

UNITED STATES OF AMERICA

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GENERAL SERVICES ADMINISTRATION

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MULTIPLE AWARD SCHEDULE ADVISORY COMMITTEE

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MEETING

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Monday, November 10, 2008

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The meeting came to order at 9:00 a.m.
in Ballroom II of the Washington Court Hotel,
525 New Jersey Ave, NW, Washington, DC.
Elliott Branch, Chairman, presiding.

PRESENT:

ELLIOTT BRANCH	CHAIRMAN
ALAN CHVOTKIN	MEMBER
DAVID DRABKIN	MEMBER
DON ERICKSON	MEMBER
THOMAS ESSIG	MEMBER
JANUARY FRYE	MEMBER
JACQUELINE JONES	MEMBER
JUDITH NELSON	MEMBER
GLENN PERRY	MEMBER
LESA SCOTT	MEMBER
TOM SHARPE	MEMBER
DEBRA SONDERMAN	MEMBER
PAT BROOKS	DESIGNATED FEDERAL

OFFICIAL

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

2 MS. BROOKS: Good morning,
3 everyone. We are going to get started with
4 this morning's meeting. I just remind
5 everyone to turn off cell phones and pagers.

6 There is material on the table, as
7 you walk out to your right. For the panel
8 members, there's one set of material that I
9 put in front of you this morning. That was
10 new. The other material is the same thing that
11 we had for the October 27 meeting.

12 During breaks, the bathrooms are
13 out the door, also to your right. During
14 lunch, there is a restaurant on one of the
15 upper levels, but you're also just a couple of
16 blocks over from Union Station.

17 Any questions? Okay, then I'm
18 going to turn to Elliott.

19 MR. BRANCH: Thank you, Pat. Good
20 morning, everyone. I think we're probably
21 heading down the home-stretch here. We did
22 some very, very good work on products and

1 services, and I think we've come up with a set
2 of recommendations that were arrived at by
3 consensus that we can submit to the
4 administrator in the near future.

5 We have a meeting scheduled today,
6 as well as one scheduled on Wednesday, and my
7 goal would be for us to finish up,
8 I think, our last item of business with
9 respect to recommendations over those two days
10 and then possibly start to talk about the
11 structure of the report.

12 I believe we kind of divided the
13 work up at a previous meeting, and I want to
14 re-visit that just to confirm that that's the
15 way we should approach it because as I look at
16 the recommendations, they're so similar that
17 perhaps another approach is called for.

18 But when we met last on 6 October,
19 there was a motion that the motions developed
20 for products and services apply to solutions
21 as appropriate. That motion was tabled, and I
22 think it was tabled because we believed that

1 there were some discussion issues that needed
2 to be addressed.

3 And Pat captured three of them, so
4 I'm going to read those three off, and I'd
5 like us to take this morning to see if we can
6 kind of flesh out the discussion with respect
7 to solutions and see what the path is going
8 forward.

9 So as I read Pat's record, the
10 discussion issues were to define solutions.
11 You know, what is a solution essentially? The
12 second issue was, are there differences -- Are
13 solutions in and of them themselves unique so
14 that discussions over and above what we've
15 done for products and services separately
16 require a different or additional set of
17 recommendations.

18 And then the last one put on the
19 table, I think is one we're re-visiting, and
20 I think it's perhaps important to do that. And
21 the third one is, do we want to do something
22 with what I think David calls "commoditize-

1 able services versus services that require a
2 statement of work."

3 So, it would be my intention that
4 we spend most of our morning, at least,
5 discussing those and coming to some consensus
6 on the issues surrounding those, and to
7 develop such recommendations as we think are
8 necessary in this area.

9 So, with that, I'll simply open
10 the floor for discussion.

11 MR. DRABKIN: Thank you, Elliot.
12 I'd like to add a threshold question, and that
13 is, whether the schedules are appropriate for
14 solutions at all. And I know it's
15 controversial, and I want to make it very
16 clear that I am not speaking for my office or
17 for anybody at GSA except me.

18 The schedules were designed
19 originally to be contracts where agencies
20 could save time and effort by placing orders
21 without having to go through significant
22 source selection to get there.

1 GSA's role was to do the initial
2 negotiations on the contracts, negotiate the
3 terms and conditions, and identify pricing.
4 And the theory was that agencies then would
5 come behind GSA and really only have to deal
6 with the issues of price and delivery, all
7 other issues having been resolved through
8 GSA's negotiation process.

9 For goods in today's marketplace,
10 that pretty much remains true, and for those
11 services which I've characterized as
12 "commoditize-able," which can be easily
13 defined by a labor category at a fixed price,
14 and can be purchased by simply saying, "I want
15 two from column A, and three from column B,
16 and four from column C multiplied by their
17 price, and I have placed an order." I think
18 the schedules remain, also, a very viable
19 tool.

20 But when you get into the process
21 that many agencies find themselves in, and for
22 which there is a growing body of protest

1 opinions from GAO where in order to buy the
2 solution, an intricate, almost -- Well, if you
3 look at the documents, the contract documents,
4 it's FAR part 15 being done through the
5 schedule's program.

6 It's taking people six to nine
7 months to place an order under the schedules
8 for some of these solutions, as opposed to one
9 to two weeks or three weeks. It involves
10 sizable proposals being submitted by industry
11 in response to the RFQ instead of a simple
12 pick from column A, B, C, and then multiply,
13 and that's your price.

14 And I don't believe that the
15 schedules were designed for that purpose or
16 ever contemplated that that's what they would
17 be used for. That doesn't mean that there
18 could not be a change in philosophy, but to do
19 that, I think we'd have to also have a change
20 in how we treat those things to make sure that
21 we address the issues that we've all talked
22 about over the last few months, which are

1 competition, transparency, the integrity of
2 the process, the pricing issues which many of
3 my colleagues have raised.

4 And currently the way we've talked
5 about it, even in our recommendations of
6 products and services that we've addressed, we
7 haven't come to grasp with the \$100 million
8 dollar task order for incredibly complex
9 integrated services, including the delivery of
10 a solution, whether it's a technical solution
11 or a service solution. And I just don't know
12 that without a great deal more work by us, we
13 can get to the point where we can make a
14 recommendation that really will address these
15 concerns.

16 And again, I think most of the
17 problems that have been written about, most of
18 the problems the GAO has opined about, come
19 from those types of purchases.

20 MR. BRANCH: All right. I think
21 that's a very valid question for us to
22 address. In kind of looking at the issues that

1 we have on the board, I'd like to take that
2 one on early on because I think that may bring
3 to bear on the question with respect to -- You
4 know, our solution is unique. Do we need to
5 make a separate set of recommendations?

6 Clearly, if we were to recommend
7 to the administrator that we not be able to
8 buy solutions on the schedule, that question
9 becomes moot.

10 MR. DRABKIN: I'm sorry. One other
11 point I left out. I think it's crucial also,
12 is the way schedules, by their very
13 nature, deny you the use of a very important
14 contract type that might be more than
15 appropriate, and absolutely called for when
16 you buy a solution, and that is a cost-type
17 contract.

18 And another point I meant to make
19 -- and I just don't want to leave that off
20 while -- because it is integral to this
21 question.

22 MR. BRANCH: Absolutely, and I

1 think that -- Point very well taken.

2 Other comments? Any other
3 questions we want to add to this list of
4 issues for discussion?

5 Hearing on -- I'm a great believer
6 in defining one's -- Oh, I'm sorry. Alan?

7 MR. CHVOTKIN: I'm not sure I have
8 a question. I do want to address because I
9 had intended to address the point that David
10 concluded which is the alternative vehicles.

11 We have said many times to panel
12 and elsewhere that we ought to be mindful of
13 taking tools out of the toolkit. And my only
14 hesitancy about making a declarative statement
15 about the inappropriateness of the schedules
16 for solutions is basically two-fold.

17 One, they are used a lot for
18 solutions today, and the question is what
19 those solutions look like and how they're
20 used. And secondly, as part of an agency's
21 acquisitions strategy, if there is a way that
22 the schedules can be used appropriately for

1 solutions, why deny the agencies that
2 flexibility to have it?

3 So, I'm reluctant at this point to
4 just conclude that they're inappropriate. I
5 recognize there's some added challenges as the
6 request for solutions become more complex. It
7 introduces an important concept we haven't
8 really talked about, and that is the role of
9 BPA's under the schedules.

10 And I think we probably ought to
11 talk about that in context once we decide
12 whether solutions are appropriate, so if we
13 could -- If Pat would put the role of BPA's up
14 in the list of questions before David's, then
15 when we can get to the whole question of
16 solutions and conclude if they are
17 appropriate, then we can address those other
18 subsidiary questions as well.

19 MR. BRANCH: Okay, fair enough.
20 Other issues we need to add to our list for
21 today's deliberation?

22 Well, I guess I'd like to kind of

1 start us off with defining some terms of
2 reference. So, what do we believe a "solution"
3 is? Now, we know, you know, products are
4 fairly straight forward, services are fairly
5 straight forward in their definition. But when
6 we talk about solutions, what do we believe a
7 "solution" is defined as? I'll -- Lisa?

8 MS. SCOTT: One of the things that
9 I think is integral to a solution is the
10 measurement of return on investment, which
11 oftentimes doesn't get brought into the
12 picture as an obvious part of a solution.

13 MR. BRANCH: Could you expand on
14 that a little bit?

15 MS. SCOTT: Some work I've actually
16 done -- We took a look at coming up with
17 building an entire infrastructure for a
18 network for an organization. An done of the
19 key components that drove the solution was the
20 return on investment. How much were they
21 going to have to invest up front to replace
22 all of their mainframes and/or their servers

1 and their server farm?

2 And then all the networking that
3 might have to be done in terms of pulling wire
4 and cable and the combination of all the labor
5 this needed for all of this.

6 And then, using the GSA schedules
7 to actually buy the products and the tools
8 that they then used as a supplement to the
9 cost reimbursable effort for designing and
10 building that network again. And then working
11 it so it was measured in such a way so that
12 you could see what the return on investment
13 was. So, it was an overall architecture and
14 installation.

15 MR. BRANCH: So, would it be fair
16 to say we might start out -- A definition of
17 "solutions" is a solution is the type of
18 project or program contemplated by OMB
19 circular A-11 regardless of dollar amount?

20 You know, because OMB circular A-
21 11 drives us to do kind of the major program
22 analysis where we come up with a need

1 statement. We do an analysis of alternatives.
2 We settle on a set of alternatives, and we go
3 through some critical decision points with
4 respect to whether the alternative we're
5 pursuing is executable from a financial
6 standpoint and will provide the benefits to
7 the agency over whatever that perspective is.
8 So, I just kind of throw that out as perhaps
9 a framework. David?

10 MR. DRABKIN: Alternatively,
11 perhaps, I would suggest that it's 'other than
12 a commercial off-the-shelf item or service.
13 It can be a combination of both. It can be the
14 modification beyond what would we call a
15 "minor modification" as we have defined it.

16 I'm not sure A-11 -- I'm not sure
17 using A-11 gets us there, but I mean, the
18 schedules were designed for the purchase of
19 commercial items, including those things which
20 are commercial services.

21 A solution is actually neither. It
22 can be the combination of both. It can be

1 something -- But it's not something that
2 already exists and that is being purchased in
3 a condition that already exists or is modified
4 in a minor way to meet our need.

5 It's not "not commercial" in the
6 sense that the commercial sector provides
7 solutions all the time, but it's not something
8 that you can walk up and say, "That's what I
9 want and I'll buy it." It's "Here's my
10 requirements."

11 It's the statement of need and
12 it's the use of the intellectual capacity of
13 the private sector to respond to that need by
14 fashioning something that doesn't currently
15 exist using things that may currently exist.

16 MS. SCOTT: It definitely has an
17 element of packaging to it, bringing disparate
18 elements together to get a total, final
19 product.

20 But I like that, David. It's not
21 something you just pick up off the shelf.

22 MR. BRANCH: All right. Yes, Tom?

1 MR. ESSIG: Just clarification for
2 my benefit. Under A-11, what are we covering
3 other than capital investments?

4 MR. BRANCH: I guess that's really
5 what's covered.

6 MR. ESSIG: My concern is the
7 solutions goes way beyond just capital
8 investments.

9 MR. BRANCH: So, I think what I'm
10 hearing is that there is a -- I guess you
11 could look at a "solution" as the integration
12 of components, be they good or services, into
13 a means to attain an end.

14 MS. SCOTT: And synergism.

15 MR. BRANCH: Right. And I think
16 that probably the key -- I'm not sure exactly
17 how to phrase this, but the key to that is
18 that each of these components has utility in
19 and of itself. But that when assembled
20 together in a particular way, is something
21 designed to attain a specific objective.

22 MS. SCOTT: And has an element

1 that's better than the components.

2 MR. BRANCH: Right.

3 MS. SONDERMAN: It's also got some
4 creativity --

5 MS. SCOTT: : Well, not
6 necessarily.

7 MS. SONDERMAN: No?

8 MR. BRANCH: Well, it -- You know,
9 but if you look at -- I guess if you look at
10 the discipline of system dynamics, what the
11 literature will tell you is that systems have
12 emergent properties. And I think that's really
13 what you're talking about.

14 So, just to draw a very simple
15 analogy -- If someone asked you to take the
16 single component that would define your
17 automobile, you couldn't choose a single
18 component because it's the integration of the
19 components -- the wheels, the chassis, the
20 transmission, the drive chain, the engine --
21 the controls that has a set of emergent
22 properties that provide transportation.

1 So, it's really, I guess, the
2 integration of a set of the components that
3 creates a set of emergent properties that the
4 purpose of which is to solve a problem.

5 MR. DRABKIN: And the expertise for
6 which -- That is, that combination does not
7 reside within the government. It resides
8 within the private sector.

9 It's that expertise that creates
10 the integration that actually adds the value.
11 And that's not priced on the schedule.

12 MS. SONDERMAN: Well, I'm sorry.
13 I'm unwilling to say that expertise does not
14 exist within the federal government. I am
15 willing to say that it's the expertise that
16 adds value to the bringing together of the
17 components.

18 MR. DRABKIN: I spoke too
19 generally. Forgive me. It is Monday morning
20 and my team lost last night and -- But, when
21 I say the expertise, I mean the expertise of
22 identifying, supplying, creating the solution

1 resides in the private sector.

2 And I think to that extent -- I
3 don't mean to say there's no expertise in the
4 government, but if the government knew what it
5 wanted, it would tell people what it wanted.
6 And what we're doing is using a performance
7 based -- I mean we're really talking about --
8 Solutions are in a performance based
9 environment when you say, "I don't know what
10 I want in terms of what it looks like. I just
11 know what I want it to do when it's done, and
12 I'm relying on your expertise, not mine to put
13 that together."

14 It's kind of like what Gansler
15 wrote about in terms of dissimilar solutions
16 when you're trying to put steel on target,
17 which is always a much easier thing to talk
18 about. You can use it in a tube. You can use
19 it plain. You can use a person with, you know,
20 munitions strapped to their back.

21 The question is, how does the
22 vendor community bring us the solution to

1 putting steel on target as opposed to us
2 telling them, "Build us a tube with a round
3 that shoots one mile and has a degree of
4 accuracy of 1 tenth or a yard or something or
5 a meter."

6 MR. BRANCH: Well, that though -- I
7 guess your observation, David, I think raises
8 an interesting question. And it kind of ties
9 in with what Debra has said.

10 So, if I have really smart IT guys
11 within government, and they essentially define
12 a set of components that would constitute a
13 solution -- So, let's say we're talking about
14 implementing an ERP system, and they go to
15 vendors and say, "Okay. Here's what my data,
16 warehouse, hardware ought to look like. Here's
17 what my user terminals ought to look like. You
18 got to lay it in on this infrastructure, and
19 oh, by the way, I want you to use SAP."

20 I've essentially defined at least
21 the boundaries of that solution fairly
22 tightly. Would that not fall within our

1 definition of a solution?

2 MR. DRABKIN: From my perspective,
3 no, because we could then buy those component
4 parts. We can then buy the separate
5 integration services that are definable to put
6 those component parts together the way we've
7 done it. And I believe that's different from
8 saying, "Here's a problem. Come to me now and
9 tell me how you'd solve that problem," which
10 may or may not involve a piece of software
11 called "SAP," or it may or may not involve
12 servers. It may -- I mean, who knows what the
13 solution would actually comprise.

14 The schedules, I think, are
15 perfect when we know what it is we want to buy
16 because we can go buy it, and it's priced, and
17 it's competed in the marketplace at that
18 price.

19 What the schedules aren't, I don't
20 think, excellent at is the pricing of those
21 things for which we don't know what we want in
22 terms of functionality -- I'm sorry. That's

1 wrong. We don't know what we want in terms of
2 components and pieces. All we know is the
3 functionality we want.

4 And then I think, FAR part 15 is a
5 much better tool and ought to be reserved for
6 that kind of buy. It also gives us the option
7 where appropriate to use a cost-type contract
8 to reduce risk in the first years of such a
9 solution, whereas on the schedules, you either
10 do a time and materials or you do it by fixed
11 price.

12 And in a solution where you don't
13 know what it is you want that solution to look
14 like -- you only know what you want it to do -
15 - I think there's a huge pricing risk, which
16 is what has created some of the
17 dissatisfaction that our colleagues have
18 expressed with a tool.

19 It's not to say that the tool
20 isn't any good. It's just to say that some
21 tools -- You know, a hammer is designed to
22 drive nails into a wall. It is not designed to

1 drive a screw into a wall, and if you use a
2 hammer for a screw, you may well drive the
3 screw into the wall, but you're going to not
4 be happy with the resulting fastening effect.

5 And so, while Alan makes a good
6 point that -- I also agree we should never
7 take a tool off the table. We should also make
8 sure that tools are used for the right job,
9 and buying solutions where we are defining
10 outcomes as opposed to what you suggested --
11 "I want these kinds of servers and these kinds
12 of interfaces, and this specific software, --"
13 I don't think the schedules are a good tool
14 and will achieve what needs to be done for the
15 -- for the opposite. I think I've lost my
16 train here.

17 MR. BRANCH: Yes. I want to drive
18 down this road a little more, and I'll tell
19 you why -- Because I think given the
20 constrained resources of the acquisition
21 workforce and indeed, across our departments,
22 we have a tendency sometimes to define the

1 solution within government. But we really
2 don't want to go through the trouble of being
3 the system's integrator.

4 So, what we will do is we will
5 package the components of the solution and
6 say, "These are your rather narrow boundary
7 conditions and what I really want to buy from
8 you is your expertise to provide that."

9 And our view is and if you -- You
10 know, you talk to many program managers,
11 they'll say if you ask them, "Why are you
12 doing that? You could go to schedule 70 and
13 you could go buy the hardware. You could buy
14 the services off the other part of schedule 70
15 and you could oversee this." And they say,
16 "No. I want a single belly button to oversee
17 this for me."

18 My concern is that if we don't
19 address that acquisition approach as we talk
20 about this, that we will leave things on the
21 table, and a different panel will be back here
22 in a few years trying to wrestle with that

1 rather difficult issue.

2 So, it's not that I disagree with
3 you philosophically on what a solution should
4 be, but I think if we're going to define a
5 solution that narrowly, then we also have to
6 address how ordering agencies would use the
7 schedules when they wish to prescribe major
8 components of that solution.

9 MR. DRABKIN: And I think you've
10 described it actually, quite well -- How they
11 should use it, how it was designed to be used
12 is "I'll buy the parts and I'll buy the
13 integrator, and there won't be a single
14 contract. They'll be multiple contracts, and
15 I'll have the integrator out the parts
16 together."

17 The risk then is where it belongs.
18 It's on me, that I've bought the right parts
19 and I've come up with the right -- And all I'm
20 buying from the integrator is the thing I
21 don't or can't do for whatever reason, which
22 is put it all together and make it work.

1 And the schedules are fine for
2 that because then you can have the competition
3 on the parts and you can have a competition on
4 the service of an integrator, and it's put
5 together.

6 But it's a whole different thing
7 when I say, "I want to buy it all now as one
8 lump sum," particularly when I'm buying
9 something that has not been done before, which
10 doesn't make it not commercial. I have
11 colleagues who say then it's not commercial.
12 That's not true. But it does make it of a
13 different nature that requires a different
14 type of acquisition, both strategy and source
15 selection.

16 And what I'm concerned about is,
17 is that people, when using the schedules --
18 even though the schedules are very clear that
19 you should adapt your source selection to the
20 complexity of your product -- they essentially
21 think they're getting someplace by doing a FAR
22 part 15 source selection for a solution on the

1 schedules. The only disadvantage they have is
2 that when it's appropriate -- the price, the
3 risk -- through a cost-type contract, they
4 can't.

5 But expediency -- what they think
6 is expediency -- is driving them to do
7 something which is not in the government's
8 best interest or for that matter, industry's
9 best interest.

10 And again, while I don't believe -
11 - I mean, I'm the biggest proponent of a huge
12 toolbox. But again, some tools -- and some
13 tools shouldn't be used and sometimes you have
14 to put a notice on a tool, "Don't use this as
15 a hammer," or "This is a screwdriver." Or you
16 say, "You cannot, for safety reasons, use this
17 tool for this purpose."

18 And I think we're at that point on
19 some of these things. The majority of things -
20 - it's never going to be an issue. You know -
21 - I'm trying to buy financial system. Not
22 really a big issue. I'm trying to buy the

1 integration of my financial system and my
2 procurement system and my property system. Big
3 issue.

4 And I think those are different.
5 You can buy financial systems modified in a
6 minor way to meet your agency's needs as a
7 commercial off-the-shelf product. Buying the
8 integration of all those into a single system
9 or single enterprise architecture -- not so
10 much.

11 MR. BRANCH: Lisa?

12 MS. SCOTT: I was going to say I
13 analogize this to a construction contract, and
14 whether you need a general contractor or not.
15 That's probably the easiest way for me to
16 explain it.

17 MR. BRANCH: Any other thoughts on
18 what we really mean when we say "solution?"
19 I think where we are is that we're really
20 talking about a place where we're talking
21 about generally a performance based statement
22 of work that would involve the provision of

1 components, both hardware and software, if you
2 will, or "goods" and "services" where there is
3 a key task of integration such that the result
4 possesses emergent properties that are
5 separate and apart from each of the elements.

6 Are folks comfortable with
7 defining a solution that way? I'd like to get
8 a consensus.

9 MR. PERRY: Can we put the words up
10 there so we make sure we all understand what
11 the definition is?

12 MR. BRANCH: Okay. All right. I'm
13 going to try this again. So, it is the
14 integration -- I think Pat has many of them
15 there. So, it's essentially a performance --
16 "It is the outcome of a performance based
17 statement of work that involves the acquis of
18 hardware or goods and services." I'd say
19 "goods and services."

20 "And the integration of those
21 goods and services to create a set of emergent
22 properties that are not possessed by those

1 goods or services alone."

2 MR. ESSIG: I concur.

3 MR. BRANCH: Okay.

4 MS. SONDERMAN: I would just ask
5 for us -- I understand what you're saying and
6 I agree with it. I am concerned that a phrase
7 like "creating a set of emergent properties"
8 is so intellectual that the average reader
9 will not understand what we mean.

10 MR. BRANCH: Okay. Fix it.

11 MS. SONDERMAN: And that it's --
12 So, I would ask that
13 we --

14 MR. BRANCH: It's early on Monday,
15 so please fix my words.

16 MS. SONDERMAN: I know. Well, I'll
17 have to think about because I'm not prepared
18 to do that right now, but it --

19 MR. BRANCH: That's as well as I
20 can do this early on a Monday morning, but I -
21 - And I certainly -- There's no pride of
22 authorship in that definition, so if we can

1 have an understanding of what we mean, knowing
2 full well that we're going to have to probably
3 write it with more clarity.

4 MR. PERRY: Could you say "outcome
5 of performance based" -- that it's the
6 outcome. You want to say that the goods or
7 services alone don't give -- doesn't give you
8 unless you have the -- You could almost drop
9 that set of "emergents of properties that are
10 not possessed."

11 It's just that's that outcome that
12 -- If you have either goods and the services
13 alone, together, that it won't -- Those that
14 end up sales don't give you that outcome.

15 MR. BRANCH: Well, I guess I would
16 -- Let me suggest a separate set of words. I
17 think you want to keep that, so "to create,"
18 I guess, "to create a product that does not
19 exist, that does not previously exist" --
20 something like that.

21 MS. SCOTT: Well, Tom mumbled,
22 "Where the whole is better than the pieces."

1 MR. BRANCH: Okay. Works for me.

2 MR. DRABKIN: Or is the resulting
3 solution unique to that requirement, although
4 if we use the word "unique," we feed to those
5 people who want to argue then it's not
6 commercial, so -- never mind. I don't want to
7 use the word "unique." I withdraw it.

8 MR. BRANCH: Well, it creates a --

9 MS. SONDERMAN: "Create a result
10 that's different from those goods and services
11 alone."

12 MR. BRANCH: Or perhaps, "That
13 creates a --" Yes, I hate to use the word
14 "solution" because that's -- total logical.
15 I mean, what we're really trying to say is,
16 "Hey, we've gotten now something that is
17 specific to an agency need."

18 MS. JONES: I'm just wondering if
19 there's a FAR definition? There isn't.

20 MR. BRANCH: No.

21 MR. ERICKSON: Could you just say
22 that "integration of those goods and services

1 that meets a need that would not be possessed
2 by those goods and services alone?"

3 MR. BRANCH: Yes, I like that. Yes,
4 that works. I don't know if "possessed--"
5 "That would not be met by those goods or
6 services alone."

7 MS. SONDERMAN: "Goods and services
8 --"

9 MR. BRANCH: I guess "to meet a
10 need --" Yes, I would, yes, take "services" --
11 to after "services," just take out "create a
12 that," and then --

13 MS. SONDERMAN: And "singular
14 need."

15 MR. BRANCH: Right. So, "meet." So
16 it becomes "meet a need."

17 MS. SONDERMAN: So "meet" and --
18 He's driving something different.

19 MR. BRANCH: Okay, so a "solution"
20 is "an outcome of a performance based
21 statement of work that involves the
22 acquisition of goods and services, and the

1 integration of those goods and services to
2 meet a need that would not be met by those
3 goods and services alone." Works for me.

4 MS. SONDERMAN: Do we require --
5 Does the FAR require solutions, procurements,
6 to use performance based statements of work?

7 MR. BRANCH: Well, we looked at the
8 FAR -- When we first went down this path, I
9 guess -- To take us back to earlier meetings,
10 the FAR doesn't, I guess, define a solution.

11 MS. SONDERMAN: Right.

12 MR. BRANCH: So, since it doesn't
13 define a solution, I guess the inference I
14 would take is "no." It doesn't require the use
15 of a performance based statement of work
16 because it's not
17 defined."

18 MR. DRABKIN: Actually, Tom?

19 MR. BRANCH: Go ahead, David.

20 MR. DRABKIN: My concern is if we
21 don't use a performance based statement of
22 work, how do we accomplish that definition

1 where it's more than the individual parts?

2 MS. SONDERMAN: It was more a
3 question of curiosity. I'm not challenging the
4 use of performance based statements of work.
5 I don't know that the rules currently say that
6 you have to do that in order to purchase a
7 solution through the schedules program.

8 MR. BRANCH: Yes. David and then
9 Lesa.

10 MR. DRABKIN: One, there currently
11 is no requirement in the schedules program
12 that addresses this, either for solutions or
13 the use of performance based statement.
14 Actually, PBSA. The coverage in the FAR on
15 PBSA does not talk in terms of solutions. It
16 talks in terms of requirements to meet a
17 certain goal of purchase -- And it's dressed
18 at services, not solutions, interestingly
19 enough. It doesn't go beyond that, just so
20 you'll know.

21 MR. BRANCH: Lesa?

22 MS. SCOTT: I was sitting here

1 mulling away and I re-arranged the words a
2 little bit so I've got an alternate strategy
3 for folks to read. "The acquisition of goods
4 and services that result in a singular outcome
5 for a performance based statement of work."
6 Just to make things fun.

7 MR. BRANCH: I think that's
8 cleaner, but I think -- So, I'm comfortable.
9 To go to Tom's point though, this comes back
10 to the discussion -- Go ahead.

11 MS. SONDERMAN: Or "performance
12 based statement of work," I think is what
13 she's saying.

14 MR. BRANCH: Yes.

15 MS. SONDERMAN: Lesa, can you read
16 it again?

17 MS. SCOTT: "The acquisition of
18 goods and services that result in a singular
19 outcome for performance based statement of
20 work." Or you could just say "statement of
21 work." Maybe even "performance based
22 product."

1 MR. ESSIG: I think that will need
2 clarification for your average reader.

3 MR. BRANCH: Okay.

4 MR. ESSIG: Specifically, what does
5 a "singular outcome" mean?

6 MR. BRANCH: Okay. Judith?

7 MS. NELSON: I'm kind of -- Well, I
8 would go back to taking the "performance based
9 statement of work" out.

10 MR. BRANCH: Why would you take
11 that out?

12 MS. NELSON: Well, again, because
13 there's no -- As David said, there's no
14 requirement that it be performance-based.

15 MR. BRANCH: Tom?

16 MR. ESSIG: My concern is then is
17 that we have a thing that says, "Combine
18 Oracle -- Integrate these Oracle systems and
19 these other systems and deliver it." And
20 where's the added value over having purchased
21 them individually?

22 MR. BRANCH: David?

1 MR. DRABKIN: I think our point
2 here, Judith, is what we're talking about is
3 something -- a new requirement to make it
4 clearer in the FAR, both with regard -- Well,
5 in this case, with regard to the schedules,
6 and that a performance based statement of work
7 is what distinguishes from our early
8 discussion those things which the schedules
9 were designed for, i.e. I can buy software. I
10 can buy hardware. I can buy services. And this
11 new thing, which is truly something different,
12 although it's composed of these various parts
13 and the difference is the value added by the
14 contractor in figuring out how to make that
15 work. And a performance based statement of
16 work is the key here.

17 We talked earlier about the fact
18 that if you knew what you wanted in the
19 system, in the solution, you could buy off the
20 schedules, quite appropriately, you could buy
21 the software. You could buy the hardware. You
22 could buy the services to integrate all of

1 them, and you can direct how that would be
2 done.

3 This is the circumstance where you
4 don't know how to integrate them to achieve
5 the solution you want. And the only way you
6 get there is by using a performance based
7 statement of work, which is the postulate we
8 began with was -- that I began with, was that
9 the schedules were not designed to sell that
10 kind of solution. They were designed to sell
11 everything else but that.

12 MR. BRANCH: Yes, well, going back
13 to Tom's point -- I think it was really -- The
14 concern I had earlier with respect to defining
15 it this narrowly, so I think we need to
16 perhaps come to a consensus on that.

17 I can see again us getting into a
18 situation where the agency decides to kind of
19 half take on the systems integrator role. So,
20 it says, "I want Oracle financials. I want
21 People Soft personnel. I'm going to go buy a
22 big IBM mainframe and that's going to be my

1 data warehouse and it's going to be connected
2 to all these Dell laptops. And oh -- By the
3 way, you now, Mr. Contractor, go figure out
4 how to make all that work together."

5 Because what they really want is a
6 single belly button, but they want control
7 over the solution, so I think the question is,
8 do we need to broaden the definition of a
9 solution to include those? That's one
10 alternative.

11 Or, do we need to keep the
12 definition of a solution narrow and perhaps,
13 make a few recommendations as to how ordering
14 agencies would go pursue that course, i.e. to
15 tell agencies "No, you may not have this kind
16 of teaming across schedules. You may not go
17 get a single vendor to go partner with these
18 guys to buy the components that I specify."

19 Judith?

20 MS. NELSON: I think the value of
21 the schedules would be greatly diminished if
22 we don't allow the agencies to create an

1 acquisition plan that meets their needs.

2 One of the values of the schedules
3 is that it offers a great deal of services and
4 products. And it's upon what we want to be
5 able to do is allow the agencies, the
6 customers, to be able to create an acquisition
7 plan.

8 I mean, let's not forget that the
9 customer is able to create a specific
10 acquisition plan whether or not it be
11 performance based or in another format that
12 best meets their needs to be able to pursue
13 what they want.

14 So, if we narrow the definition of
15 how that happens in the FAR, then ultimately
16 we're not meeting the needs of the customer.
17 I think we're better off giving guidance to
18 the customer and allowing the schedules to --
19 What I'd like to be able to see is actually a
20 broadening of the use of the schedules for the
21 customer, but better regulations or use of the
22 schedules tighter, but a better use of the

1 schedules for the customer.

2 MS. SONDERMAN: What does that
3 mean?

4 MS. NELSON: I don't want to
5 restrict how the schedules can be used as far
6 as the customers can use them. I'd like to see
7 the competition there. I'd like to see how --
8 But I don't want to tighten how the schedules
9 can be used across the schedules.

10 I don't want to say that "You can
11 only use MOBIS" or "You can only use IT
12 schedule," and that "You can't go for more
13 than one vendor and that vendor has to figure
14 out how to use it, and then you're going to
15 have problems with sub-contractors," because
16 I foresee that you're going to end up with
17 these back boxes if you don't allow to go
18 across the schedules.

19 MR. DRABKIN: I don't think --
20 First, we're not telling, in this
21 recommendation, if we were to adopt it --
22 We're not telling the administrator how to

1 implement it. So, whether they do it by
2 guidance in the schedules program, whether
3 they put it in FAR 8.4, whether we amend the
4 section -- What is it? --37, on buying
5 services -- That's not for us to decide if the
6 recommendation goes forward.

7 Secondly, we're not saying in here
8 that you cannot have a cross-schedule
9 procurement. What we're talking about here is
10 that -- What we're discussing is whether we
11 agree that the schedules cannot be everything
12 to everybody, and that there are some things -
13 - In this case, we're talking about a very
14 limited area. If we used the language that
15 we've written up here, those procurements
16 which are the result of a performance work
17 statement, performance based statement of work
18 -- And that those things really are not the
19 things for which the schedules were designed
20 to be a solution.

21 And yes, it is restrictive in that
22 sense. But you know, that's why we have IDIQ

1 contracts, which have cost-learned and a while
2 different world and it's why we have GWACS and
3 other forms of IDIQ's.

4 The schedules were designed for
5 commodities and commoditize-able services, not
6 solutions. That was the point I made when we
7 began the discussion, and I haven't heard
8 anything to date, so far, that suggests that
9 that's not the case.

10 MR. BRANCH: Jackie?

11 MS. JONES: Yes, I have a comment
12 about -- not necessarily about what you said,
13 David, but just a different way of thinking
14 about this.

15 In the services industry,
16 companies are not just limited to performing
17 one thing or the scope of one particular
18 service. They're multi-faceted now, and
19 especially for some of your larger government
20 providers.

21 I think the opposite. I think that
22 we are trying to fit contractors in a box

1 under the schedules program in a lot of ways
2 by saying that in order to have a MOBIS
3 contract, the scope of what you're providing
4 has to be limited to this.

5 And as a result, companies may
6 have seven different schedules -- seven
7 different schedule contracts, and each of
8 those contracts are limited in scope.

9 I think the opposite. I think that
10 if we allow companies under the schedules
11 program to have a single contract that
12 provides a total solution to an agency then it
13 becomes a better tool for using the schedules
14 approach to fulfilling a requirement.

15 That's just my opinion.

16 MS. NELSON: David, with all due
17 respect, I have to disagree to some degree
18 with you.

19 Indeed, the schedules program were
20 designed to offer commercial commodities.
21 That's true, and they have moved far beyond
22 that post-fair FASA -- I mean, they are

1 successfully at 65 percent of the schedules
2 program offering services and a great deal of
3 those services are total solutions.

4 So, the program has moved far
5 beyond that and a great deal of our panel
6 members are successfully using that and
7 offering very successful, mission critical --

8 MS. SONDERMAN: I would like to see
9 the evidence about that, frankly. I'd like to
10 see the data.

11 MR. BRANCH: I don't want to cut
12 off discussion here, because I think it's a
13 very important discussion. But I think before
14 we come back to it -- I guess the only
15 question on the table as I see is how do we
16 want to define "solutions" because I think
17 that kind of drives the discussion that we're
18 starting to have.

19 MR. DRABKIN: Your wisdom, sir, is
20 beyond description.

21 MS. SCOTT: I was going to amend
22 and take out the word "singular." Pat, take

1 out the word "singular," and change it to
2 "outcome."

3 The sum of its parts. "The
4 acquisitions of goods and services that result
5 in an outcome where the sum of its parts --"
6 whatever.

7 MR. BRANCH: Could I make a
8 suggestion and I -- So I would change your
9 amendment to "an outcome that satisfies the
10 requirements of a performance based statement
11 or work?"

12 MS. SCOTT: Yes. I was trying to
13 stick in "an outcome that is greater than the
14 sum of its parts in response to a performance
15 based statement of work."

16 MR. BRANCH: Okay.

17 MS. NELSON: Debra, the data that -
18 - On one of the data calls that GSA was asked
19 to provide very early in the panel's
20 deliberations was based by schedule and by
21 special item number.

22 MS. SONDERMAN: That doesn't say

1 anything about the success of any of those
2 acquisitions. That gets back to Lesa's earlier
3 comment about return on investment. And I
4 don't believe any of us have that data.

5 MS. NELSON: Well, I think that Tom
6 Sharpe has mentioned that 30 percent of their
7 business, their acquisitions, go through GSA
8 schedules. I don't know why they would
9 continue to do so if they weren't successful.

10 MS. SONDERMAN: They're fast and
11 you can limit competition. That's why.

12 MR. SHARPE: It's just under 30
13 percent, and we've done no qualitative
14 analysis. I mean, it's ease of use.

15 MS. NELSON: I'm sorry. I --

16 MR. PERRY: I'm going to third
17 that. It's speed and it's limited competition.

18 I can point at just as many
19 failures under these schedule awards as I can
20 successes. I can probably give you some data
21 on that, but no one's asked. I think we're
22 trying to --

1 MS. NELSON: Tom, I did ask for the
2 data and you didn't provide it.

3 MR. BRANCH: If we can restore a
4 little bit of order here.

5 MR. DRABKIN: Let me suggest that
6 there is no value added to our discussion now
7 today, particularly since we do lack
8 substantive qualitative data about the issues
9 that have just been under discussion.

10 The point is we're here to talk
11 about what improvements or changes we
12 recommend should be made to the schedules
13 program to make it more effective, vibrant
14 program that meets the needs of our customers.

15 I think that's the point we're
16 looking at. Rather than trying to go back and
17 justify whether it's good or bad now, which is
18 really -- without people who have actually
19 taken up a task order and looked at its
20 implementation and done a value analysis -- I
21 think that's not going to serve our purpose.

22 The question is properly put by

1 the chairman -- How do we define a solution
2 and then we can have the discussion about
3 whether we want to recommend a limitation or
4 not on the use of the schedules to acquire
5 solutions.

6 MR. BRANCH: Glenn?

7 MR. PERRY: My dear colleague, Mr.
8 Drabkin, before he cut me off. That's what I
9 wanted to say.

10 I think what we have up here is
11 what I find an unattractive statement to shape
12 how we would go forward in defining solutions
13 that would address the issues I was just sort
14 of throwing out as examples as to why without
15 this doesn't serve us well.

16 I don't want to come out of here
17 with any recommendation that basically
18 provides a platform to continue to do -- And
19 I what I sort of -- layman's speak, "bad
20 contracting."

21 And I think this would be a good place to
22 start and go forward from there.

1 MR. BRANCH: Okay. So, I think Lesa
2 has come up with some -- a refinement of what
3 we've been taking about and Pat is putting
4 that up now.

5 So, a solution would be defined as
6 "the acquisition of goods and services that
7 result in an outcome that is greater than the
8 sum of its parts in response to a performance
9 based statement of work." Yes, Tom?

10 MR. SHARPE: I can also live with
11 that one.

12 MR. BRANCH: Okay. Can we -- we're
13 just trying to get definitional. I think it's
14 very, very important for us to have the
15 discussion that we've been having, but it's
16 also helpful if we have a common reference
17 point -- If we can come to consensus on what
18 we mean when we say "a solution."

19 So, I guess I'll throw the
20 question out there again. Is that a definition
21 we as a panel can live with for the purposes
22 of having the discussion on David's threshold

1 question, which is "Should we be using the
2 schedule to buy solutions?" Yes, Debra?

3 MS. SONDERMAN: Do you believe this
4 is sufficiently broad to cover the example
5 that you provided where the agency does
6 specify some things but nevertheless is
7 looking for a solution kind of outcome?

8 MR. BRANCH: I don't. But having
9 said that, I'm not sure that that's important,
10 and I go to David's observation, which is, if
11 we want to specify the components of that
12 solution in government and those component
13 providers either -- And I'm defining
14 "components" broadly to mean goods and
15 services -- are all on schedule. It should be
16 within the purview of an ordering agency to
17 acquire those things off a schedule.

18 Now, having said that, I'll add an
19 editorial comment here that I would not be
20 comfortable in my agency buying a solution
21 that way because going back to David's point,
22 if I were going to acquire the goods and

1 services, including integration for something
2 that I specified and I wanted a single belly
3 button, I would lose money doing that with a
4 time and materials contract. I would be better
5 off doing that using a part 15 approach,
6 probably using a cost reimbursement type
7 contract.

8 MS. SCOTT: I was going to say the
9 example you gave earlier becomes a questions
10 of who is the integrator and who is the
11 creator of the solution. And I don't know
12 that the definition needs to go to that, but
13 it is an aspect that needs to be addressed.

14 I've actually seen this situation
15 where the agency came up with and did research
16 and had a consultant. They wrote a report and
17 said, "We believe the solution is these two
18 products." Had a competition, got adequate
19 competition, and got a totally different
20 unique solution that absolutely floored the
21 technical evaluation team and resulted in a
22 much better product and a much better result

1 that was 180 out from what they had originally
2 envisioned and gotten from their consultant.

