

# REPORT OF THE ACQUISITION ADVISORY PANEL

to the Office of Federal Procurement Policy  
and the United States Congress

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## Preface

The Acquisition Advisory Panel (“the Panel”) was authorized by Section 1423 of the Services Acquisition Reform Act of 2003, which was enacted as part of the National Defense Authorization Act for Fiscal Year 2004.<sup>1</sup>

By statute, the Panel was tasked with reviewing laws, regulations, and government-wide acquisition policies “regarding the use of commercial practices, performance-based contracting, the performance of acquisition functions across agency lines of responsibility, and the use of Government-wide contracts.”<sup>2</sup> The Panel was tasked to “review all Federal acquisition laws and regulations, and, to the extent practicable, government-wide acquisition policies, with a view toward ensuring effective and appropriate use of commercial practices and performance-based contracting.”<sup>3</sup> The Panel was requested to recommend changes that are necessary to: (A) “protect the best interests” of the government; (B) “ensure the continuing financial and ethical integrity of acquisitions by “the government; and (C) “amend or eliminate any provisions in such laws, regulations, or policies that are unnecessary for the effective, efficient, and fair award and administration of contracts for the acquisition” by the government of goods and services.<sup>4</sup> Originally, the Panel was to submit its Report to the Administrator of the Office of Federal Procurement Policy (“OFPP”) at the end of a year. That period was later extended by the FY 2006 DoD Authorization Act.

The appointment of the Panel members was completed and the 14 Panel members sworn in on February 9, 2005. The Chair immediately appointed five Working Groups to begin a study of the laws, regulations and policies affecting the areas of focus called out in the statute, as well as two cross-cutting working groups, as follows: Commercial Practices, Interagency Contracting, Performance Based Contracting, Small Business, and Federal Acquisition Workforce. In mid-2005, another Working Group was appointed to examine the Appropriate Role of Contractors Supporting the Government. The working groups consisted of two to five Panel members each (with many Panel members serving on multiple groups) who studied the issues and then made detailed presentations, including proposed findings and recommendations, to the full Panel.<sup>5</sup>

The Panel held 31 public meetings over the course of 18 months. In its effort to assess current commercial practices, use of performance-based contracting, use of interagency contracts, and their implications for small business, the acquisition workforce, and contractors supporting the government, the Panel received testimony from more than 100 witnesses during the public meetings. More than 85 organizations or groups from industry and government appeared before the panel. The meeting transcripts comprise roughly 7,500 pages.

The Panel also solicited and received input from the public via the Internet. The Panel received and reviewed 54 written submissions from interested groups and individuals.

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<sup>1</sup> Pub. L. No. 108-136, 117 Stat. 1663 (2003).

<sup>2</sup> *Id.*, sec. 1423(a).

<sup>3</sup> *Id.*, sec. 1432(c)(1).

<sup>4</sup> *Id.*, sec. 1423(c)(2).

<sup>5</sup> The Panel’s activities are subject to the Federal Advisory Committee Act (Pub. L. No. 92-463, as amended), which requires that the Panel’s meetings be open to the public.

The Panel's Working Groups met regularly over the 18 month period, most of them holding over 30 meetings. The Panel determined that it would take a 360-degree view of the acquisition process, with the recognition that our recommendations potentially would have an effect on multiple aspects of the process. The Panel also took the view early on that there were no privileged perspectives—it performed a thorough analysis in each area of inquiry.

The research and analysis by the Working Groups was the foundation for the Panel's work, and the findings and recommendations reflected in this Report. The Working Groups reviewed laws, legislative histories, regulations, and policy documents, as well as virtually all available reports by the agency Inspectors General, the Government Accountability Office ("GAO"), and other commissions, as well as academic research and articles in these areas. The Working Groups published their draft findings and recommendations on the Panel's website for public analysis and comment and made periodic presentations to the Panel during public meetings, where their research, findings, and proposals were discussed and debated at length. The Working Groups provided essential information and differing viewpoints for the Panel's deliberations.

A word is in order about constraints. This Panel was given 18 months to complete its substantive work. No appropriations for the Panel were authorized. The Panel had one permanent professional staff member, the Executive Director. GSA and the Director of Defense Procurement and Acquisition Policy periodically provided temporary staff to support the Panel's activities. Most of the Panel members were supported by staff from their own companies or organizations, several of whom devoted substantial hours to the Panel's work and completion of this Report, and whose work is gratefully recognized and acknowledged. That said, the work of this Panel is the work of its members. The Panel members performed the research and analysis. They sat through days of Working Group and Panel meetings. They debated, discussed and deliberated at length over these findings and recommendations, and they are responsible for this Report.

All of the findings and recommendations in this Report are the product of a deliberative process and were adopted by the Panel by majority vote in public meetings. Each Panel Member had the opportunity to present and discuss his or her views and proposals at length during the Panel's deliberations. While each Panel member does not necessarily agree with every aspect of the discussion in the final Report, the Panel as a whole is in agreement with the approach taken in this Report.