it by being either more effective
7 leaders and getting more resources then we
8 need to at least set the pricing and the
9 competition rules so that the taxpayers have
10 a fair shot at getting a good price at the end
11 of the day and that's what I'm worried about
12 and it's a small segment of the whole
13 marketplace but it's a collective segment
14 nonetheless.

15 Anyway, you and I shouldn't have a
16 colloquy about it.

17 CHAIRMAN BRANCH: Absolutely.

18 MR. DRABKIN: It may be
19 appropriate to vote on it so that you can vote
20 now and I can go home.

21 CHAIRMAN BRANCH: Other discussion
22 on this motion?

1 (No verbal response.)

2 Hearing none, we'll put the motion
3 to a vote. The motion is to undertake the
4 study to determine whether services sold in
5 the marketplace that are similar to
6 commodities can be standardized and set up as
7 commoditized services. So all those in
8 support of the recommendation signify by
9 raising their hands.

10 (Show of hands.)

11 All those opposed?

12 (Show of hands.)

13 The motion fails.

14 Okay. We are about 3:15 p.m. now
15 and I don't want to belabor this, but I would
16 like to thank my colleagues on the panel for
17 what I think was a pretty good and significant
18 piece of work today. I think we've covered a
19 lot of ground and done so with good
20 deliberation. It's given an airing to the
21 issues.

22 So I think here's the plan. We

1 have a set of recommendations on services. I
2 think we would be remiss since we rolled
3 solutions into this particular aspect if we
4 did not come back and spend some time on
5 examining whether there are peculiar issues
6 with respect to solutions that we need to
7 address in our recommendations. So what I'd
8 like to do is I'd like folks to first of all
9 go off and have a good weekend, but while you
10 are doing that to consider (a) if there are
11 any other recommendations we want to make
12 specifically with respect to services and (b)
13 whether there are peculiar issues that must be
14 addressed when we are talking about the blend
15 of services and goods into a solution set.

16 So, with that, I think we're
17 adjourned for the day. We will be back at
18 8:00 a.m. on Monday morning. Thank you. Off
19 the record.

20 (Whereupon, at 3:15 p.m., the
21 above-entitled matter was concluded.)
22

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