3 MR. BRANCH: I guess the question
4 is, "Is this a useful reference definition for
5 the rest of our discussions today?"

6 I think that's really all we're trying to get
7 a consensus on.

8 Okay. So, I think -- Hearing no
9 objection to that, so we're going to define a
10 "solution" as Pat has delineated in item
11 number 3 up on the screen. So, it's "the
12 acquisition of goods and services that results
13 in an outcome that's greater than the sum of
14 its parts in response to a performance based
15 statement of work."

16 Acceptable definition to go
17 forward for discussion?

18 Okay, so I think we've got a consensus on
19 that. And I think it's now incumbent upon us
20 to move to the next question, which is, given
21 that definition, are the schedules appropriate
22 to buy solutions? So, I'll open the floor for

1 discussion on that.

2 Debra and then Tom.

3 MS. SONDERMAN: I support the
4 thesis proposed by my colleague, my esteemed
5 colleague from GSA, that they are not, that
6 solutions do not belong on the schedules.

7 MR. BRANCH: Tom?

8 MR. ESSIG: I would like to echo
9 Alan's comments about not taking a tool out of
10 the toolbox, but in general, I also concur
11 with David's comments.

12 Perhaps what we really need to do
13 is provide guidance on the proper use of the
14 vehicle. It is not intended for this type. It
15 is okay for that type. I guess -- Allow the
16 tool to be there, but restrict its use to
17 where it makes sense.

18 MS. SCOTT: Well, I'm back to
19 defining the integrator, and if an agency
20 wants to decide and designs and create their
21 solution and then buy the pieces in parts,
22 that makes sense.

1 But I agree with you also that it's not
2 effective.

3 MR. BRANCH: Okay. Other comments
4 on that?

5 MR. ESSIG: A question -- I ask the
6 question -- the network schedule involves, as
7 I understand it, a bit of a solutions concept.

8 MR. DRABKIN: If I might, just to
9 save you some time -- Networks is not a
10 schedule. It's an IDIQ. It's not a GWAC
11 either, but it's one of the IDIQs in our --
12 Part it's definitely not part of the schedules
13 program, Tom.

14 And just so we're clear that non
15 of our GWACs are part of the schedules program
16 either. Answer, Millennia, Millennia Lite, the
17 service-disable veteran-owned, the HUB Zone,
18 the 8(A) Stars, and there are a couple others
19 -- None of those are part of the schedules
20 programs. Those are all GWACs under the
21 Klinger Cohen executive designation.

22 MR. BRANCH: Yes. David, I guess I

1 have a question for you. That, not being my
2 primary product line, can I write a cross
3 reimbursement contract against a GWAC?

4 MR. DRABKIN: Yes. Actually, that's
5 probably the largest distinction between the
6 GWACS and schedules programs at GSA is that we
7 specifically provide cost CLIN in those
8 contracts if you choose to use them.

9 MR. BRANCH: Lesa and then Judith.

10 MS. SCOTT: When the GWAC vehicles
11 are -- Solutions that are awarded underneath
12 the GWAC oftentimes authorize the contractors
13 to use the schedules in order to buy pieces
14 and parts toward their total solution.

15 MR. BRANCH: Judith?

16 MS. NELSON: The GWACs, by
17 definition, are not considered commercial
18 vehicles.

19 MR. DRABKIN: Right, and the reason
20 is because we have a cost CLIN.

21 MR. BRANCH: Right. Yes. Well, I
22 guess I have to concur with Mr. Drabkin here.

1 You know, when we look at the definition of a
2 solution -- and I tend to think of the risk
3 inherent in acquisition along two axes.

4 You know, we talk about cost
5 schedule and performance, but if you think
6 more deeply about it, cost schedule and
7 performance risk are really symptoms of two
8 things. And they are symptoms of our ability
9 to define the scope and our ability to define
10 what I will call the "technology." And I use
11 "technology" not in the narrow sense of
12 information technology or the application of
13 science to solving problems, but I use it in
14 the sense that technology is a tool that
15 allows man to do a useful thing. And if you
16 kind of draw, if you will, a graph in your
17 mind and say, "At the origin, the scope is
18 fairly well-defined and the technologies are
19 fairly well-defined," that would drive you to
20 a cost type solution.

21 And at the other end of the
22 spectrum, if you kind of picked a point at the

1 opposite ends of both of those axes, you would
2 say, "That's really an envelope of
3 uncertainty."

4 And my concern about buying
5 solutions on schedules is the key component to
6 buying solutions, in my view, is really the
7 intellectual capital provided by the industry.
8 And when we look at time and material type
9 contracting in the hierarchy, we all accept
10 the fact that that is the least preferred type
11 of contract.

12 So, in a solutions environment
13 where the risk is very high and we have
14 alternatives, we should not be using the least
15 preferred contract type to contract for those
16 things. I don't think they serve the agency,
17 nor do they serve the taxpayer.

18 And given that GSA has a set of
19 vehicles given to them under the authority to
20 do GWACs that would allow us to use the proper
21 contract type to contract for those things, I
22 guess my own sense is that I would recommend

1 to the administrator that he prohibit the
2 acquisition of solutions on GSA schedule
3 unless the contracting officer determine that
4 there was some compelling reason to use a time
5 and material contract, and that that
6 compelling reason be approved at least two
7 levels above the contracting officer.

8 MR. DRABKIN: I've talked a lot.
9 Why don't you go ahead and then I'll follow
10 you.

11 MS. JONES: Okay. First of all, the
12 schedule contract is an IDIQ in and of itself.
13 I meant, absent of the fact that it's under
14 the GSA schedules, it's an IDIQ ultimately.

15 And I'm sitting here and I'm
16 looking at ACQNET and the guidance that's
17 provided on ACQNET about task orders being
18 performance based. And the guidance on ACQNET,
19 which is used by the acquisition community is
20 stating that "yes," they can, as long as the
21 IDI contract includes language that says that
22 "some/all task orders issued against this

1 contract may be performance based.

2 "Even though the overall work
3 statement at the contract level be broad and
4 impressive, individual task orders can be
5 written with precise definitive performance
6 work statement or statements of objectives
7 including performance standards and
8 incentives.

9 "The IDIQ contract promises a
10 minimum dollar amount, not a minimum quantity
11 of hours. Each task order within needs to be
12 written with its own incentive structure
13 and/or pricing arrangement, including type
14 matched to its requirements.

15 "Furthermore, multiple contract
16 awards will require submission of competitive
17 proposals."

18 MR. BRANCH: We've got Judith in
19 the que and then David and then Alan.

20 MS. NELSON: Well, in part I was
21 going to go where Jackie is going. In
22 addition, the schedules program allows for

1 more than just T&M contracting.

2 We have the fixed price. I think
3 we've also just defined solutions as falling
4 under performance based, so we go back to that
5 as well.

6 I also would like to reiterate
7 that I would hesitate to take, as Tom Essig
8 here, to my left, has said, to take a tool out
9 of the toolbox of the contracting officer. I
10 would like to see greater regulation or
11 guidance. I don't know if it would be
12 regulation, but greater guidance out there to
13 the contracting officer at the task order
14 level in putting out task orders for
15 solutions, whether or not that be the
16 definition of the solution or the guidance of
17 how to order the solution, and at what levels.
18 Maybe that would be based at certain
19 acquisition levels, what kind of authority
20 they need -- Somewhat along the lines of what
21 Elliot was saying.

22 But I am very hesitant to limit

1 the tools as well, as I have misgivings
2 limiting -- One of the things that the
3 schedules allows a contracting officer to do
4 is not limit the solution to say -- The IDIQs
5 that GSA has are specifically IT. All of them.

6 So, when the customer comes in,
7 they do not have the ability to get the
8 project managers the financial skills, say,
9 that they need that, or any of the other
10 solutions that they need and to combine them,
11 say, with the IT.

12 So, if VA comes in or DOD comes
13 in, and they have a BRAC requirement to
14 combine healthcare requirements because
15 they're pulling together multiple
16 organizations and they need to bring in all of
17 them together and they're bringing in all of
18 their systems to be able to look at the
19 records, they can't do that under a GWAC. But
20 under the schedules, they can do that.

21 MR. BRANCH: Okay. I just --
22 Clarification for me, Judith. So, as I'm

1 hearing the example that you're using, I guess
2 I wouldn't contemplate buying that under a
3 performance based statement of work. I would
4 be contemplating saying, "I want," to David's
5 word, almost commoditize-able services where
6 I say, "I need to pull this together. I need
7 some really certified smart guys to go get
8 that so I'm going to issue a time and material
9 order. I'm going to go buy a year of a program
10 manager, project manager, analyst, to do
11 that."

12 So, am I not understanding? I
13 guess, let me phrase that differently. So,
14 could you help me understand, given that
15 example, how you would you use a performance
16 based statement of work to buy those, such
17 that they would fall into the ambit of our
18 discussion today?

19 MS. NELSON: No, it certainly could
20 be done on a performance based. I mean, it's
21 something that could be said, "This needs to
22 be done in an 18 month period of time. I need

1 nursing skills. I need --"

2 In order to achieve it, you don't
3 have to say who you need to do it, but this is
4 something that's done in the commercial
5 market. It's done in the DOD market. It's done
6 in the VA market.

7 And there are certain skills that
8 need to be able to do to achieve it. There's
9 certain software that needs to be done to
10 achieve it, and it could be set up that this
11 needs to be done in a certain time-frame, and
12 there can be incentives in order to do it, to
13 do it faster. But it cannot be done under a
14 specific, say, IT-skill base. It can be done
15 under GWAC. It can be done across the
16 schedules, and it is being done across the
17 schedules. That's one specific example.

18 Now, there's multiple examples
19 like that. Certainly can be done performance
20 based if it's laid out by DOD for exactly the
21 BRAC and quite frankly, it's going on.

22 MR. BRANCH: All right. Thank you.

1 David and then Tom.

2 MR. DRABKIN: A couple things.

3 First of all, my colleague who read to you
4 from her BlackBerry was reading from the "7
5 Steps Guide to Performance Based Contracting"
6 which deals with IDIQ contracts under FAR part
7 16.

8 It's important to note that GSA
9 has always maintained that the schedules
10 program is not an IDIQ contract under FAR part
11 16, and has never been so. And we make that
12 distinction for important reasons.

13 The schedules program is awarded
14 under the administrator's authority under
15 Title 40, not under the Office of Federal
16 Procurement Policy Act in Title 41. It also
17 allows us to structure our program a little
18 differently than you would under an IDIQ
19 contract.

20 So, for instance, fair opportunity
21 was defined very differently under the
22 schedules program, and it only recently

1 required to be changed to be consistent with
2 FAR part 16 as a result of the National
3 Defense Authorization Act of FY '09, extending
4 to the civilian agencies the requirements of
5 Section 803.

6 That's an important background
7 policy there, and we shouldn't confuse
8 schedules contracts with IDIQ contracts under
9 FAR part 16 or FASA.

10 Second point I would make though,
11 is that I am compelled by the statements made
12 by my colleagues Mr. Essig and Mr. Chvotkin
13 about their desire that we not eliminate a
14 tool. The difficulty is, we've heard over
15 these months is that GSA does not see itself
16 as a policeman of its vehicles. It puts those
17 vehicles out there for use by its customers.

18 We write rules that we expect our
19 customers to follow when they use the
20 vehicles, between we have all heard about
21 situations where our vehicles were not used
22 properly. And we as an agency have virtually

1 no power, authority to correct the misuse of
2 our vehicles short of denying an agency access
3 to those vehicles, which we have never done.

4 Having said all those things, I do
5 not think in our recommendation we ought to
6 tell the administrator whether he should limit
7 the use of a vehicle absolutely for solutions.
8 I think, rather, what we should is describe
9 for the administrator the problem that we see
10 with the use of solutions and allow the
11 administrator to fashion a solution that
12 achieves what we're talking about.

13 I mean, after all, in the very
14 end, what we're talking about is a solid
15 acquisition plan which, as part of the
16 planning process, determines the appropriate
17 vehicle to be used to meet the goals of that
18 acquisition. And if the appropriate answer is
19 to use a cost type vehicle because of the risk
20 allocation issues associated with the solution
21 you're buying, the schedule is not the right
22 answer.

1 And last, with regard to my
2 colleague's discussion of the GWACs -- I
3 certainly don't want to say that she was
4 inaccurate in describing what the GWACs are
5 used for, but in fact
6 they are used for solutions that involve IT
7 and they have design systems which have
8 required the bringing together of financial
9 expertise or property expertise or any numbers
10 or types and varieties of expertise to achieve
11 an IT solution. And there are companies in
12 this room listening to what we're talking
13 about who sell through our GWACs and have sold
14 solutions of that very nature.

15 It is true that you do not go to
16 the GWACs to do a re-invention of your
17 property system -- to have a consultant come
18 out and do that. But if you're buying an IT
19 solution to re-invent your property system,
20 you most certainly could go to the GWACs and
21 buy that solution there and you would you have
22 available to you both the cost CLIN -- a fixed

1 price CLIN -- and a time and materials CLIN,
2 all of which have been provided for.

3 Again, though, the key to that
4 would be the acquisition planning process,
5 which properly identifies the nature of your
6 requirement and the best way to acquire that
7 requirement, which then drives you to wether
8 you're going to use the schedules in the first
9 place.

10 So, that's a very long-winded way
11 about getting back to saying, in our
12 recommendation -- and even though I've begun
13 this discussion -- rather than recommending
14 that he prohibit the use of the schedules for
15 solutions, I think we need to describe for the
16 administrator what you and I, Elliot -- and I
17 believe Deborah, as well -- and others agree
18 is that solutions are complicated things with
19 risks that need to be addressed.

20 And one of those risks, among
21 others, is pricing, and that we should provide
22 guidance and we should provide some additional

1 oversight to make sure that the schedules are
2 being used properly because, quite frankly, my
3 colleagues who are the senior procurement
4 executives at the various agencies themselves
5 don't know that one's activity within their
6 agency has placed an order until it's way too
7 late for them to have become involved in
8 reviewing, even with their own agency, whether
9 the right acquisition solutions have been
10 chosen in the acquisition planning process.

11 MR. BRANCH: Alan?

12 MR. CHVOTKIN: I think that if it
13 weren't for David's opening statement about
14 the inappropriate use of the schedules for
15 solutions, the rest of the statement I whole-
16 heartedly endorse because I think he laid out
17 a case for just that under certain
18 circumstances the schedules not only are
19 appropriate, but have been used for the
20 acquisition of solutions including complex
21 solutions.

22 Many of the schedules today have

1 special item numbers that are solutions based
2 and those are being used, I'm sure, to some
3 extent.

4 By the same token, there are some
5 natural constraints on their use. We've talked
6 about some of them already that they're only
7 fixed price, the T&M. There are no open
8 purchases off the schedules, so external
9 constraints. And so, there are some things
10 that limit an agency from an acquisition
11 planning standpoint.

12 My appropriately limited agency's
13 desire to sue the schedules for certain types
14 of solutions and go to a cost type contract or
15 some other type of vehicle.

16 As to the liability and the
17 oversight -- There's no question that that's
18 appropriate. We've talked about the
19 responsibilities of both the acquiring agency
20 as well as GSA and the oversight.

21 And if we draw this analogy out of
22 the misuse of the tool, rarely am I aware of

1 chair manufacturers who sue when a consumer
2 uses a chair as a ladder, but it could happen.
3 And here again, a misuse of the tool --
4 inappropriate use of the tool -- has
5 consequences with it and agencies need to
6 police their use of this tool just as the GSA
7 should be monitoring how agencies are using
8 it.

9 And I think David raised the
10 question that we've avoided talking about so
11 far, which I think is the crux of the issue in
12 the use of solutions, and that's how to arrive
13 at ensuring that the pricing of a solution is
14 fair and reasonable. We have not had that
15 discussion yet.

16 And I think it is the most
17 challenging part when you're looking at the
18 combination of goods and services into a
19 unique solution or a set of outcomes to be
20 achieved. How do we ensure that the pricing
21 offered under the schedules is fair and
22 reasonable? We know what some of the tools and

1 techniques are available under other types of
2 vehicles.

3 So, my bottom line for this is
4 that I think we can make the case that there
5 are appropriate uses of solutions on the
6 schedules. We ought to give the administrator
7 our guidance, best thinking about what that
8 universe might look like, and then delve a
9 little bit more deeply into how we answer the
10 question about the pricing.

11 MR. BRANCH: Thank you. Tom and
12 then Judith.

13 MR. ESSIG: Based on the discussion
14 we've been having, I think I'm going to have
15 to temper my prior recommendation to keep the
16 tool, but provide significant guidance.

17 Considering things such as
18 limitations under schedules for the use of
19 other than fixed price or time and materials
20 contracts, and a discussion, for example, of
21 networks and other GWACs or whatever being
22 viable alternatives to schedules.

1 I am not sure at this point that
2 the potential market for use of a solutions
3 schedule -- appropriate use of such a schedule
4 -- is sufficient to justify the cost of
5 building and maintaining that capability.

6 While I don't think I have enough
7 data to say "yes" or "no." I think it's
8 something which really should be evaluated by
9 GSA. Given the constraints that we would
10 apply to what would be the appropriate use of
11 a solutions schedule -- Is there likely to be
12 enough business out there to maintain it?

13 MR. BRANCH: Judith?

14 MS. NELSON: I don't think that
15 we're at this point recommending a specific
16 solutions schedule. What I would recommend is
17 more appropriate guidance to the customers on
18 how to use multiple schedules. Although, I
19 would like to see ultimately a better -- a
20 greater platform for customers to be able to
21 use appropriately across the schedules with
22 less barriers, scope-wise, to be able to use

1 the schedules.

2 I think, to a large extent,
3 because of scope issues, the schedule create
4 a difficulty for our customers to be able to
5 create the solutions that they need. So, I
6 would like to see first of all, guidance in
7 the way of competition and the way of scope
8 and in the way of creating acquisition plans
9 that would allow the customers to be able to
10 appropriately use the schedules.

11 I would like to be able to
12 recommend to the administrator, whether it be
13 he or she, that there be some look at how,
14 perhaps, the GWACs and/or the schedules can --
15 not "and/or" but the schedules can be looked
16 at that, rather than dividing what GSA has to
17 offer our customers, they can be looked at as
18 a more holistic view so that GSA's customers
19 can come to us and say, "Here's my acquisition
20 requirement, and I need to be able to fulfill
21 it. What is the best way for me to fulfill
22 it?" And rather than dividing it up.

1 So, I do, to a large extent, agree
2 with Tom, but not to be able to eliminate the
3 schedules as a solution to strongly put out
4 the guidance, but to look to eliminate as many
5 of the barriers across the schedules so that
6 the -- And what I mean there is scope-wise to
7 allow for greater solutions but not
8 eliminating the competition requirements
9 knowing now that the 803, which I believe is
10 Section 862 -- just to confuse us all -- in
11 the public law, has gone into place, knowing
12 that we're recommending that it be performance
13 based, knowing that we have the capacity to do
14 firm fixed price. And looking at some other
15 possibilities under the schedules, which may
16 require some changes to the schedule, but not
17 eliminating them as a tool.

18 MR. BRANCH: I guess I'm going to
19 take a somewhat philosophical hard-line on
20 this issue. And that is driven, in my mind,
21 by what I believe are key words in our working
22 definition, and those key words, to me, are

1 "results in an outcome."

2 You know, the scope of this panel
3 really is to look at pricing. And when I think
4 about pricing in the context of those words,
5 I can never use a time and materials contract
6 that will result in an outcome because what I
7 buy from that contractor is not even his best
8 efforts to provide that outcome. But I simply
9 buy the hours.

10 So, I would argue that when we use
11 schedule to buy solutions, unless we buy those
12 on a firm fixed priced basis where the offeror
13 is committing to me to provide a solution that
14 is compliant with the spec for a sum certain
15 on a date certain, that the pricing structure
16 of the schedules is inconsistent with
17 purchasing solutions.

18 And I think we probably, perhaps,
19 do not need to recommend to the Administrator
20 that he prohibit their use, but I certainly
21 believe we should not soft pedal a
22 recommendation here because the pricing

1 methodology used in the schedules is
2 inconsistent with the idea of a completion
3 type. Tom?

4 MR. ESSIG: What you just said, I
5 think, is very consistent with what I was
6 trying to get at before, I guess, to the
7 complexity of the integration effort involved
8 and if it becomes very complex. By doing an
9 ERP solution for the Department of the Army,
10 for example, probably exceeds the ability to
11 do that effectively under the schedule.

12 But for items that can
13 appropriately be managed and risk on a firm
14 fixed price basis where the risk is manageable
15 and understandable, this type of schedule
16 might be very appropriate.

17 So, I would say with that, is a
18 recommendation we may want to consider is to
19 allow the continued use of a solutions
20 schedule, but only if the risk can be a
21 managed on a firm fixed price basis.

22 MR. BRANCH: Judith?

1 MS. NELSON: I'm in absolute
2 agreement. I mean, I thought that we were
3 looking at a definition that was performance
4 based and my comments were around that. So, if
5 we're looking at a performance based or to
6 expand that to a firm fixed price acquisition,
7 I certainly would expand that.

8 My issue with our definition was
9 to limit it to performance based only. If
10 we're looking at a definition, which I would
11 expand to firm fixed price, I would greatly
12 agree with expanding our definition from only
13 "performance based" to "firm fixed price."

14 I have an issue with doing
15 solutions under T&M because they cannot be
16 controlled. I have no issue with just
17 acquiring services under T&M because -- right?
18 But if we expand our definition, number 3, to
19 "firm fixed price for solutions," then it can
20 be greater controlled. So, it's either both
21 performance based and firm fixed price.

22 MR. BRANCH: Okay.

1 MR. DRABKIN: Just for
2 clarification for Tom because you've said it
3 now twice, Tom, and I don't know that it's
4 just a semantics issue or not. But we're not
5 talking about creating, nor have we created a
6 solutions schedule. We're talking about using
7 the existing solutions to buy a solution.

8 And I just want to make sure that
9 we're clear there. I don't think anybody is
10 talking about creating something. It's a
11 question of how they're currently being used
12 and whether that use is appropriate.

13 MR. ESSIG: Okay. I appreciate the
14 clarification.

15 MR. DRABKIN: And if I might, Mr.
16 Chairman, one other point. And of course, I'm
17 torn here being part of GSA. And I do
18 understand that a firm fixed price contract on
19 the schedules is
20 conceptually an appropriate solution, which is
21 the use of the word inappropriately.

22 But what I'm not sure we've

1 resolved is the ability -- and of course, in
2 GSA we currently have these. We're trying to
3 figure out these problems -- is how does a
4 vendor bring that solution to bear when the
5 things that they've priced on their schedule
6 don't include, many times, all of the pieces
7 of the solution itself. And the don't,
8 certainly, price solutions when they come into
9 negotiate their schedule's contract.

10 And we are currently going through
11 a policy discussion about will we allow
12 scheduled vendors to use other scheduled
13 vendors to sell solutions or to sell something
14 to the government and whether that's
15 appropriate and how, in fact, we'll deal with
16 that pricing.

17 And when they don't have -- When
18 you haven't even had the rudimentary pricing
19 discussion -- which we have when we're talking
20 about a specific service or a specific good --
21 We haven't had even a rudimentary pricing
22 discussion on the solution, how do we -- Well,

1 I guess "how" is the wrong word.

2 What we really wind up is what
3 we've talked about from the very beginning,
4 which is competition takes place and pricing,
5 real pricing, takes place at the order level.

6 And so, I guess, we've almost come
7 full circle then in our discussions and
8 solutions is the example because you're not
9 going to find on any scheduled contractor's
10 contract something that says "solutions," and
11 even if you did, how in God's name could they
12 contemplate what would be in that pricing
13 based upon the very nature of what solutions
14 are?

15 So, I'm going back and forth, I
16 know. I'm torn by Tom and Alan talking about
17 not taking away a tool. But again, I think,
18 the schedules aren't designed to provide this
19 tool.

20 There is no pricing done. There is
21 no fair and reasonable pricing done by a GSA
22 contractor on a solution. There is a fair and

1 reasonable pricing determination made on a
2 labor rate or on a good, but not on a
3 solution.

4 Leaving all of that totally to the
5 contracting officer by the using agency in the
6 direct order direct bill scenario.

7 MR. BRANCH: Yes, and I'm okay with
8 that. You know, because I think as we've come
9 through this discussion over the past months,
10 we've determined that there's a role for
11 pricing the labor component.

12 There's a role for pricing the
13 composite component at the contract level --
14 That the fair and reasonableness of those
15 things get driven at the order level. And I
16 think when we talk about solutions, we are not
17 talking about anything other than either the
18 labor component or the product component. We
19 are simply talking about their configuration
20 around something that meets an agency need.

21 So, I'm good with that. I guess
22 what I'm sitting here kind of struggling with

1 though, is never having used a GSA scheduled
2 contract to buy a solution. Exactly how does
3 that happen?

4 You know, if the terms and
5 conditions are such that I buy labor, and I
6 buy a certain number of hours of labor and I
7 buy components, and I buy a certain set of
8 components -- So, if I were to do that on a
9 fixed price basis, what happens when the guy
10 runs out of labor hours? Do I have the right
11 to say "No. You sold me this as a solution
12 under a GSA order. You got to keep performing
13 until such time that you get the --" Okay.

14 Then the only kind of solution
15 that I would be okay buying under the schedule
16 would be a firm fixed price one because if I'm
17 trying to buy a cost reimbursement one, at
18 some point in time, when I get to components
19 and I get that good pricing but when I run out
20 of hours, I'm out of hours. And if I want the
21 answer, I've got to buy more hours.

22 Yes, Judith?

1 MS. NELSON: Firm fixed prices,
2 firm fixed price. So, either somebody is
3 taking a risk. The government in designing it
4 may ultimately have the risk or the contractor
5 may have the risk. So that's how it works.

6 And there's multiple -- We can go
7 into it, but there's multiple ways to acquire
8 it. It may be a prime or it may be blanket
9 purchase agreement, and how it's done. There's
10 multiple ways to set it up, but just like in
11 any other scenario, it's firm fixed price.

12 And as to David's concern about
13 how to set it up and pricing the solution --
14 I'm listening to it and I'm a little confused
15 because I don't understand how that's
16 different than pricing any other solution
17 under any other IDIQ that's out there where we
18 would need to mesh labor rates that exist with
19 bringing in solutions and components from
20 other areas.

21 The labor rates are out there. The
22 acquiring agency goes out through other areas

1 and particularly now with 862, the competition
2 has to take place and the ordering activity is
3 going to have to run it through competition to
4 the most -- as many available contractors as
5 possible and see what the best value solution
6 is. So, that's what's going to happen and
7 that's what we have suggested, whether or not
8 that's for products, services, or solutions.

9 So, an acquisition plan is going
10 to come in place. It's going to be firm fixed
11 price or it's going to be PBA, and they're
12 going to run it through competition, pulling
13 together what they need in order to provide a
14 solution -- the same as they would under any
15 other IDIQ whether or not it was one of GSA's
16 IDIQs or quite frankly, Seaport-E, and pulling
17 together everything that they needed to
18 provide their mission.

19 MR. BRANCH: I think Tom was next
20 and then David and then I'll insert myself
21 into the que.

22 MR. ESSIG: Actually, I'd like,

1 first off, to get a clarification. David, your
2 comment down there? If I understood you
3 correctly, it's no fair and reasonable price
4 determination on a solution at the schedule
5 level?

6 MR. DRABKIN: Correct.

7 MR. ESSIG: Okay. So, I think
8 that's misstated there. It's not by the
9 contractor. It's at the schedule level.
10 Based on that definition -- Since you
11 indicated it is not a separate schedule -- for
12 solutions, the fair and reasonable price
13 determination is at the task order and has to
14 be at the task order level. And so the rest
15 is moot.

16 MR. DRABKIN: And actually, that --
17 When it comes to mind now is we're really
18 talking about scope. In the GWAC, we announce
19 as part of the scope, as part of the statement
20 of work, 1) that we're buying solutions, and
21 2) we discuss how it will be priced in
22 different ways.

1 In the schedules, there is no
2 discussion of buying solutions and there is no
3 scope. And when I describe what we just
4 described, it occurs to me, what we're doing
5 is having an open market in theory -- and open
6 market competition -- in a very limited market
7 because when you're buying a solution, you've
8 neither notified -- I mean, if we were going
9 under a CICA definition of scope, you've not
10 notified anybody that you intended to sell
11 scope solutions under this contract. You've
12 not given them the opportunity to compete --
13 I use that word carefully when we talk about
14 a scheduled contract -- for that solution.
15 You've not taken the time to include solutions
16 in your terms and conditions, nor have you
17 discussed it in your pricing.

18 And so what we've -- essentially,
19 I think it becomes a question of scope. The
20 more we discuss this, the more convinced I am
21 that we were right at the beginning. This is
22 purely contractually now, we're really down to

1 a scope issue.

2 A solution is not within the scope
3 of the contract that was awarded. The task
4 order cannot cure the scope issue. The task
5 order can address competition, but it can't
6 cure the scope issue in that it was never
7 intended within the scope of the contract
8 awarded that we would sell solutions.

9 MR. ESSIG: Chairman, I move that
10 we don't debate it further because we're
11 getting him more convinced -- that I move we
12 close.

13 MR. BRANCH: Well, I guess a couple
14 things. 1) To address Judith's observation --
15 I think the key difference between non-
16 scheduled IDIQs and the way they can be
17 structured and schedules is that, for example,
18 in Seaport, we use cost reimbursement line
19 items.

20 So, what does this mean for us? It
21 means, certainly, that the vendors only give
22 us their best efforts to provide a solution.

1 But at least under Seaport, once he runs past
2 that total estimated cost, I stop paying him
3 profit. I don't do that on T&M contracts.

4 To buy a solution on a T&M
5 contract, I would argue, almost rises to the
6 level of being a cost plus percentage of cost
7 contract where I continue to pay him profit
8 until he gets to the result that I, as an
9 agency, believe fulfills my needs. And that's
10 my discomfort with using the T&M pricing
11 model.

12 Firm fixed price, you could get
13 there -- and I want to talk a little bit about
14 David's scope issue. I disagree with you, and
15 I disagree with you because as long as I have
16 all the components on a schedule, and as long
17 as I have all the labor categories on a
18 schedule, all we're really talking about is
19 how we aggregate those to get to a specific
20 solution set that meets the agency needs.

21 So, I would argue that yes, at a
22 macro-level, no, there's not scope there. But

1 inferentially, you have properly covered the
2 scope of a solution.

3 MR. DRABKIN: But with all due
4 respect -- Foregt that "all due respect,"
5 because I do, in fact, respect you, Elliot,
6 although one of my colleagues who used it with
7 regard to me earlier doesn't respect me at
8 all. Nor would I expect her to.

9 But the real difficulty here is
10 that the schedule contract does not include
11 all of the various parts it needs in order for
12 you to argue inferentially that you have
13 within scope -- In fact, that is precisely the
14 problem that we are having in that company's
15 find themselves ffering solutions, which, even
16 if you looked for the ieces of the solution,
17 aren't priced in their contract.

18 And then the question becomes, how
19 do we allow them to offer that solutoion on
20 the scheduel when all the component parts --
21 service and hardware, software -- aren't on
22 their particular schedule, which is what's

1 driven us to teaming arrangements and all
2 sorts of other kinds of things. But I do think
3 that if you sit down and peel this back, scope
4 really is the issue on solutions.

5 MR. BRANCH: Judith?

6 MS. NELSON: Again, with all due
7 respect, Mr. Drabkin, you say with a little
8 lilt in your voice, "which has driven us to
9 teaming arrangements" -- Teaming arrangements
10 are very much authorized under the schedules.
11 And at this point, blanket purchase agreements
12 are very much authorized under the schedules -
13 - All of which allow us to -- or allow the
14 customers to combine the scopes.

15 Under a particular contract in
16 solicitation, the scopes of the contract are
17 limited on what the scope of the solicitation
18 is. That does not limit a customer to buy off
19 of multiple schedules and to team those
20 schedules together and to get their
21 solicitations together.

22 And as evidence of that --

1 actually, on our own tool, E-Buy, which our
2 customer use -- they are not limited to
3 saying, "Oh, we only want to buy a solution
4 off of one schedule." A customer on E-Buy can
5 say -- they can choose multiple solicitations,
6 so they don't have to say, "Oh, I only want
7 the solution from MOBIS."

8 I actually will open this up to
9 many and see where the best solution is going
10 to come from because I don't know. I don't
11 want to limit this. Maybe the best solution
12 will come from IT, and actually, hopefully the
13 best solution may come from three small
14 businesses that can give me the most
15 innovative solution as opposed to one large
16 business that's always winning.

17 So, GSA's own e-tools, by design,
18 has set it up so that it may cross scopes.

19 MR. BRANCH: Tom and then David.

20 MR. ESSIG: I'm unable to dismiss
21 David's comments. I think he raises a very,
22 very good point. And so, at the task order

1 level of solutions -- and correct me if I'm
2 wrong -- we have a combination of three things
3 -- an order under a supply schedule, an order
4 under a services schedule, and an open market
5 purchase. Something that's outside the scope
6 of any of the schedules.

7 MR. CHVOTKIN: Can't do that.

8 MR. BRANCH: Can't do that.

9 MR. ESSIG: Well, if we're --
10 David's point was, in those solutions, they
11 come up with a service which they don't have
12 a schedule for.

13 MS. NELSON: Only if you compete
14 that will be.

15 MR. BRANCH: Well, I'm going to try
16 to clarify that, knowing full well that David
17 will spit the words out if I'm putting them in
18 his mouth inappropriately.

19 I think what I hear him saying is,
20 when I look at the SIN on a schedule contract,
21 there isn't a SIN that says, "I can sell you
22 a solution here." You know, there's no line

1 item against which I sell solutions.

2 What there are is there are line
3 items for hardware. There are line items for
4 labor, but there's no place where it says,
5 "One each. Solution in the general area of X."

6 So, from his perspective, if you
7 look at it from a CICA perspective, I have not
8 properly framed my requirement such that every
9 potential offeror really gets an opportunity
10 to compete. It's kind of going back to the --

11 But had I know you wanted to buy
12 this argument, I would have submitted a
13 proposal and I didn't. And I think what I
14 heard Judith respond was, however, to the
15 extent that I can get all of the components
16 for a solution from a number of scheduled
17 vendors. Not only do we encourage that through
18 teaming and BPAs, but we also actually
19 encourage it in the implementation of the tool
20 with it.

21 Am I putting words I either of
22 your mouths that you care to spit out at this

1 point?

2 MR. DRABKIN: None in mine.

3 MR. BRANCH: Okay. So --

4 MS. NELSON: You got me.

5 MR. ESSIG: The next to their last
6 bullet -- the phrase "are all component parts
7 on the schedule."

8 MS. NELSON: Tom, all component
9 parts are on the schedule. If a customer wants
10 to buy something that is not on schedule, they
11 can buy it open market, but they must --
12 Anything over the micro-purchase threshold
13 must be competed full in open market -- full
14 in open competition.

15 MR. ESSIG: Okay. That's what I was
16 trying to get to. So, we have to have -- make
17 it clear to whoever places the task order that
18 they can only buy products and services that
19 are on schedule.

20 MS. NELSON: Correct. There's a
21 ruling. If it is above the micro-purchase
22 threshold, it must be competed by the ordering

1 activity full and open.

2 MR. DRABKIN: Well, and therein
3 lines the problem because when you buy a
4 solution, you're not buying a component part.

5 In fact, if you're truly buying a
6 solution under performance statement of work,
7 which we started with way up at the top of our
8 discussion, we're not requesting to buy
9 anything in particular vis-a-vis a component
10 part. We are asking for a vendor to come back
11 and propose to us a solution of their own --
12 however it is configured, and then we
13 hopefully are getting competitions between
14 those solutions and the solutions of other
15 vendors that achieve the same outcome. We're
16 not buying component parts.

17 The difficulty is the way the
18 schedules program is currently configured,
19 there are many things that might go into that
20 solution, the individual solutions of the
21 company, which may not either be on their
22 schedule or anybody else's schedule., which

1 means they've never been priced in advance,
2 nor have they have been competed in advance,
3 nor have people been given the opportunity to
4 compete for them.

5 We have jury-rigged solutions for
6 that. The teaming arrangements were a result
7 of the realization that we have vendors who
8 don't have anything on the schedule, and so we
9 encourage them to team to come up with a joint
10 solution.

11 We still have issues about how do
12 we pay the teaming arrangements, who is the
13 primary person responsible for, where's the
14 privity of contract -- I mean, there's a whole
15 host of issues.

16 But my point is that when you look
17 at the scope of the schedules program and the
18 contracts that we've awarded, we didn't
19 contemplate this. We didn't allow for
20 competition for it. We've come up with
21 solutions to jury-rig things to make it work,
22 and we still haven't addressed, of course, the

1 issue of "is it really appropriate?"

2 I don't know that maybe what we
3 ought not to be telling the administrator is,
4 "Hey, look. You have jury-rigged over a
5 period of time a result which you should have
6 adjusted and recognized and fixed up-front,
7 and so, solutions ought to be in your master
8 solicitation. And figure out -- Maybe that's
9 an un-priced CLIN because the solution is
10 obviously going to vary from requirement to
11 requirement.

12 And maybe the rules associated
13 with providing a solution either say you can
14 bring anything to the table, whether you have
15 it on your schedule or not. Or you can buy
16 what you're missing from other schedule
17 vendors if there are component parts you need
18 to buy.

19 But the schedules today do not
20 address the scope of solution, and they
21 certainly don't provide the pricing
22 flexibility which you, yourself, have

1 described exists when there is risk -- that a
2 fixed price contract won't either meet
3 industry's risk needs or our own risk needs.

4 MR. BRANCH: Jackie and then Glenn,
5 and then what I'd like to do -- Since it's
6 11:00 and we've been going at this, let's take
7 a 15 minute break.

8 MS. JONES: I'd just like to
9 comment from a working level. When the
10 contracts come in, they're proposing their
11 capabilities as a company to provide a service
12 -- which , I work in the services arena -- to
13 provide a service that falls within the
14 perimeters of a specific business line.

15 So, I guess you could play on
16 words and call that a "solution" or not a
17 solution, and the agencies -- What they're
18 doing when they are issuing a task order is
19 they're trying to figure out where the scope
20 of their requirements fit within the
21 parameters of the individual schedules.

22 And what I'm going to re-state

1 what I was saying before is that I think the
2 way the program is compartmentalized where we
3 continually are evaluating companies and
4 trying to determine whether or not what
5 they're offering us fits into this box or this
6 box or this box.

7 And when a company comes in --
8 Let's say, for example, they're proposing
9 MOBIS services and we say, "No, you don't fit
10 in this box specifically. You're doing IT."
11 Well, they could be doing some of both,
12 actually, in terms of the approach to them
13 providing a solution, if you will, within the
14 realm of what they do as a business. So, we
15 do have a solution schedule, Tom, if you will,
16 but we don't promote it. Where companies can
17 come in and provide everything that they're
18 capable of doing, they can propose that under
19 and get an award for a single contract.

20 But that's not the preferred
21 method for a lot of companies because they
22 like the boxes. They like the boxes. They like

1 to compartmentalize what they have on schedule
2 because of the way that they're set up too
3 within their own organizations and their
4 structure.

5 So, I guess my point is, there's a
6 lot of dialogue going on about the solutions,
7 when in fact, companies are coming in and
8 saying, "Here is my capability in terms of
9 what I can provide as a solution if you are
10 looking for -- consulting services." So,
11 that's just --

12 MR. BRANCH: All right. Glenn?

13 MR. PERRY: I'm going way back to
14 your question about what we're doing under
15 Start Smart is what I want to say -- back to
16 the fixed price part on the schedules.

17 The reality is the practicality of
18 what's going on is that for solutions, I think
19 there are lots of people trying to do that and
20 do try to do that. But it doesn't work very
21 well because there isn't anything that really
22 addresses what the price is for these

1 solutions.

2 I think Dave is right also. We
3 have a proliferation of SINS on the schedules
4 that people are trying to -- Oh, I'm sorry. I
5 can't believe I just said that but that's all
6 right.

7 I should have -- Instead of using
8 the acronym, I should have said "line item
9 numbers" -- That what I think has happened,
10 yes, GSA has tried to put together because I
11 did take a look at the lists that were
12 provided earlier and I looked at who the
13 contractors were against some of those special
14 line item numbers, and that's what you can
15 see.

16 You can see, I was asking, "Well,
17 how come there's only two of those in there?
18 Them." Well, that's because someone tried to
19 set something up as a solution, but it didn't
20 work. And so now what we have is a whole huge
21 collection of these things that don't make a
22 lot sense.

1 And I would just prefer that for
2 the schedules program, let's just focus on
3 services that can be priced, goods that can be
4 priced, and there are other ways in order to
5 obtain the combination of those than using the
6 schedules because I think the biggest problem
7 we're going to have here if we keep trying --
8 The other two items, we kind of got
9 comfortable with, that we're able to come up
10 with at least some ricing at the schedule
11 contract level. We're not going to be able to
12 do that here based on this.

13 So, I don't even know how we're
14 going to do that if we were to leave this in.

15 MR. BRANCH: All right. So, why
16 don't we -- I have five
17 after 11, so why don't we take a 10 minute
18 break until 11:15 to allow folks to process
19 some of this stuff.

20 And perhaps we can move on to
21 trying to shape some recommendations for the
22 administrator. This here has been a very good

1 discussion. So, 11:15, let's be back.

2 (Whereupon, the above-entitled
3 matter went off the record at 11:06 a.m. and
4 resumed at 11:21 a.m.)

5 MR. BRANCH: You know, I think this
6 morning's discussion has been a very good one,
7 and I will offer my observations.

8 I think the first would be whether
9 the schedules were designed to sell solutions.
10 Vendors are certainly selling solutions under
11 the schedule and agencies are buying them.
12 GSA, over the years, in an effort to be
13 responsive to agency customer needs as well as
14 the vendor community, has put in place several
15 devices to make that possible -- that those
16 devices are somewhat -- I won't say
17 "cumbersome," but they were architected one at
18 a time and no one has ever taken a
19 comprehensive look at how we sell solutions on
20 the schedule.

21 So, I would move that in our
22 report that we do two things. So, I would

1 move that we observe the current state of
2 acquiring solutions under the schedule for the
3 benefit of the administrator.

4 And I would move, secondly, that
5 our recommendation be that the administrator
6 take a comprehensive examination of that
7 policy currently in place that facilitates the
8 purchase of solutions under the schedule, and
9 to revise that policy such that the
10 acquisition of solutions under the schedule be
11 consistent with both the guidance under which
12 the schedule program was established and
13 consistent with good business practice.

14 MS. SCOTT: I second.

15 MR. BRANCH: Okay. We have a
16 "second." Any discussion?

17 MR. DRABKIN: Great wisdom. Thank
18 you.

19 MR. BRANCH: David? Okay. So,
20 hearing no further -- Oh, Debra?

21 MS. SONDERMAN: Which "current
22 state" do you want the report writers to

1 observe?

2 MR. BRANCH: Well, let me outline,
3 I guess, what I think I've heard is that --

4 MS. SCOTT: The "establishing
5 schedule guidance" is the word she's missing.

6 MS. SONDERMAN: The "guidance under
7 which the schedules program--"

8 MS. SCOTT: "Was established."

9 MS. SONDERMAN: "Was established,"
10 which is slightly different.

11 MR. BRANCH: Right.

12 MS. SONDERMAN: Or maybe quite
13 different than the -- So, yes, in that second
14 line where you have "with the schedule
15 guidance --"

16 MS. SCOTT: Yes, it should be "the
17 establishing."

18 MS. SONDERMAN: "With the guidance
19 under which the schedules program was devised"
20 is the word that Elliot used.

21 MR. BRANCH: Yes. Now in
22 addressing the question is to the current

1 state, so I think we need to observe that the
2 history of the schedule program contemplated
3 the purchase of goods. It contemplated the
4 purchase of services -- that it contemplated
5 that those purchases be made under separate
6 orders -- That as we have evolved to more
7 complex long-cycle requirements in the
8 agencies that there has been a need for
9 solutions as we've defined them -- That in
10 order to facilitate the aggregation of the
11 components that make up those solutions, that
12 we have done things like BPAs, that we have
13 done things like teaming arrangements, which
14 have allowed vendors, if you will, to partner
15 in providing a solution as we've defined it
16 under the schedule.

17 But that the structure of schedule
18 contracts in and of themselves doesn't
19 inherently allow for that. I mean, that's kind
20 of what I've seen and if you look at even
21 those things we see as firm fixed price under
22 schedules -- and having been on the other side

1 of the table in putting together some of those
2 orders -- very often what you will see is you
3 will see yes, firm fixed price, but you will
4 see all hours referenced there.

5 And yes, and when companies -- I'm
6 telling you what happens at the ordering
7 agency on the ground. So what happens is as a
8 contracts manager, I would argue first, "Well,
9 we have used up X number of hours and you
10 really need to give us more hours." And some
11 contracting officers, frankly, had the
12 business acumen to push back and say, "No. A
13 fixed price is a fixed price," and others
14 readily gave more hours because they wanted a
15 solution.

16 So I look at what happens in
17 actual practice, at least from my limited --
18 I guess, my narrow experience. I won't say
19 "limited experience" because we did a lot of
20 work on schedules. But my narrow experience is
21 that our IT practice would often go out and
22 say, "Well, we're out of hours so you need to

1 give us more hours," and agencies gave us more
2 hours on what were fixed price orders. So,
3 they were not managed as fixed price orders.

4 So, I think we need to observe the
5 current state -- How we actually are buying
6 solutions under schedules and we need to make
7 some observations about the pitfalls of doing
8 that that way, and that there be a
9 recommendation to the administrator that there
10 be a comprehensive review, and that review can
11 start with Mr. Drabkin's threshold questions.
12 Ought we to buy solutions under the schedules
13 and if so, under what conditions subject to
14 what guidance and oversight? Judith?

15 MS. NELSON: I would like to look
16 back to our definition of solutions and add
17 into it the "firm fixed price" alternative.

18 MR. BRANCH: Okay. Where would you
19 put that?

20 MS. NELSON: Just "the acquisition
21 of goods and services that results in an
22 outcome that is greater than the sum of its

1 parts in response to a performance based or
2 firm fixed price statement of work."

3 MS. SONDERMAN: Or you could just
4 put "the acquisition of goods and services on
5 a firm fixed price basis that results in an
6 outcome." Something like that.

7 MS. NELSON: Works for me.

8 MR. BRANCH: Okay. Want to change
9 that, Pat, and see how -- I guess the only
10 question I have about that in putting that in
11 the definition is, is that the only way we buy
12 solutions?

13 I mean, it should be the only way
14 we buy solutions, but is it the only way we
15 buy solutions?

16 MS. NELSON: Ideally, right, the
17 guidance coming out of OFPP is to say that it
18 should be done performance based. I don't
19 know -- I'm coming from the acquisitions side.
20 I don't know on the procurement side what
21 percentage of solutions from any -- whether or
22 not internally from organizational IDIQs or

1 MACS or actually being done on a PBA. So, if
2 we want to limit it at this time to
3 performance based or we don't want to limit it
4 to performance based.

5 My preference at this time would
6 not be to limit it to performance based. I
7 think ideally that would be it, but I
8 certainly would want to limit it to firm fixed
9 price.

10 MR. BRANCH: Tom?

11 MR. ESSIG: I think, clearly,
12 that's not the way we're doing it across the
13 federal government. I think the need here
14 though, is to define this within the terms of
15 the schedules. And for use within the
16 schedules, it means this.

17 The issue of whether or not it's
18 performance based -- If we go with a firm
19 fixed price, it's not performance based. What
20 the heck would we get? I don't know how you
21 separate those two.

22 MR. BRANCH: Well, the only reason

1 I raise the question
2 is that this is kind of a reference
3 definition, so when the report is read, the
4 reader will say, "Okay. I'm going to assume
5 what you mean by solutions is this --"

6 It was not meant to make a policy
7 recommendation, so that's why I asked the
8 question -- Because I would hate somebody to
9 read that definition and say, "Oh, they're not
10 talking about me because I have a bunch of
11 components over here and then I have a bunch
12 of T&M line items over here and I call that a
13 "solution." And so, when I read that
14 definition, none of this applies to what we're
15 talking about.

16 MS. NELSON: Well, let me ask a
17 question. OMB and several other -- For
18 instance, put HSPD 12 in the purview of the
19 schedules. Can that be done on a -- and it's
20 being done across the government. Can that be
21 done on a performance based --?

22 MR. BRANCH: I guess I would have a

1 different question, which is, is that a
2 solution?

3 MS. NELSON: Yes. It's integrated
4 services and products.

5 MR. BRANCH: Well, I guess -- You
6 know, you could do anything on a firm fixed
7 price basis if you can bargain to that
8 agreement.

9 MS. NELSON: Well, it can be done
10 on a firm fixed price. I would agree to that,
11 but can it be done on a performance based, and
12 that's the question that I'm asking. I'm not
13 questioning the firm fixed price. What I am
14 questioning is the performance based aspect of
15 it as this point.

16 MR. PERRY: I don't see why not.

17 MR. BRANCH: Yes, Tom?

18 MR. ESSIG: In response to your
19 concern about people saying, "This is not what
20 I'm using --" These are the only types that
21 are authorized under the schedule, and that's
22 what we're saying here. And so, if you have

1 some different type that's using time and
2 material, it's not authorized under the
3 schedule.

4 MS. SONDERMAN: That's what we're
5 proposing? Yes.

6 MR. BRANCH: Okay. I understand
7 that that's the only type that's authorized
8 under the schedule.

9 MS. SONDERMAN: That's what we want
10 -- is to recommend.

11 MR. BRANCH: Okay. Then I would
12 argue that that probably shouldn't be in that
13 definition because that's all that is. It's a
14 definition that we want to make a separate
15 recommendation
16 that --

17 MR. ESSIG: Concur.

18 MR. BRANCH: You know, that they
19 only get done on a fixed price basis.

20 MS. SONDERMAN: And that they only
21 get done on a performance based basis.

22 So, does that mean we have a new

1 definition? That the definition is --
2 "Solutions" are "the acquisition of goods and
3 services that result in an outcome that is
4 greater than the sum of its parts." Period.

5 MR. BRANCH: Yes. So, I think the
6 discussion says, "Take out fixed price basis
7 and take out everything after "parts." And
8 take out "in response." Right.

9 MS. SONDERMAN: And then take out
10 "on a" -- after "services."

11 MR. BRANCH: Yes. I think that's
12 fine. Right. Okay, so we have a motion on the
13 floor that we make an observation on the
14 current state of how solutions are bought
15 under solutions and a recommendation to the
16 administrator that he take a comprehensive
17 review of that and kind of rationalize that so
18 it's consistent with the policy under which
19 the schedules were created and consistent with
20 good business practice.

21 MR. ESSIG: Question?

22 MR. BRANCH: Yes, Tom?

1 MR. ESSIG: As a stand-alone,
2 that's okay, as long as we go back and then
3 re-insert the performance based and the firm
4 fixed price some place.

5 MR. BRANCH: Well, I guess I would
6 recommend that what we might want to do is we
7 might want to create two additional
8 recommendations.

9 One that the administrator -- And
10 I'm not going to frame these as motions
11 because we have a motion on the table. But
12 one is that the administrator reiterate that
13 you can only buy solutions using a performance
14 based statement of work and that they must be
15 fixed priced.

16 MS. NELSON: I would ask that those
17 two recommendations be split into separate
18 sentences.

19 MR. BRANCH: Okay. We can dispose
20 of that one when it comes time for motions --
21 Although I'd come back to this, so if you're
22 telling me that I can buy a performance based

1 solution, and it's not fixed price, then it by
2 definition has to be T&M. And I would argue
3 that by definition, then it is not performance
4 based.

5 MS. NELSON: My point is, I'm going
6 the opposite direction. My statement is that -
7 - I totally concur that it must be firm fixed
8 price. I do not concur that it must be for
9 performance based.

10 MR. ESSIG: Can we go back to the
11 recommendation for discussion purposes?

12 MR. BRANCH: Yes.

13 MR. ESSIG: We have been
14 deliberating this morning -- should we use
15 solutions. If so, what constraints should we
16 put on those?

17 It seems to me, at this point in
18 time, we're not coming up with any
19 recommendation. We're telling GSA to go back
20 and study it, and I'm not sure that's what we
21 want to do.

22 MR. BRANCH: Okay. Other discussion

1 on that issue?

2 MR. PERRY: I have on this one or -

3 -

4 MR. BRANCH: Either.

5 MR. PERRY: Well, it's not really -

6 - My thing was, the recommendation, I think,

7 is predicated upon doing something with the

8 recommendations that we made on products and

9 services. And I don't think you can even --

10 You can't adequately deal with this issue

11 until you address the other issues that we had

12 on products and services. You go to clean up

13 both of those first. Then you can talk about

14 the interplay between them.

15 MR. BRANCH: Okay. Yes, Debra?

16 MS. SONDERMAN: I guess the

17 phrasing on the recommendation of that

18 facilitates -- "recommend that the

19 administrator take a comprehensive review of

20 policy that facilitates solutions under the

21 schedule" could be implied to be saying that

22 we want to continue to have solutions under

1 the schedule.

2 And I think we need to find
3 slightly more neutral language -- maybe "a
4 comprehensive review of current policies used
5 for solutions under the schedule" or something
6 like that.

7 MR. BRANCH: Okay. Tom?

8 MR. ESSIG: Okay. Again, that's a
9 little less definite than I thought we were
10 headed to. I thought we had narrowed -- And I
11 could be wrong, obviously, but I thought we
12 had narrowly constrained the conditions under
13 which schedules for solutions or combinations
14 of schedules that result in solutions could
15 effectively be used."

16 And those conditions were if you
17 can do it on a firm fixed price and you can do
18 it on a performance basis. Then it made sense
19 and it was a recommendation of this panel to
20 allow solutions. If you could not, then the
21 recommendation was not to allow them.

22 MR. BRANCH: Well, let me talk to

1 that and tell you why I phrased the
2 recommendation the way I phrased it -- because
3 I think we have two issues.

4 And the first issue is one of
5 appropriate use, which will kind of deal with
6 -- in the form of other recommendations, I'll
7 certainly entertain a motion to do that --
8 that they be performance based and they be
9 fixed price.

10 But I think the other question --
11 It kind of goes to David's point. And what
12 we've done is we've taken schedules that were
13 clearly designed for the purchase of goods or
14 the purchase of services within a particular
15 vendor, but not necessarily both.
16 So, not necessarily for both the purchase of
17 goods or services and not necessarily across
18 vendors.

19 And what GSA has done over the
20 history of the program -- in order to be
21 responsive to customers is they've come up
22 with what I will call "devices" to make that

1 happen. So you have teaming. You have BPA,
2 such that if you have, let's say, KPMG re-
3 doing your financial system and they believe
4 part of that system is Oracle Financials, then
5 they can go out and get the Oracle guys
6 because the Oracle guys have the schedule and
7 they can partner with those guys.

8 And to David's point, there are
9 issues of scope. The schedules never really
10 contemplated that and you get kind of into the
11 "but for" -- You know, "If I had known that's
12 what you were really going to buy under the
13 schedules, I would have bid or I would have
14 done something differently."

15 And then you get into the issue of
16 sub-contracts -- who has privity of contract.
17 When the Oracle release doesn't work as you
18 expected, do you go back to Oracle because
19 they have a GSA schedule contract or do you go
20 to KPMG Bearing Point because they're the ones
21 that brought Oracle on the team?

22 And then thirdly, what's your

1 visibility into the pricing between KPMG,
2 let's say, and Oracle on this? So, that
3 recommendation was really meant to say, "You
4 know, you really ought to sit down and you
5 ought to take a look at the mechanics of how
6 you buy solutions on schedules, and you really
7 ought to issue policy that, if you were
8 rationalizing, it makes it clearer how we get
9 to contract formation for a solution.

10 And then I think that's separate
11 and apart from "Oh, by the way. When you use
12 the solutions, it ought to be performance
13 based and it ought to be fixed price." So
14 that was my reasoning behind that.

15 MR. ESSIG: Thanks.

16 MR. BRANCH: Other discussion?

17 MR. ESSIG: I think you just need
18 to do some editorial clean up on the language.
19 Wrong verbs. It's not "take."

20 MR. BRANCH: Okay.

21 MS. JONES: I have a question. Did
22 we lose "products" in this? In the

1 "observation of solutions?"

2 MR. BRANCH: We said "goods." If
3 you want to make that "products," that's fine.

4 MS. JONES: Well, the reason I was
5 asking that is because now we're talking about
6 -- it must be fixed price and it must be
7 performance based. So if you have "products"
8 included in that, then that doesn't cover the
9 products -- The "fixed price" does, but to say
10 that it should be performance based is
11 excluding the products aspect of it.

12 MR. BRANCH: I don't think so. And
13 if that's a component of the solution.

14 MS. JONES: Well, you're assuming -
15 - But you're assuming that all solutions are
16 services when you say it must be performance
17 based.

18 MR. BRANCH: No, no.

19 MR. ESSIG: Go back up to the
20 definition.

21 MS. JONES: Yes. I'm just wondering
22 if I missed something. That's all.

1 MS. NELSON: Now, the performance
2 based is Absolutely going to include the
3 products by the definition of how the
4 performance based statement of work is put
5 together and understood between the acquiring
6 contracting officer and the contractor.

7 MS. JONES: Well, I guess my point
8 is the performance based statement of work is
9 applicable for services.

10 MR. ESSIG: It's applicable to
11 both.

12 MR. BRANCH: It's applicable to
13 both. But, yes, I think -- Let's not get
14 tripped up over terminology here. I guess
15 when we were talking about solutions, you
16 could argue that we call -- Sometimes in some
17 agencies are called "performance
18 specifications" as opposed to "design
19 specifications" or "build specifications," but
20 I think the sense is that the way we're using
21 the terms, it includes both products and
22 services.

1 MS. JONES: Okay because we're
2 acquiring part 12. So, I guess I was thinking
3 the way that it's set up now, in terms of the
4 way that agencies can go about acquiring
5 solutions, you could have a tram lead on
6 either side of the fence.

7 So I guess I was relating the
8 performance based statement of work to the
9 services aspect of it. That's all.

10 MS. NELSON: Can we just come down
11 to the recommendations again so we can word-
12 smith it a little? So, "recommendation that
13 the administrator take a comprehensive review
14 of current --"

15 MR. BRANCH: I guess "make a
16 comprehensive review."

17 MS. NELSON: Okay, so starting with
18 "recommend that the administrator take a
19 comprehensive -- recommend that the
20 administrator perform a comprehensive review
21 of current GSA policies and guidance that
22 facilitate --"

1 MR. BRANCH: Yes, I would take out
2 that -- "that facilitate."

3 MS. NELSON: "That facilitate --"
4 Take out the "s."

5 MR. BRANCH: Yes.

6 MS. NELSON: "That facilitate the
7 acquisition --"

8 MR. BRANCH: Yes.

9 MS. NELSON: I actually would add
10 in "the acquisition--" I want to say, "the
11 acquisition --" I would say "the acquisition
12 planning" rather than say -- Yes. "That
13 facilitate the acquisition of solutions --"

14 MR. BRANCH: "Under the schedule --
15 "

16 MS. NELSON: "Under the scheduled
17 program --"

18 MR. BRANCH: Yes, and I would put a
19 period after that.

20 MS. NELSON: "Under the scheduled
21 program, period," because I don't want to say
22 "schedule" because that would be singular.

1 MR. BRANCH: Right. I agree.

2 MS. NELSON: And "solutions," by
3 definition may be program or it may be a
4 single schedule.

5 MR. SHARPE: Is not the predicate
6 that we think, "absent this," it's
7 inappropriate?

8 MS. NELSON: Correct. Well --

9 MR. SHARPE: So, are we saying that
10 because what of this review never occurs?
11 What's our advice? So, isn't our advice is,
12 we think it's not used appropriately and it
13 needs to be fixed?

14 MS. NELSON: Well, our recommend --
15 I think that "absent this" -- The reason why
16 we're putting "recommendations" in is that it
17 falls outside the purview of the price
18 reduction clause and the use of pricing
19 specifically under the schedules, so we're
20 making a very strong recommendation. And we
21 can word it that
22 way --

1 MR. SHARPE: What happens in the
2 interim? What of this review never occurs?

3 MR. ESSIG: That's our other
4 recommendation.

5 MS. NELSON: Well, if this review
6 never occurs then I suppose that the customers
7 can make a very clear choice in their use of
8 the schedules.

9 MR. SHARPE: Is our advice that
10 they stand down the use until this occurs?

11 MR. BRANCH: Well, I think that's a
12 motion we could certainly put on the table,
13 Tom.

14 MR. SHARPE: I just don't
15 understand, We seem to be spinning on this. If
16 we think it's inappropriate and we're
17 recommending "Go figure it out so it's
18 appropriate," that second part may never
19 occur.

20 MR. BRANCH: Well, I'm not sure
21 we've concluded that it's inappropriate. We've
22 built a consensus around that. And I'll only

1 speak for myself.

2 I believe that the use of schedule
3 contracts to buy solutions is inappropriate
4 unless they are firm fixed price solutions. I
5 mean, that's my personal opinion.

6 MR. ESSIG: Is this a
7 recommendation to table this motion and put
8 another one first?

9 MR. SHARPE: That's where I was
10 going.

11 MR. BRANCH: Okay. So we have a --

12 MR. SHARPE: I mean, what's the
13 problem we're solving?

14 MR. BRANCH: Well, I think we're
15 solving a couple of problems here. Number one,
16 we're not real sure whether -- Well, I think
17 there's a given. We're buying solutions under
18 the schedule today. No question about that.

19 And when you look at the policy
20 that we use to do that, it is, if you will, an
21 assemblage of tactical pieces that allow that
22 to go happen. But nobody started with a blank

1 sheet pf paper and said, "You know, if we were
2 going to allow you to buy solutions against a
3 solution, this is how we would make that
4 happen." So I think that's one issue.

5 I think the other issue is should
6 you be doing it at all? I would agree that
7 that's an issue on the table. So, maybe the
8 order, if you will, that you need to be
9 thinking about this is, should you be doing it
10 at all. And if you decide you should be doing
11 it, then you need to go fix the policy that
12 you used to do it.

13 MR. SHARPE: Or even stronger. I
14 guess, our wisdom this morning is "you
15 shouldn't be doing it unless this can be
16 fixed."

17 MR. ESSIG: I don't think I'd agree
18 with that. I think I would agree with allowing
19 these as long as they were fixed price and
20 performance based. So, that's different than
21 what you're saying, Tom.

22 MR. SHARPE: I think I'd be okay

1 with what you just said, Tom.

2 MR. ESSIG: I recommend, actually,
3 we proceed with this recommendation and then
4 immediately go to the --

5 MR. BRANCH: Well, let me -- Well,
6 I'll move we table this recommendation until
7 we address the issues of under what conditions
8 this should be done.

9 MS. SONDERMAN: Second.

10 MR. BRANCH: All right. So, all
11 those favor in tabling this, that we take up -
12 -? Okay. Opposed?

13 All right. So, this motion is laid
14 on the table. The chair will entertain a
15 motion to deal with the circumstances under
16 which solutions should be purchased under GSA
17 schedule.

18 MR. SHARPE: Why don't we start
19 with what you just suggested, Tom?

20 MR. BRANCH: Want to frame that as
21 a motion, Tom?

22 MR. ESSIG: Yes. Motion?

1 MR. SHARPE: I guess I move that
2 Tom frame what he's saying --

3 MR. ESSIG: Task orders for
4 solutions under schedules must be on a firm
5 fixed price performance basis.

6 MR. BRANCH: Okay. Do I hear a
7 second?

8 MS. SCOTT: Second.

9 MR. BRANCH: Second. Okay. So,
10 task orders for solutions under GSA schedules
11 must be on a fixed price performance basis.

12 MR. ESSIG: Firm fixed price.

13 MR. BRANCH: Firm fixed price
14 performance basis.

15 MR. SHARPE: Can I ask a quick
16 question? I think I'm okay with that. Is it
17 always clear in all cases what PBA is? Is
18 there a better way to word that?

19 I agree with what you said . I
20 know at Treasury we struggle when it's a PBA
21 and when it's not.

22 MR. ESSIG: I just asked that

1 actually, and the language, I guess, more PP,
2 talks to performance based acquisition but it
3 really talks in detail about performance based
4 services.

5 MS. JONES: That's the point I was
6 making earlier.

7 MR. ESSIG: But I think there's
8 enough guidance on performance based now. I
9 wouldn't try to open that. That is in FAR.

10 MS. SCOTT: Pat, my suggestion
11 would be make it "task orders for solutions
12 under the schedules program should be on a
13 fixed price, comma, performance basis.

14 MR. ESSIG: Yes, firm fixed price

15 MR. SHARPE: Does it matter that
16 it's PBA? I mean, I support that but if it's
17 "fixed price," I think we're there, right?

18 MR. BRANCH: Not necessarily
19 because you could go back to, again, the
20 scenario where I say, "Go bring me these
21 pieces and go hook them together." Glenn and
22 then Judith?

1 MR. PERRY: I'm still -- I guess
2 I'm still stuck on what I said before, so --
3 But you can all just tell me to shut up on
4 this one. I think why you continue --

5 MS. NELSON: Shut up.

6 MR. PERRY: I didn't say whether
7 I'd acknowledge it, though.

8 Based on our conversation, we're
9 talking about solutions, but those solutions
10 would still entail the utilization of the
11 pricing for the goods and for the services.
12 And then there's that sort of the in-between
13 piece that's in our definition.

14 So as long as -- So, I think
15 before you can even start to try to do a
16 solutions, we still need to address the
17 inconsistencies and the issues we identified
18 on the products side. We still have to do the
19 part on the service side.

20 And then you're going to have this
21 third piece because even if I do -- Your
22 performance based thing -- You want to make

1 sure -- When you do solutions on the
2 schedules, you still want to see that Oracle
3 Financials -- to use -- Maybe we need to give
4 fair play. I'll use another one, SK or
5 something -- You want to make sure that you
6 got a reasonable price in that solution for
7 that. You still want to have the other piece
8 in the solution of that, and then you're going
9 to have this other -- I think you ended up
10 with this third piece -- What's it going to
11 take to put the two of them together, for
12 example?

13 But yore still going to be using
14 that underlying pricing on those two
15 categories in order to come up with this
16 integrated solution. So, either somehow we've
17 got to build that into this, that that has to
18 happen.

19 MR. ESSIG: I propose that be on a
20 separate motion. I think they're all valid
21 concerns. I don't think the necessarily apply
22 here.

1 MR. BRANCH: Okay.

2 MR. ESSIG: But I would like to
3 clarify that statement. First off, delete
4 "should," and it's "must." It's not optional.

5 MR. BRANCH: Okay.

6 MR. ESSIG: And it's not "fixed
7 price." It's "firm fixed price."

8 MR. BRANCH: Okay.

9 MR. PERRY: But that's like -- I
10 just want to add. That's why I like having
11 "performance based" in there because
12 I think that is the piece about solutions
13 that's different and it needs to be there.

14 MR. BRANCH: Well, Judith, I think
15 -- Judith, do you want the floor? All right,
16 well, while we're waiting for
17 Judith --

18 Because I guess I would observe
19 that even though the integration piece is the
20 piece that makes it a solution, that
21 integration piece is still going to consist of
22 either goods or services, which are priced on

1 the schedule.

2 So I'm okay with not worrying
3 about that in the sense that where the burden
4 now falls is on the ordering agency to look at
5 the quantity of that integration piece and
6 say, "Is that really enough hours?" And "Is
7 that enough, in terms of material, to do that
8 piece?"

9 So, I guess I'm not as
10 uncomfortable, perhaps, as you are with,
11 "Okay, so how do you go assure reasonableness,
12 the pricing of that?" You have the rates on
13 labor. You have the price of the components,
14 you know, at the schedule level. You have
15 competition, hopefully, although it may be
16 dissimilar.

17 And the real issue is a technical
18 evaluation of the hours and the products to be
19 used. So, I'm okay. Judith?

20 MS. NELSON: I'd like to offer a
21 friendly amendment. First of all, to take the
22 word "task" out and leave it at "orders." And

1 to address the pricing to put -- Ad you don't
2 have to adjust it here, but just -- I'm
3 talking to Pat -- But just to hear, "Orders
4 for solutions under the schedules program must
5 be on a firm fixed price basis in accordance
6 with the contracting officer's determination
7 for best value pricing."

8 MR. ESSIG: I would agree with the
9 first change, delete "task." But not the
10 second.

11 MR. SHARPE: A question? Which
12 contracting officer are we talking about
13 because we don't have any GSA pricing help,
14 right?

15 MS. NELSON: No. In accordance with
16 the contracting, with the task order, with the
17 ordering activities because we've determined -
18 - Going back to your concern, Tom, that you
19 expressed. We've determined that the best
20 value pricing is made at the ordering
21 activities level.

22 And I think that going back to the

1 concern that this go back to the discussion on
2 products and services that we made earlier and
3 tying that back to that, I think that the
4 motion should tie back to that, and this does
5 it -- that we need to address the fact that
6 when placing orders for solutions, we look at
7 the best value determination -- which we've
8 already discussed, happens at the task order
9 level.

10 MR. SHARPE: So the ordering CO is
11 on the hook for the fair and reasonableness of
12 the pricing?

13 MS. NELSON: No, for the best value
14 of the pricing, not for the fair and
15 reasonable.

16 MR. SHARPE: Okay. They're
17 responsible for the pricing?

18 MS. NELSON: At the task order
19 level or the --

20 MR. ESSIG: I think those are two
21 entirely different points. The first one is a
22 limitation on your ability to use it at all.

1 The second one concerns the determination of
2 a fair and reasonable price.

3 MS. NELSON: But I think we need to
4 do both of them.

5 MR. SHARPE: I agree.

6 MR. ESSIG: I think it muddies that
7 they try to put them in the one overall
8 statement.

9 MS. NELSON: That's fine. I just
10 want to make sure that we address both of
11 them.

12 MS. SCOTT: Well, a friendly
13 amendment to her amendment.
14 And if you did put it in one sentence, what
15 you could say is "on a firm fixed price basis"
16 or "firm fixed price basis awarded to what is
17 a best value." So you've got firm fixed price
18 awarded on best value.

19 MR. ESSIG: Best value and -- "Best
20 value" gives the impression that cost only
21 awards are not allowed, and I wouldn't want to
22 do that.

1 MS. NELSON: In that case, while I
2 would love to have the assurance that the
3 entire federal government is ordering PBA, I
4 would then offer the friendly amendment to
5 motion number 2 that says "orders for
6 solutions under schedules program must be on
7 a firm fixed price basis or under a
8 performance based basis only under firm fixed
9 price."

10 MS. SCOTT: Can't we split this
11 into multiple versions?

12 MS. NELSON: It could be split into
13 two, but I do not want to limit the use of
14 schedules to performance based contracting
15 because the federal government is not ordering
16 specifically and solely under performance
17 based contracts under any contracting vehicle.

18 MR. ESSIG: It sounds like Debra's
19 recommendation is going to be necessary to get
20 through this, and we'll split it into two
21 parts.

22 MR. DRABKIN: Well, but I think if

1 we --

2 MR. DRABKIN: Excuse me. Aren't we
3 just talking about solutions here? So, the
4 restriction to performance based contracting,
5 the language, would only be to solutions. It's
6 not to anything else, right? Okay. So, I'm
7 not sure, Judith, I understand where your
8 concern is.

9 MS. NELSON: Because I'm not aware
10 of the federal government buying solutions
11 under any contract vehicle for any specific --
12 under any contract vehicle anywhere in the
13 federal government only under PBAs.

14 MR. DRABKIN: So, GSA can lead the
15 way in providing an opportunity for
16 contracting officers to do the right thing.

17 MS. FRYE: I would say though, that
18 we don't have enough program management types
19 to put PBS in place across the government.
20 That's the problem.

21 Contracting officers can put
22 contracts in place all day. You've got to have

1 program managers that are willing to
2 administer those contracts. That's the issue.

3 MS. NELSON: I would love for GSA
4 to lead the way, particularly if we had the
5 program management to offer to the federal
6 government to be able to do that. So, if we
7 could triple the size of assistive acquisition
8 services, that would be fantastic.

9 MR. BRANCH: As I listen to the
10 discussion -- If it's simply the government
11 saying "I want a widget off of this contract
12 and a widget off if that contract, and I want
13 three manures of project management, a couple
14 of the technical writers, and a senior
15 engineer to put this together" by definition,
16 did we not decide that that wasn't a solution?

17 MR. DRABKIN: I believe our
18 discussions of this morning came to that
19 agreement.

20 MR. BRANCH: If that's not a
21 solution, then wouldn't all solutions, by
22 definition, have to be performance based?

1 MR. BRANCH: So what we're really
2 telling agencies is "Don't use schedule
3 contracts to buy solutions unless they're
4 performance based solutions."

5 And that is probably going to
6 reduce the number of solutions that get bought
7 under the schedule. It will certainly reduce
8 the number of marketing buzzwords people sell
9 to us can use, and it will probably drive
10 contracting officers and program managers to
11 go do what the law has been telling them to do
12 for almost the last eight years .

13 MR. DRABKIN: It certainly doesn't
14 force them to decided to buy a solution. That
15 is their decision in the first place. It is
16 part of the acquisition planning process, and
17 what we're saying to them is, "After you've
18 made the decision on whether or not you want
19 to buy a solution, and you decide you want to
20 use the schedules to satisfy that requirement,
21 then your order for the solution must be
22 performance based and firm fixed price."

1 But we're not telling them whether
2 they have to buy a solution and whether they
3 have to buy it from the schedules or not from
4 the schedules. We're only saying "Once you've
5 made these decisions, then the schedules will
6 accommodate you under these circumstances only
7 -- Firm fixed price and performance based."

8 And yes, Judith, there will be
9 other contracts with other types of
10 requirements that don't have to have a
11 competitive advantage or with the sales we
12 make at GSA, but GSA is not in business to
13 make sales. GSA is in business to provide
14 acquisition excellence and leadership across
15 the government.

16 MR. FRYE: I would say one of the
17 other things it will do is cause contracting
18 officers to lie and say contracts are
19 performance based -- because I look at
20 contract after contract after contract that
21 contracting officers claim are performance
22 based now and they're not. They're simply

1 checking the block.

2 MR. DRABKIN: Yes. There won't be
3 any more lying than is going on right now.
4 They also say personal services are non-
5 personal services.

6 I mean, we can't make people
7 honest. We can only provide the with the
8 guidance to do the right thing, and hopefully,
9 most of them will at least try.

10 MS. SCOTT: I would recommend the
11 wording be "orders for solutions under the
12 schedules program must be firm fixed price and
13 performance based.

14 MR. ESSIG: I concur with that
15 change.

16 MR. BRANCH: Further discussions?
17 Hearing on? I'll call for a vote on the -- Oh,
18 Judith?

19 MS. NELSON: I would ask that the
20 vote be captured in the transcripts.

21 MR. BRANCH: We'll do a vote by
22 roll call then. Okay?

1 Tom Sharpe? Glenn Perry? Lesa Scott?

2 COURT REPORTER: I'm sorry. Could
3 you turn on your microphone if we're voting on
4 the record?

5 MR. BRANCH: Okay. We'll start this
6 over. Tom Sharpe?

7 MR. SHARPE: Aye.

8 MR. BRANCH: Glenn Perry?

9 MR. PERRY: Aye.

10 MR. BRANCH: Lesa Scott?

11 MS. SCOTT: Aye.

12 MR. BRANCH: Tom Essig?

13 MR. ESSIG: Aye.

14 MR. BRANCH: Judith Nelson?

15 MS. NELSON: Any.

16 MR. BRANCH: Alan Chvotkin?

17 MR. CHVOTKIN: No.

18 MR. BRANCH: Jacqueline Jones?

19 MS. JONES: Any.

20 MR. BRANCH: David Drabkin?

21 MR. DRABKIN: Yay.

22 MR. BRANCH: Debra Sonderman?

1 MS. SONDERMAN: Aye.

2 MR. BRANCH: Elliot Branch, the
3 chair, votes aye. Don Erickson?

4 MR. ERICKSON: No.

5 MR. BRANCH: January Frye?

6 MR. FRYE: January Frye, no.

7 MR. BRANCH: Okay. Motion carries.

8 Are there any other motions that we need to
9 take up before we look at taking the previous
10 motion off the table? Okay. So I move that we
11 take the previous motion off the table.

12 MS. SONDERMAN: Second.

13 MR. BRANCH: All those in favor of
14 continuing discussion on motion number 1?
15 Okay, the "ayes" have it.

16 So, motion number 1 is to include
17 in our report an observation of the current
18 state or, I guess, the current process under
19 which we buy solutions under the schedule. And
20 to recommend to the administrator that they
21 perform a comprehensive review of GSA policies
22 and guidance that facilitates solutions under

1 the schedule. Discussion?

2 Okay. Hearing none, we'll put it
3 to a vote. All those in favor? All those
4 opposed? Okay. Motion carries.

5 Okay. It is 10 minutes after 12. I
6 think that's probably a good time to break for
7 lunch. So, why don't we come back at 1:00 and
8 go back to our original list of action items
9 and see which of those needs to be
10 dispositioned. Please be back at one.

11 (Whereupon, the above-entitled
12 matter went off the record at 12:10 p.m. and
13 resumed at 1:10 p.m.)

14 MR. BRANCH: Okay, we have a
15 quorum, so we are going to get started, and I
16 think we have a definition in addition to a
17 definition.

18 So, we've defined number 4, which
19 was scrolled up. That's our reference
20 definition for solutions -- not a policy
21 issue. Not necessarily a recommendation for
22 adoption by the administrator, but simply the

1 premise from which we start.

2 So, our premise is that if I acquire goods and
3 services and I get an outcome greater than the
4 sum of the parts, that really is the solution.

5 We have three recommendations that
6 have carried the day. One is to essentially
7 ask the administrator to perform a
8 comprehensive review of GSA policies and
9 guidance that facilitates the acquisition of
10 solutions under the schedule program, and
11 that's driven by, if you will, the patchwork
12 architecture under which we buy solutions and
13 a schedule that was really designed to buy
14 products or services, but not necessarily the
15 two in conjunction.

16 The next motion that was approved
17 was that orders for solutions under the
18 schedules program have to be fixed price and
19 performance based. And this is consistent with
20 the philosophy of ensuring that we do not use
21 time and material, which results in the
22 delivery of hours or effort to the extent that

1 additional effort is needed to complete the
2 goal -- rewards the contractor with additional
3 profit for that to restrict those for firm
4 fixed price and performance based.

5 So, good work this morning, I
6 think. So, Pat, if I could ask you to go back
7 to the beginning of your notes this morning.
8 We put some issues on the table. I think we've
9 resolved most of them here. But I just want to
10 do a last minute check to see if there are any
11 outstanding things that we have to deal with.

12 Okay, so we've defined solutions.
13 I'm not sure we need to address the second
14 one, in light of our observations and
15 recommendations this morning. We recognize
16 that solutions are unique. We recognize that
17 the architecture for buying them under
18 schedules is something that probably needs
19 some review, so I would propose that bullet
20 number 2 has become somewhat irrelevant
21 given our discussion.

22 I think we've accomplished bullet

1 number 4 -- in that we have made
2 recommendations to the administrator when they
3 are appropriate, i.e. when it is performance
4 based and they can be done on a fixed price
5 basis.

6 MR. SHARPE: Have we addressed all
7 of them?

8 MR. BRANCH: No, we have not
9 addressed all of them.

10 MS. SCOTT: Should we delineate
11 bullet number 2 and 3 because we have dealt
12 with those. No?

13 MR. BRANCH: I don't think we've
14 addressed 3 at all, so I'll start the
15 discussion by putting this on the table. We
16 had talked about 3 in a different context. And
17 if you recall, it was in the context, if you
18 will, of Tom's rate sheet against a ste of
19 standard labor categories. I think we're re-
20 visiting it in a slightly different context
21 here. I think it was raised in the context of
22 solutions, and I'll give the example that

1 Judith always uses of a help desk.

2 So I have a help desk is
3 essentially a solution, and it consists of
4 labor and I pick off, you know, I want 10 tier
5 1 support guys, 5 tier 2 support guys, 4 tier
6 3 support guys. And that really kind of
7 constitutes a solution, but if you look at the
8 composition of that solution, it really does
9 look like a commodity. Lesa?

10 MS. SCOTT: I was going to say that
11 to me, it's just the reverse of that. It's
12 that you need the help desk and you don't know
13 how many people they're going to bring in.
14 You're just buying it at a certain fixed price
15 for a certain level of service. And that would
16 be the commoditized version of it.

17 MR. BRANCH: Okay.

18 MS. SCOTT: So I was taking that
19 when we were talking about using performance
20 based and fixed price, that would then
21 eliminate the need for this.

22 MR. BRANCH: All right.

1 MR. PERRY: Another example is we
2 use -- or we actually set up with GSA -- I
3 better not use that acronym again. Anyway,
4 something to do with collecting defaulted
5 loans. So, it's a commodities service and they
6 get paid based on -- We don't care how many
7 people they use. They get paid on what they
8 actually collect and a percentage of that.

9 MR. BRANCH: So, I guess the
10 question on the table is do we need to address
11 this issue as it's stated or have we
12 dispositioned this sufficiently within the
13 context of our discussions this morning?

14 MS. SONDERMAN: I guess -- Because
15 Pat was so helpful and set out our previous
16 motions, do we need to re-look at motion
17 number 6 from our services debates that we
18 disapproved, which was that GSA undertake a
19 study to determine the services sold in the
20 marketplace that are similar to commodities,
21 can be standardized, and set up as
22 commoditized services. Does that need to be a

1 separate schedule category?

2 MR. CHVOTKIN: Mr. Chairman --

3 MR. BRANCH: Alan.

4 MR. CHVOTKIN: I was very
5 comfortable with the decision we made that
6 about stand alone services. I'm just not sure
7 what's left over here based on the discussion
8 this morning.

9 We talked extensively then,
10 although I didn't fully agree with it, about
11 fixed price and performance based. I think
12 that was endemic to what David had when he
13 described a commoditization. And I think the
14 one thing that is different that makes the
15 discussion of commoditization of solutions
16 different is the very definition we used that
17 it is a solution with --

18 Ultimately, we didn't use the word
19 "unique." It is not replicable. They're
20 usually one time events. And so I think these
21 two terms are almost inconsistent --
22 commoditization and solutions -- So I think we

1 should either table or trash it or do
2 something appropriate.

3 MR. BRANCH: All right. So, do we
4 want to consider that bullet having been
5 dispositioned as a result of our discussions
6 this morning?

7 MS. SCOTT: I make a motion we
8 remove it since it's dealt with.

9 MR. BRANCH: All right. Second?

10 MR. CHVOTKIN: Second.

11 MR. BRANCH: All those in favor?
12 Opposed? Motion carries, so we've
13 dispositioned that particular bullet on
14 commoditize-able services.

15 MR. PERRY: I guess I should have
16 said something. Should we leave it, but should
17 we leave it some place in there and at least
18 make some mention of it since it does keep
19 coming up -- How we dealt with that.

20 MR. BRANCH: I guess I would
21 suggest that we address that in the report.

22 MR. PERRY: That's what I was

1 thinking.

2 MR. BRANCH: Yes. Absolutely,
3 because we do have the motion from our
4 services discussion where we disapproved that
5 idea.

6 And I think, in fairness, the
7 administrator should get the benefit, not only
8 of our recommendations, but the administrator
9 should get the benefit of those things that we
10 did not approve with some brief discussion of
11 why we did not approve them because maybe
12 there is absolutely something we missed. I
13 mean, maybe that's a direction the agency
14 would like to go in.

15 And in that sense, the discussion
16 around that issue would serve as, at least, if
17 nothing else, an observation of some of the
18 pitfalls and issues that would have to be
19 grappled with. So, it would be my
20 recommendation that in our report, we discuss
21 all motions, whether we voted them up or down.
22 Lesa?

1 MS. SCOTT: I would say that here
2 we say the definition that we are proposing
3 eliminates the need to address this underneath
4 "integrated services" and that we refer them
5 back to motion 6 under "services," as Debra
6 pointed out.

7 MR. BRANCH: Okay. Folks
8 comfortable with that? Okay, very good.

9 MS. SONDERMAN: We did have a
10 recommendation from the Office of Government-
11 Wide Policy that was provided to us about the
12 definition that asked us to consider,
13 including computing services as an area in
14 addition to products and services.

15 And I think, in some respects, the
16 computing services as described in this paper,
17 fall into that commoditize-able service bucket
18 and maybe should be -- This particular set of
19 comments and suggestions could be included in
20 the report in that section, rather than under
21 the solutions. But there is some worthwhile --

22 MR. PERRY: Although, I think we

1 took care of the recommendation here. The
2 concern was that we said "professional
3 services," and we have eliminated the word
4 "professional," so it now covers what they
5 were looking for. So, I think we've
6 dispositioned this.

7 MR. BRANCH: Okay. Very good.

8 MR. CHVOTKIN: Mr. Chairman?

9 MR. BRANCH: Yes, sir?

10 MR. CHVOTKIN: I don't disagree
11 with the disposition. I've looked at that
12 paper several times in a slightly different
13 context, and Lord knows, as a government
14 contracts lawyer, difficult to be talking
15 about computing technologies.

16 But it raises an interesting issue
17 -- A whole lot of literature now and
18 acquisitions around what is referred to as
19 "cloud computing," and when I look at the
20 schedules program in 70, an awful lot of that
21 looks like it's desk top oriented or self-
22 contained.

1 And it raises the question about
2 sort of the innovative way in which the
3 marketplace is accommodating change which the
4 agencies are adapting to that new technologies
5 far faster than our acquisition vehicles are
6 capable of handling. And that, as a result, is
7 encouraging people or recommending people or
8 folks are in any way -- seeking acquisition
9 vehicles that are close enough so that they
10 can accommodate the emerging technologies even
11 though our acquisition vehicles haven't kept
12 pace. And I suspect that that's the case with
13 respect to cloud computing. I have not
14 scanned all of 70. I don't think any of the
15 vendors have cloud computing as a capability
16 or a pricing technique. So, it does raise some
17 interesting questions.

18 So, I agree with Mr. Essig that
19 we've dispositioned this by eliminating the
20 restriction on solely addressing professional
21 services. We're talking about services more
22 broadly, but I do think it raises an important

1 question about addressing the innovation and
2 technology and the rapid change of technology
3 and how our acquisition vehicles accommodate
4 those.

5 MR. BRANCH: Yes, I guess I would
6 invite everyone's attention to the motions
7 that Pat passed out. Those have 19 and 22
8 September.

9 Alan, I think you make an
10 outstanding point, and I think that could be
11 a discussion under both motions 4 and 5 on
12 that day. And motion 4 was that GSA
13 periodically evaluate the program SINS to
14 determine if the descriptions are consistent
15 with customer needs, current market offerings,
16 and then, further on motion number 5, that
17 they take a periodic evaluation in
18 consultation with the ordering agencies and
19 industry partners of the current schedules to
20 see if they're relevant in the marketplace.

21 So, if you would kind of hold that
22 thought and let's make sure that that gets in

1 the report, we can reference the presentation
2 given to us today as an example of where that
3 would be very useful. So, I would suggest we
4 might want to proceed along those lines.

5 MR. CHVOTKIN: I would be happy to
6 do that, and I will also take it upon myself
7 though, just for my own knowledge and I'll be
8 happy to share with the panel, how some of the
9 activities and how some of the industry are
10 now offering those services into the
11 government marketplace.

12 MR. BRANCH: Thank you. All right,
13 I think we have worked through products,
14 services, and solutions -- especially
15 solutions, as best we can. I certainly, at
16 this time, would like to thank my fellow panel
17 members for their insights and their passion
18 and the spirited discussion around these
19 issues, as well as the drive to build
20 consensus to them. I think we've done some
21 excellent work here with what has now turned
22 into almost a six month project.

1 So, it's with some hesitation, but
2 I think my duty to completeness -- to ask is,
3 have we formulated a complete set covering the
4 issues in our charter? Does anyone believe
5 that we have not at least deliberated on an
6 issue critical, given the charter for which we
7 should make a recommendation to the
8 administrator? Debra?

9 MS. SONDERMAN: I don't know
10 whether we have or haven't done a complete
11 set, but I guess in looking back over the
12 motions, in the context of the solutions, do
13 we need to at least discuss the issue of the
14 price reduction clause and whether it applies
15 or not, and just for completeness of our
16 discussion since that was what our initial
17 charter was. We've looked at that specifically
18 for services. We've looked at it specifically
19 for products, and just for the sake of being
20 able to say, "Yes, we did look at each of
21 these things as we were considering."

22 MR. BRANCH: Tom?

1 MR. ESSIG: I'm not sure I
2 understood because we did address that
3 specifically in products, and it says, "Motion
4 approved to eliminate price reduction clause"
5 I'm sorry, "for services." What are we doing
6 for products?

7 MS. SONDERMAN: Right. We said we'd
8 leave it in --
9 I'm just asking. Do we need to -- Is there
10 something about the solutions that we should
11 pause for a moment or talk for a few minutes
12 about -- whichever way you process information
13 better, whether there's any need for a price
14 reduction clause -- Does that need to apply to
15 the products that are covered by a solutions -
16 -

17 MR. ESSIG: Well, we recommend
18 eliminating it from products and services
19 schedules, which are the underlying vehicles
20 for solutions. We've also identified that the
21 solutions can only be on a firm fixed price
22 performance based basis. You combine those two

1 and I would see absolutely no benefit to
2 including one.

3 MR. BRANCH: Yes, I would -- though
4 you have triggered a thought in my mind. I
5 agree with you, Tom, but I would -- So, I'm
6 going to put a motion. I'm going to make a
7 motion.

8 So, with respect to solutions, I
9 move that we do explicitly state that
10 procurements for solutions be subject to the
11 same competitive forces at the task order
12 level that both products and services are now
13 required to undergo.

14 Just so we make it explicit --
15 "Yes, you can buy solutions and that's fine,
16 but we expect you to put a statement of work
17 out there. We expect you to compete those. We
18 expect that price competition to take place at
19 that level."

20 At some level, it's probably not
21 necessary. One could infer from what we've
22 done on products or services that, "Well, of

1 course, you must compete these," but I think
2 it would be useful to leave no doubt.

3 MR. DRABKIN: I second that motion.

4 MR. BRANCH: Okay. Discussion?

5 MR. ESSIG: Clarification? Is it
6 "products or services" or "products and
7 services?"

8 MR. BRANCH: Actually, it's
9 "products and services." I think it's
10 "products and services" because if you go back
11 and you look at the motions on products and
12 services, they are clearly consistent with
13 each other. I mean, they're not quite
14 identical, but they are consistent with each
15 other. So I think you could say "products and
16 services."

17 MR. CHVOTKIN: Mr. Chairman, would
18 you consider a friendly amendment that said
19 "the level similar to the panel's" or "panel's
20 recommendations for products and services."

21 MR. BRANCH: Yes. I would certainly
22 accept that as a friendly amendment. Glenn?

1 MR. PERRY: More eloquently -- I
2 was starting to go through the other
3 recommendations and I think by including all
4 of them -- because I was going to start saying
5 "transparency competition," all those things
6 we addressed and the others -- that if we
7 could make sure we include all those, I think
8 it would be good.

9 MR. BRANCH: Okay. Very good.

10 MS. SONDERMAN: In deference to
11 Judith, who isn't here, do we need to take out
12 the word "task?"

13 MR. DRABKIN: Just for the sake of
14 clarity, if you put in "task," then by
15 definition somewhere else, you're only talking
16 about services. If you take out the word
17 "task" or add the word "task and delivery" so
18 that you cover both. If you leave "order,"
19 then you cover both.

20 MR. BRANCH: In the words of Ken
21 Oscar, too many words take it out. Further
22 discussion on that motion?

1 Okay, so I'll put that to a vote. All those
2 in favor? Those opposed? Motion carries.

3 Is there anything else in the
4 nature of clean-up or for the sake of
5 completeness that we need to address? Alan?

6 MR. CHVOTKIN: Mr. Chairman, I
7 think we've not addressed Debra's question,
8 which is the right one about the price
9 reduction clause because as you recall, when
10 we did the construct for products and the for
11 services or services and then products, we
12 addressed specifically the need for
13 competition and then addressed the pricing
14 questions. And I think here in solutions, the
15 application of the price reduction clause is
16 even less applicable than a case could have
17 been made somewhere else.

18 So, just for the sake of
19 completeness, thoroughness, and that we didn't
20 forget about it, safety, and current complete
21 and accurate and every other thing, I would
22 move that the panel -- No application of the

1 price reduction clause to solutions as we have
2 defined it.

3 MR. DRABKIN: Second.

4 MR. BRANCH: The motion has been
5 seconded. Discussion.

6 MR. DRABKIN: For the sake of the
7 record, because there will be some people who
8 actually read this thing. I would like to put
9 on the record that one may argue about whether
10 the price reduction clause ought to be for
11 products or ought to be for services but there
12 is no question given the fact that solutions
13 aren't priced in the original contract that
14 the application of the price reduction clause
15 would be not only inappropriate, it would be
16 impossible.

17 Just so its clear on the record
18 what we are talking about if someone were to
19 read it, and again I remind you that as I said
20 earlier when we award a schedules contract and
21 we talk about products, we talk about
22 solutions -- I am sorry, we talk about

1 products and services, but we don't talk about
2 solutions, and we specifically don't have a
3 price for solutions.

4 And the reason we don't have a
5 price for solutions is because you cannot
6 anticipate what the various solutions might be
7 that would allow you then to do a pricing
8 discussion against which the price reduction
9 clause could ultimately be used, and those are
10 my words for posterity.

11 MS. SONDERMAN: So does that mean
12 we should say the price reduction clause
13 cannot apply to the solutions? I am trying to
14 get the right verb.

15 MR. DRABKIN: Well, this is Alan's
16 motion. Why don't we let Alan address it.

17 MR. CHVOTKIN: I completely agree
18 with David, so maybe the right way to address
19 it is as the price adjustment clause cannot
20 and should not apply to the acquisition. I
21 just don't want a lot of creativity to sneak
22 in here and someone saying we didn't address

1 it, so maybe we thought otherwise, so cannot
2 and should not.

3 MR. BRANCH: And I would agree
4 with, I guess, the evolution of this motion.
5 I would observe however -- I think we need to
6 draw David's logic out in the report words,
7 because the first thing I think of is, but the
8 underlying components of the solution set are
9 things you could apply the price reduction
10 clause to, so why wouldn't you at least apply
11 it to those underlying components, assuming
12 the administrator, of course, disregards our
13 recommendation to get rid of those underlying
14 components?

15 And I think to David's point, it
16 really doesn't matter, because when you are
17 talking solutions, you cannot price them at
18 the schedule level. So even if you were to
19 maintain the price reduction clause , you
20 would limit its enforcement to when you bought
21 products and services as components, and not
22 part of the solution set.

1 MR. SHARPE: Just a dumb question,
2 I didn't follow this from prior discussions.
3 When the price reduction is taken where does
4 it go? I am losing what's the difference, how
5 it's priced on the ordering office side
6 because if there's a price reduction, where
7 does it go? Back to GSA? So wouldn't it go
8 back to GSA no matter how it's priced at the
9 ordering office?

10 MR. BRANCH: No. You know, GSA
11 folks correct me if I am incorrect. But that's
12 the interesting thing about the price
13 reduction clause. You know that money
14 certainly does not rebate, as I understand it,
15 to the ordering agency. So the real benefit to
16 the ordering agency is now that benchmark
17 prices..

18 MR. SHARPE: What I am asking -- I
19 am surprised we don't know where the money
20 goes, but what's the difference how the
21 ordering office bought it? Whether they bought
22 just one at the schedule price or rolled it up

1 into a solution, I don't see what difference
2 that has to do if a vendor comes in and says
3 there's a price reduction that comes back to
4 GSA. Why would we want to preclude that coming
5 back to GSA?

6 MR. DRABKIN: I think this question
7 has multiple answers. The first answer -- the
8 price reduction clause in theory, kicks in in
9 the first instance at the order level when you
10 are pricing and the company has somehow
11 changed its pricing mode. And you would, in
12 the very first instance, you as the ordering
13 office, would have the advantage of the price
14 reductions clause reduction in price.

15 The second level that the price
16 reduction clause kicks in is when we find that
17 a contractor has not, over some period of
18 time, reduced its prices. Then we negotiate
19 over time with the contractor what amount that
20 represents and there is a payment made to GSA
21 for that amount with a concomitant reduction
22 in price on all future orders.

1 MR. SHARPE: In the second instance
2 why wouldn't that apply?

3 MR. DRABKIN: Because that brings
4 me to the third point of the discussion. When
5 you are buying a solution, the price
6 competition isn't on the component parts. It
7 is on the whole. In fact, that is why you had
8 a rather substantial discussion there -- was
9 language up there several times that talked
10 about the whole is greater than the sum of its
11 parts. The very nature of a solution is your
12 competition is not at the piece level. It is
13 at the end-item level.

14 MR. SHARPE: I agree David, but
15 within that is going to be a piece of product.
16 Why would it be excluded from the price
17 reduction back to GSA?

18 MR. DRABKIN: Because we would not
19 get a cost build up in a fixed price solution.
20 You get a price.

21 MR. SHARPE: But you don't get that
22 anyway. You don't have visibility of people

1 buying just the products, right?

2 MR. DRABKIN: Actually, in time and
3 materials you do get that. Time at the labor
4 rate and materials at their cost.

5 MR. SHARPE: No, when GSA takes a
6 price reduction, you have no visibility what
7 the various ordering offices paid for the
8 product. What's the difference?

9 MR. BRANCH: The presumption is
10 they would not have paid anymore than the
11 schedule price.

12 MR. SHARPE: Okay, but the point
13 being that we don't know, and even under a
14 solution, there is some product being
15 purchased. Why would it be excluded?

16 MR. BRANCH: I'll go a different
17 place with that, Tom. And that is that while
18 that pricing information on a component basis
19 may be useful, if I am really willing to drive
20 the competitive forces at the task order level
21 for a solution, I might well want to give the
22 vendors some leeway to pricing those

1 components.

2 MR. SHARPE: I'll say it
3 differently. Forget how it's priced at the
4 ordering office level. If there is a price
5 reduction, why would you exclude the
6 quantities that were bought on a solutions
7 basis from the rebate back to GSA?

8 MR. BRANCH: GSA gets no rebate
9 unless essentially they have uncovered someone
10 who failed to report. Okay. So I think you
11 would, and GSA would get that rebate back.

12 MS. JONES: Are you referring to
13 the price reduction clause and discounts
14 interchangeably, Tom?

15 MR. SHARPE: No. I'm saying, if you
16 take a price reduction, doesn't it apply to
17 all the quantities purchased under the
18 schedule. I mean, how do you figure out what
19 the reduction is?

20 MR. DRABKIN: Well, if you presume
21 -- To answer your question scientifically, the
22 IG goes in, does an audit, and says, "The

1 company has made this many sales based upon
2 the receipts that they uncover in the
3 company's records, and that the price for the
4 items they sold exceeded what the price should
5 have been. And they do some arithmetic and
6 tell you, "This is what you should get back
7 under the price reductions clause."

8 If you are selling a solution, I
9 don't know how the IG would uncover the things
10 that were sold under the solution because the
11 only pricing will be the solution. There's no
12 cost breakdown. There's no cost build up.
13 There is a price -- that firm fixed price. If
14 they're using time and materials, there would
15 be such a breakdown.

16 MR. BRANCH: Tom?

17 MR. ESSIG: Can I make a
18 suggestion. In the interest of time, since the
19 panel has already voted to eliminate the price
20 reduction clause every place that this
21 discussion is moot. I would like to change the
22 note however though, to clarify, since

1 solutions are not priced at the schedule
2 level.

3 MR. BRANCH: I think -- and I would
4 agree with you that the discussion surrounding
5 is probably not at the heart of our
6 recommendations, but I do also believe that it
7 is important, and this is just my opinion. I
8 believe it is important to talk to why it is
9 not meaningful in the context of solutions and
10 here's the reason. So if the Administrator
11 receives our report and goes, you know, "I
12 cannot get to eliminate the price reduction
13 clause for either goods or services," that is
14 a bridge to FAR for whatever reason. I would
15 still argue you wouldn't want to apply that to
16 solutions.

17 MR. ESSIG: For the reasons
18 identified in --

19 MR. BRANCH: Exactly. Exactly. So I
20 think if we do that we've gone far enough.
21 That's my personal opinion. Further discussion
22 on this?

1 MS. SONDERMAN: Is the FAR guidance
2 clear that if you are going to do solutions.
3 As I recall -- and I haven't read or reread it
4 for a few week -- In part eight where it talks
5 about, that the price is determined to be fair
6 and reasonable, is the FAR clear that if you
7 are buying a solution, the price has not been
8 determined to be fair and reasonable? And is
9 that an area that we need to make a
10 recommendation on clarifying the guidance?

11 MR. DRABKIN: FAR 8.4 does not talk
12 to the distinctions between solutions,
13 products and services. It only says that
14 schedules prices are determined to be fair and
15 reasonable. The CICA provision upon which the
16 FAR language is based also makes no
17 distinction whatsoever between solutions,
18 products and services. In fact, I suggest to
19 you that CICA wouldn't have contemplated
20 solutions in that regard anyway.

21 MR. ESSIG: And again, since there
22 are no schedule prices for solutions, you

1 cannot make an assessment as to whether or not
2 those non-existent prices are fair and
3 reasonable.

4 MR. DRABKIN: Not at the contract
5 level certainly, not until you get to the
6 order level.

7 MS. SONDERMAN: I am just thinking,
8 I was talking with Glenn earlier about some of
9 the challenges we have in the real world. We
10 are supposed to get tax exemptions on our
11 charge cards for transactions that are paid
12 for by the government, but our fate on tax
13 exemptions is in the hands of the clerk at
14 that store in Winnemuka, Nevada, or wherever
15 it is.

16 And we have people ordering
17 against schedules all the time who may not
18 have the time to stop and think, and I just
19 ask if the FAR language is not explicit about
20 the differences between products, services and
21 solutions, perhaps it should be so that they
22 acknowledge or our training or whatever, that

1 they know there must be a price reasonableness
2 determination as part of their order.

3 MR. BRANCH: Would you add
4 something to the note to that regard. Can I
5 ask a question? What contracts do we think
6 these orders are placed under for these
7 solutions?

8 MS. SONDERMAN: 70?

9 MR. SHARPE: 70 MOBIS probably.

10 MS. SONDERMAN: FAMS.

11 MS. NELSON: They can be placed
12 under any of the schedules.

13 MR. SHARPE: Solutions would be in
14 scope of any schedule contracts.

15 MR. DRABKIN: Well, that's the
16 discussion we had earlier today. I'd argue
17 they are not within the scope, but I was --
18 seem to be a majority of one.

19 MS. SONDERMAN: Make that two.

20 MR. BRANCH: Well, I guess I would
21 observe, and here's where we come into the
22 subtlety here, whether you believe as David

1 does, somewhat as a purist, that they are not
2 in scope.

3 The reality is that GSA has laid
4 mechanisms in place -- teaming agreements and
5 the like, that treat them as if they are in
6 scope. Which really goes to motion number 3.
7 "Go take a look at what you have done and go
8 fix that piece."

9 So I guess in answer to your
10 question, Tom, I would argue that the way GSA
11 administers these contracts in practice and to
12 the extent a solution spans either a number of
13 vendors or a number of schedules, yes, every
14 GSA schedule contract allows for the purchase
15 of a solution. And if anybody wishes to
16 disagree with me I will turn off my mike.

17 MR. DRABKIN: You should turn off
18 your mike anyway. But I think that based on
19 Deborah's comment that an other motion is in
20 order, not as part of the note, but I do think
21 that the existing guidance in the schedules
22 program which is reflected in the FAR should

1 be changed to recognize that prices for
2 solutions must be determined to be fair and
3 reasonable at the order level.

4 MR. BRANCH: And I would agree with
5 you and I will entertain such a motion upon
6 disposition of motion 4.

7 MS. SONDERMAN: Must be determined
8 to be fair and reasonable at the order level.

9
10 MR. SHARPE: Second.

11 MR. BRANCH: Well, you are out of
12 order. Is there any more discussion on motion
13 4?

14 MR. DRABKIN: We have not finished
15 with that. I thought we hadn't.

16 MR. BRANCH: No, we didn't put
17 motion 4 to a vote.

18 MS. SONDERMAN: Can we go back and
19 have a vote? That's it at the top of the page.
20 The price reduction clause cannot and should
21 not apply to the acquisition of solutions.
22 That's motion number 4.

1 MR. BRANCH: Any further
2 discussion? Okay, hearing none, we'll put that
3 to a vote, so all those in favor of motion
4 number four? All those opposed? Okay, motion
5 number four carries. So now you may move
6 number 5.

7 MS. SONDERMAN: I will second
8 motion number 5.

9 MR. DRABKIN: Actually you have to
10 move it.

11 MS. SONDERMAN: I move that we
12 recommend that the schedule guidance be
13 updated to be clear that prices for solutions
14 must be determined to be fair and reasonable
15 at the order level.

16 MR. DRABKIN: Second.

17 MR. BRANCH: Okay, it has been
18 moved and seconded. Discussion? I guess I
19 would like to offer a friendly amendment
20 because I think we need to be more explicit
21 than that, and it would be to update FAR Part
22 8.

1 MR. DRABKIN: Actually, here's
2 where I would have a disagreement with you.
3 The FAR reflects the schedule guidance. It is
4 not the FAR itself.

5 MR. BRANCH: Alright, then I will
6 withdraw my friendly amendment.

7 MR. DRABKIN: Thank you, sir.

8 MR. BRANCH: Discussion on motion
9 number 5?

10 MS. SONDERMAN: Could you put to
11 clarify after the word "guidance" -- update
12 schedule guidance, to clarify that prices for
13 solutions or make explicit or something?

14 MR. BRANCH: Further discussion
15 about motion number 5?

16 MS. JONES: I have a concern about
17 consistency here. All other areas says that
18 the ordering activity has to make a best value
19 determination. So, now we're saying that for
20 solutions though, we're going to determine the
21 prices to be fair and reasonable.

22 MS. SONDERMAN: You have to

1 determine that a price is fair and reasonable
2 before you can make an award, and unlike other
3 orders where the prices on the underlying
4 schedule have been determined by a GSA
5 contracting officer to be fair and reasonable,
6 that is not true for solutions. Somebody has
7 to do that before an award can be made.

8 MS. JONES: But in that where the
9 price for the solutions is coming from, the
10 prices on the schedule?

11 MS. SCOTT: Yes, it's the component
12 parts but you still have to evaluate the sum
13 total. In this case the configuration will
14 change the entire pricing philosophy.

15 MR. BRANCH: I would observe not
16 entirely. I think we have a tendency, because
17 our training and orientation is always to
18 drive priced down, to assume that if a price
19 is below that which we have determined fair
20 and reasonable, it is by its extension fair
21 and reasonable. I will tell you from my
22 experience having worked a fair number of

1 claims, that there are times when a price
2 lower than the benchmark price is not fair and
3 reasonable, and I will tell you also, if you
4 look at, not necessarily the case law, but
5 certainly the administrative boards we have,
6 they will impose upon the contracting officer
7 a duty to inquire with respect to pricing when
8 he or she thinks that price is too low.

9 So no, I don't necessarily agree
10 with the premise that simply because the
11 pricing is at or lower than its component
12 prices that you would necessarily determine
13 that that price is fair and reasonable because
14 vendors, having the right to discount against
15 the schedule prices, may well drive a vendor
16 to a place where the price is not fair and
17 reasonable, where it jeopardizes performance.

18 MR. DRABKIN: And consistent with
19 our earlier discussion as well, keep in mind
20 that the solution may include items and
21 services not priced already on the schedule by
22 the nature of the very solution. Even if you

1 were to use and arithmetic approach to
2 determining fair and reasonable, you would be
3 unable to get there because there is a
4 component that's missing.

5 MR. BRANCH: Further discussion on
6 this motion. No? Hearing none I will put it to
7 a vote. All those in favor of motion number
8 five raise your hand. All those opposed?
9 Motion carries.

10 MR. BRANCH: Before we leave this
11 particular major area, are there any other
12 things we need to clean up? David?

13 MR. DRABKIN: Mr. Chairman. We
14 talked around it and I reserved it for the end
15 because I think it is potentially one of the
16 more controversial issues that we can address,
17 and that is whether or not we should recommend
18 to the administrator that cost-type CLINs be
19 added to schedule contracts in this context --
20 at least for solutions given our earlier
21 discussions, and potentially whether it should
22 be added across the board for all of the

1 supplies and services sold under the schedules
2 program.

3 MR. BRANCH: Would you care to
4 frame that as a motion?

5 MR. DRABKIN: I was actually just
6 hoping for discussion before we got a motion,
7 but I can easily do it. I move that we
8 recommend to the administrator that cost-type
9 contracts be added to schedules program for
10 products, services and solutions?

11 MR. BRANCH: Okay, Tom?

12 MR. ESSIG: One of the controls
13 that actually I had recommended was to limit
14 the ability to use it to those that could be
15 relatively low risk -- those that could be
16 priced on a firm fixed price environment. And
17 I think that at least as far as solutions is
18 concerned, opening it up to cost-type goes way
19 beyond that. It creates a very significant
20 area of risk. I would not be in favor of doing
21 it for solutions.

22 MR. BRANCH: Just so we keep

1 straight, I will second the motion so
2 discussion is in order.

3 MR. DRABKIN: And I understand, by
4 the way, that Tom's point -- I think I
5 understand it well. I make the motion
6 understanding that the competencies and skills
7 in our workforce today to do cost-type
8 contracting correctly are meager.

9 I am sure that's not the case in
10 the Navy, sir, where you have trained them all
11 quite well, but it certainly has been my
12 experience finding people who understand cost-
13 type contracting is hard to do. But on the
14 other hand, just because something is hard to
15 do, or because we have meager resources to do
16 it with, if we are trying to improve the
17 overall value of the program and give
18 customers a choice which allows them to do the
19 right thing as opposed to channeling them for
20 expediency's sake to do the wrong thing, that
21 it would be in our interest to at least allow
22 for them to do the right thing and leave it to

1 their judgment whether they are capable of
2 doing it or not.

3 MR. BRANCH: Tom?

4 MR. ESSIG: The rest of my comment
5 in the other two categories really gets down
6 to almost a question as to the overall purpose
7 of the schedules. If it is intended to provide
8 easy access to commercial products and
9 services, than I would be reluctant to open it
10 up to cost-type, which implies some necessary
11 developmental work or things that don't quite
12 fit the current market today. If the purpose
13 of the schedules was broader than that, than
14 I might have a different answer.

15 MR. DRABKIN: And I guess that does
16 actually go to what the Administrator will
17 have consider. First I would suggest to you
18 that the schedules are only called commercial
19 contracts because GSA decided to call them
20 commercial contracts, and at the time that GSA
21 did it, we were exploring a new world, new
22 marketplace for government procurement.

1 I would further suggest that over
2 time we have learned that there are commercial
3 services and commercial products which
4 certainly can be priced in a fixed price
5 contract, but which may in combination or even
6 by themselves be better purchased on a cost
7 type basis, assuming that industry wants to
8 sell it that way to us. There are companies
9 who have told us they will never sell to us a
10 product that they make on a cost type basis
11 because they do not wish to subject themselves
12 to cost accounting standards or to providing
13 certified cost or pricing data.

14 Nonetheless, there are also many
15 companies that provide us with commercial
16 products and services whose ability to satisfy
17 our requirement in an expedited fashion is
18 limited solely because of the type of
19 contract. Again, this presupposes that people
20 will use judgment in deciding in their
21 acquisition plan when they are going to
22 purchase the item, the method, the means of

1 purchasing it, but we have denied ourselves
2 access to this type of contracting which would
3 have addressed many criticisms but not limited
4 our access to the commercial marketplace at
5 the same time. Does that make sense, I hope it
6 makes sense.

7 MR. BRANCH: You know,
8 philosophically David I have to agree with
9 you. I think it makes a great deal of sense,
10 but as a practical matter you couldn't peg the
11 industrial funding fee high enough, or if you
12 could, could you get enough auditors to go in
13 to validate the acceptability of most of your
14 vendors' accounting systems for cost type
15 contracts, in the event that they would do
16 business with you on that basis.

17 MR. DRABKIN: You know, that is an
18 interesting observation you make, but in our
19 recent competition, which is not yet completed
20 on Alliant and Alliant small business, most of
21 the companies -- well, all of the large and
22 most of the small -- had cost accounting

1 capability, had a certified cost-accounting
2 system or in the process of getting one.

3 There are 18,00, give or take a
4 few, scheduled contracts. There are about 11
5 or 13,000 scheduled contractors, but almost
6 all of the large businesses -- I would say 90
7 plus percent -- already have a business line
8 as part of their business that has a certified
9 cost-accounting system. And many of the small
10 businesses who do business both with us and
11 the DOD either have them or are in the process
12 of acquiring them.

13 I am not sure that the resources
14 to get the company capable of selling to us
15 are really the issue. The real issue, I think,
16 is the resources we would need to both
17 structure and administer the contract properly
18 to take complete advantage of a cost-side
19 contract.

20 I understand that Senator McCain
21 thought the cost side contracting was
22 basically an evil thing, but the reason

1 Senator McCain had had bad experiences with
2 those contracts, as you well know, came from
3 his experience on the Senate Armed Services
4 Committee dealing with DOD cost-type contracts
5 that were managed poorly, and if you manage
6 them poorly they deliver a bad result. The
7 same thing happens with T&M, T&M can be a very
8 satisfactory value returning type of contract
9 if we manage it well, but if you don't manage
10 it and you just burn hours, it's not.

11 MR. BRANCH: I guess though -- I
12 hear your analogy, but when I look across the
13 universe of all of your contractors, I would
14 still argue that it takes significant
15 resources on their part -- some of the
16 vendors, especially those not in MOBIS and not
17 in IT. I mean, I think MOBIS folks and IT
18 folks are probably closer, although I work for
19 a MOBIS schedule holder that avoided DCAA like
20 the plague for that reason and would take
21 fixed price orders and T&M orders, but would
22 not take a toss type contract committee.

1 And I think the other -- My
2 greater concern is the other though. I'm not
3 sure we have the level of staffing at GSA, nor
4 do I think you could buy them even in this
5 labor market, such that we could effectively
6 administer cost type contracts -- to schedule
7 though. And the other thing is, so what would
8 that mean exactly?

9 MR. DRABKIN: Well, I think it
10 means a couple things. First, I think the
11 administrator has to decide whether or not
12 based on our recommendation. This is an area
13 which he wishes -- or she wishes -- to
14 explore.

15 I think, secondly, it has to
16 remain the way GSA's current philosophy is,
17 which is companies don't have to come on the
18 schedule. They have a cancellation clause
19 which is unique in government contract, which
20 allows them to quit anytime they want with a
21 30 days written notice. And they don't have to
22 offer us a cost CLIN if they don't want to

1 sell us through a cost CLIN, and even if they
2 have a cost CLIN, there are provisions for
3 them or --In different parts of our schedules
4 program, we allow them to refuse orders.

5 And so if you decide that the true
6 fulfillment of the schedules program is to
7 have also this cost capability, then I think
8 we have to leave it to the administrator to
9 structure it in such a way that is voluntary
10 and that it's only done if you have the
11 resources to do it with.

12 But I think we would be remiss in
13 not having some sort of discussion in our
14 report that the lack of a cost type CLIN
15 drives people to behavior which we have all
16 decried, but we haven't really talked about it
17 in that sense to date.

18 MR. BRANCH: Alan and then Debra
19 and then Judith.

20 MR. CHVOTKIN: Thank you, Mr.
21 Chairman. I agree with Mr. Drabkin. I think
22 this too falls in the areas that we talked

1 about earlier and the recommendations of the
2 past of 5 and 6 deflect guidance to the
3 administrator recommendations for the panel to
4 the administrator to evaluate the continuing
5 vitality of the schedules and the use of them
6 --

7 Here again, as I said at the
8 outset of today's meeting, I'm not only
9 reluctant to take tools out of the toolkit,
10 but I'm also in favor of putting appropriate
11 tools into the toolkit. This is one of those
12 where while I'm not a big supporter of broad
13 range of cost type contracts or the schedules
14 program today, I'm not visionary enough to
15 know what that program is going to look like
16 in the next four or five years. And yet, as
17 the technology changes as the demands and the
18 agency's mission change, I think the
19 administrator ought to be encouraged to take
20 a look at those issues.

21 So, I'd be supportive of a motion
22 that recommends that we modify the earlier

1 provisions and recommendations 5 and 6, that
2 they look at SINS -- may be appropriate for
3 some and not others. And we look at the
4 schedules across the board. It may be
5 appropriate for some and not others to
6 consider cost type CLINS in the appropriate
7 circumstance.

8 MR. BRANCH: Debra?

9 MS. SONDERMAN: I was going to
10 suggest a friendly amendment to your motion,
11 David, to recommend that the administrator
12 explore the addition of cost type CLINS to be
13 added to the schedule programs with some of
14 those things that you just said on a voluntary
15 basis for those companies who find it
16 beneficial and who are capable --

17 MR. DRABKIN: I accept your
18 friendly amendment. And so let's try to get
19 those words up there.

20 MR. BRANCH: Okay. I think Pat's --

21 MS. SONDERMAN: So the addition of
22 -- Yes, take that out. Take out "are added."

1 "To schedule on a voluntary basis for those
2 contractors --"

3 MR. BRANCH: Yes, I think we might
4 want to bullet-ize those or do you want those
5 spots to really be in a demotion.

6 MS. SONDERMAN: I don't know. I'm
7 open. I'm easy. "Who have the --," you know,
8 "with the capacity to manage cost type
9 contracts and whatever."

10 MR. BRANCH: Okay. Judith?

11 MS. NELSON: Yes. I mean, to go to
12 what Elliot was saying earlier and his concern
13 a little bit -- We've tried to steer clear of
14 not getting into the solution. And because we
15 don't have in front of us the absolute
16 solution as to whether or not GSA currently
17 has the capacity to implement it, I would
18 hesitate to put aside a valid recommendation.
19 So, that would be the first thing.

20 The second is, I fully agree with
21 Debra and David that it be on a voluntary
22 basis. And the way the current schedules work

1 is that the SINS are out there and any
2 contractor has the capacity to choose which
3 SINS they want to respond to, and I think
4 this should follow along the same lines -- is
5 that a contractor has the capacity to respond
6 to the SINS and then any particular SIN not be
7 required to be cost reimbursable. And, as well
8 as we have some programs such as Disaster
9 Recovery of Cooperative Purchasing under some
10 of the schedules where those are voluntary.
11 You can play or not play in that arena.

12 Som those would be two of the
13 things, and I'll leave it at that because I
14 think, sort of, it's all been out there.

15 MS. SONDERMAN: Do we need to make
16 CLINS -- Do we need to add slash and add SINS?
17 I mean, you all are the technical experts.

18 MS. NELSON: The schedules work on
19 SINS. The CLINS come at the order bases.
20 Schedules are awarded on the SIN basis,
21 whether or not you want to read into that or
22 not, but --

1 MS. SONDERMAN: Okay.

2 MR. BRANCH: Tom?

3 MR. ESSIG: I think I'd like to
4 express the opposing viewpoint to this. I
5 really don't understand at this point the
6 implications on socioeconomic concerns. Some
7 small businesses who don't have the finances
8 to set up some of these capabilities, and even
9 if it's on a voluntary basis, it's pretty much
10 okay. You didn't volunteer. You didn't do it.
11 Well then, you're not eligible for award. And
12 we really would need to understand the
13 implications, again, on small businesses
14 before opening it up like this.

15 Secondly, I don't believe that the
16 schedules need to be or should be schedules to
17 provide everything to everybody. It has to
18 have a niche. It has to have some things it
19 can do very, very well, but to try to broaden
20 it up to things that imply complex development
21 work or where the requirement may be unique
22 for one buying activity are things that

1 probably should be more appropriately
2 contracted directly by that activity. So, I
3 have the other viewpoint.

4 MR. BRANCH: Other discussion?
5 Jackie?

6 MS. JONES: In the context of
7 solutions, contractors do come in and request
8 to add ODCs to their schedule contract and
9 those could be evaluated as cost type ODCs,
10 but the remaining portions of the schedules
11 program and the way that they're evaluated as
12 a fixed price -- I'm not seeing that aspect of
13 it.

14 MR. BRANCH: Okay. Now, I guess I
15 can live with the motion as amended because I
16 think that's a conversation that's probably
17 worth having and it's worth having well above
18 our pay grades.

19 I was uncomfortable saying we
20 should definitely go do this, but I think Tom
21 raises some valid points with respect to out
22 flexibility in meeting socioeconomic goals.

1 I'm still concerned about the added burden of
2 imposing -- The requirements of cost type
3 CLIN, even if contractors take them on
4 voluntarily, as well as the burden we impose
5 on ourself. But I think the conversation is
6 worth having, so I will support that as it's
7 written. Tom?

8 MR. ESSIG: I guess one final
9 thought -- There is, in my opinion, a bit of
10 a conflict of interest built in here. By
11 having the administrator of GSA make a
12 determination as to federal-wide, GSA should
13 be doing more business.

14 MR. BRANCH: David?

15 MR. DRABKIN: Well, actually -- No
16 matter what I do I have a conflict of
17 interest. At least from my perspective, what
18 I think we ought to be doing is figuring out
19 what's right for the government. If you want
20 to buy it from GSA, fine. Nothing requires you
21 to go and use the schedules contracts.

22 There are a few things you have to

1 buy from us, but schedules contracting isn't
2 one of them. I'm just talking about doing a
3 good job and letting the marketplace --
4 really, letting market forces have people make
5 a decision whether they use us or not. I'm not
6 particularly interested in increasing our
7 business, but for instance, one of the things
8 I'm very worried about is right now we're in
9 an environment where Congress is trying to
10 force us, for instance, to buy services solely
11 on a fixed price basis if you choose to use
12 the schedules -- the schedules to buy
13 services, particularly those which I continue
14 to refer to as "commoditize-able," is a
15 marvelous way to reduce the administrative
16 cost and time it takes for the government to
17 acquire those services.

18 The difficulty now is, is we're
19 going to force people to buy at fixed price in
20 order to take advantage of that quick and easy
21 way to the market. And if I can add a cost SIN
22 and I have companies who are willing to

1 participate, I give back to government
2 contracting people the fast and easy way, and
3 at least a choice between using a type of
4 contract that makes sense instead of taking
5 that horse and painting cow all over it just
6 so that they can buy it quickly.

7 MR. ESSIG: I have to agree with
8 that on services. My concern is more on the
9 products area.

10 MR. DRABKIN: I can't imagine that
11 we'd buy products on a cost type basis.

12 MR. BRANCH: Yes, I would not
13 imagine.

14 MS. SONDERMAN: So should we amend
15 the motion to remove the word "products" and
16 just have it cover "services and solutions?"

17 MR. ESSIG: I could support it that
18 way,

19 MR. BRANCH: Okay. Besides that, I
20 sure GSA would be willing to make the
21 industrial funding fee a non-allowable cost
22 under the cost CLINS rate.

1 MR. PERRY: Can we go up the list
2 of motions because I'm having a bit of a hard
3 time if this is a motion under "solutions,"
4 how this interacts with the previous motion we
5 approved about the fixed price stuff.

6 MR. DRABKIN: Well, actually,
7 that's a good point, Glenn.

8 MR. BRANCH: Well, actually, I
9 don't see them as inconsistent. So, let me
10 talk to that for a minute because I think what
11 we're really saying is that if you accept this
12 state of nature as it is today, where we buy
13 solutions across schedules and across vendors
14 using teaming agreements and BOAs and the
15 things we have put in place to enable that --
16 Given that, then we should only be buying
17 solutions on a fixed price basis and they
18 should only be performance based.

19 However, were you to look at
20 changing that model, you know, as you evaluate
21 how you want to rationalize the provision of
22 services, one of the things you ought to look

1 at is the idea of establishing cost type
2 CLINS. At least, that's my reading of what
3 we've kind of done. Glenn?

4 MR. PERRY: I only bring it up
5 because when we write this up, I just was
6 making sure we talked about it.

7 MR. BRANCH: Okay. I think that's
8 excellent. Tom?

9 MR. ESSIG: Again, that's
10 inconsistent with my recommendation here about
11 limiting the scope for solutions to those that
12 are low risk -- those that can be accommodated
13 by fixed price.

14 If we in turn then go back and
15 suggest to the administrator that you also
16 study cost type contracts that would allow you
17 to go there, then actually my consent in
18 solutions at all changes.

19 So again, that one recommendation
20 is inconsistent with our decision here.

21 MR. BRANCH: Well, Tom, I've got to
22 ask because I don't understand -- I mean, I

1 understand your view that solutions ought to
2 be low risk, that they ought to be in that
3 quadrant that you can fix price them, but am
4 I hearing you say that under no circumstances
5 ought the administrator even look at
6 broadening the scope? Because that's kind of
7 what I hear you saying.

8 MR. ESSIG: In part, but it's even
9 worse when I actually specifically recommend
10 that they look at increasing the scope. That
11 recommendation says, "Look at cost type
12 contracts for solutions." It's an affirmative
13 recommendation from us to look at that, and
14 what that implies is that we may feel that
15 under certain conditions, that would be okay.

16 MR. BRANCH: Okay. I guess
17 I'll have to respectfully agree to disagree
18 with you on that. I mean, its just because I
19 look doesn't mean I'm going to say "yes." --
20 Which is why I would not support the motion as
21 it was originally drafted because I am not in
22 favor of necessarily saying "yes." I just

1 think the question deserves a fair hearing.

2 So maybe it comes in the way we
3 draft the report. Maybe we want to say,
4 "though we express no opinion one way or the
5 other as to whether cost type line items are
6 appropriate for schedules, indeed, in keeping
7 with the philosophy of low risk sorts of
8 solutions, they may not be. Regardless, we
9 suggest that you want to look at that."

10 I think that's a legitimate policy
11 question, but I tend to philosophically agree
12 with you, but I think the administrators -- I
13 guess I believe the administrator has
14 sufficient authority to go look at that.

15 MR. ESSIG: Again, I don't disagree
16 that the administrator has the authority to
17 look at it -- Is whether I want to recommend
18 what the panel recommend that he or she do so.
19 But I don't disagree with the comments you put
20 on it -- "That we're not recommending this,
21 however --"

22 MR. BRANCH: Yes. David?

1 MR. DRABKIN: Well, you know,
2 listening to the conversation, which I guess
3 is the advantage of having a panel -- Maybe we
4 should just talk -- we started out with
5 products, services, and solutions, but maybe
6 where we ought to be is just services, which
7 addresses part of Tom's concern that, you
8 know, I don't want them to buy a solution for
9 Seabased air warfare through the schedules
10 program -- which might be translated into an
11 aircraft carrier or something else.

12 But I am concerned about how we
13 buy services and the choices that are being
14 left to us and the fact that you virtually
15 have no choice when you buy services. So to my
16 own motion now, I would propose an amendment
17 to take "and solutions" off and just leave it
18 "schedule program for services."

19 By the way, once we make the
20 suggestion, whether we're talking about
21 services or not, the administrator, if he or
22 she has any sense, are going to look at all of

1 it anyway, but I think we would be doing
2 ourselves a disservice to walk away from this
3 whole issue of services and whether or not we
4 ought to at least look at buying them on a
5 cost type basis through the schedules program.

6 And you could have the same
7 discussion, Tom, about whether complex
8 services ought to be purchased that way
9 through the schedules or would not be better
10 served purchase under FAR part 15 through a
11 full and open competition or on a GWAC, which
12 had already been competed and other things had
13 been done. So, I make that motion to amend my
14 own motion to delete "solutions."

15 MR. BRANCH: Okay. Glenn and then
16 Tom and then Lesa.

17 MR. PERRY: Yes, I was just going
18 to add that the more we talk -- Leaving it
19 under the "solutions" piece is the wrong place
20 for this. Can we move it to either "services"
21 or can we create another thing, and this is an
22 "other" motion? It's sort of more global

1 across the board.

2 But, sir. I'd like to actually
3 after Dave talks, maybe putting it under
4 "services" is a better place to put it.

5 MR. BRANCH: Okay. Tom?

6 MR. ESSIG: Yes, I would
7 completely support looking at it for services.
8 My question is, do we want to limit that
9 analysis then on voluntary basis or just end
10 it with a period after "services?"

11 MR. DRABKIN: I think the reason
12 the words "on a voluntary basis" was added was
13 in part to address the concern that you raised
14 about, for instance, socioeconomic -- If we
15 say that every schedule offeror for services
16 must include cost, we may well exclude small
17 businesses who either cannot or do not want to
18 get into that business.

19 I'm not so much worried about
20 large businesses who may choose not to sell us
21 services on a cost type basis, but I think you
22 had a good point. So, the words "on a

1 voluntary basis" for those contractors, I
2 think, address that concern.

3 MR. BRANCH: Okay, thanks. Lesa?

4 MS. SCOTT: I was going to second
5 David's amendment.

6 MR. BRANCH: Well, I don't want to
7 go down a rabbit hole here, but I have to look
8 at that. So once I start to buy services on a
9 cost reimbursement basis, why would I ever use
10 time and material again -- under a schedule
11 contract?

12 MR. DRABKIN: And I think the
13 answer is, you've made a decision that you can
14 actually manage T&M or you don't have the
15 resources and so you limit yourself to a
16 statement of work that can work under T&M
17 versus what you might have done if you had the
18 resources to do a cost reimbursement contract.

19 MR. BRANCH: Well, so let me extend
20 my logic a little further here.

21 So, once I've decided that I can
22 manage a T&M contract, then it is not a

1 difficult extension to say that I could manage
2 a cost plus fixed fee level of effort
3 contract. So, fundamentally, what becomes of
4 the difference is, I guess, the only question
5 I'm tossing out there.

6 MR. DRABKIN: I'm not sure I
7 understand. The only fundamental difference a
8 that point in time, from a company
9 perspective, is the necessity of having an
10 approved accounting system.

11 MR. BRANCH: Well, not only, but
12 there is another one as I see it. And this is
13 why I go to so if I had the ability to cost a
14 cost line item, why would I ever want to do
15 otherwise. Just think about it. If I use a
16 cost line item, even if it's level of effort,
17 I pay reasonable, allowable, and allocable
18 cost. If I use a T&M lien time, I'm going to
19 pay the fixed rate.

20 So, I'm almost always better, even
21 if I decide -- You know, if I decide that I
22 have the capacity to manage a T&M line time,

1 I'm almost always better off, from a pricing
2 perspective, managing a cost plus fixed fee
3 level of effort line item.

4 So if the vendor figures out an
5 innovative way, say, to substitute junior
6 labor for more senior labor, but I've priced
7 it at more senior labor rate, in a cost
8 reimbursement contract, I get the benefit of
9 that and in a T&M contract, I don't.

10 So, I'm just kind of putting it
11 out there. Once you open that rabbit hole up,
12 you really are kind of opening yourself up to
13 reviewing the entire pricing structure of
14 schedule contracts.

15 MR. DRABKIN: But I think there may
16 be another way to look at it. And that way
17 would be to say, "Look, we buy a lot of
18 services, which are --" I've talked about
19 being commoditize-able, and for which, if we
20 did a head to head competition on a defined
21 labor category, we would be more successful in
22 driving an acceptable price for those

1 simplified services that we're really only
2 buying in 40 hour lots or multiples of 40 hour
3 lots, as opposed to in a cost type contract
4 where they could do just exactly what you've
5 suggested. In helping me achieve a solution,
6 they could figure out a better labor mix.

7 But if what I'm really wanting to
8 buy is 365 hours of a receptionist -- That's
9 what I want and I just want that receptionist
10 at the desk 365 days a year. I think I have
11 had a real competition -- and I know I've lost
12 this issue in a vote and I'm not bringing it
13 back up for a vote -- but if I had a real
14 competition just on that head to head
15 description of a receptionist, I would get
16 better pricing and it would be cheaper for me
17 overall as a government to buy it that way.

18 Whereas, if I was on a cost type
19 contract and for that receptionist, I'm paying
20 the full boat for the maintenance of the whole
21 cost type structure just to get a
22 receptionist, where there's no way that the

1 contractor is going to find a way to
2 substitute -- because I want a body sitting
3 there at the table 40 hours a week times 52.

4 MR. BRANCH: David, I think that's
5 an excellent observation, so I certainly won't
6 continue to go further down that hole. I do,
7 however, think, as the administrator looks at
8 this, if he or she chooses to, those are some
9 of the types of issues that have got to be
10 looked at.

11 MS. SCOTT: I would just like to
12 ensure that it's a neutrally expressed
13 concern, just an idea that's out there, not
14 that we're positively with it or negatively
15 opposed to it, but extremely neutral. Is this
16 the right time to look at?

17 MR. BRANCH: Okay. So, I would
18 suggest that kind of be a note for the text of
19 the report.

20 MR. DRABKIN: Although, I might add
21 that there will never be a better time. By the
22 time our recommendations are received, it will

1 be beginning of a new administration. We will
2 have people new at OFPP. We will have people
3 new in GSA.

4 We are facing concerns raised by
5 the Hill on how we buy services generally. It
6 seems to me that if we're going to ask this
7 question, we ought to ask it -- I agree when
8 you say "neutral," that we not an express an
9 opinion on what the outcome of that review be,
10 but I think we ought to be very positive that
11 the review should happen now. And if that's
12 what you meant when you said "neutral," then
13 I agree 100 percent. If it's not, then I've
14 made my point.

15 MR. BRANCH: Further discussion on
16 this motion. I'm hearing none. Let's put it
17 to a vote. All those in favor? Opposed?
18 Motion carries.

19 MR. DRABKIN: We agreed to move
20 this to the "services" piece.

21 MR. BRANCH: Right. Okay. Very
22 good. Any other things? Any other loose ends

1 for us to tie up here? Okay.

2 Hearing none, this is what I'd
3 like to do. My goal is to give everybody their
4 Wednesday back. I think we have gone through
5 this fairly comprehensively. I mean, we've
6 talked about services. We've talked about
7 products. We've talked about solutions. I
8 think we have a good structure on the table
9 here, or a good set of recommendations on the
10 table here.

11 So, what I'd like to spend the
12 rest of our time together doing is talking
13 about the structure of the report. We had
14 started down the road of dividing up into
15 three teams, I guess, four teams. We had a
16 products team. We had a services team. We had
17 a solutions team, and then we had an editing
18 team.

19 I think Pat has captured those
20 team assignments. If you haven't volunteered
21 for a team, as you well know by now, while you
22 can run from Pat, you cannot hide, so she will

1 put you on a team.

2 I guess the real question is,
3 given our discussion -- because when I look at
4 the recommendations we've made on products and
5 services, frankly, I am surprised they came
6 out to be as similar as they were. But given
7 that set of similarities, is this the right
8 structure for us to write the report or is
9 there another line of organization that we
10 might want to take in putting together the
11 report.

12 If we can decide on what that
13 might look like, then this is what I will
14 suggest. Pat, we can post documents to the
15 website, and if we generate documents, we can
16 post those to the FACA website, yes -- no.

17 MS. BROOKS: To the FACA website?

18 MR. BRANCH: Yes, I mean to the GSA
19 panel website?

20 MS. BROOKS: Yes -- No, you cannot
21 because of the process that it has to go
22 through, so it would need to come to me.

1 MR. BRANCH: Okay, but I don't mean
2 directly, but I mean, we, the panel, can get
3 those up?

4 MS. BROOKS: Yes.

5 MR. BRANCH: Okay. So this is what
6 I'd like to suggest. If we can come to some
7 kind of general agreement on the structure of
8 the report -- Based on that, I'll put an
9 outline out there and I'll get it out to you.
10 And to make sure that that outline is
11 transparent, we'll put it on the website, so
12 any interested party can kind of see what
13 we're writing to.

14 I'd like to establish some
15 deadlines to get those drafts exchanged, and
16 then I'd like to schedule the next couple of
17 meetings to actually come in and deliberate on
18 our drafts.

19 So, it's kind of a meta-process.
20 That's the way I'd like to do it, but the
21 question I have on the table now is, have we
22 structured our teams correctly in order to

1 start writing this report? So, I'll open the
2 floor for comments.

3 MS. SONDERMAN: I guess I'm
4 wondering -- Since we ended up with so much
5 similarilty, is on simpler to have a sort of
6 background and findings or testimoney or
7 whatever, what we heard, and then just break
8 into the separate motions and recommendations
9 as we have -- because I would fear that if we
10 had a section just on services, a section on
11 products, there would be a lot of repitition
12 in the findings that went in to lead us to the
13 conclusions that are reflected in the motions
14 and recommendations.

15 MR. BRANCH: Other thinking on
16 this? Yes, Judith?

17 MS. NELSON: I agree. I don't think
18 it makes sense to divide it specifically by
19 services and products. I think, in large part,
20 if we charted out services in a chart -- If we
21 charted out services and products, we'll be
22 able to see where the difference is or where

1 there were things that we motioned or made
2 decisions for one that we didn't for the
3 others, and then are bale to write around them
4 or write to them.

5 But I don't think we should divide
6 it out between the two. I think there's a
7 background to be done or a context and a
8 background, a context, and then moving on to
9 the findings. And maybe within that, some
10 pieces on service and products, but certainly
11 not separate sections.

12 I'd rather say that there be
13 sections specifically around the price
14 reduction clause, maybe the sections be broken
15 out around the issues rather than around
16 products and services.

17 MR. BRANCH: Okay. So, if I were to
18 kind of look at that -- So, we might have a
19 section called "background --" And I would
20 actually bring your "issues" section back out
21 a level of indenture. So, I'm thinking that
22 what I'd like to see, and if I hadn't sat

1 through this for six months and I were picking
2 it up as a casual reader, "so explain to me
3 how this schedule pricing thing works?" That's
4 the first thing I would want to know.

5 And then the context of how
6 schedule pricing works -- "Explain to me how
7 this price reduction thing works and why it's
8 such a big deal?"

9 So, that's kind of what I'd like
10 to see, and then I would like to say, "Well,
11 clearly, the price reduction clause has made
12 some people unhappy and some people happy."
13 So, what are the issues surrounding that?

14 And based on those issues, this is
15 what we did. We took testimony from people.
16 We had robust discussions, and out of those,
17 this is what we think. We think there's a
18 value in having schedule pricing at contract
19 formation because it gives us economically
20 useful information or however you want to
21 phrase it. We believe, however, the best
22 competitor pressure comes to bear at the order

1 level and so forth and so on, and based on
2 these things, here are our recommendations for
3 going and restructuring things.

4 I mean, that's just kind of in my
5 own head, how I tend to think about this.
6 Judith?

7 MS. NELSON: One of the exercises
8 that you as the Chairman, asked us to do as
9 the panel, I think, might also serve as a very
10 good format. And I don't have the specific
11 questions in format of us, but one of the ways
12 you broke it down was --

13 MR. BRANCH: I think you do. I'm
14 sorry. I think Pat -- You gave us those
15 questions, I think, in our notes. I think
16 there were five questions.

17 MS. NELSON: I don't bring -- If
18 you recall, at one of the sessions, the
19 questions that you had, but also at a previous
20 session, you asked us very early on what were
21 the roles and responsibilities of GSA? What
22 was the roles and responsibilities of the

1 contracting officer at the ordering level, and
2 then again, the five questions that we put out
3 now.

4 And I think that if we looked to
5 those questions, in large part they may frame
6 how -- because that is the way we walked
7 through getting to our recommendations. So, if
8 we were to do a background and we were to say,
9 "This is how the program works right now. This
10 is what the schedule is right now. This is how
11 the price reduction clause works right now,
12 and this is then therefore what the roles and
13 responsibilities are right now at the contract
14 level and at the ordering activity level. So,
15 therefore, this is where we've moved to and
16 this is how we understood it. This is where we
17 went to.

18 That frames the context for our
19 discussion. It frames the context for where we
20 want it to go. Here is some of the testimony
21 that we heard in order to base our decisions
22 and our recommendations.

1 MR. BRANCH: Okay. Glenn?

2 MR. PERRY: I guess the only thing
3 -- Sort of, because they're similar -- the
4 motions and what we decided. I think we still
5 should -- We decide to sort of glom them
6 together a little bit.

7 We have to make sure we still are
8 disciplined enough to address how those
9 motions affect the market place where products
10 are the predominant versus the marketplace
11 where services are predominant because while
12 they look the same, they potentially will have
13 different impacts, different reactions from
14 people.

15 MR. BRANCH: Right. We kind of got
16 to some of them using a different logic, so I
17 would agree with you. We need to retain the
18 logic. Further discussion?

19 MS. SONDERMAN: Is there a general
20 set -- I mean, we have, with the help of our
21 colleagues, broadly interpreted our charter to
22 include things that are not only the price

1 reduction clause. So, is there a need to have
2 a general recommendation?

3 I'm comfortable structuring it any
4 way, but -- I don't know. I offer that for
5 thought.

6 MR. BRANCH: David?

7 MR. DRABKIN: I don't see an
8 introduction listed here, but it would seem to
9 me that in our introduction, we would identify
10 the charter that we received and then how
11 we've chosen to interpret that charter. And
12 the background then isn't the background of
13 the panel, the background is the background of
14 the schedules program.

15 And our introduction is
16 essentially the background of the panel. Is
17 that consistent with what you were thinking?

18 MR. BRANCH: No -- Yes, well, it
19 was your suggestion, Debra, but I guess what
20 I heard was we ought to talk about the charter
21 and we really ought to say early on in the
22 report -- and you wouldn't phrase it this way,

1 of course -- but the message is, "Hey, you
2 know, you're going to see a lot of stuff in
3 this report that doesn't say 'price reduction
4 clause' directly, but when you look at the
5 price reduction clause as part of a system for
6 establishing a fair and reasonable price, you
7 really can't look at the price reduction
8 clause in isolation. You have to look at all
9 this other stuff. So, there is going to be a
10 whole bunch of recommendations here that don't
11 have anything to do with the price reduction
12 clause, per se, but are enablers to reaching
13 the goal of fair and reasonable pricing in the
14 schedules program."

15 I mean, that's kind of what I
16 heard you guys --

17 MR. DRABKIN: Right. And so, with
18 the introduction where that occurs and then
19 the rest of this kind of falls into place, I
20 think.

21 MR. BRANCH: Okay. So, we seem to
22 have about a 5 --

1 MR. DRABKIN: So, Elliot, you're
2 going to prepare the first draft and we'll all
3 chop on. Is that right, sir?

4 MR. PERRY: We'll all be editors.

5 MR. BRANCH: Well, no.

6 MS. NELSON: That will be ready for
7 Wednesday, Elliot?

8 MR. BRANCH: No, but if this is the
9 first level of the work breakdown structure,
10 I commit to getting you to at least the third
11 of fourth level of the work breakdown
12 structure, at which point we will parse out
13 the work.

14 MR. DRABKIN: I was teasing, sir. I
15 do think, based upon this discussion, if we
16 could divide these parts up -- My experience
17 is that multiple drafters lead to longer
18 process and that if one person can kind of
19 take ownership of preparing the first
20 discussion draft, which will be just that --
21 just a draft. And then we can flush it out and
22 go from there as a group. It might facilitate

1 it getting done faster.

2 MR. BRANCH: I agree. I do agree
3 with you.

4 MR. DRABKIN: And so, for example,
5 I would volunteer to take ownership of the
6 recommendations section and to write that up.

7 MR. BRANCH: Okay. All right, and
8 in the spirit of cooperation, I'll volunteer to
9 take ownership of introduction and do an
10 interpretation of charter. Judith?

11 MS. NELSON: I would volunteer to
12 do the background on the schedules program.

13 MR. BRANCH: Yes, you and Jackie
14 are the subject matter experts, I think, on
15 that, along with Lesa.

16 MS. NELSON: Wait. As I'm
17 volunteering, we actually haven't set those
18 time-frames yet.

19 MR. BRANCH: No, we haven't.

20 MS. NELSON: Seems to me, I've
21 jumped into a pit before I knew how deep it
22 was.

1 MR. DRABKIN: That was my intent --
2 to lead you right there.

3 MS. NELSON: Thank you again, Mr.
4 Drabkin. So enjoyable working with you on a
5 regular basis.

6 MR. DRABKIN: Yes, with all due
7 respect, I understand.

8 MR. BRANCH: Well, I think
9 certainly, this has got to get done sooner
10 than later, but it's also got to get done with
11 the understanding that everyone in the room
12 has a day job.

13 MR. DRABKIN: Mr. Chairman, given
14 that today is the 10th? That was a question.

15 MR. BRANCH: Yes. It is the 10th.

16 MR. DRABKIN: Given that the day is
17 the 10th, is it unreasonable to suggest that
18 we circulate the first draft by Monday the
19 21st so that people can have it to look over
20 the Thanksgiving holiday? I ask that as a
21 question.

22 MR. BRANCH: Well, I'm certainly

1 willing to have a first cut at the
2 introduction, and I'm assuming, since it's
3 your question, you're willing to have a first
4 cut at issues.

5 MR. DRABKIN: On recommendations.

6 MR. BRANCH: On recommendations.

7 MR. DRABKIN: But by the 21st, which
8 is -- No, it's not the 21st. The 21st is a
9 Friday -- the 24th.

10 MR. BRANCH: 24th. Okay, so two
11 weeks from today.

12 MS. NELSON: I'm good with that.

13 MR. BRANCH: Okay. So, would anyone
14 like to try to pull together findings and
15 testimony? I will reserve that while I'm
16 certainly not a fan of plagiarism, I do take
17 benefit when people have clarified issues for
18 me, and if you look at the ABA statement, they
19 wrote two of our five questions.

20 So, we know what those five
21 questions are, and while not everything they
22 have is consistent with what we agreed to,

1 quite a bit of it is, and I think that would
2 be a drafting aid for somebody to take on
3 findings of testimony. So, do I have a
4 volunteer to do that? Or should we volunteer
5 someone who is not here?

6 MS. NELSON: I volunteer Thedius.
7 Can I ask a point of clarification?

8 MR. BRANCH: Yes.

9 MS. NELSON: What is the difference
10 between "findings" and "recommendations?"

11 MR. BRANCH: In my own mind, it's
12 this -- The findings that we come to are,
13 essentially, things that we believe after
14 having reviewed all the testimony and all the
15 discussion from which the recommendations
16 flow.

17 So, for example, a finding may be,
18 "We find that pricing at the schedule --" And
19 I'm tossing this out because it's one of my
20 favorites. "We find that pricing at the
21 schedule level primarily functions as a
22 baseline set of information for the

1 contracting officer to do Further due
2 diligence and da, da, da.
3 So, we find that the most effective
4 competition takes place at the task order
5 level. We find that GSA pricing does not go
6 vertically and horizontally, and therefore we
7 recommend that --"

8 MS. NELSON: Mr. Branch, I just ran
9 through every IG report and GAO report I've
10 ever seen and I got the difference.

11 MR. BRANCH: Okay. So, I think --
12 We might e able to actually take out issues.

13 MR. PERRY: I was going to say, we
14 have the testimony, We had material presented
15 to us. Are we going to synopsize that here or
16 somehow cover that? But that is what
17 generated the issues piece that came out of
18 it, which would be, sort of -- Is it "issues?"
19 Is it "findings," but that's the part that
20 probably --

21 MR. BRANCH: Yes, and I would --

22 MR. PERRY: We did some data

1 gathering.

2 MR. BRANCH: And I would think we
3 would want to cite that in that section and
4 talk about -- Based on that discussion from
5 the panel, this is what we conclude.

6 MR. PERRY: And that left us with
7 some issues, and that's where your
8 recommendations came in from.

9 MR. BRANCH: Right. Actually, I
10 think we could take out the "issues" section.
11 I'm not sure that's necessary.

12 MR. PERRY: I am concerned that in
13 the initial drafting stage, so far it's the
14 government. And I do think that industry ought
15 to be heard from, not that I'm trying to
16 volunteer Larry and Alan and Don, who left,
17 but -- And Alan's backing up because he can
18 see what's coming.

19 I don't know whether that's going
20 to be covered by the review of the draft or
21 whether it ought to be covered in the initial
22 draft.

1 MR. DRABKIN: I didn't try to --
2 throughout the course here, suggest that there
3 was an industry view or a government view of
4 the panel's recommendations. I thought, sort
5 of how we could find a way that addressed best
6 use of the schedules programs for the multiple
7 stakeholders, so -- And I've already talked to
8 Elliot about where I might be able to be of
9 assistance. I'm happy to add to that.

10 I think the structure here is a
11 little different than we had talked earlier,
12 so I wanted to see how that developed.

13 MR. CHVOTKIN: I didn't mean to
14 suggest that here were two views based upon
15 where you sat. I am concerned about the
16 appearance that may have if -- But I'm
17 satisfied that the fact that I've raised the
18 subject has now neutralized it.

19 MR. BRANCH: Glenn? Your mike's on.
20 Do you have a question or a comment?

21 MR. PERRY: I'm not volunteering.

22 MS. NELSON: Elliot? Just to

1 clarify -- You're going to put out a more
2 detailed structure and --

3 MR. BRANCH: That was my intention.

4 MS. NELSON: And then we'll get to
5 work on it so we look a little bit more
6 cohesive before we start working?

7 MR. BRANCH: Yes, that was my
8 intention.

9 MR. PERRY: I would be willing to
10 spend some time on the "issues/testimony"
11 piece.

12 MR. BRANCH: Okay.

13 MR. PERRY: But again, in some
14 ways, I'd like to have it tempered a little
15 bit because I feel like I'll end up being
16 prejudiced on one side and it needs to be
17 balanced to make sure we got all perspectives
18 on that.

19 MS. SCOTT: Which way do you think
20 you're going to lean and we'll decide who else
21 should help you.

22 MR. BRANCH: Well, let me do this.

1 The introduction and the background piece and
2 the recommendations, I think, are very, very
3 straight forward because we have the motions.
4 That really covers the recommendations. We've
5 had extensive discussions on it. You can kind
6 of go back to the transcripts.

7 I think the introduction is
8 somewhat straight forward. We have the charter
9 in front of us. We have the transcripts from
10 our early meetings in front of us, which I
11 think kind of shaped our path as a panel.

12 Background is certainly not a
13 trivial section to write, but with Judith and
14 Jackie as kind of our subject matter experts
15 in acquisition and procurement, that piece
16 ought to fall out surely straight forwardly.

17 I think maybe one of the things
18 we're kind of struggling with is "issues."

19 MR. CHVOTKIN: Mr. Chairman, before
20 you go to the next one -- I think it's
21 important on the "background," that we talk
22 about the operation of the GSA schedule from

1 the GSA's part. I think that's also essential
2 that we get the perspective of the GSA
3 schedules from the ordering agency's part.

4 And throughout the panel, there
5 has been a lot of discussion about the
6 different perspectives and I think that's
7 essential to be captured. It really drives
8 part of the recommendations we have and so, in
9 addition to having the GSA folks talk about
10 how the schedules work, I would really
11 encourage somebody from the ordering side --
12 whether that's Mr. Essig or Debra or somebody
13 else -- talking about the schedule's
14 utilization from the ordering activity's side.

15 MS. SCOTT: I was going to
16 volunteer to do that aspect because that's
17 where I really spent the bulk of my career.

18 MR. BRANCH: Okay. That's fair.
19 That's great. So, why don't we do this. I
20 think we may be struggling and the lack of
21 hands I see may be driven by the uncertainty
22 caused by that section.

1 So, I will take an action to flesh
2 that out in deeper outline from and then I
3 will call upon you to perhaps -- either
4 somebody to take ownership of it or for people
5 to take ownership of issues within it. Does
6 that sound fair? Okay.

7 So, let's see. Today is the 10th.
8 So, if I have a more detailed outline out to
9 everybody via e-mail by close of business on
10 the 12th -- Since I think we've eliminated the
11 need for that meeting and I just won't tell
12 anybody that so I can get this piece done --
13 Would that give folks enough time to get a
14 rough draft of the things they've committed to
15 together by the 24th?

16 MS. BROOKS: We made a public
17 announcement that there would be a meeting on
18 the 12th.

19 MR. BRANCH: Okay.

20 MR. DRABKIN: Okay, so you show up
21 and tell them we canceled the meeting. You're
22 the DFO, right. You don't have to do any

1 writing. No one is assigning you any work.

2 MR. PERRY: What happens on the
3 27th?

4 MR. BRANCH: I mean, I understand
5 that, but I think the panel really has no
6 business to conduct then.

7 MR. DRABKIN: Why don't we just
8 have a notice that it's been cancelled?

9 MR. BRANCH: We will do one as a
10 formality, but by the time it gets published
11 in the Federal Register, it will be a week or
12 two after the fact. We do have someone from
13 the press here, who I'm sure will be
14 publishing today a story about the panel's
15 proceeding and announce that the panel decided
16 not to have a meeting on the 12th. Right,
17 Matthew?

18 AUDIENCE MEMBER: I don't have a
19 microphone.

20 MS. NELSON: Did I just hear that
21 there won't be a quorum on the 12th?

22 MR. BRANCH: I don't believe

1 there's going to be quorum on the 12th. But I
2 do think we need to -- We now do need to
3 schedule a couple of meetings to really deal
4 with the editing of this because -- And I
5 don't want to edit offline. I think we owe,
6 within the spirit of FACA, the right for the
7 public to hear us deliberate on this draft so
8 --

9 As we move into the holiday
10 season, does everyone have their calendar?

11 MR. DRABKIN: Mr. Chairman, the
12 only days that I cannot move between now and
13 the first of the year are 3,4, and 5 December.
14 I'm not available on those three days.

15 MR. BRANCH: Okay.

16 MS. BROOKS: Elliot, I also remind
17 the panel that
18 I will need from today's date, I will need
19 about 20 days to get the meeting notice
20 published unless we can get it expedited, say
21 by Friday, to get it over to the Federal
22 Register. We can't hold the meeting until 15

1 days after the notice.

2 MR. BRANCH: Okay. So, what if we
3 were to schedule one
4 on the 8th of December?

5 MS. NELSON: Elliot, for better or
6 for worse, don't schedule it around me. I will
7 be in Shepherdstown from the 8th through the
8 18th. I just won't be here.

9 MR. BRANCH: Have you ever been to
10 Shepherdstown in the middle of the winter? You
11 sure you don't want to use this as an excuse
12 to get out of that?

13 MS. NELSON: I don't think I have a
14 choice.

15 MR. BRANCH: Okay.

16 MR. DRABKIN: I can make the 8th.
17 Except for those three dates, I will re-
18 arrange anything else on my calendar.

19 MS. SONDERMAN: The 8th of December.

20 MR. ESSIG: Sorry. What dates are
21 we looking at?

22 MR. BRANCH: That's a Monday. Pat,

1 let's do this -- Let's try to do this by e-
2 mail when folks get back to their calendars
3 because we do have a few people who aren't
4 here, and I think we're going to have to go
5 with our long standing rule on deliberations
6 and go if we have a quorum.

7 People will have drafts and we
8 will have hopefully circulated those drafts in
9 order to deliberate, so if you will not be
10 here and you have questions on those, please
11 submit those via e-mail to Pat and we can
12 publish those along with our draft.

13 So, if I could ask everybody when they
14 review drafts, turn track changes on so that
15 there's an audit trail and we'll just
16 adjudicate that language. But we're going, I
17 think, have to go with our quorum rule to pull
18 this together and get it done. So, why don't
19 we say the 8th of December?

20 MS. SONDERMAN: I thought you were
21 going to say "no."

22 MR. BRANCH: Starting point, yes.

1 So, we'll start -- I'd like to start with a
2 date because if you don't start with a date
3 then people will kind of wander. So, let's out
4 that one on the table and see if that's good
5 for a quorum. If it's not good for a quorum,
6 are there other dates that people are good for
7 or terribly bad for?

8 MS. SONDERMAN: Well, along with
9 David, Glenn and I are both out-of-pocket on
10 the 3 and 4th of December, so those are --

11 MR. BRANCH: Okay. Yes, and I'm out
12 of pocket that first week anyway, so -- Let's
13 start with the 8th and the 9th tentatively.
14 Let's just say one of those two days we'll
15 hold the meeting. We'll see which day we can
16 raise a quorum on and move from there.

17 MS. BROOKS: Okay. So, are you
18 suggesting then that I send out an e-mail,
19 say, tomorrow, just to poll everybody to say
20 which date works better for you and then based
21 upon that, I'll go with my notice?

22 MR. BRANCH: Yes, and I think if we

1 take a look at what we have on that day, then
2 that will drive our next meeting date. I don't
3 want to necessarily schedule more than one at
4 a time. We've come through this pretty well,
5 I think, and if we can build a consensus
6 around those drafts or whatever changes people
7 have to them, maybe we'll be able to do this
8 in early January and put it to bed.

9 MR. PERRY: Pat, when you go out,
10 why don't you just -- the 8th, 9th and ask for
11 people's availability the 1st three weeks of
12 December, whatever. Is there anything wrong
13 with just having people tell you what their
14 availability is?

15 MR. BRANCH: No, I think that's a
16 good idea, Glenn.
17 Okay. Is there any other business we need to
18 take up today? Hearing none, we are adjourned.
19 Thank you.

20 (Whereupon, the above-entitled
21 matter concluded at 3:00 p.m.)
22

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ABA 236:18	65:2,8,10 69:10	acumen 110:12	adjudicate 248:16	71:4 73:5,7 101:17
ability 58:8,9 63:7	98:15 219:5	Ad 140:1	adjust 140:2	106:11 109:8
79:10 82:1 141:22	achieved 73:20	adapt 26:19	adjusted 100:6	111:1 126:17
191:14 194:16	achieves 68:12	adapting 162:4	adjustment 172:19	127:4 146:2 162:4
217:13	acknowledge 136:7	add 5:12 10:3 11:20	administer 145:2	163:18
able 5:1 9:7 41:5,6,9	182:22	52:18 111:16	196:17 198:6	agency 14:7 32:17
41:12,19 63:18	ACQNET 60:16,17	128:9 138:10	administers 184:11	39:18 45:12 52:5
65:8 75:20,22 76:4	60:18	169:17 183:3	administration 1:3	52:16,20 53:15
76:9,11,20 77:2	acquire 50:4 52:17	203:16,16 205:8	221:1	55:19 59:16 67:22
105:9,11 145:6	52:22 70:6 86:7	207:21 214:18	administrative	68:2 71:6,8 72:10
165:20 225:22	152:2 207:17	220:20 240:9	189:5 207:15	72:19 84:5,20
238:12 240:8	acquiring 72:19	added 11:5 37:20	administrator 3:4	86:22 91:9,20
250:7	80:17 86:22 107:2	38:13 49:6 190:19	9:7 42:22 60:1	106:13 110:7
above-entitled	126:5 127:2,4	190:22 191:9	68:6,9,11 70:16	139:4 159:13
106:2 151:11	196:12	201:13,22 206:1	74:6 76:12 78:19	174:15,16
250:20	acquis 29:17	215:12	100:3 105:22	agency's 10:20 28:6
absent 60:13 129:6	acquisition 23:20	addition 61:22	107:3,5 111:9	72:12 200:18
129:15	24:19 26:14 33:22	151:16 160:14	117:16 118:9,12	243:3
absolute 80:1	36:3,17 41:1,6,10	201:12,21 243:9	120:19 127:13,18	aggregate 91:19
202:15	51:6 54:12 58:3	additional 4:16	127:20 150:20	aggregation 109:10
absolutely 9:15,22	60:2,19 62:19	70:22 118:7 153:1	151:22 152:7	agree 23:6 30:6
53:20 68:7 126:2	68:15,18 70:4 71:9	153:2	154:2 159:7,8	43:11 56:1 70:17
159:2,12 167:1	71:10,20 72:10	address 7:21 8:14	165:8 173:12	77:1 80:12 115:10
accept 59:9 168:22	76:8,19 80:6 87:9	8:22 10:8,9 11:17	180:10 190:18	129:1 132:6,17,18
201:17 209:11	107:10 111:20	24:19 25:6 50:13	191:8 193:16	134:19 140:8
acceptability	112:4 117:2 128:7	90:5,14 100:20	198:11 199:8	142:5 157:10
195:13	128:10,11,11,13	120:11 133:7	200:3,4,19 201:11	162:18 167:5
acceptable 54:16	135:2 145:7	136:16 140:1	206:11 210:15	172:17 173:3
218:22	146:16 147:14	141:5 142:10	211:5 212:13,16	176:14 180:4
access 68:2 193:8	152:9 162:5,8,11	153:13 156:10	213:21 220:7	185:4 189:9 195:8
195:2,4	163:3 172:20	158:21 160:3	administrators	199:21 202:20
accommodate	185:21 194:21	166:2 170:5	212:12	208:7 211:17
147:6 162:10	242:15	172:16,18,22	administrator's	212:11 221:7,13
163:3	acquisitions 10:21	190:16 215:13	66:14	225:17 230:17
accommodated	47:4 48:2,7 112:19	216:2 230:8	adopt 42:21	234:2,2
210:12	161:18	addressed 4:2 8:6	adoption 151:22	agreed 221:19
accommodating	acronym 104:8	53:13 70:19 99:22	advance 99:1,2	236:22
162:3	156:3	154:6,9,14 169:6	advantage 147:11	agreement 80:2
accomplish 34:22	Act 66:16 67:3	170:7,12,13 195:3	175:13 196:18	86:9 115:8 145:19
accomplished	action 151:8 244:1	240:5	207:20 213:3	224:7
153:22	activities 140:17,21	addresses 35:12	advice 129:11,11	agreements 93:11
accounting 194:12	164:9	103:22 213:7	130:9	184:4 209:14
195:14,22 217:10	activity 71:5 87:2	addressing 108:22	ADVISORY 1:5	ahead 34:19 36:10
accuracy 20:4	98:1 187:18	162:20 163:1	affect 230:9	60:9
accurate 170:21	204:22 205:2	adds 18:10,16	affirmative 211:12	aid 237:2
achieve 23:14 39:4	229:14	adequate 53:18	agencies 5:19 6:4,21	air 213:9
	activity's 243:14	adequately 120:10	11:1 25:6 40:14,15	aircraft 213:11
	actual 110:17	adjourned 250:18	40:22 41:5 67:4	Alan 1:17 10:6 23:5

61:19 71:11 83:16 149:16 157:3 163:9 170:5 172:16 199:18 239:16 Alan's 55:9 172:15 239:17 Alliant 195:20,20 allocable 217:17 allocation 68:20 allow 40:22 41:5 42:17 45:10 55:15 59:20 68:10 76:9 77:7 79:19 82:11 92:19 93:13,13 99:19 105:18 109:19 121:20,21 131:21 132:2 172:7 192:21 199:4 210:16 allowable 217:17 allowed 109:14 142:21 allowing 41:18 132:18 allows 58:15 61:22 63:3 66:17 184:14 192:18 198:20 Alright 187:5 alternate 36:2 alternative 10:10 14:4 40:10 111:17 Alternatively 14:10 alternatives 14:1,2 59:14 74:22 ambit 64:17 amend 43:3 46:21 208:14 214:13 amended 205:15 amendment 47:9 139:21 142:13,13 143:4 168:18,22 186:19 187:6 201:10,18 213:16 216:5 AMERICA 1:1 amount 13:19 61:10 175:19,21	analogize 28:13 analogy 17:15 72:21 197:12 analysis 13:22 14:1 48:14 49:20 215:9 analyst 64:10 and/or 12:22 61:13 76:14,15 announce 88:18 245:15 announcement 244:17 answer 56:16 68:18 68:22 74:9 85:21 175:7 178:21 184:9 193:14 216:13 answers 175:7 anticipate 172:6 anybody 5:17 81:9 89:10 98:22 184:15 244:12 anymore 177:10 anytime 198:20 anyway 156:3 176:22 181:20 184:18 214:1 249:12 apart 29:5 124:11 appearance 240:16 applicable 126:9,10 126:12 170:16 application 58:12 170:15,22 171:14 applies 114:14 165:14 apply 3:20 75:10 137:21 166:14 172:13,20 173:9 173:10 176:2 178:16 180:15 185:21 appreciate 81:13 approach 3:15,17 24:19 45:14 53:5 102:12 190:1 appropriate 3:21 5:13 9:15 11:12,17	22:7 27:2 54:21 68:16,18 71:19 72:18 74:5 75:3,10 75:17 79:16 81:12 81:20 82:15 100:1 122:5 130:18 154:3 158:2 200:10 201:2,5,6 212:6 appropriately 10:22 38:20 72:12 75:21 76:10 79:13 129:12 205:1 approve 159:10,11 approved 60:6 152:16 166:4 209:5 217:10 architected 106:17 architecture 13:13 28:9 152:12 153:17 area 5:8 43:14 96:5 160:13 181:9 190:11 191:20 198:12 208:9 areas 86:20,22 187:17 199:22 arena 101:12 203:11 argue 32:5 78:10 91:5,21 92:12 110:8 116:12 119:2 126:16 171:9 180:15 183:16 184:10 197:14 argument 96:12 arithmetic 179:5 190:1 Armed 197:3 Army 79:9 arrange 247:18 arrangement 61:13 arrangements 93:1 93:9,9 99:6,12 109:13 arrive 73:12 arrived 3:2	aside 202:18 asked 17:15 47:18 48:21 114:7 134:22 160:12 228:8,20 asking 98:10 104:16 115:12 125:5 166:9 174:18 aspect 53:13 115:14 125:11 127:9 205:12 243:16 assemblage 131:21 assembled 16:19 assessment 182:1 assigning 245:1 assignments 222:20 assistance 240:9 assistive 145:7 associated 68:20 100:12 assume 114:4 188:18 assuming 125:14,15 173:11 194:7 236:2 assurance 143:2 assure 139:11 attain 16:13,21 attention 163:6 AUDIENCE 245:18 audit 178:22 248:15 auditors 195:12 authority 59:19 62:19 66:14 68:1 212:14,16 Authorization 67:3 authorize 57:12 authorized 93:10,12 115:21 116:2,7 authorship 30:22 automobile 17:17 availability 250:11 250:14 available 69:22 74:1 87:4 246:14 Ave 1:14 average 30:8 37:2 avoided 73:10	197:19 award 1:5 102:19 171:20 188:2,7 204:11 awarded 57:11 66:13 90:3,8 99:18 142:16,18 203:20 awards 48:19 61:16 142:21 aware 72:22 144:9 awful 161:20 axes 58:3 59:1 aye 149:7,9,11,13 150:1,3 eyes 150:15 A-11 13:19 14:16,17 16:2 a.m 1:13 106:3,4
B				
b 6:15 7:12 22:5 back 19:20 24:21 34:9 36:9 37:8 39:12 42:17 46:14 48:2 49:16 52:21 55:18 62:4 70:11 83:15 93:3 96:10 98:10 103:13,15 106:1 110:12 111:16 118:2,21 119:10,19 123:18 125:19 135:19 140:18,22 141:1,3 141:4 151:7,8,10 153:6 160:5 165:11 168:10 174:7,8 175:3,5 176:17 178:7,11 179:6 185:18 208:1 210:14 219:13 222:4 226:20 242:6 248:2 background 67:6 225:6 226:7,8,19 229:8 231:12,12 231:13,13,16 234:12 242:1,12				

242:21	50:17 196:22	159:7,9 167:1	117:14 146:6	128:14,18 129:1
backing 239:17	basis 78:12 79:14	174:15 218:8	173:20 174:21,21	130:11,20 131:11
bad 49:17 50:19	79:21 85:9 112:5	236:17	178:6	131:14 133:5,10
197:1,6 249:7	115:7 116:19,21	benefits 14:6	boundaries 20:21	133:20 134:6,9,13
balanced 241:17	117:6 121:18	best 27:8,9 41:12	boundary 24:6	135:18 138:1,5,8
bale 226:3	134:5,11,14	70:6 74:7 76:21	box 44:22 102:5,6,6	138:14 145:9,20
Ballroom 1:13	135:13 140:5	78:7 87:5 90:22	102:10	146:1 148:16,21
bargain 115:7	142:15,16 143:7,8	94:9,11,13 140:7	boxes 42:17 102:22	149:5,8,10,12,14
barriers 75:22 77:5	154:5 166:22	140:19 141:7,13	102:22	149:16,18,20,22
base 65:14 229:21	177:18 178:7	142:17,18,19,19	BPA 123:1	150:2,2,5,7,13
based 19:7,8 28:21	194:7,10 195:16	164:15 187:18	BPAs 96:18 109:12	151:14 154:8,13
29:16 31:5 33:20	201:15 202:1,22	227:21 240:5	BPA's 11:9,13	155:17,22 156:9
34:6,15,21 35:4,13	203:20 204:9	better 17:1 22:5	BRAC 63:13 65:21	157:3 158:3,9,11
36:5,12,19,21 37:8	207:11 208:11	31:22 41:17,21,22	Branch 1:14,17	158:20 159:2
38:6,15 39:6 41:11	209:17 214:5	45:13 53:4,22,22	2:19 8:20 9:22	160:7 161:7,9
43:17 47:10,15,20	215:9,12,21 216:1	75:19 134:18	11:19 12:13 13:15	163:5 164:12
51:9 54:14 60:18	216:9 235:5	156:3 166:13	15:22 16:4,9,15	165:22 167:3
61:1 62:4,18 64:3	bathrooms 2:12	194:6 214:9 215:4	17:2,8 20:6 23:17	168:4,8,21 169:9
64:16,20 65:20	bear 9:3 82:4	217:20 218:1	28:11,17 29:12	169:20 171:4
66:5 72:1 74:13	227:22	219:6,16 220:21	30:3,10,14,19	173:3 174:10
77:13 80:4,5,9,13	Bearing 123:20	247:5 249:20	31:15 32:1,8,12,20	177:9,16 178:8
80:21 83:13 88:10	bed 250:8	beyond 14:14 16:7	33:3,9,15,19 34:7	179:16 180:3,19
105:12 112:1,18	began 39:8,8 44:7	35:19 45:21 46:5	34:12,19 35:8,21	183:3,20 185:4,11
113:3,4,6,18,19	beginning 83:3	46:20 191:19	36:7,14 37:3,6,10	185:16 186:1,17
114:21 115:11,14	89:21 153:7 221:1	bid 123:13	37:15,22 39:12	187:5,8,14 188:15
116:21 118:3,14	begun 70:12	big 27:22 28:2	44:10 46:11 47:7	190:5,10 191:3,11
118:22 119:4,9	behavior 199:15	39:22 200:12	47:16 49:3 50:6	191:22 193:3
122:8 124:13	believe 3:12 7:14	227:8	51:1,12 52:8 54:3	195:7 197:11
125:7,10,17 126:2	12:2,6 21:7 27:10	biggest 27:11 105:6	55:7 56:3,22 57:9	199:18 201:8,20
126:4,8 127:8	48:4 52:3 53:17	bill 84:6	57:15,21 61:18	202:3,10 204:2
132:20 135:2,3,8	70:17 77:9,21	bit 12:14 36:2 49:4	63:21 65:22 71:11	205:4,14 206:14
136:8,22 138:11	78:21 91:9 104:5	56:7 74:9 91:13	74:11 75:13 77:18	208:12,19 209:8
143:8,14,17 144:4	123:3 131:2	202:13 206:9	79:22 80:22 84:7	210:7,21 211:16
145:22 146:4,22	145:17 165:4	209:2 230:6 237:1	87:19 90:13 93:5	212:22 214:15
147:7,19,22	180:6,8 183:22	241:5,15	94:19 95:8,15 97:3	215:5 216:3,6,19
148:13 152:19	204:15 212:13	BlackBerry 66:4	101:4 103:12	217:11 220:4,17
153:4 154:4	227:21 237:13	blank 131:22	105:15 106:5	221:15,21 223:18
155:20 156:6	245:22	blanket 86:8 93:11	107:15,19 108:2	224:1,5 225:15
157:7,11 166:22	believed 3:22	block 148:1	108:11,21 111:18	226:17 228:13
179:1 181:16	believer 10:5	blocks 2:16	112:8 113:10,22	230:1,15 231:6,18
184:18 198:12	belly 24:16 40:6	board 9:1 190:22	114:22 115:5,17	232:21 233:5,8
209:18 224:8	53:2	201:4 215:1	116:6,11,18 117:5	234:2,7,13,19
227:14 228:1	belong 55:6	boards 189:5	117:11,22 118:5	235:8,15,22 236:6
233:15 239:4	belongs 25:17	BOAs 209:14	118:19 119:12,22	236:10,13 237:8
240:14 249:20	benchmark 174:16	boat 219:20	120:4,15 121:7,22	237:11 238:8,11
baseline 237:22	189:2	body 6:22 220:2	124:16,20 125:2	238:21 239:2,9
bases 203:19	beneficial 201:16	bottom 74:3	125:12,18 126:12	240:19 241:3,7,12
basically 10:16	benefit 16:2 107:3	bought 25:18	127:15 128:1,5,8	241:22 243:18

244:19 245:4,9,22 246:15 247:2,9,15 247:22 248:22 249:11,22 250:15 break 101:7 105:18 151:6 225:7 breakdown 179:12 179:15 233:9,11 breaks 2:12 bridge 180:14 brief 159:10 bring 9:2 19:22 63:16 82:4 100:14 135:20 155:13 210:4 226:20 228:17 bringing 15:17 18:16 63:17 69:8 86:19 219:12 brings 176:3 broad 52:4 61:3 200:12 broaden 40:8 204:19 broadening 41:20 211:6 broader 193:13 broadly 52:14 162:22 230:21 broke 228:12 broken 226:14 BROOKS 1:23 2:2 223:17,20 224:4 244:16 246:16 249:17 brought 12:11 123:21 bucket 160:17 build 20:2 126:19 137:17 164:19 176:19 179:12 250:5 building 12:17 13:10 75:5 built 130:22 206:10 bulk 243:17 bullet 97:6 153:19 153:22 154:11	158:4,13 bullet-ize 202:4 bunch 114:10,11 232:10 burden 139:3 206:1 206:4 burn 197:10 business 3:8 48:7 75:12 94:16 101:14 102:14 107:13 110:12 117:20 147:12,13 195:16,20 196:7,8 196:10 206:13 207:7 215:18 244:9 245:6 250:17 businesses 94:14 196:6,10 204:7,13 215:17,20 button 24:16 40:6 53:3 buy 7:1 9:8,16 13:7 15:9 21:3,4,15,16 22:6 24:7,13,13 25:12,12 26:7 27:21,22 28:5 38:9 38:10,10,19,20,21 38:22 39:21 40:18 52:2 54:22 55:21 57:13 64:9,16 69:21 78:7,9,11,11 81:7 85:2,5,6,7,7 85:17,21 91:4 93:18 94:3 96:11 97:10,11,18 98:3,8 100:15,18 111:12 112:11,14,15 118:13,22 123:12 124:6 131:3 132:2 146:3,14,19 147:2 147:3 150:19 152:12,13 167:15 198:4 206:20 207:1,10,12,19 208:6,11 209:12 213:8,13,15 216:8 218:17 219:8,17	221:5 buying 23:9 25:20 26:8 28:7 43:4 52:20 59:4,6 64:2 68:21 69:18 85:15 88:20 89:2,7 98:4 98:5,16 106:11 111:5 131:17 144:10 153:17 155:14 176:5 177:1 181:7 204:22 209:16 214:4 219:2 buzzwords 146:8 <hr/> C <hr/> C 6:16 7:12 cable 13:4 calendar 246:10 247:18 calendars 248:2 call 14:14 58:10 101:16 114:12 122:22 126:16 148:17,22 193:19 244:3 called 3:17 9:15 21:11 126:17 193:18 226:19 calls 4:22 47:18 canceled 244:21 cancellation 198:18 cancelled 245:8 capabilities 101:11 204:8 capability 75:5 103:8 162:15 196:1 199:7 capable 102:18 162:6 193:1 196:14 201:16 capacity 15:12 77:13 202:8,17 203:2,5 217:22 capital 16:3,7 59:7 captured 4:3 148:20 222:19 243:7 cards 182:11	care 96:22 156:6 161:1 191:3 career 243:17 carefully 89:13 carried 152:6 carrier 213:11 carries 150:7 151:4 158:12 170:2 186:5 190:9 221:18 case 38:5 43:13 44:9 71:17 74:4 143:1 162:12 170:16 188:13 189:4 192:9 cases 134:17 casual 227:2 categories 91:17 137:15 154:19 193:5 category 6:13 157:1 218:21 cause 147:17 caused 243:22 cell 2:5 certain 35:17 62:18 65:7,9,11 71:17 72:13 78:14,15 85:6,7 155:14,15 211:15 certainly 30:21 64:19 65:19 69:3 69:20 78:20 80:7 82:8 90:21 100:21 106:10 113:8 122:7 130:12 146:7,13 164:15 168:21 174:14 182:5 189:5 192:11 194:4 220:5 226:10 235:9,22 236:16 242:12 certified 64:7 194:13 196:1,8 chain 17:20 chair 73:1,2 133:14 150:3	chairman 1:14,17 50:1 81:16 90:9 157:2 161:8 168:17 170:6 190:13 199:21 228:8 235:13 242:19 246:11 challenges 11:5 182:9 challenging 35:3 73:17 change 7:18,19 47:1 47:8 112:8 140:9 148:15 162:3 163:2 179:21 188:14 200:18 changed 67:1 175:11 185:1 changes 49:11 77:16 200:17 210:18 248:14 250:6 changing 209:20 channeling 192:19 characterized 6:11 charge 182:11 chart 225:20 charted 225:20,21 charter 165:4,6,17 230:21 231:10,11 231:20 234:10 242:8 chassis 17:19 cheaper 219:16 check 153:10 checking 148:1 choice 130:7 192:18 208:3 213:15 247:14 choices 213:13 choose 17:17 57:8 94:5 203:2 207:11 215:20 chooses 220:8 chop 233:3 chosen 71:10 231:11 Chvotkin 1:17 10:7
--	---	--	--	---

67:12 71:12 95:7 149:16,17 157:2,4 158:10 161:8,10 164:5 168:17 170:6 172:17 199:20 240:13 242:19 CICA 89:9 96:7 181:15,19 circle 83:7 circular 13:19,20 circulate 235:18 circulated 248:8 circumstance 39:3 201:7 circumstances 71:18 133:15 147:6 211:4 cite 239:3 civilian 67:4 claim 147:21 claims 189:1 clarification 16:1 37:2 63:22 81:2,14 88:1 168:5 237:7 clarified 236:17 clarify 95:16 138:3 179:22 187:11,12 241:1 clarifying 181:10 clarity 31:3 169:14 clause 129:18 165:14 166:4,14 170:9,15 171:1,10 171:14 172:9,12 172:19 173:10,19 174:13 175:8,14 175:16 178:13 179:7,20 180:13 185:20 198:18 226:14 227:11 229:11 231:1 232:4,5,8,12 clean 120:12 124:18 190:12 cleaner 36:8 clean-up 170:4 clear 5:16 26:18	56:14 81:9 97:17 130:7 134:17 171:17 181:2,6 186:13 202:13 clearer 38:4 124:8 clearly 9:6 113:11 122:13 168:12 227:11 clerk 182:13 CLIN 57:7,20 69:22 70:1,1 100:9 198:22 199:1,2,14 206:3 CLINs 190:18 201:6,12 203:16 203:19 208:22 210:2 close 90:12 162:9 244:9 closer 197:18 cloud 161:19 162:13 162:15 Cohen 56:21 cohesive 241:6 colleague 50:7 55:4 55:5 66:3 colleagues 8:3 22:17 26:11 67:12 71:3 92:6 230:21 colleague's 69:2 collect 156:8 collecting 156:4 collection 104:21 column 6:15,15,16 7:12 combination 13:4 14:13,22 18:6 73:18 95:2 105:5 194:5 combinations 121:13 combine 37:17 63:10,14 93:14 166:22 come 3:1 6:5 8:7,18 13:22 21:8 25:19 39:16 46:14 50:16 51:2,17 69:17	76:19 82:8 83:6 84:8 87:10 94:10 94:12,13 95:11 98:10 99:9,20 101:10 102:17 104:17 105:9 118:21 122:21 127:10 137:15 151:7 183:21 198:17 203:19 205:7 223:22 224:6,17 237:12 250:4 comes 36:9 63:6,12 63:12 88:17 102:7 118:20 175:2,3 212:2 227:22 comfortable 29:6 36:8 52:20 105:9 157:5 160:8 231:3 coming 5:5 12:16 103:7 112:17,19 119:18 158:19 175:4 188:9 239:18 comma 135:13 comment 44:11 48:3 52:19 88:2 101:9 184:19 193:4 240:20 comments 10:2 55:9 55:11 56:3 80:4 94:21 160:19 212:19 225:2 commercial 14:12 14:19,20 15:5,6 26:10,11 28:7 32:6 45:20 57:17 65:4 193:8,18,20 194:2 194:3,15 195:4 commit 233:10 committed 244:14 committee 1:5 197:4,22 committing 78:13 commodities 44:5 45:20 156:5,20 commoditization	157:13,15,22 commoditize 4:22 commoditized 155:16 156:22 commoditize-able 6:12 44:5 64:5 158:14 160:17 207:14 218:19 commodity 155:9 common 51:16 community 19:22 60:19 106:14 companies 44:16 45:5,10 69:11 102:3,16,21 103:7 110:5 194:8,15 195:21 198:17 201:15 207:22 company 98:21 101:11 102:7 175:10 179:1 196:14 217:8 company's 92:14 179:3 compartmentalize 103:1 compartmentalized 102:2 compelled 67:11 compelling 60:4,6 compete 89:12 95:13 96:10 99:4 167:17 168:1 competed 21:17 97:13,22 99:2 214:12 competencies 192:6 competition 8:1 26:2,3 42:7 48:11 48:17 53:18,19 76:7 77:8 83:4 87:1,3,12 89:6 90:5 97:14 99:20 139:15 167:18 169:5 170:13 176:6,12 195:19 214:11 218:20 219:11,14 238:4	competitions 98:13 competitive 61:16 147:11 167:11 177:20 competitor 227:22 complete 153:1 165:3,10 170:20 196:18 completed 195:19 completely 172:17 215:7 completeness 165:2 165:15 170:5,19 completion 79:2 complex 8:8 11:6 71:20 79:8 109:7 204:20 214:7 complexity 26:20 79:7 compliant 78:14 complicated 70:18 component 17:16 17:18 21:3,6 52:12 59:5 84:11,13,18 84:18 92:20 97:6,8 98:4,9,16 100:17 125:13 176:6 177:18 188:11 189:11 190:4 components 12:19 16:12,18 17:1,19 18:2,17 20:12 22:2 24:5 25:8 29:1 40:18 52:11,14 85:7,8,18 86:19 91:16 96:15 109:11 114:11 139:13 173:8,11 173:14,21 178:1 composed 38:12 composite 84:13 composition 155:8 comprehensive 106:19 107:6 111:10 117:16 120:19 121:4 127:13,16,19,20 150:21 152:8
--	---	--	---	--

comprehensively 222:5	connected 40:1	226:7,8 227:5	contractor 28:14	cost 13:9 53:6 57:7
comprise 21:13	consensus 3:3 5:5	229:18,19	38:14 40:3 78:7	57:20 58:4,6,20
computing 160:13	29:8 39:16 51:17	continually 102:3	83:22 86:4 88:9	68:19 69:22 72:14
160:16 161:15,19	54:7,18 130:22	continue 48:9 50:18	126:6 153:2	75:4 85:17 90:18
162:13,15	164:20 250:5	91:7 120:22 136:4	175:17,19 203:2,5	91:2,6,6 142:20
concept 11:7 56:7	consent 210:17	207:13 220:6	220:1	176:19 177:4
conceptually 81:20	consequences 73:5	continued 79:19	contractors 44:22	179:12,12 192:12
concern 16:6 24:18	consider 79:18	continuing 150:14	57:12 87:4 104:13	194:6,10,12,13
34:20 37:16 39:14	158:4 160:12	200:4	196:5 197:13	195:14,22 196:21
59:4 86:12 115:19	168:18 193:17	contract 7:3 9:14,17	202:2 205:7 206:3	198:6,22 199:1,2,7
140:18 141:1	201:6	22:7 25:14 27:3	216:1	199:14 200:13
144:8 161:2	considered 57:17	28:13 45:3,11 53:4	contractor's 83:9	201:6,12 202:8
187:16 198:2	considering 74:17	53:7 57:3 59:11,15	contracts 5:19 6:2	203:7 205:9 206:2
202:12 208:8	165:21	59:15,21,21 60:5	25:14 44:1 45:7,8	207:16,21 208:11
213:7 215:13	consist 138:21	60:12,21 61:1,3,9	57:8 66:6 67:8,8	208:21,22 210:1
216:2 220:13	consistency 187:17	61:15 66:10,19	74:20 91:3 99:18	210:16 211:11
concerned 26:16	consistent 67:1 79:5	72:14 78:5 81:18	101:10 109:18	212:5 214:5
30:6 191:18 206:1	107:11,13 117:18	82:9 83:10 84:13	110:8 131:3	215:16,21 216:9
213:12 239:12	117:19 152:19	85:2 89:11,14 90:3	143:17 144:22	216:18 217:2,13
240:15	163:14 168:12,14	90:7 91:5,7 92:10	145:2 146:3 147:9	217:14,16,18
concerns 8:15	189:18 231:17	92:17 93:15,16	147:18 161:14	218:2,7 219:3,18
137:21 142:1	236:22	95:20 99:14 101:2	183:5,14 184:11	219:21
204:6 221:4	consists 155:3	102:19 105:11	190:19 191:9	cost-accounting
conclude 11:4,16	constitute 20:12	123:16,19 124:9	193:19,20 195:15	196:1,9
239:5	constitutes 155:7	144:11,12 145:11	196:4 197:2,4	cost-cleans 44:1
concluded 10:10	constrained 23:20	145:12 147:20,20	198:6 200:13	cost-side 196:18
130:21 250:21	121:12	147:20 171:13,20	202:9 206:21	cost-type 9:16 22:7
conclusions 225:13	constraints 72:5,9	182:4 184:14	210:16 211:12	27:3 190:18 191:8
concomitant 175:21	75:9 119:15	194:5,19 196:17	218:14	191:18 192:7
concur 30:2 55:10	construct 170:10	196:19 197:8,22	contractually 89:22	193:10 197:4
57:22 116:17	construction 28:13	198:19 205:8	control 40:6	couple 2:15 56:18
119:7,8 148:14	consultant 53:16	208:4 216:11,18	controlled 80:16,20	66:2 90:13 131:15
condition 15:3	54:2 69:17	216:22 217:3	controls 17:21	145:13 198:10
conditions 6:3 24:7	consultation 163:18	218:8,9 219:3,19	191:12	224:16 246:3
85:5 89:16 111:13	consulting 103:10	227:18 229:13	controversial 5:15	course 40:14 81:16
121:12,16 133:7	consumer 73:1	contracted 205:2	190:16	82:1 99:22 168:1
211:15	contained 161:22	contracting 50:20	conversation 136:8	173:12 232:1
conduct 245:6	contemplate 64:2	59:9 60:3,7 62:1,9	205:16 206:5	240:2
configuration 84:19	83:12 99:19	62:13 63:3 66:5	213:2	Court 1:13 149:2
188:13	contemplated 7:16	84:5 110:11 126:6	convinced 89:20	cover 52:4 125:8
configured 98:12,18	13:18 109:2,3,4	140:6,12,16	90:11	169:18,19 208:16
confirm 3:14	123:10 181:19	143:14,17 144:4	cooperation 234:8	238:16
conflict 206:10,16	contemplating 64:4	144:16,21 146:10	Cooperative 203:9	coverage 35:14
confuse 67:7 77:10	context 11:11 78:4	147:17,21 188:5	correct 68:1 88:6	covered 16:5 92:1
confused 86:14	154:16,17,20,21	189:6 192:8,13	95:1 97:20 129:8	166:15 239:20,21
Congress 207:9	156:13 161:13	195:2 196:21	174:11	covering 16:2 165:3
conjunction 152:15	165:12 180:9	207:1 208:2 229:1	correctly 88:3 192:8	covers 161:4 242:4
	190:19 205:6	238:1	224:22	cow 208:5

create 29:21 31:17 31:18 32:9 33:11 40:22 41:6,9 55:20 76:3,5 118:7 214:21	236:1,4	133:15 153:11 195:9 227:8 246:3	definable 21:5	delineate 154:10
created 22:16 81:5 117:19	D	dealing 197:4	define 4:10 17:16 20:11 23:22 25:4 34:10,13 46:16 50:1 54:9 58:9,9 113:14	delineated 54:10
creates 18:3,9 32:8 32:13 191:19	da 238:2,2,2	deals 66:6	defined 6:13 12:7 14:15 20:20 34:17 51:5 62:3 66:21 109:9,15 151:18 153:12 171:2 218:20	deliver 37:19 197:6
creating 18:22 30:7 76:8 81:5,10	data 20:15 40:1 46:10 47:17,18 48:4,20 49:2,8 75:7 194:13 238:22	dealt 154:11 158:8 158:19	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	delivery 6:6 8:9 152:22 169:17
creativity 17:4 172:21	date 44:8 78:15 199:17 246:18 249:2,2,20 250:2	dear 50:7	definition 12:5 13:16 21:1 29:11 30:22 32:19 34:22 40:8,12 41:14 51:20 53:12 54:4 54:16,21 57:17 58:1 62:16 77:22 80:3,8,10,12,18 88:10 89:9 111:16 112:11 114:3,9,14 116:13,14 117:1,1 119:2,3 125:20 126:3 129:3 136:13 145:15,22 151:16,17,20 157:16 160:2,12 169:15	Dell 40:2
creator 53:11	dates 247:17,20 249:6	debate 90:10	definite 121:9	delve 74:8
critical 14:3 46:7 165:6	Dave 104:2 215:3	debates 156:17	definitely 15:16 56:12 205:20	demands 200:17
criticisms 195:3	David 1:18 4:22 10:9 14:9 15:20 20:7 34:19 35:8 37:13,22 44:13 45:16 56:22 61:19 66:1 73:9 87:20 88:1 94:19 95:16 107:19 149:20 157:12 172:18 176:14 183:22 190:12 195:8 201:11 202:21 206:14 212:22 220:4 231:6 249:9	Deborah 70:17	definition 12:5 13:16 21:1 29:11 30:22 32:19 34:22 40:8,12 41:14 51:20 53:12 54:4 54:16,21 57:17 58:1 62:16 77:22 80:3,8,10,12,18 88:10 89:9 111:16 112:11 114:3,9,14 116:13,14 117:1,1 119:2,3 125:20 126:3 129:3 136:13 145:15,22 151:16,17,20 157:16 160:2,12 169:15	demotion 202:5
cross 57:2 94:18	David's 11:14 51:22 52:10,21 55:11 64:4 71:13 86:12 91:14 94:21 95:10 122:11 123:8 173:6,15 216:5	Deborah's 184:19	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	denied 195:1
cross-schedule 43:8	day 144:22 152:6 163:12 235:12,16 249:15 250:1	Debra 1:23 20:9 47:17 52:2 55:2 107:20 120:15 149:22 160:5 165:8 199:18 201:8 202:21 231:19 243:12	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	deny 9:13 11:1
crucial 9:11	David's 11:14 51:22 52:10,21 55:11 64:4 71:13 86:12 91:14 94:21 95:10 122:11 123:8 173:6,15 216:5	December 246:13 247:4,19 248:19 249:10 250:12	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	denying 68:2
crux 73:11	day 144:22 152:6 163:12 235:12,16 249:15 250:1	decide 11:11 43:5 55:20 132:10 145:16 146:19 198:11 199:5 217:21,21 223:12 230:5 241:20	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	Department 79:9
cumbersome 106:17	days 3:9 198:21 219:10 246:12,14 246:19 247:1 249:14	decides 39:18	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	departments 23:21
cure 90:4,6	DC 1:14	deciding 194:20	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	describe 68:8 70:15 89:3
curiosity 35:3	DCAA 197:19	decision 14:3 146:15,18 157:5 207:5 210:20 216:13	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	described 25:10 89:4 101:1 157:13 160:16
current 107:1,21 108:22 111:5 117:14 121:4 127:14,21 150:17 150:18 163:15,19 170:20 193:12 198:16 202:22	deadlines 224:15	decides 39:18	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	descriptions 163:14
currently 8:4 15:14 15:15 35:5,10 81:11 82:2,10 98:18 107:7 202:16	deal 6:5 8:12 41:3 46:2,5 82:15 120:10 122:5	decided 146:14 193:19 216:21 230:4 245:15	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	deserves 212:1
customer 41:9,16 41:18,21 42:1 63:6 93:18 94:2,4 97:9 106:13 163:15		decides 39:18	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	design 69:7 94:17 126:18
customers 41:6 42:6 49:14 67:17,19 75:17,20 76:4,9,17 76:18 93:14 122:21 130:6 192:18		deciding 194:20	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	DESIGNATED 1:23
cut 46:11 50:8		decision 14:3 146:15,18 157:5 207:5 210:20 216:13	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	designation 56:21
		decisions 147:5 226:2 229:21	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	designed 5:18 7:15 14:18 16:21 22:21 22:22 25:11 38:9 39:9,10 43:19 44:4 45:20 83:18 106:9 122:13 152:13
		declarative 10:14	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	designing 13:9 86:3
		decried 199:16	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	designs 55:20
		deep 234:21	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	desire 67:13 72:13
		deeper 244:2	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	desk 155:1,2,12 161:21 219:10
		deeply 58:6 74:9	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	detail 135:3
		defaulted 156:4	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	detailed 241:2 244:8
		Defense 67:3	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	determination 84:1 88:4,13 140:6 141:7 142:1 183:2 187:19 206:12
		deference 169:10	defining 10:6 12:1 23:9 29:7 39:14 50:12 52:13 55:19	determine 60:3

102:4 156:19 163:14 187:20 188:1 189:12 determined 84:10 140:17,19 181:5,8 181:14 185:2,7 186:14 188:4,19 determines 68:16 determining 190:2 develop 5:7 developed 3:19 240:12 development 204:20 developmental 193:11 devices 106:15,16 122:22 devised 108:19 DFO 244:22 dialogue 103:6 difference 38:13 90:15 174:4,20 175:1 177:8 217:4 217:7 225:22 237:9 238:10 differences 4:12 182:20 different 4:16 21:7 24:21 26:6,13,13 28:4 32:10 33:18 38:11 44:2,13 45:6 45:7 53:19 86:16 88:22 108:10,13 115:1 116:1 132:20 138:13 141:21 154:16,20 157:14,16 161:12 177:16 193:14 199:3 230:13,13 230:16 240:11 243:6 differently 64:13 66:18,21 123:14 178:3 difficult 25:1 161:14 217:1 difficulty 67:14	76:4 92:9 98:17 207:18 diligence 238:2 diminished 40:21 direct 39:1 84:6,6 direction 119:6 159:13 directly 205:2 224:2 232:4 disadvantage 27:1 disagree 25:2 45:17 91:14,15 161:10 184:16 211:17 212:15,19 disagreement 187:2 disapproved 156:18 159:4 Disaster 203:8 discipline 17:10 disciplined 230:8 discomfort 91:10 discount 189:14 discounts 178:13 discuss 88:21 89:20 159:20 165:13 discussed 89:17 141:8 discussing 5:5 43:10 discussion 4:1,6,10 5:10 10:4 36:10 38:8 44:7 46:12,13 46:17 49:6,9 50:2 51:15,22 54:17 55:1 64:18 69:2 70:13 73:15 74:13 74:20 82:11,19,22 84:9 89:2 98:8 106:1,6 107:16 117:6 119:11,22 124:16 141:1 145:10 150:14 151:1 153:21 154:15 157:7,15 159:4,10,15 163:11 164:18 165:16 168:4 169:22 171:5 172:8 176:4,8	179:21 180:4,21 183:16 185:12 186:2,18 187:8,14 189:19 190:5 191:6 192:2 199:13 205:4 214:7 221:15 223:3 229:19 230:18 233:15,20 237:15 239:4 243:5 discussions 4:14 54:5 83:7 145:18 148:16 156:13 158:5 174:2 190:21 227:16 242:5 dismiss 94:20 disparate 15:17 dispose 118:19 disposition 161:11 185:6 dispositioned 151:10 156:12 158:5,13 161:6 162:19 disregards 173:12 dissatisfaction 22:17 disservice 214:2 dissimilar 19:15 139:16 distinction 57:5 66:12 181:17 distinctions 181:12 distinguishes 38:7 divide 225:18 226:5 233:16 divided 3:12 dividing 76:16,22 222:14 documents 7:3,3 223:14,15 DOD 63:12 65:5,20 196:11 197:4 doing 19:6 24:12 26:21 53:3,5 79:8 80:14 89:4 101:18	102:10,11,18 103:14 111:7 113:12 120:7 123:3 132:6,9,10 132:15 166:5 191:20 193:2 206:13,18 207:2 214:1 222:12 dollar 8:8 13:19 61:10 Don 1:18 150:3 239:16 door 2:13 doubt 168:2 Drabkin 1:18 5:11 9:10 14:10 18:5,18 21:2 25:9 32:2 34:18,20 35:10 38:1 42:19 46:19 49:5 50:8 56:8 57:4,19,22 60:8 66:2 81:1,15 88:6 88:16 92:3 93:7 97:2 98:2 107:17 143:22 144:2,14 145:17 146:13 148:2 149:20,21 168:3 169:13 171:3,6 172:15 175:6 176:3,18 177:2 178:20 181:11 182:4 183:15 184:17 185:14 186:9,16 187:1,7 189:18 190:13 191:5 192:3 193:15 195:17 198:9 199:21 201:17 206:15 208:10 209:6 213:1 215:11 216:12 217:6 218:15 220:20 221:19 231:7 232:17 233:1,14 234:4 235:1,4,6,13,16 236:5,7 240:1	244:20 245:7 246:11 247:16 Drabkin's 111:11 draft 212:3 233:2 233:20,21 235:18 239:20,22 244:14 246:7 248:12 drafted 211:21 drafters 233:17 drafting 237:2 239:13 drafts 224:15,18 248:7,8,14 250:6 draw 17:14 58:16 72:21 173:6 dressed 35:17 drive 17:20 22:22 23:1,2,17 58:19 146:9 164:19 177:19 188:18 189:15 250:2 driven 77:20 84:15 93:1,8 152:11 243:21 drives 13:21 46:17 70:7 199:15 243:7 driving 27:6 33:18 218:22 drop 31:8 drove 12:19 due 45:16 92:3,4 93:6 235:6 238:1 dumb 174:1 duty 165:2 189:7 dynamics 17:10
E				
e 22:5 238:12 248:1 earlier 34:9 38:17 39:14 48:2 53:9 92:7 104:12 135:6 141:2 171:20 182:8 183:16 189:19 190:20 200:1,22 202:12 240:11 early 9:2 30:14,20 38:7 47:19 228:20				

231:21 242:10 250:8 ease 48:14 easier 19:17 easiest 28:15 easily 6:12 191:7 easy 193:8 202:7 207:20 208:2 echo 55:8 economically 227:19 edit 246:5 editing 222:17 246:4 editorial 52:19 124:18 editors 233:4 effect 23:4 effective 49:13 56:2 238:3 effectively 79:11 121:15 198:5 effort 5:20 13:9 79:7 106:12 152:22 153:1 217:2,16 218:3 efforts 78:8 90:22 eight 146:12 181:4 either 22:9 31:12 35:12 52:13 56:11 56:16 80:20 84:17 86:2 96:21 98:21 100:13 101:2 120:4 127:6 137:16 138:22 158:1 180:13 184:12 196:11 214:20 215:17 244:3 element 15:17 16:22 elements 15:18 29:5 eligible 204:11 eliminate 67:13 77:2,4 155:21 166:4 179:19 180:12 eliminated 161:3 244:10	eliminates 160:3 eliminating 77:8,17 162:19 166:18 Elliot 5:11 62:21 70:16 92:5 108:20 150:2 202:12 233:1,7 240:8,22 246:16 247:5 Elliott 1:14,17 2:18 eloquently 169:1 else's 98:22 emergent 17:12,21 18:3 29:4,21 30:7 emergents 31:9 emerging 162:10 enable 209:15 enablers 232:12 encourage 96:17,19 99:9 243:11 encouraged 200:19 encouraging 162:7 ended 137:9 225:4 endemic 157:12 endorse 71:16 ends 59:1 221:22 end-item 176:13 enforcement 173:20 engine 17:20 engineer 145:15 enjoyable 235:4 ensure 73:20 220:12 ensuring 73:13 152:20 entail 136:10 enterprise 28:9 entertain 122:7 133:14 185:5 entire 12:17 143:3 188:14 218:13 entirely 141:21 188:16 envelope 59:2 environment 19:9 59:12 191:16 207:9 envisioned 54:2 Erickson 1:18 32:21 150:3,4	ERP 20:14 79:9 especially 44:19 164:14 197:16 essential 243:1,7 essentially 4:11 20:11,20 26:20 29:15 89:18 152:6 155:3 178:9 231:16 237:13 Essig 1:19 16:1,6 30:2 37:1,4,16 55:8 56:5 62:7 67:12 74:13 79:4 81:13 87:22 88:7 90:9 94:20 95:9 97:5,15 113:11 115:18 116:17 117:21 118:1 119:10,13 121:8 124:15,17 125:19 126:10 130:3 131:6 132:17 133:2,22 134:3,12 134:22 135:7,14 137:19 138:2,6 140:8 141:20 142:6,19 143:18 148:14 149:12,13 162:18 166:1,17 168:5 179:17 180:17 181:21 191:12 193:4 204:3 206:8 208:7 208:17 210:9 211:8 212:15 215:6 243:12 247:20 establish 224:14 established 107:12 108:8,9 establishing 108:4 108:17 210:1 232:6 esteemed 55:4 estimated 91:2 evaluate 163:13 188:12 200:4 209:20	evaluated 75:8 205:9,11 evaluating 102:3 evaluation 53:21 139:18 163:17 event 195:15 events 157:20 everybody 43:12 204:17 222:3 244:9 248:13 249:19 everyone's 163:6 evidence 46:9 93:22 evil 196:22 evolution 173:4 evolved 109:6 exactly 16:16 65:20 85:2 180:19,19 198:8 219:4 examination 107:6 example 52:4 53:9 64:1,15 65:17 74:20 79:10 83:8 90:17 102:8 137:12 154:22 156:1 164:2 234:4 237:17 examples 50:14 65:18 exceeded 179:4 exceeds 79:10 excellence 147:14 excellent 21:20 164:21 210:8 220:5 exchanged 224:15 exclude 178:5 215:16 excluded 176:16 177:15 excluding 125:11 excuse 144:2 247:11 executable 14:5 executive 56:21 executives 71:4 exemptions 182:10 182:13 exercises 228:7	exist 15:15,15 18:14 31:19,19 86:18 existing 81:7 184:21 exists 15:2,3 101:1 expand 12:13 80:6 80:7,11,18 expanding 80:12 expect 67:18 92:8 167:16,17,18 expected 123:18 expediency 27:5,6 expediency's 192:20 expedited 194:17 246:20 experience 110:18 110:19,20 188:22 192:12 197:3 233:16 experiences 197:1 expertise 18:5,9,13 18:15,21,21 19:3 19:12 24:8 69:9,9 69:10 experts 203:17 234:14 242:14 explain 28:16 227:2 227:6 explicit 167:14 182:19 186:20 187:13 explicitly 167:9 explore 198:14 201:12 exploring 193:21 express 204:4 212:4 221:8 expressed 22:18 140:19 220:12 extend 216:19 extending 67:3 extension 188:20 217:1 extensive 242:5 extensively 157:9 extent 19:2 72:3 76:2 77:1 96:15 152:22 184:12
--	--	--	---	---

external 72:8	fan 236:16	figures 218:4	122:4 131:8 138:3	209:17 210:13
extremely 220:15	fantastic 145:8	figuring 38:14	139:21 140:9	217:2,19 218:2
E-Buy 94:1,4	far 7:4 22:4 26:21	206:18	141:21 146:15	flesh 4:6 244:1
e-mail 244:9 248:11	32:19 34:5,8,10	final 15:18 206:8	173:7 175:7,9,12	flexibility 11:2
249:18	35:14 38:4 41:15	finances 204:7	193:17 198:10	100:22 205:22
e-tools 94:17	42:5 43:3 44:8	financial 14:5 27:21	202:19 227:4	floor 5:10 54:22
	45:21 46:4 66:6,10	28:1,5 63:8 69:8	233:2,9,19 235:18	117:13 138:15
	67:2,9 73:11 135:9	123:3	236:1,3 246:13	225:2
F	162:5 180:14,20	financials 39:20	249:12	floored 53:20
FACA 223:16,17	181:1,6,11,16	123:4 137:3	fit 44:22 101:20	flow 237:16
246:6	182:19 184:22	find 6:21 50:11 83:9	102:9 193:12	flush 233:21
facilitate 109:10	186:21 187:3,4	92:15 121:2	fits 102:5	focus 105:2
127:22 128:2,3,6	191:17 214:10	175:16 201:15	five 105:16 190:8	folks 29:6 36:3
128:13 233:22	239:13	220:1 237:18,20	200:16 228:16	105:18 160:7
facilitates 107:7	farm 13:1	238:3,5 240:5	229:2 236:19,20	162:8 174:11
120:18,20 150:22	FASA 45:22 67:9	finding 192:12	fix 30:10,15 132:11	197:17,18 243:9
152:9	fashion 68:11	237:17	184:8 211:3	244:13 248:2
facing 221:4	194:17	findings 225:6,12	fixed 6:13 22:10	follow 60:9 67:19
fact 38:17 59:10	fashioning 15:14	226:9 236:14	62:2 69:22 72:7	174:2 203:4
60:13 69:5 82:15	fast 48:10 208:2	237:3,10,12	74:19 77:14 78:12	force 146:14 207:10
92:5,13 98:5 103:7	fastening 23:4	238:19	79:14,21 80:6,11	207:19
141:5 171:12	faster 65:13 162:5	fine 26:1 117:12	80:13,19,21 81:18	forces 167:11
176:7 181:18	234:1	125:3 142:9	85:9,16 86:1,2,11	177:20 207:4
213:14 240:17	fate 182:12	167:15 206:20	87:10 91:12 100:6	Foregt 92:4
245:12	favor 133:11 150:13	finish 3:7	101:2 103:16	foresee 42:16
failed 178:10	151:3 158:11	finished 185:14	109:21 110:3,13	forget 41:8 170:20
failures 48:19	170:2 186:3 190:7	firm 77:14 78:12	110:13 111:2,3,17	178:3
fair 11:19 13:15	191:20 200:10	79:13,21 80:6,11	112:2,5 113:8,19	Forgive 18:19
66:20 73:14,21	211:22 221:17	80:13,19,21 81:18	115:6,10,13	form 122:6
83:21,22 84:14	favorites 237:20	85:16 86:1,2,11	116:19 117:6	formality 245:10
88:3,12 137:4	fear 225:9	87:10 91:12	118:4,15 119:1,7	format 41:11
141:11,14 142:2	federal 1:23 18:14	109:21 110:3	121:17 122:9	228:10,11
181:5,8,14 182:2	66:15 113:13	111:17 112:2,5	124:13 125:6,9	formation 124:9
185:2,8 186:14	143:3,15 144:10	113:8,18 115:6,10	129:13 131:4	227:19
187:21 188:1,5,19	144:13 145:5	115:13 118:3	132:16,19 134:5	forms 44:3
188:20,22 189:2	245:11 246:21	119:7 121:17	134:11,12,13	formulated 165:3
189:13,16 190:2	federal-wide 206:12	131:4 134:4,12,13	135:13,14,17	forth 83:15 228:1
212:1 232:6,13	fee 195:11 208:21	135:14 138:7	138:6,7 140:5	forward 4:8 12:4,5
243:18 244:6	217:2 218:2	140:5 142:15,16	142:15,16,17	43:6 50:22 54:17
fairly 12:4,4 20:21	feed 32:4	142:17 143:7,8	143:7,8 146:22	242:3,8
58:18,19 222:5	feel 211:14 241:15	146:22 147:7	147:7 148:12	forwardly 242:16
fairness 159:6	fellow 164:16	148:12 153:3	152:18 153:4	four 6:16 186:4,5
fall 20:22 64:17	fence 127:6	166:21 179:13	154:4 155:14,20	200:16 222:15
160:17 242:16	ffering 92:15	191:16	157:11 166:21	fourth 233:11
falling 62:3	figure 40:3 42:13	first 22:8 34:8 42:20	176:19 179:13	frame 118:10
falls 101:13 129:17	82:3 100:8 101:19	60:11 66:3 70:8	191:16 194:4	133:20 134:2
139:4 199:22	130:17 178:18	76:6 88:1 106:8	197:21 205:12	191:4 229:5
232:19	219:6	110:8 120:13	207:11,19 209:5	framed 96:8
FAMS 183:10				

frames 229:18,19	gathering 239:1	52:10 53:12 54:16	87:11,12 89:8 94:9	125:2 136:11
framework 14:9	general 1:3 28:14	60:9 61:21 62:4	95:15 96:10	138:22 152:2
frankly 46:9 65:21	55:10 96:5 224:7	64:7,9 69:15,20	100:10 101:6,22	180:13
71:2 87:16 110:11	230:19 231:2	72:14 86:6 98:19	103:6,13,18 105:7	gotten 32:16 54:2
223:5	generally 18:19	110:21 113:18	105:11,14 114:4	government 18:7,14
Friday 236:9	28:21 221:5	118:2 119:10,19	118:10 119:5	19:4,4 20:11 24:1
246:21	generate 223:15	120:12 123:5,18	123:12 126:2	44:19 52:12 82:14
friendly 139:21	generated 238:17	123:19 125:19	131:10 132:2	86:3 113:13
142:12 143:4	getting 26:21 39:17	127:4 130:17	136:20 137:8,10	114:20 143:3,15
168:18,22 186:19	70:11 90:11 98:13	131:22 132:11	137:13 138:21	144:10,13,19
187:6 201:10,18	196:2 202:14	133:4 135:19,20	140:18,22 143:19	145:6,10 147:15
front 2:9 12:21	229:7 233:10	135:21 139:11	146:5 148:3	160:10 161:13
202:15 242:9,10	234:1	141:1 146:11	151:15 155:10,13	164:11 182:12
froward 50:12	give 31:7,7,14 48:20	151:8 153:6	167:6,6 169:4	193:22 198:19
Frye 1:19 144:17	74:6 90:21 94:14	159:14 168:10	176:15 181:2	206:19 207:16
147:16 150:5,6,6	110:10 111:1	169:2 174:4,7,7	187:20 194:21	208:1 219:17
fulfill 76:20,21	137:3 154:22	177:16 184:7,7	200:15 201:9	239:14 240:3
fulfilling 45:14	177:21 192:17	185:18 193:16	207:19 211:19	government's 27:7
fulfillment 199:6	196:3 208:1 222:3	195:12 202:11	213:22 214:17	grades 205:18
fulfills 91:9	244:13	205:20 206:21	216:4 217:18	graph 58:16
full 31:2 83:7 95:16	given 23:19 54:20	209:1 210:14,17	220:1 221:6 228:3	grappled 159:19
97:13,13 98:1	59:18,19 64:14	212:14 216:7	232:2,9 233:2	grasp 8:7
214:11 219:20	75:9 89:12 99:3	217:13 220:6	238:13,15 239:19	great 8:12 10:5 41:3
fully 157:10 202:20	131:17 153:21	223:21 229:20	241:1,20 243:15	46:2,5 107:17
fun 36:6	164:2 165:6	233:22 238:5	246:1 248:4,16,21	195:9 243:19
functionality 21:22	171:12 190:20	242:6,20 248:4,6	good 2:2,19,22	greater 47:13 51:7
22:3	209:16 223:3,6	248:17 249:21	16:12 22:20 23:5	54:13 62:10,12
functions 237:21	235:13,16	250:9	23:13 49:17 50:21	75:20 77:7 80:20
fundamental 217:7	gives 22:6 142:20	goal 3:7 35:17 153:2	82:20 84:2,21	111:22 117:4
fundamentally	227:19	222:3 232:13	85:19 94:22	152:3 176:10
217:3	giving 41:17	goals 68:17 205:22	105:22 106:6	198:2
funding 195:11	Glenn 1:21 50:6	God's 83:11	107:13 117:20	greatly 40:21 80:11
208:21	101:4 103:12	goes 16:7 43:6	151:6 153:5 160:8	ground 110:7
further 90:10	135:21 149:1,8	86:22 122:11	161:7 169:8,9	group 233:22
107:20 148:16	168:22 182:8	174:20 178:22	207:3 209:7	growing 6:22
163:16 169:21	209:7 210:3	180:11 184:6	215:22 221:22	GSA 5:17 6:5 13:6
180:21 186:1	214:15 230:1	191:18	222:8,9 228:10	47:18 48:7 55:5
187:14 190:5	240:19 249:9	going 2:3,18 4:4,7	236:12 249:4,5,6	57:6 59:18 60:2,14
194:1 216:20	250:16	12:21 23:3 25:4	250:16	63:5 66:8 67:15
220:6 221:15	global 214:22	27:20 28:12 29:13	goods 6:9 29:2,18	72:20 73:6 75:9
230:18 238:1	glom 230:5	31:2 39:12,21,22	29:19,21 30:1 31:6	76:16 81:17 82:2
Furthermore 61:15	go 5:21 14:2 20:14	40:1 42:14,16	31:12 32:10,22	83:21 85:1,12
future 3:4 175:22	21:16 24:2,12,13	46:21 48:16 49:21	33:2,5,7,22 34:1,3	104:10 106:12
FY 67:3	34:19 35:19 36:9	52:21,22 53:8 54:9	36:3,18 47:4 51:6	119:19 122:19
	36:10 37:8 39:21	61:21,21 64:8,9	52:14,22 54:12	123:19 127:21
	40:3,14,16,17	65:21 70:8 74:14	73:18 105:3 109:3	133:16 134:10
G	42:12,17 48:7	77:18 82:10 83:9	111:21 112:4	140:13 144:14
Gansler 19:14	49:16 50:12,22	83:15 87:3,6,9,10	117:2 122:13,17	145:3 147:12,12
GAO 7:1 8:18 238:9				

147:13 150:21 152:8 156:2,18 163:12 174:7,8,10 175:4,5,20 176:17 177:5 178:7,8,11 184:3,10,14 188:4 193:19,20 198:3 202:16 206:11,12 206:20 208:20 221:3 223:18 228:21 238:5 242:22 243:2,9 GSA's 6:1,8 76:18 87:15 94:17 198:16 243:1 guess 11:22 16:4,10 17:9 18:1 20:7 31:15,18 33:9 34:9 34:10,13 46:14 51:19 54:3 55:15 56:22 57:22 59:22 64:1,13 77:18 79:6 83:1,6 84:21 90:13 101:15 103:5 108:3 110:18 112:9 114:22 115:5 118:5 120:16 126:7,14 127:2,7,15 132:14 134:1 135:1 136:1 138:18 139:9 150:18 156:9,14 158:15,20 163:5 165:11 173:4 183:20 184:9 186:18 193:15 197:11 205:14 206:8 211:16 212:13 213:2 217:4 222:15 223:2 225:3 230:2 231:19 guidance 41:17 43:2 55:13 60:16,18 62:11,12,16 70:22 74:7,16 75:17 76:6 77:4 107:11 108:5 108:6,15,18	111:14 112:17 127:21 135:8 148:8 150:22 152:9 181:1,10 184:21 186:12 187:3,11,12 200:2 Guide 66:5 guy 85:9 guys 20:10 40:18 64:7 123:5,6,7 155:5,5,6 232:16 GWAC 56:10 57:3 57:10,12 63:19 65:15 88:18 214:11 GWACs 44:2 56:15 56:20 57:6,16 59:20 69:2,4,13,16 69:20 74:21 76:14	headed 121:10 heading 2:21 healthcare 63:14 hear 95:19 134:6 140:3 197:12 211:7 245:20 246:7 heard 44:7 67:14,20 96:14 108:3 225:7 229:21 231:20 232:16 239:15 hearing 10:5 16:10 54:8 64:1 107:20 148:17 151:2 186:2 190:6 211:4 212:1 221:16 222:2 250:18 heart 180:5 heartedly 71:16 heck 113:20 help 64:14 140:13 155:1,2,12 230:20 241:21 helpful 51:16 156:15 helping 219:5 hesitancy 10:14 hesitant 62:22 hesitate 62:7 202:18 hesitation 165:1 Hey 32:16 100:4 232:1 hide 222:22 hierarchy 59:9 high 59:13 195:11 Hill 221:5 history 109:2 122:20 hold 163:21 246:22 249:15 holder 197:19 hole 216:7 218:11 220:6 holiday 235:20 246:9 holistic 76:18 home-stretch 2:21 honest 148:7	hook 135:21 141:11 hope 195:5 hopefully 94:12 98:13 139:15 148:8 248:8 hoping 191:6 horizontally 238:6 horse 208:5 host 99:15 Hotel 1:13 hour 219:2,2 hours 61:11 78:9 85:6,10,20,20,21 110:4,9,10,14,22 111:1,2 139:6,18 152:22 197:10 219:8 220:3 HSPD 114:18 HUB 56:17 huge 22:15 27:11 104:20	immediately 133:4 impacts 230:13 implement 43:1 202:17 implementation 49:20 96:19 implementing 20:14 implications 204:6 204:13 implied 120:21 implies 193:10 211:14 imply 204:20 important 4:20 9:13 11:7 46:13 51:14 52:9 66:8,12 67:6 162:22 180:7,8 242:21 impose 189:6 206:4 imposing 206:2 impossible 171:16 impression 142:20 impressive 61:4 improve 192:16 improvements 49:11 inaccurate 69:4 inappropriate 11:4 71:14 73:4 129:7 130:16,21 131:3 171:15 inappropriately 81:21 95:18 inappropriateness 10:15 incentive 61:12 incentives 61:8 65:12 include 40:9 82:6 89:15 92:10 126:2 150:16 169:7 189:20 215:16 230:22 included 125:8 160:19 includes 60:21 126:21
	H		I	
half 39:19 hammer 22:21 23:2 27:15 hand 190:8 192:14 handling 162:6 hands 182:13 243:21 happen 73:2 85:3 87:6 123:1 131:22 132:4 137:18 221:11 happened 104:9 happens 41:15 85:9 110:6,7,16 130:1 141:8 197:7 245:2 happy 23:4 164:5,8 227:12 240:9 hard 192:13,14 209:2 hardware 20:16 24:13 29:1,18 38:10,21 92:21 96:3 hard-line 77:19 hate 32:13 114:8 head 218:20,20 219:14,14 228:5				

including 8:9 14:19 53:1 61:7,13 71:20 160:13 167:2 169:3	114:18 175:9,12 176:1 207:7,10 215:14	introduction 231:8 231:9,15 232:18 234:9 236:2 242:1 242:7	241:10	199:19 202:10 225:16 228:6 234:10 242:13
inconsistencies 136:17	integral 9:20 12:9	invest 12:21	issuing 101:18	Judith's 90:14
inconsistent 78:16 79:2 157:21 209:9 210:10,20	integrate 37:18 38:22 39:4	investment 12:10 12:20 13:12 48:3	item 3:8 14:12 47:21 54:10 72:1 96:1 104:8,14 194:22 217:14,16 218:3	jumped 234:21
incorrect 174:11	integrated 8:9 115:3 137:16 160:4	investments 16:3,8	items 14:19 79:12 90:19 96:3,3 105:8 114:12 151:8 179:4 189:20 212:5	junior 218:5
increasing 207:6 211:10	integration 16:11 17:18 18:2,10 21:5 28:1,8 29:3,14,20 32:22 34:1 53:1 79:7 138:19,21 139:5	invite 163:6	IT-skill 65:14	jury-rig 99:21
incredibly 8:8	integrator 24:3 25:13,15,20 26:4 39:19 53:10 55:19	involve 21:10,11 28:22 69:6	i.e 38:9 40:14 154:3	jury-rigged 99:5 100:4
incumbent 54:19	integrity 8:1	involved 71:7 79:7	Jackie 44:10 61:21 101:4 205:5 234:13 242:14	justify 49:17 75:4
indenture 226:21	intellectual 15:12 30:8 59:7	involves 7:9 29:17 33:21 56:6	Jacqueline 1:20 149:18	<hr/> K <hr/>
indicated 88:11	intended 10:9 55:14 89:10 90:7 193:7	in-between 136:12	January 1:19 150:5 150:6 250:8	keep 31:17 40:11 74:15 85:12 105:7 158:18 189:19 191:22
individual 35:1 61:4 98:20 101:21	intent 235:1	irrelevant 153:20	jeopardizes 189:17	keeping 212:6
individually 37:21	intention 5:3 241:3 241:8	isolation 232:8	Jersey 1:14	Ken 169:20
industrial 195:11 208:21	interacts 209:4	issue 4:12 25:1 27:20,22 28:3 64:8 73:11 77:20 80:8 80:14,16 81:4 90:1 90:4,6 91:14 93:4 100:1 113:17 120:1,10 122:4 123:15 124:7 132:4,5,7 139:17 145:2 151:21 156:11 159:16 161:16 165:6,13 196:15,15 214:3 219:12	job 23:8 207:3 235:12	kept 162:11
industry 7:10 44:15 59:7 163:19 164:9 194:7 239:14 240:3	interchangeably 178:14	issued 60:22	joint 99:9	key 12:19 16:16,17 29:3 38:16 59:5 70:3 77:21,22 90:15
industry's 27:8 101:3	interest 27:8,9 179:18 192:21 206:10,17	issues 4:1,10 5:6 6:6 6:7 7:21 8:2,22 10:4 11:20 49:8 50:13 68:20 76:3 99:11,15 120:11 122:3 123:9 133:7 136:17 153:8 159:18 164:19 165:4 190:16 200:20 220:9 226:15,20 227:13 227:14 236:4,17 238:12,17,18 239:7,10 242:18 244:5	Jones 1:20 32:18 44:11 60:11 101:8 124:21 125:4,14 125:21 126:7 127:1 135:5 149:18,19 178:12 187:16 188:8 205:6	kick 175:8,16
infer 167:21	interested 207:6 224:12	issues/testimony	judgment 193:1 194:20	kind 3:12 4:6 8:22 11:22 13:21 14:8 19:14 20:8 22:6 37:7 39:10,18 40:15 46:17 52:7 58:16,22 62:19 84:22 85:14 96:10 105:8 109:19 114:2 117:17 122:5,11 123:10 155:6 163:21 210:3 211:6 218:10,12 220:18 224:7,12,19 226:18 227:9 228:4 230:15 232:15,19 233:18 242:5,11,14,18 249:3
inference 34:13	interesting 20:8 161:16 162:17 174:12 195:18		Judith 1:21 37:6 38:2 40:19 57:9,15 61:18 63:22 74:12 75:13 79:22 85:22 93:5 96:14 111:14 135:22 138:14,15 138:17 139:19 144:7 147:8 148:18 149:14 155:1 169:11	kinds 23:11,11 93:2
inferentially 92:1 92:12	interestingly 35:18			Klinger 56:21
information 58:12 166:12 177:18 227:20 237:22	interfaces 23:12			knew 19:4 38:18 234:21
infrastructure 12:17 20:18	interim 130:2			know 4:11 5:14
inherent 58:3	internally 112:22			
inherently 109:19	interplay 120:14			
initial 6:1 165:16 239:13,21	interpret 231:11			
innovation 163:1	interpretation 234:10			
innovative 94:15 162:2 218:5	interpreted 230:21			
inquire 189:7	intricate 7:2			
insert 87:20	introduces 11:7			
insights 164:17				
installation 13:14				
instance 66:20				

8:11 9:4 12:3,3 13:20 17:8 19:9,11 19:19 21:15,21 22:1,2,13,14,21 24:10 27:20 30:16 33:4 35:5,20 39:4 43:22 48:8 53:11 58:1,4 62:11 71:5 73:22 78:2 81:3 83:16 84:8 85:4 94:10 95:22 96:11 100:2 105:13 106:5 112:19,20 113:20 115:6 116:18 123:11 124:4 132:1 134:20 139:14 155:4,12 165:9 174:10,13,19 177:13 179:9 180:11 183:1 195:7,17 197:2 200:15 202:6,7 209:20 213:1,8 217:21 219:11 222:21 227:4 231:4 232:2 236:20 239:19 knowing 31:1 77:9 77:11,13 95:16 knowledge 164:7 known 123:11 knows 21:12 161:13 KPMG 123:2,20 124:1	133:13 184:3 language 43:14 60:21 121:3 124:18 135:1 144:5 176:9 181:16 182:19 248:16 laptops 40:2 large 76:2 77:1 94:15 195:21 196:6 215:20 225:19 229:5 larger 44:19 largest 57:5 Larry 239:16 late 71:7 law 77:11 146:11 189:4 lawyer 161:14 lay 20:18 layman's 50:19 lead 127:5 144:14 145:4 225:12 233:17 235:2 leadership 147:14 lean 241:20 learned 194:2 leave 9:19 24:20 105:14 139:22 158:16,17 166:8 168:2 169:18 190:10 192:22 199:8 203:13 213:17 Leaving 84:4 214:18 leeway 177:22 left 9:11 62:8 157:7 213:14 239:6,16 legitimate 212:10 Lesa 1:22 35:9,21 36:15 51:1 57:9 149:1,10 155:9 159:22 214:16 216:3 234:15 Lesa's 48:2 letting 207:3,4 let's 20:13 41:8	101:6 102:8 105:2 106:1 123:2 124:2 126:13 163:22 201:18 221:16 244:7 248:1,1 249:3,12,14 level 61:3 62:14 83:5 84:13,15 88:5 88:9,14 91:6 95:1 101:9 105:11 139:14 140:21 141:9,19 155:15 167:12,19,20 168:19 173:18 175:9,15 176:12 176:13 177:20 178:4 180:2 182:5 182:6 185:3,8 186:15 198:3 217:2,16 218:3 226:21 228:1 229:1,14,14 233:9 233:11 237:21 238:5 levels 2:15 60:7 62:17,19 liability 72:16 lie 147:18 lien 217:18 light 153:14 lilt 93:8 limit 48:11 62:22 63:4 68:6 72:10 80:9 93:18 94:11 113:2,3,6,8 143:13 173:20 191:13 215:8 216:15 limitation 50:3 141:22 limitations 74:18 limited 43:14 44:16 45:4,8 48:17 72:12 89:6 93:17 94:2 110:17,19 194:18 195:3 limiting 63:2 210:11 line 57:2 74:3 90:18 95:22 96:2,3	101:14 104:8,14 108:14 114:12 196:7 212:5 217:14,16,22 218:3 223:9 lines 62:20 98:3 164:4 203:4 Lisa 12:7 28:11 list 10:3 11:14,20 151:8 209:1 listed 231:8 listen 145:9 listening 69:12 86:14 213:2 lists 104:11 Lite 56:16 literature 17:11 161:17 little 12:14 23:18 36:2 49:4 66:17 74:9 86:14 91:13 93:7 121:9 127:12 202:13 216:20 230:6 240:11 241:5,14 live 51:10,21 205:15 loans 156:5 logic 173:6 216:20 230:16,18 logical 32:14 long 60:20 91:15,16 118:2 132:19 136:14 248:5 longer 233:17 long-cycle 109:7 long-winded 70:10 look 3:15 7:3 10:19 12:16 16:11 17:9,9 20:16,17 22:13 58:1 59:8 63:18 74:8 76:13 77:4 78:3 95:20 96:7 99:16 100:4 104:11 106:19 109:20 110:16 111:15 124:5 131:19 139:4 141:6 147:19	150:9 155:7,9 161:19 165:20 168:11 184:7 189:4 197:12 200:15 201:2,3 209:19,22 211:5 211:10,11,13,19 212:9,14,17 213:22 214:4 216:7 218:16,17 220:16 223:3,13 226:18 230:12 232:4,7,8 235:19 236:18 241:5 250:1 looked 34:7 49:19 76:15,17 92:16 104:12 161:11 165:17,18 220:10 229:4 looking 8:22 49:16 52:7 60:16 73:17 77:14 80:3,5,10 103:10 161:5 165:11 215:7 247:21 looks 19:10 161:21 220:7 loose 221:22 Lord 161:13 lose 53:3 124:22 losing 174:4 lost 18:20 23:15 219:11 lot 10:17 45:1 60:8 102:21 103:6 104:22 110:19 161:17,20 172:21 218:17 225:11 232:2 243:5 lots 103:19 219:2,3 love 143:2 145:3 low 189:8 191:15 210:12 211:2 212:7 lower 189:2,11 lump 26:8 lunch 2:14 151:7
L				
labor 6:13 13:4 84:2 84:11,18 85:5,6,10 86:18,21 91:17 96:4 139:13 154:19 155:4 177:3 198:5 218:6 218:6,7,21 219:6 lack 49:7 199:14 243:20 ladder 73:2 laid 65:20 71:16				

lying 148:3	230:10	meant 9:18 60:13 114:6 124:3 221:12	mind 32:6 58:17 77:20 88:17 167:4 189:19 237:11	132:14 145:18 153:5,7,15 156:13 157:8 158:6
M	marvelous 207:15	measured 13:11	mindful 10:12	morning's 2:4 106:6
macro-level 91:22	master 100:7	measurement 12:10	mine 19:12 97:2	motion 3:19,21 117:12 118:11 122:7 130:12 131:7 133:13,15 133:21,22 137:20 141:4 143:5 150:7 150:10,11,14,16 151:4 152:16 156:16 158:7,12 159:3 160:5 163:12,16 166:3 167:6,7 168:3 169:22 170:2 171:4 172:16 173:4 184:6,19 185:5,6,12,17,22 186:3,4,8 187:8,15 190:6,7,9 191:4,6 192:1,5 200:21 201:10 205:15 208:15 209:3,4 211:20 213:16 214:13,14,22 221:16,18
MACS 113:1	matched 61:14	mechanics 124:5	minimum 61:10,10	
mail 248:2	material 2:6,8,10 59:8 60:5 64:8 116:2 139:7 152:21 216:10 238:14	mechanisms 184:4	minor 14:15 15:4 28:6	
mainframe 39:22	materials 22:10 53:4 70:1 74:19 78:5 177:3,4 179:14	meet 15:4 28:6 33:9 33:15,16,17 34:2 35:16 68:17 101:2	minute 101:7 105:17 153:10 209:10	
mainframes 12:22	matter 27:8 106:3 135:15 151:12 173:16 174:8 195:10 206:16 234:14 242:14 250:21	meeting 1:8,13 2:4 2:11 3:5,13 41:16 200:8 205:22 244:11,17,21 245:16 246:19,22 249:15 250:2	minutes 151:5 166:11	
maintain 75:12 173:19	Matthew 245:17	meetings 34:9 224:17 242:10 246:3	misgivings 63:1	
maintained 66:9	McCain 196:20 197:1	meets 33:1 41:1,12 49:14 84:20 91:20	missed 125:22 159:12	
maintaining 75:5	meager 192:8,15	MEMBER 1:17,18 1:18,19,19,20,21 1:21,22,22,23 245:18	missing 100:16 108:5 190:4	
maintenance 219:20	mean 7:17 14:17 18:21 19:3,7 21:12 27:11 28:18 30:9 31:1 32:15 37:5 41:8 42:3 45:22 48:14 51:18 52:14 64:20 68:13 77:6 80:2 89:8 90:20 99:14 109:19 112:13 114:5 116:22 131:5,12 135:16 148:6 159:13 168:13 172:11 178:18 197:17 198:8 202:11 203:17 210:22 211:18,19 222:5 223:18 224:1,2 228:4 230:20 232:15 240:13 245:4	members 2:8 46:6 164:17	mission 46:7 87:18 200:18	
major 13:21 25:7 190:11	McCain 196:20 197:1	mention 158:18	misstated 88:8	
majority 27:19 183:18	meager 192:8,15	mentioned 48:6	misuse 68:1 72:22 73:3	
making 10:14 129:20 135:6 210:6	mean 7:17 14:17 18:21 19:3,7 21:12 27:11 28:18 30:9 31:1 32:15 37:5 41:8 42:3 45:22 48:14 51:18 52:14 64:20 68:13 77:6 80:2 89:8 90:20 99:14 109:19 112:13 114:5 116:22 131:5,12 135:16 148:6 159:13 168:13 172:11 178:18 197:17 198:8 202:11 203:17 210:22 211:18,19 222:5 223:18 224:1,2 228:4 230:20 232:15 240:13 245:4	message 232:1	misuse 68:1 72:22 73:3	
man 58:15	mean 7:17 14:17 18:21 19:3,7 21:12 27:11 28:18 30:9 31:1 32:15 37:5 41:8 42:3 45:22 48:14 51:18 52:14 64:20 68:13 77:6 80:2 89:8 90:20 99:14 109:19 112:13 114:5 116:22 131:5,12 135:16 148:6 159:13 168:13 172:11 178:18 197:17 198:8 202:11 203:17 210:22 211:18,19 222:5 223:18 224:1,2 228:4 230:20 232:15 240:13 245:4	met 3:18 33:5 34:2	mix 219:6	
manage 197:5,9,9 202:8 216:14,22 217:1,22	man 58:15	meta-process 224:19	MOBIS 42:11 45:2 94:7 102:9 183:9 197:16,17,19	
manageable 79:14	manage 197:5,9,9 202:8 216:14,22 217:1,22	members 2:8 46:6 164:17	mode 175:11	
managed 79:13,21 111:3 197:5	management 144:18 145:5,13	mention 158:18	model 91:11 209:20	
management 144:18 145:5,13	manager 64:10,10 110:8	mentioned 48:6	modification 14:14 14:15	
manager 64:10,10 110:8	managers 24:10 63:8 145:1 146:10	message 232:1	modified 15:3 28:5	
managers 24:10 63:8 145:1 146:10	managing 218:2	met 3:18 33:5 34:2	modify 200:22	
managing 218:2	manufacturers 73:1	method 102:21 194:22	moment 166:11	
manufacturers 73:1	manures 145:13	methodology 79:1	Monday 1:10 18:19 30:14,20 235:18 247:22	
manures 145:13	market 65:5,5,6 75:2 89:5,6,6 95:4 97:11,13 163:15 193:12 198:5 207:4,21 230:9	microphone 149:3 245:19	money 53:3 174:13 174:19	
market 65:5,5,6 75:2 89:5,6,6 95:4 97:11,13 163:15 193:12 198:5 207:4,21 230:9	marketing 146:8	micro-purchase 97:12,21	monitoring 73:7	
marketing 146:8	marketplace 6:9 21:17 156:20 162:3 163:20 164:11 193:22 195:4 207:3	middle 247:10	month 64:22 164:22	
marketplace 6:9 21:17 156:20 162:3 163:20 164:11 193:22 195:4 207:3	meaningful 180:9	mike 184:16,18	months 7:7,22 67:15 84:9 227:1	
means 16:13 90:21 99:1 113:16 194:22 198:10	means 16:13 90:21 99:1 113:16 194:22 198:10	mike's 240:19	moot 9:9 88:15 179:21	
		mile 20:3	morning 2:2,9,20 4:5 5:4 18:19 30:20 119:14	
		Millennia 56:16,16		
		million 8:7		
				moved 45:21 46:4 186:18 229:15

moving 226:8
muddies 142:6
mulling 36:1
multiple 1:5 25:14
61:15 63:15 65:18
75:18 86:6,7,10
93:19 94:5 143:11
175:7 233:17
240:6
multiples 219:2
multiplied 6:16
multiply 7:12
multi-faceted 44:18
mumbled 31:21
munitions 19:20

N

nails 22:22
name 83:11
narrow 24:6 40:12
41:14 58:11
110:18,20
narrowed 121:10
narrowly 25:5
39:15 121:12
National 67:2
natural 72:5
nature 9:13 26:13
69:14 70:5 83:13
170:4 176:11
189:22 209:12
Navy 192:10
near 3:4
necessarily 17:6
44:12 122:15,16
122:17 135:18
137:21 151:21
152:14 189:4,9,12
211:22 250:3
necessary 5:8
143:19 167:21
193:10 239:11
necessity 217:9
need 9:4 11:20
13:22 15:4,11,13
28:14 32:17 33:1
33:10,14,16 34:2
37:1 39:15 40:8,11

55:12 62:20 63:9
63:10,16 64:6,6,22
65:1,3,8 70:15,19
73:5 76:5,20 78:19
84:20 86:18 87:13
100:17 109:1,8
110:10,22 111:4,6
113:13 121:2
124:17 132:8,11
136:16 137:3
141:5 142:3 150:8
153:13 155:12,21
156:10,16,22
160:3 165:13
166:9,13,14
169:11 170:5,12
173:5 181:9
186:20 190:12
196:16 203:15,16
204:12,16 223:22
230:17 231:1
244:11 246:2,2,18
246:18 250:17
needed 4:1 13:5
87:17 153:1
needs 23:14 28:6
41:1,12,16 49:14
53:12,13 61:11
64:21 65:9,11 91:9
91:20 92:11 101:3
101:3 106:13
129:13 138:13
151:9 153:18
163:15 241:16
negatively 220:14
negotiate 6:2 82:9
175:18
negotiation 6:8
negotiations 6:2
neither 14:21 89:8
Nelson 1:21 37:7,12
40:20 42:4 45:16
47:17 48:5,15 49:1
57:16 61:20 64:19
75:14 80:1 86:1
93:6 95:13 97:4,8
97:20 111:15,20
112:7,16 114:16

115:3,9 118:16
119:5 126:1
127:10,17 128:3,6
128:9,16,20 129:2
129:8,14 130:5
136:5 139:20
140:15 141:13,18
142:3,9 143:1,12
144:9 145:3
148:19 149:14,15
183:11 202:11
203:18 225:17
228:7,17 233:6
234:11,16,20
235:3 236:12
237:6,9 238:8
240:22 241:4
245:20 247:5,13
network 12:18
13:10 56:6
networking 13:2
networks 56:9
74:21
neutral 121:3
220:15 221:8,12
neutralized 240:18
neutrally 220:12
Nevada 182:14
never 23:6 27:20
32:6 66:11 68:3
78:5 85:1 90:6
99:1 123:9 129:10
130:2,6,18 194:9
220:21
nevertheless 52:6
new 1:14 2:10 38:3
38:11 116:22
162:4 193:21,21
221:1,2,3
niche 204:18
night 18:20
nine 7:6
non 56:14 90:15
148:4
non-allowable
208:21
non-existent 182:2
note 66:8 179:22

183:4 184:20
220:18
notes 153:7 228:15
notice 27:14 198:21
245:8 246:19
247:1 249:21
notified 89:8,10
November 1:10
number 47:21
54:11 80:18 85:6
96:16 110:9
131:15 143:5
146:6,8 150:14,16
151:18 153:20
154:1,11 156:17
163:16 184:6,12
184:13 185:22
186:4,5,6,8 187:9
187:15 188:22
190:7
numbers 69:9 72:1
104:9,14
nursing 65:1
NW 1:14

O

objection 54:9
objective 16:21
objectives 61:6
observation 20:7
52:10 90:14
117:13 125:1
150:17 159:17
195:18 220:5
observations 106:7
111:7 153:14
observe 107:1 108:1
109:1 111:4
138:18 173:5
183:21 188:15
obtain 105:5
obvious 12:12
obviously 100:10
121:11
occur 130:19
occurs 89:4 129:10
130:2,6,10 232:18
October 2:11 3:18

ODCs 205:8,9
offer 45:20 76:17
92:19 106:7
139:20 143:4
145:5 186:19
198:22 231:4
offered 73:21
offering 46:2,7
102:5 164:10
offerings 163:15
offeror 78:12 96:9
215:15
offers 41:3
office 5:16 66:15
160:10 174:5,9,21
175:13 178:4
officer 60:3,7 62:9
62:13 63:3 84:5
126:6 140:12
188:5 189:6 229:1
238:1
officers 110:11
144:16,21 146:10
147:18,21
officer's 140:6
offices 177:7
OFFICIAL 1:24
offline 246:5
off-the-shelf 14:12
28:7
OFPP 112:17 221:2
oftentimes 12:11
57:12
oh 10:6 20:19 40:2
94:3,6 104:4
107:20 114:9
124:11 148:17
okay 2:17 11:19
20:15 29:12 30:3
30:10 32:1 33:19
37:3,6 47:16 51:1
51:12 54:8,18
55:15 56:3 60:11
63:21 80:22 81:13
84:7 85:13,15 88:7
97:3,15 107:15,19
111:18 112:8
114:4 116:6,11

117:12 118:2,19 119:22 120:15 121:7,8 124:20 127:1,17 131:11 132:22 133:12 134:6,9,16 138:1,5 138:8 139:2,11,19 141:16 144:6 148:22 149:5 150:7,10,15 151:2 151:4,5,14 153:12 155:17 160:7,8 161:7 168:4 169:9 170:1 177:12 178:10 186:2,4,17 191:11 201:20 202:10 204:1,10 205:14 208:19 210:7 211:15,16 214:15 215:5 216:3 220:17 221:21 222:1 224:1,5 226:17 230:1 232:21 234:7 236:10,13 238:11 241:12 243:18 244:6,19 244:20 246:15 247:2,15 249:11 249:17 250:17 OMB 13:18,20 114:17 once 11:11 91:1 147:4 213:19 216:8,21 218:11 ones 123:20 one's 10:6 48:21 71:5 open 5:9 54:22 72:7 89:5,5 94:8 95:4 97:11,13,14 98:1 135:9 193:9 202:7 214:11 218:11 225:1 opening 71:13 191:18 204:14 218:12 operation 242:22	opined 8:18 opinion 45:15 131:5 180:7,21 206:9 212:4 221:9 opinions 7:1 opportunity 66:20 89:12 96:9 99:3 144:15 opposed 7:8 20:1 23:10 94:15 126:18 133:12 151:4 158:12 170:2 186:4 190:8 192:19 219:3 220:15 221:17 opposing 204:4 opposite 23:15 44:21 45:9 59:1 119:6 option 22:6 optional 138:4 Oracle 37:18,18 39:20 123:4,5,6,17 123:18,21 124:2 137:2 order 1:13 6:17 7:1 7:7 8:8 35:6 45:2 49:4,19 57:13 61:11 62:13,17 64:9 65:2,12 71:6 83:5 84:6,15 85:12 87:13 88:13,14 90:4,5 92:11 94:22 95:3,3 97:17 101:18 105:4 109:10 122:20 132:8 137:15 140:16 141:8,18 146:21 167:11 169:18 175:9 177:20 182:6 183:2 184:20 185:3,8,12 186:15 192:2 203:19 207:20 224:22 227:22 229:21 238:4 248:9 ordering 25:6 40:13	52:16 87:2 97:22 110:6 139:4 140:17,20 141:10 143:3,15 163:18 174:5,9,15,16,21 175:12 177:7 178:4 182:16 187:18 229:1,14 243:3,11,14 orders 5:20 60:17 60:22 61:4 62:14 109:6 110:2 111:2 111:3 134:3,10 135:11 139:22 140:3 141:6 143:5 148:11 152:17 175:22 183:6 188:3 197:21,21 199:4 organization 12:18 223:9 organizational 112:22 organizations 63:16 103:3 orientation 188:17 oriented 161:21 origin 58:17 original 151:8 171:13 originally 5:19 54:1 211:21 Oscar 169:21 ought 10:12 11:10 20:16,17 22:5 68:5 74:6 100:3,7 111:12 124:4,5,7 124:12,13 171:10 171:11 200:19 206:18 209:22 211:1,2,5 213:6 214:4,8 221:7,10 231:20,21 239:14 239:21 242:16 ourself 206:5 outcome 29:16 31:4 31:6,11,14 33:20 36:4,19 37:5 47:2	47:5,9,13 51:7 52:7 54:13 78:1,6 78:8 98:15 111:22 112:6 117:3 152:3 221:9 outcomes 23:10 73:19 outline 108:2 224:9 224:10 244:2,8 outset 200:8 outside 95:5 129:17 outstanding 153:11 163:10 out-of-pocket 249:9 overall 13:13 61:2 142:7 192:17 193:6 219:17 oversee 24:15,16 oversight 71:1 72:17,20 111:14 owe 246:5 ownership 233:19 234:5,9 244:4,5	161:12 parameters 101:21 parse 233:12 part 7:4 10:20 12:12 22:4 24:14 26:22 53:5 56:12 56:12,15,19 61:20 66:6,10 67:2,9 68:15 73:17 81:17 88:19,19 98:4,10 103:16 123:4 127:2 130:18 136:19 146:16 173:22 181:4 183:2 184:20 186:21 196:8 197:15 211:8 213:7 214:10 215:13 225:19 229:5 232:5 238:19 243:1,3,8 participate 208:1 particular 16:20 44:17 92:22 93:15 98:9 122:14 158:13 160:18 190:11 203:6 particularly 26:8 49:7 87:1 145:4 207:6,13 partner 40:17 109:14 123:7 partners 163:19 parts 21:4,6 25:12 25:15,18 26:3 35:1 38:12 47:3,5,14 51:8 54:14 55:21 57:14 92:11,20 97:6,9 98:16 100:17 112:1 117:4,7 143:21 152:4 176:6,11 188:12 199:3 233:16 party 224:12 passed 163:7 passion 164:17 Pat 1:23 2:19 4:3
---	---	---	--	---

P

pace 162:12
package 24:5
packaging 15:17
page 185:19
papers 2:5
paid 156:6,7 177:7
177:10 182:11
painting 208:5
panel 2:7 10:11
24:21 46:5 51:21
78:2 121:19 164:8
164:16 170:22
179:19 200:3
212:18 213:3
223:19 224:2
228:9 231:13,16
239:5 242:11
243:4 245:5,15
246:17
panel's 47:19
168:19,19 240:4
245:14
paper 132:1 160:16

11:13 29:14 46:22 51:3 54:10 112:9 135:10 140:3 153:6 156:15 163:7 222:19,22 223:14 228:14 247:22 248:11 250:9 patchwork 152:11 path 4:7 34:8 242:11 Pat's 4:9 201:20 pause 166:11 pay 91:7 99:12 205:18 217:17,19 paying 91:2 219:19 payment 175:20 PBA 87:11 113:1 134:17,20 135:16 143:3 PBA's 144:13 PBS 144:19 PBSA 35:14,15 pedal 78:21 peel 93:3 peg 195:10 people 7:6 19:5 26:17 32:5 39:21 49:18 99:3 103:19 104:4 115:19 146:8 148:6 155:13 156:7 162:7,7 171:7 176:22 182:16 192:12 194:19 199:15 207:4,19 208:2 221:2,2 227:12,12,15 230:14 235:19 236:17 244:4 248:3,7 249:3,6 250:6,13 people's 250:11 percent 46:1 48:6 48:13 196:7 221:13 percentage 91:6 112:21 156:8	perfect 21:15 perform 127:20 150:21 152:7 performance 19:6,8 28:21 29:15,16 31:5 33:20 34:6,15 34:21 35:4,13 36:5 36:11,19,21 37:8 38:6,15 39:6 41:11 43:16,17 47:10,14 51:8 54:14 58:5,7 60:18 61:1,5,7 62:4 64:3,15,20 65:19 66:5 77:12 80:3,5,9,13,21 98:6 112:1,18 113:3,4,6,18,19 114:21 115:11,14 116:21 118:3,13 118:22 119:3,9 121:18 122:8 124:12 125:7,10 125:16 126:1,4,8 126:17 127:8 132:20 134:5,11 134:14 135:2,3,8 135:13 136:22 138:11 143:8,14 143:16 144:4 145:22 146:4,22 147:7,19,21 148:13 152:19 153:4 154:3 155:19 157:11 166:22 189:17 209:18 performance-based 37:14 performing 44:16 85:12 perimeters 101:14 period 64:22 100:5 117:4 128:19,21 175:17 215:10 periodic 163:17 periodically 163:13 Perry 1:21 29:9 31:4 48:16 50:7	103:13 115:16 120:2,5 136:1,6 138:9 149:1,8,9 156:1 158:15,22 160:22 169:1 209:1 210:4 214:17 230:2 233:4 238:13,22 239:6,12 240:21 241:9,13 245:2 250:9 person 19:19 99:13 233:18 personal 131:5 148:4,5 180:21 personnel 39:21 perspective 14:7 21:2 96:6,7 206:17 217:9 218:2 243:2 perspectives 241:17 243:6 pf 132:1 philosophical 77:19 philosophically 25:3 195:8 212:11 philosophy 7:18 152:20 188:14 198:16 212:7 phones 2:5 phrase 16:17 30:6 64:13 97:6 227:21 231:22 phrased 122:1,2 phrasing 120:17 pick 7:12 15:21 155:4 picked 58:22 picking 227:1 picture 12:12 piece 21:10 136:13 136:21 137:7,10 138:12,19,20,21 139:5,8 176:12,15 184:8 214:19 221:20 238:17 241:11 242:1,15 244:12 pieces 22:2 31:22	55:21 57:13 82:6 131:21 135:21 226:10 pit 234:21 pitfalls 111:7 159:18 place 7:7 28:20 50:21 70:9 77:11 83:4,5 87:2,10 96:4 106:14 107:7 118:4 144:19,22 146:15 158:17 167:18 177:17 179:20 184:4 189:16 209:15 214:19 215:4 230:9 232:19 238:4 placed 6:17 71:6 183:6,11 places 97:17 placing 5:20 141:6 plagiarism 236:16 plague 197:20 plain 19:19 plan 41:1,7,10 68:15 87:9 194:21 planning 68:16 70:4 71:10 72:11 128:12 146:16 plans 76:8 platform 50:18 75:20 play 101:15 137:4 203:11,11 please 30:15 151:10 248:10 plus 91:6 196:7 217:2 218:2 pocket 249:12 point 8:13 9:11,18 10:1,9 11:3 23:6 27:18 36:9 38:1 39:13 44:6 48:18 49:10,15 51:17 52:21 58:22 67:10 75:1,15 81:16 85:18 93:11 94:22	95:10 97:1 99:16 103:5 115:15 119:5,17 122:11 123:8,20 126:7 135:5 163:10 173:15 176:4 177:12 192:4 204:5 209:7 215:22 217:8 221:14 233:12 237:7 248:22 pointed 160:6 points 14:3 141:21 205:21 police 73:6 policeman 67:16 policies 121:4 127:21 150:21 152:8 policy 66:16 67:7 82:11 107:7,9 114:6 117:18 120:20 124:7 131:19 132:11 151:20 160:11 212:10 poll 249:19 poorly 197:5,6 portions 205:10 positive 221:10 positively 220:14 possessed 29:22 31:10 33:1,4 possesses 29:4 possibilities 77:15 possible 87:5 106:15 possibly 3:10 post 223:14,16 posterity 172:10 postulate 39:7 post-fair 45:22 potential 75:2 96:9 potentially 190:15 190:21 230:12 power 68:1 PP 135:1 practical 195:10
---	---	--	--	--

practicality 103:17	111:3,17 112:2,5	191:16 194:4	problem 18:4 21:8	225:11,19,21
practice 107:13	113:9,19 115:7,10	218:6	21:9 68:9 92:14	226:10,16 230:9
110:17,21 117:20	115:13 116:19	prices 86:1 174:17	98:3 105:6 131:13	professional 161:2
184:11	117:6 118:4 119:1	175:18 181:14,22	144:20	161:4 162:20
precise 61:5	119:8 121:17	182:2 185:1	problems 8:17,18	profit 91:3,7 153:3
precisely 92:13	122:9 124:13	186:13 187:12,21	42:15 58:13 82:3	program 7:5 13:18
preclude 175:4	125:6,9 129:17	188:3,10 189:12	131:15	13:21 24:10 35:7
predicate 129:5	131:4 132:19	189:15	proceed 133:3	35:11 43:2 45:1,11
predicated 120:7	134:5,11,12,13	pricing 6:3 8:2	164:4	45:19 46:2,4 49:13
predominant	135:13,14,17	21:20 22:15 61:13	proceeding 245:15	49:14 56:13,15
230:10,11	137:6 138:7,7	70:21 73:13,20	process 6:8,20 8:2	61:22 64:9 66:10
prefer 105:1	139:13 140:5	74:10 78:3,4,15,22	68:16 70:4 71:10	66:13,17,22 98:18
preference 113:5	142:2,15,16,17	82:16,18,21 83:4,5	105:18 146:16	99:17 102:2 105:2
preferred 59:10,15	143:7,9 146:22	83:12,20,21 84:1	150:18 166:12	107:12 108:7,19
102:20	147:7 148:12	84:11,12 85:19	196:2,11 223:21	109:2 122:20
prejudiced 241:16	152:18 153:4	86:13,16 89:17	233:18	128:17,21 129:3
promise 152:1,2	154:4 155:14,20	91:10 100:21	procurement 28:2	135:12 140:4
189:10	157:11 165:14	124:1 129:18	43:9 66:16 71:3	143:6 144:18
prepare 233:2	166:4,13,21	136:11 137:14	112:20 193:22	145:1,5 146:10
prepared 30:17	167:18 170:8,15	139:12 140:1,7,13	242:15	148:12 152:10,18
preparing 233:19	171:1,10,14 172:3	140:20 141:12,14	procurements 34:5	161:20 163:13
prescribe 25:7	172:5,8,12,19	141:17 162:16	43:15 167:10	184:22 191:2,9
PRESENT 1:15	173:9,17,19 174:3	170:13 172:7	product 15:19	192:17 199:4,6
presentation 164:1	174:6,12,22 175:3	175:10,11 177:18	26:20 28:7 31:18	200:14,15 205:11
presented 238:14	175:8,13,14,15,22	177:22 179:11	36:22 53:22 57:2	213:10,18 214:5
presiding 1:14	176:5,16,19,20	188:14 189:7,11	84:18 176:15	229:9 231:14
press 245:13	177:6,11 178:4,13	194:13 218:1,13	177:8,14 194:10	232:14 234:12
pressure 227:22	178:16 179:3,4,7	219:16 227:3,6,18	products 2:22 3:20	programs 56:20
presume 178:20	179:13,13,19	232:13 237:18,20	4:15 8:6 12:3 13:7	57:6 201:13 203:8
presumption 177:9	180:12 181:5,7	238:5	41:4 53:18 87:8	240:6
presupposes 194:19	183:1 185:20	pride 30:21	97:18 115:4 120:8	prohibit 60:1 70:14
pretty 6:10 204:9	188:1,9,18 189:1,2	primarily 237:21	120:12 124:22	78:20
250:4	189:8,13,16	primary 57:2 99:13	125:3,7,9,11 126:3	project 13:18 63:8
previous 3:13 150:9	191:16 194:4	prime 86:8	126:21 136:18	64:10 145:13
150:11 156:15	197:21 205:12	prior 74:15 174:2	139:18 141:2	164:22
209:4 228:19	207:11,19 209:5	private 15:13 18:8	152:14 160:14	proliferation 104:3
previously 31:19	209:17 210:13	19:1	164:13 165:19	promises 61:9
price 6:6,13,17 7:13	211:3 218:22	privity 99:14	166:3,6,15,18	promote 102:16
21:18 22:11 27:2	226:13 227:7,11	123:16	167:12,22 168:6,6	proper 55:13 59:20
62:2 70:1 72:7	229:11 230:22	probably 2:20	168:9,10,11,15,20	properly 49:22
74:19 77:14 79:14	232:3,5,6,7,11	11:10 16:16 28:15	170:10,11 171:11	67:22 70:5 71:2
79:21 80:6,11,13	priced 18:11 21:16	31:2 48:20 53:6	171:21 172:1	92:1 96:8 196:17
80:19,21 81:18	78:12 82:5 88:21	57:5 78:18 79:10	173:21 177:1	properties 17:12,22
82:8 85:9,16 86:2	92:17 99:1 105:3,4	116:12 146:5,9	181:13,18 182:20	18:3 29:4,22 30:7
86:11 87:11 88:3	118:15 138:22	151:6 153:18	191:10 193:8	31:9
88:12 91:12 101:2	171:13 174:5,8	167:20 180:5	194:3,16 208:9,11	property 28:2 69:9
103:16,22 109:21	178:3 180:1	183:9 197:18	208:15 213:5	69:17,19
110:3,13,13 111:2	188:18 189:21	205:1,16 238:20	222:7,16 223:4	proponent 27:11

proposal 96:13	95:5 107:8 109:3,4	62:14 95:17 96:21	228:16,19 229:2,5	ready 233:6
proposals 7:10	122:13,14,16	110:1 112:10	236:19,21 248:10	real 83:5 92:9
61:17	184:14 194:22	129:16 154:15	quick 134:15	131:16 139:17
propose 98:11	214:10	200:10 215:3	207:20	174:15 182:9
102:18 137:19	purchased 6:14	218:10 223:10	quickly 208:6	196:15 219:11,13
153:19 213:16	15:2 37:20 133:16	P-R-O-C-E-E-D-...	quit 198:20	223:2
proposed 55:4	177:15 178:17	2:	quite 25:10 38:20	reality 103:17 184:3
proposing 101:10	194:6 214:8	p.m 151:12,13	65:21 71:2 87:16	realization 99:7
102:8 116:5 160:2	purchases 8:19 72:8	250:21	108:12 168:13	really 6:5 8:14 11:8
protest 6:22	109:5		192:11 193:11	16:4 17:12 18:1
provide 14:6 17:22	purchasing 78:17	Q	237:1	19:7 20:10 24:1,7
24:8 47:19 49:2	195:1 203:9	quadrant 211:3	quorum 151:15	27:22 28:18,19
55:13 57:7 70:21	purely 89:22	qualitative 48:13	245:21 246:1	32:15 39:13 40:5
70:22 74:16 78:8	purist 184:1	49:8	248:6,17 249:5,5	43:18 49:18 54:6
78:13 83:18 87:13	purpose 7:15 18:4	quantities 178:6,17	249:16	55:12 58:7 59:2,6
87:18 90:22	27:17 49:21 193:6	quantity 61:10		64:7 75:8 78:3
100:21 101:11,13	193:12	139:5	R	83:2 88:17 89:22
102:17 103:9	purposes 51:21	que 61:19 87:21	rabbit 216:7 218:11	91:18 93:4 96:9
147:13 148:7	119:11	question 5:12 8:21	raise 114:1 162:16	100:1 103:21
193:7 194:15	pursue 40:14 41:12	9:3,8,21 10:8,18	190:8 249:16	110:10 120:5
204:17	pursuing 14:5	11:15 19:21 20:8	raised 8:3 73:9	123:9,12 124:3,4,6
provided 52:5 59:7	purview 52:16	35:3 40:7 46:15	154:21 215:13	135:3 139:6 146:1
60:17 70:2 104:12	114:18 129:17	49:22 51:20 52:1	221:4 240:17	152:4,13 155:6,8
160:11	push 110:12	54:3,20 56:5,6	raises 20:7 94:21	173:16 177:19
providers 44:20	put 2:9 4:18 11:13	57:1 72:17 73:10	161:16 162:1,22	184:6 193:5
52:13	19:12,16 21:5	74:10 81:11 89:19	205:21	196:15 199:16
provides 15:6 45:12	25:22 26:4 27:14	92:18 103:14	ran 238:8	202:5 204:5,12
50:18	29:9 43:3 49:22	108:22 112:10	range 200:13	207:4 209:11
providing 45:3	77:3 104:10	114:1,8,17 115:1	rapid 163:2	218:12 219:1,7
100:13 102:13	106:14 111:19	115:12 117:21	rarely 72:22	231:21 232:7
109:15 144:15	112:4 114:18	122:10 124:21	rate 84:2 154:18	242:4 243:7,10,17
194:12	119:16 126:4	131:18 134:16	177:4 208:22	245:5 246:3
provision 28:22	128:18 130:12	140:11 156:10	217:19 218:7	realm 102:14
181:15 209:21	131:7 137:11	162:1 163:1 170:7	rates 86:18,21	reason 25:21 57:19
provisions 199:2	140:1 142:7,14	171:12 174:1	139:12	60:4,6 113:22
201:1	144:19,21 145:15	175:6 178:21	rationalize 117:17	125:4 129:15
public 77:11 244:16	151:2 153:8 167:6	183:5 184:10	209:21	172:4 180:10,14
246:7	167:16 169:14	193:6 212:1,11	rationalizing 124:8	196:22 197:20
publish 248:12	170:1 171:8	215:8 217:4 221:7	reaching 232:12	215:11
published 245:10	185:16 186:2	223:2 224:21	reactions 230:13	reasonable 73:14,22
246:20	187:10 190:6	235:14,21 236:3	read 4:4,9 36:3,15	83:21 84:1 88:3,12
publishing 245:14	202:18 209:15	240:20	66:3 114:3,9,13	137:6 141:15
pull 64:6 236:14	212:19 215:4	questioning 115:13	171:8,19 181:3	142:2 181:6,8,15
248:17	221:16 223:1	115:14	203:21	182:3 185:3,8
pulling 13:3 63:15	224:8,11 229:2	questions 2:17 10:3	reader 30:8 37:2	186:14 187:21
87:12,16	241:1 250:8	11:14,18 53:9	114:4 227:2	188:1,5,20,21
purchase 14:18	puts 67:16	111:11 162:17	readily 110:14	189:3,13,17 190:2
35:6,17 86:9 93:11	putting 20:1 51:3	170:14 228:11,15	reading 66:4 210:2	217:17 232:6,13

reasonableness 84:14 139:11 141:11 183:1	recommendations 3:2,9,16 4:17 5:7 8:5 9:5 40:13 105:21 118:8,17 120:8 122:6 127:11 129:16 152:5 153:15 154:2 159:8 168:20 169:3 180:6 200:1,3 201:1 220:22 222:9 223:4 225:8 225:14 228:2 229:7,22 232:10 234:6 236:5,6 237:10,15 239:8 240:4 242:2,4 243:8	179:7 refer 160:4 207:14 reference 12:2 51:16 54:4 114:2 151:19 164:1 referenced 110:4 referred 161:18 referring 178:12 refinement 51:2 reflected 184:22 225:13 reflects 187:3 refuse 199:4 regard 38:4,5 69:1 92:7 181:20 183:4 regardless 13:19 212:8 Register 245:11 246:22 regular 235:5 regulation 62:10,12 regulations 41:21 reimbursable 13:9 203:7 reimbursement 53:6 57:3 85:17 90:18 216:9,18 218:8 reiterate 62:6 118:12 relating 127:7 relatively 191:15 release 123:17 relevant 163:20 reluctant 11:3 193:9 200:9 relying 19:12 remain 6:18 198:16 remaining 205:10 remains 6:10 remind 2:4 171:19 246:16 remiss 199:12 remove 158:8 208:15 repitition 225:11 replace 12:21 replicable 157:19	report 3:11 53:16 106:22 107:22 114:3 150:17 158:21 159:20 160:20 164:1 173:6 178:10 180:11 199:14 212:3 220:19 222:13 223:8,11 224:8 225:1 231:22 232:3 238:9,9 REPORTER 149:2 represents 175:20 request 11:6 205:7 requesting 98:8 require 4:16 5:1 34:4,5,14 61:16 77:16 required 67:1 69:8 167:13 203:7 requirement 32:3 35:11 37:14 38:3 45:14 63:13 70:6,7 76:20 96:8 100:10 100:11 146:20 194:17 204:21 requirements 15:10 35:16 47:10 61:14 63:14 67:4 77:8 101:20 109:7 147:10 206:2 requires 26:13 206:20 reread 181:3 research 53:15 reserve 236:15 reserved 22:5 190:14 reside 18:7 resides 18:7 19:1 resolved 6:7 82:1 153:9 resources 23:20 192:15 196:13,16 197:15 199:11 216:15,18 respect 3:9 4:6 9:3	14:4 39:14 45:17 92:4,4,5,7 93:7 162:13 167:8 189:7 205:21 235:7 respectfully 211:17 respects 160:15 respond 15:13 96:14 203:3,5 response 7:11 47:14 51:8 54:14 112:1 115:18 117:8 responsibilities 72:19 228:21,22 229:13 responsible 99:13 141:17 responsive 106:13 122:21 rest 54:5 71:15 88:14 193:4 222:12 232:19 restaurant 2:14 restore 49:3 restrict 42:5 55:16 153:3 restriction 144:4 162:20 restrictive 43:21 restructuring 228:3 result 29:3 32:9 36:4,18 43:16 45:5 47:4 51:7 53:22 67:2 78:6 91:8 99:6 100:5 117:3 121:14 158:5 162:6 197:6 resulted 53:21 resulting 23:4 32:2 results 54:12 78:1 111:21 112:5 152:21 resumed 106:4 151:13 retain 230:17 return 12:10,20 13:12 48:3 returning 197:8
---	---	--	--	--

reverse 155:11	234:7 235:2 239:9	saying 6:14 21:8	150:19 151:1	95:6 98:18 99:17
review 111:10,10	244:22 245:16	30:5 36:13 43:7	152:10,13 157:1	100:19 101:21
117:17 120:19	246:6	45:2 62:21 64:4	173:18 174:22	103:16 104:3
121:4 127:13,16	rises 91:5	70:11 94:3 95:19	177:11 178:18	105:2,6 106:9
127:20 129:10	risk 22:8,15 25:17	102:1 103:8	180:1 181:22	108:7,19 109:22
130:2,5 150:21	27:3 58:2,7 59:13	115:19,22 120:21	183:14 184:14	110:20 111:6,12
152:8 153:19	68:19 79:13,14,20	129:9 132:21	186:12 187:3,12	113:15,16 114:19
221:9,11 239:20	86:3,4,5 101:1,3,3	134:2 145:11	188:4,10 189:15	117:19 121:13,14
248:14	191:15,20 210:12	146:17 147:4	189:21 190:19	122:12 123:9,13
reviewed 237:14	211:2 212:7	169:4 172:22	197:19 198:6,18	124:6 129:19
reviewing 71:8	risks 70:19,20	178:15 187:19	201:13 202:1	130:8 134:4,10
218:13	road 23:18 222:14	202:12 205:19	205:8 213:18	135:12 137:2
revise 107:9	robust 227:16	209:11 211:7,22	215:15 216:10	140:4 143:6,14
rewards 153:2	role 6:1 11:8,13	says 37:17 39:20	218:14 224:16	146:20 147:3,4,5
re-arranged 36:1	39:19 84:10,12	60:21 83:10 95:21	227:3,6,18 229:10	148:12 152:18
re-insert 118:3	roles 228:21,22	96:4 117:6 143:5	237:18,21 242:22	153:18 161:20
re-invent 69:19	229:12	166:3 175:2	246:3 247:3,6	163:19 166:19
re-invention 69:16	roll 148:22	178:22 181:13	250:3	171:20 181:14
re-look 156:16	rolled 174:22	187:17 211:11	scheduled 3:5,6	182:17 183:12
re-state 101:22	room 69:12 235:11	scanned 162:14	82:12,12 83:9 85:1	184:13,21 191:1,9
re-visit 3:14	rough 244:14	scenario 84:6 86:11	89:14 90:16 96:16	193:7,13,18 199:3
re-visiting 4:19	round 20:2	135:20	128:16,20 196:4,5	199:6 200:5,13
RFQ 7:11	rudimentary 82:18	scheduel 92:20	schedules 5:13,18	201:4 202:22
ricing 105:10	82:21	schedule 1:5 9:8	6:18 7:7,15 9:12	203:10,18,20
rid 173:13	rule 248:5,17	18:11 24:12,14	10:15,22 11:9 13:6	204:16,16 205:10
right 2:7,13 8:20	rules 35:5 67:18	42:12 45:7 47:20	14:18 21:14,19	206:21 207:1,12
15:22 16:15 17:2	100:12	48:19 52:2,15,17	22:9 23:13 25:7	207:12 209:13
23:8 25:18,19	ruling 97:21	56:6,10 58:5,6	26:1,17,18 27:1	212:6 213:9 214:5
29:12 30:18 33:15	run 85:19 87:3,12	60:2,12 68:21 75:3	35:7,11 38:5,8,20	214:9 231:14
34:11 57:19,21	222:22	75:3,11,16 76:3	39:9 40:16,21 41:2	232:14 234:12
65:22 68:21 71:9	runs 85:10 91:1	77:16 78:11 79:11	41:18,20,22 42:1,5	240:6 243:3,10
80:17 85:10 89:21		79:15,20 81:6 82:5	42:8,9,18 43:2,11	schedule's 7:5 82:9
103:12 104:2,6	S	85:15 88:4,9,11	43:19 44:4 45:1,6	243:13
105:15 108:11	s 128:4	91:16,18 92:10,22	45:10,13,19 46:1	science 58:13
112:16 117:8,12	safety 27:16 170:20	94:4 95:3,4,12,20	48:8 49:12 50:4	scientifically 178:21
129:1 133:10,13	sake 165:19 169:13	97:7,9,10,19 98:22	54:21 55:6 56:12	scope 44:17 45:3,8
135:17 138:15	170:4,18 171:6	98:22 99:8 100:15	56:15,19 57:6,13	58:9,17 76:3,7
140:14 144:6,16	192:20	100:16 102:15	59:5 60:14 61:22	78:2 88:18,19 89:3
148:3,8 155:22	sales 31:14 147:11	103:1 105:10	63:3,20 65:16,17	89:9,11,19 90:1,2
158:3,9 164:12	147:13 179:1	106:11,20 107:2,8	66:9,13,22 67:8	90:4,6,7 91:14,22
166:7 170:8	SAP 20:19 21:11	107:10,12 108:5	70:8,14 71:1,14,18	92:2,13 93:3,17
172:14,18 177:1	sat 226:22 240:15	108:14 109:2,16	71:22 72:8,13	95:5 99:17 100:20
189:14 192:19,22	satisfactory 197:8	109:17 115:21	73:21 74:6,18,22	101:19 123:9
206:19 207:8	satisfied 240:17	116:3,8 120:21	75:18,21 76:1,10	183:14,17 184:2,6
220:16 221:21	satisfies 47:9	121:1,5 123:6,19	76:14,15 77:3,5,15	210:11 211:6,10
223:7 229:9,10,11	satisfy 146:20	128:14,22 129:4	78:16 79:1 81:19	scopes 93:14,16
229:13 230:15	194:16	131:2,18 133:17	83:18 89:1 90:17	94:18
232:17 233:3	save 5:20 56:9	139:1,14 146:2,7	93:10,12,19,20	scope-wise 75:22

77:6	226:14	208:4 213:22	138:22 141:2	shape 50:11 105:21
Scott 1:22 12:8,15	sector 15:6,13 18:8	225:18	145:8 148:4,5	shaped 242:11
15:16 16:14,22	19:1	sentence 142:14	152:3,14 156:17	share 164:8
17:5 28:12 31:21	see 4:5,7 13:12	sentences 118:18	156:19,22 157:6	Sharpe 1:22 48:6,12
35:22 36:17 46:21	39:17 41:19 42:6,7	separate 9:5 21:4	158:14 159:4	51:10 129:5,9
47:12 53:8 55:18	46:8,10,15 62:10	29:5 31:16 88:11	160:4,5,13,14,16	130:1,9,14 131:9
57:10 107:14	67:15 68:9 75:19	109:5 113:21	161:3 162:21,21	131:12 132:13,22
108:4,8,16 134:8	76:6 87:5 94:9	116:14 118:17	164:10,14 165:18	133:18 134:1,15
135:10 142:12	104:15,16 109:21	124:10 137:20	166:5,18 167:12	135:15 140:11
143:10 148:10	110:2,3,4 112:9	157:1 225:8	167:22 168:6,7,9	141:10,16 142:5
149:1,10,11	115:16 137:2	226:11	168:10,12,16,20	149:1,6,7 154:6
154:10 155:10,18	151:9 153:10	separately 4:15	169:16 170:11,11	174:1,18 176:1,14
158:7 160:1	163:20 167:1	September 163:8	171:11 172:1	176:21 177:5,12
188:11 216:4	175:1 209:9	serve 49:21 50:15	173:21 180:13	178:2,15 183:9,13
220:11 241:19	217:12 224:12	59:16,17 159:16	181:13,18 182:20	185:10
243:15	225:22 226:22	228:9	189:21 191:1,10	sheet 132:1 154:18
screen 54:11	227:10 231:7	served 214:10	193:9 194:3,16	shelf 15:21
screw 23:1,2,3	232:2 239:18	server 13:1	197:3 207:10,13	Shepherdstown
screwdriver 27:15	240:12 243:21	servers 12:22 21:12	207:17 208:8,16	247:7,10
scrolled 151:19	244:7 249:4,15	23:11	209:22 213:5,6,13	shoots 20:3
se 232:12	seeing 205:12	service 8:11 14:12	213:15,18,21	short 68:2
Seabased 213:9	seeking 162:8	26:4 44:18 82:20	214:3,8,20 215:4,7	show 244:20
Seaport 90:18 91:1	seen 53:14 109:20	92:21 95:11	215:10,15,21	shut 136:3,5
Seaport-E 87:16	238:10	101:11,13 136:19	216:8 218:18	side 109:22 112:19
season 246:10	selection 5:22 26:15	155:15 156:5	219:1 221:5,20	112:20 127:6
second 4:12 67:10	26:19,22	160:17 226:10	222:6,16 223:5	136:18,19 174:5
107:14,16 108:13	self 161:21	services 1:3 3:1,20	225:10,19,20,21	196:21 241:16
130:18 133:9	sell 39:9,10 69:13	4:15 5:1,1 6:11	226:16 230:11	243:11,14
134:7,8,9 140:10	82:13,13 89:10	8:6,9 12:4 14:20	service-disable	significant 5:21
142:1 150:12	90:8 95:21 96:1	16:12 21:5 24:14	56:17	74:16 191:19
153:13 158:9,10	106:9,19 146:8	29:2,18,19,21 30:1	session 228:20	197:14
168:3 171:3	194:8,9 199:1	31:7,12 32:10,22	sessions 228:18	similar 3:16 156:20
175:15 176:1	215:20	33:2,6,7,10,11,22	set 2:8 3:1 4:16 9:5	168:19 223:6
185:10 186:7,16	selling 106:10 179:8	34:1,3 35:18 36:4	14:2 17:21 18:2,3	230:3
192:1 202:20	196:14	36:18 38:10,22	20:12 29:21 30:7	similarity 225:5
216:4	semantics 81:4	41:3 43:5 44:5,15	31:9,16 59:18	similarities 223:7
seconded 171:5	Senate 197:3	46:2,3 47:4 51:6	65:10 73:19 85:7	simple 7:11 17:14
186:18	Senator 196:20	52:15 53:1 54:12	86:10,13 91:20	simpler 225:5
secondly 10:20 43:7	197:1	64:5 73:18 80:17	94:18 103:2	simplified 219:1
107:4 198:15	send 249:18	87:8 95:4 97:18	104:19 127:3	simply 5:9 6:14
204:15	senior 71:3 145:14	101:12 102:9	156:2,15,21	78:8 84:19 145:10
section 43:4 67:5	218:6,7	103:10 105:3	160:18 165:3,11	147:22 151:22
77:10 160:20	sense 15:6 43:22	109:4 111:21	173:8,22 204:8	189:10
225:10,10 226:19	55:17,22 58:11,14	112:4 115:4 117:3	222:9 223:7	SIN 95:20,21 203:6
226:20 234:6	59:22 104:22	117:10 120:9,12	230:20 234:17	203:20 207:21
239:3,10 242:13	121:18 126:20	122:14,17 125:16	237:22	single 17:16,17
243:22	139:3 159:15	126:9,22 127:9	settle 14:2	24:16 25:13 28:8,9
sections 226:11,13	195:5,6,9 199:17	135:4 136:11	seven 45:6,6	40:6,17 45:11 53:2

102:19 129:4	solicitations 93:21	189:22 202:14,16	152:10,12,17	169:10 172:11
singular 33:13 36:4	94:5	213:8 219:5	153:12,16 154:22	181:1 182:7 183:8
36:18 37:5 46:22	solid 68:14	solutions 3:20 4:7	157:15,22 160:21	183:10,19 185:7
47:1 128:22	solution 4:11 7:2	4:10,13 5:14 7:8	164:14,15 165:12	185:18 186:7,11
SINS 104:3 163:13	8:10,10,11 9:4,16	9:8 10:16,18,19	166:10,15,20,21	187:10,22 201:9
201:2 203:1,3,6,16	12:2,7,9,12,19	11:1,6,12,16 12:6	167:8,10,15	201:21 202:6
203:19	13:17 14:21 16:11	13:17 15:7 16:7	170:14 171:1,12	203:15 204:1
sir 46:19 161:9	18:22 19:22 20:13	19:8,15 23:9 34:5	171:22 172:2,3,5,6	208:14 225:3
187:7 192:10	20:21 21:1,13 22:9	35:12,15,18 44:6	172:13 173:17	230:19 247:19
215:2 233:3,14	22:12,13 24:1,5	46:3,16 50:5,12	178:6 180:1,9,16	248:20 249:8
sit 93:3 124:4	25:3,5,8 26:22	52:2 54:22 55:6	181:2,12,17,20,22	sooner 235:9
sitting 35:22 60:15	28:18 29:7 32:3,14	56:7 57:11 59:5,6	182:21 183:7,13	sorry 9:10 10:6
84:22 220:2	33:19 34:10,13	59:12 60:2 62:3,15	185:2,21 186:13	18:12 21:22 48:15
situation 39:18	35:7 38:19 39:5,10	63:10 68:7,10 69:6	187:13,20 188:6,9	104:4 149:2 166:5
53:14	40:7,9,12 43:20	69:14 70:15,18	190:20 191:10,17	171:22 228:14
situations 67:21	45:12 50:1 51:5,18	71:9,15,20,21 72:1	191:21 205:7	247:20
six 7:6 164:22 227:1	52:7,12,20 53:11	72:14 73:12 74:5	208:16 209:3,13	sort 50:13,19
sizable 7:10	53:17,20 54:10	75:2,11,16 76:5	209:17 210:11,18	136:12 162:2
size 145:7	55:21 57:14 58:2	77:7 78:11,17	211:1,12 212:8	199:13 203:14
SK 137:4	58:20 62:16,17	79:19 80:15,19	213:5,17 214:14	214:22 225:5
skills 63:8 65:1,7	63:4 68:11,20	81:6,7 82:8,13	214:19 222:7,17	230:3,5 238:18
192:6	69:11,19,21 73:13	83:8,10,13 84:16	solutioin 92:19	240:4
slash 203:16	73:19 77:3 78:13	86:19 87:8 88:12	solve 18:4 21:9	sorts 93:2 212:7
slightly 108:10	79:9 81:7,20 82:4	88:20 89:2,11,15	solving 58:13	sound 244:6
121:3 154:20	82:7,22 83:22 84:3	90:8 92:15 93:4	131:13,15	sounds 143:18
161:12	85:2,11,14 86:13	95:1,10 96:1 98:14	Som 203:12	source 5:22 26:14
small 94:13 195:20	86:16 87:5,14 88:4	98:14,20 99:5,21	somebody 86:2	26:19,22
195:22 196:9	89:7,14 90:2,22	100:7 103:6,18	114:8 188:6 237:2	spans 184:12
204:7,13 215:16	91:4,20 92:2,16	104:1 106:9,10,19	243:11,12 244:4	speak 50:19 131:1
smart 20:10 64:7	94:3,7,9,11,13,15	107:2,8,10 109:9	someplace 26:21	speaking 5:16
103:15	95:22 96:5,16 98:4	109:11 111:6,12	somewhat 62:20	spec 78:14
smith 127:12	98:6,11,20 99:10	111:16 112:12,14	77:19 106:16	special 47:21 72:1
sneak 172:21	100:9,13,20	112:15,21 114:5	153:20 184:1	104:13
socioeconomic	101:16,17 102:13	117:2,14,15	242:8	specific 16:21 23:12
204:6 205:22	102:15 103:9	118:13 119:15	some/all 60:22	32:17 41:9 65:14
215:14	104:19 109:15	120:20,22 121:5	Sonderman 1:23	65:17 75:15 82:20
soft 39:21 78:21	110:15 114:13	121:13,14,20	17:3,7 18:12 30:4	82:20 91:19
software 21:10	115:2 119:1 124:9	124:6,12 125:1,15	30:11,16 32:9 33:7	101:14 144:11
23:12 29:1 38:9,21	125:13 132:3	126:15 127:5	33:13,17 34:4,11	228:10
65:9 92:21	137:6,8,16 138:20	128:13 129:2	35:2 36:11,15 42:2	specifically 37:4
sold 69:13 85:11	145:16,21 146:14	131:3,4,17 132:2	46:8 47:22 48:10	57:7 63:5 102:10
156:19 179:4,10	146:19,21 147:2	133:16 134:4,10	52:3 55:3 107:21	129:19 143:16
191:1	152:4 155:3,7,8	135:11 136:9,9,16	108:6,9,12,18	165:17,18 166:3
solely 143:16	157:17 173:8,22	137:1 138:12	112:3 116:4,9,20	170:12 172:2
162:20 194:18	175:1 176:5,11,19	140:4 141:6 143:6	117:9 120:16	211:9 225:18
207:10	177:14,21 179:8	144:3,5,10 145:21	133:9 149:22	226:13
solicitation 93:16	179:10,11 181:7	146:3,4,6 148:11	150:1,12 156:14	specifications
93:17 100:8	184:12,15 189:20	150:19,22 151:20	160:9 165:9 166:7	126:18,19,19

specified 53:2	209:12	structuring 231:3	suggestion 47:8	27:21 28:1,2,2,8
specify 40:18 52:6 52:11	stated 156:11	struggle 134:20	135:10 179:18	38:19 69:17,19
spectrum 58:22	statement 5:2 10:14 14:1 15:11 28:21	struggling 84:22 242:18 243:20	213:20 231:19	123:3,4 196:2,9
speed 48:17	29:17 33:21 34:15	stuck 136:2	suggestions 160:19	217:10 232:5
spend 5:4 222:11 241:10	34:21 35:13 36:5	study 119:20 156:19 210:16	suggests 44:8	systems 17:11 28:5
spent 243:17	36:12,19,20 37:9	stuff 105:19 209:5 232:2,9	sum 26:8 47:3,5,14 51:8 54:13 78:14	37:18,19 39:19
spinning 130:15	38:6,15 39:7 43:17	subject 111:13 167:10 194:11	111:22 117:4	63:18 69:7 195:14
spirit 246:6	43:17 47:10,15	submit 3:3 248:11	152:4 176:10	system's 24:3
spirited 164:18	50:11 51:9 54:15	submitted 7:10 96:12	188:12	
spirt 234:8	61:3,6 64:3,16	substantive 176:8	supplement 13:8	T
spit 95:17 96:22	71:13,15 88:19	substitute 218:5 220:2	supplies 191:1	table 2:6 4:19 23:7
split 118:17 143:10 143:12,20	98:6 112:2 118:14	subtlety 183:22	supply 95:3	24:21 46:15
spoke 18:18	119:6 126:4,8	sub-contractors 42:15	supplying 18:22	100:14 110:1
spots 202:5	127:8 138:3 142:8	sub-contracts 123:16	support 55:3 135:16 155:5,5,6 206:6	118:11 130:12
staffing 198:3	167:16 216:16	success 48:1	208:17 211:20	131:7 132:7 133:6
stage 239:13	236:18	successes 48:20	215:7	133:14 150:10,11
stakeholders 240:7	statements 34:6 35:4 61:6 67:11	successful 46:7 48:9 218:21	supporter 200:12	153:8 154:15
stand 130:10 157:6	STATES 1:1	sue 72:13 73:1	supportive 200:21	156:10 158:1
standard 154:19	stating 60:20	sufficient 75:4 212:14	suppose 130:6	220:3 222:8,10
standardized 156:21	Station 2:16	sufficiently 52:4 156:12	supposed 182:10	224:21 249:4
standards 61:7 194:12	ste 154:18	suggest 14:11 31:16 49:5 158:21 164:3	sure 7:20 10:7 14:16,16 16:16	tabled 3:21,22
standing 248:5	steel 19:16 20:1	sue 72:13 73:1	23:8 29:10 52:9	tabling 133:11
standpoint 14:6 72:11	steer 202:13	sufficient 75:4 212:14	71:1 72:2 75:1	tactical 131:21
stand-alone 118:1	Steps 66:5	sufficiently 52:4 156:12	81:8,22 119:20	take 4:5 9:1 17:15
Stars 56:18	stick 47:13	suggest 14:11 31:16 49:5 158:21 164:3	130:20 131:16	23:7 33:10,11 34:9
start 3:10 12:1 13:16 50:22	stop 91:2 182:18	successfully 46:1,6	137:1,5 142:10	34:14 37:10 39:19
103:15 111:11	store 182:14	sue 72:13 73:1	144:7 153:13	46:22,22 62:7,8
133:18 136:15	story 245:14	sufficient 75:4 212:14	157:6 163:22	77:19 87:2 101:6
149:5 152:1	straight 12:4,5 192:1 242:3,8,16	sufficiently 52:4 156:12	166:1 169:7 192:9	104:11 105:17
154:14 169:4	strapped 19:20	suggest 14:11 31:16 49:5 158:21 164:3	196:13 198:3	107:6 117:6,7,8,9
216:8 225:1 241:6	strategy 10:21 26:14 36:2	sue 72:13 73:1	208:20 210:6	117:16 120:19
249:1,1,2,13	strong 129:20	sufficient 75:4 212:14	217:6 224:10	124:5,19 127:13
started 2:3 98:7 131:22 151:15	stronger 132:13	sufficiently 52:4 156:12	230:7 239:11	127:18 128:1,4
213:4 222:14	strongly 77:3	suggest 14:11 31:16 49:5 158:21 164:3	241:17 245:13	133:11 137:11
starting 46:18 127:17 169:2	structure 3:11 61:12 66:17 78:15	sue 72:13 73:1	247:11	139:21 150:9,11
248:22	103:4 109:17	sufficient 75:4 212:14	surely 242:16	163:17 164:6
state 107:1,22 109:1 111:5 117:14	196:17 199:9	sufficiently 52:4 156:12	surprised 174:19 223:5	167:18 169:11,16
150:18 167:9	218:13 219:21	suggest 14:11 31:16 49:5 158:21 164:3	surrounding 5:6 180:4 227:13	169:21 178:16
	222:8,13 223:8	sue 72:13 73:1	suspect 162:12	184:7 196:3,18
	224:7 233:9,12	sufficient 75:4 212:14	symptoms 58:7,8	197:20,22 200:9
	240:10 241:2	sufficiently 52:4 156:12	synergism 16:14	200:19 201:22,22
	structured 90:17 224:22	suggest 14:11 31:16 49:5 158:21 164:3	synopsize 238:15	206:3 207:20
		sue 72:13 73:1	system 17:10 20:14	213:17 223:10
		sufficient 75:4 212:14		233:19 234:5,9
		sufficiently 52:4 156:12		236:16 237:2
		suggest 14:11 31:16 49:5 158:21 164:3		238:12 239:10
		sue 72:13 73:1		244:1,4,5 250:1,18
		sufficient 75:4 212:14		taken 10:1 49:19
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		
		sufficiently 52:4 156:12		
		suggest 14:11 31:16 49:5 158:21 164:3		
		sue 72:13 73:1		
		sufficient 75:4 212:14		

89:15 106:18 122:12 174:3 takes 83:4,5 177:5 197:14 207:16 238:4 talk 3:10 11:11 12:6 19:17 24:10,19 35:15 49:10 58:4 84:16 89:13 91:13 120:13 121:22 166:11 171:21,21 171:22 172:1 180:8 181:11 209:10 213:4 214:18 231:20 239:4 242:21 243:9 talked 7:21 8:4 11:8 38:17 60:8 72:5,18 83:3 154:16 157:9 176:9 190:14 199:16,22 210:6 218:18 222:6,6,7 240:7,11 talking 17:13 19:7 20:13 28:20,20 38:2 43:9,13 68:12 68:14 69:12 73:10 81:5,6,10 82:19 83:16 84:17,19 88:18 91:18 114:10,15 125:5 126:15 136:9 140:3,12 144:3 155:19 161:14 162:21 169:15 171:18 173:17 182:8 207:2 213:20 222:12 243:13 talks 35:16 135:2,3 181:4 215:3 target 19:16 20:1 task 8:8 29:3 49:19 60:17,22 61:4,11 62:13,14 88:13,14 90:3,4 94:22 97:17 101:18 134:3,10	135:11 139:22 140:9,16 141:8,18 167:11 169:12,14 169:17,17 177:20 238:4 tax 182:10,12 taxpayer 59:17 team 18:20 53:21 93:19 99:9 123:21 222:16,16,17,18 222:20,21 223:1 teaming 40:16 93:1 93:9,9 96:18 99:6 99:12 109:13 123:1 184:4 209:14 teams 222:15,15 224:22 teasing 233:14 technical 8:10 53:21 139:17 145:14 203:17 technique 162:16 techniques 74:1 technologies 58:18 161:15 162:4,10 technology 58:10,11 58:12,14 163:2,2 200:17 tell 17:11 19:5 21:9 23:18 40:15 68:6 122:1 136:3 179:6 188:21 189:3 244:11,21 250:13 telling 20:2 42:20 42:22 100:3 110:6 118:22 119:19 146:2,11 147:1 temper 74:15 tempered 241:14 tend 58:2 212:11 228:5 tendency 23:22 188:16 tentatively 249:13 tenth 20:4 terminals 20:17 terminology 126:14	terms 6:3 12:1 13:3 19:10,15 21:22 22:1 35:15,16 85:4 89:16 102:12 103:8 113:14 126:21 127:3 139:7 157:21 terribly 249:7 testimony 225:6 testimony 227:15 229:20 236:15 237:3,14 238:14 text 220:18 thank 2:19 5:11 65:22 74:11 107:17 164:12,16 187:7 199:20 235:3 250:19 thanks 124:15 216:3 Thanksgiving 235:20 Thedius 237:6 theory 6:4 89:5 175:8 thesis 55:4 thing 2:10 19:17 25:20 26:6 37:17 38:11 44:17 58:15 120:6 136:22 144:16 148:8 157:14 170:21 171:8 173:7 174:12 192:19,20 192:22 196:22 197:7 198:7 202:19 214:21 227:3,4,7 230:2 things 7:20 12:8 14:19 15:15 21:21 24:20 27:19,19 36:6 38:8 43:12,18 43:19 52:6,17 58:8 59:16,21 63:2 66:2 68:4 70:18 72:9 74:17 82:5 84:15 90:14 93:2 95:2 98:19 99:21	104:21 106:22 109:12,13,21 147:17 153:11 159:9 165:21 169:5 173:9 179:9 190:12 193:11 198:10 201:14 203:13 204:18,20 204:22 206:22 207:7 209:15,22 214:12 221:22 226:1 228:2,3 230:22 237:13 242:17 244:14 think 2:20 3:1,8,22 4:19,20,22 5:7 6:17 7:19 8:16,20 9:2,11 10:1 11:10 12:9 16:9,15 17:12 19:2 20:7 21:14,20 22:4,15 23:13,15 23:19 25:4,9 26:21 27:5,18 28:4,19 29:14 30:17 31:17 36:7,8,12 37:1 38:1 39:13,15 40:7 40:20 41:17 42:19 44:21,21 45:9,9 46:12,13,16 48:5 48:21 49:15,21 50:10,21 51:1,13 54:6,8,18,19 58:2 58:5 59:16 62:2 68:5,8 70:15 71:12 71:16 73:9,11,16 74:4,14 75:6,7,14 76:2 78:3,18 79:5 81:9 83:17 84:8,16 87:19 88:7 89:19 90:15 93:2 94:21 95:19 96:13 102:1 103:18 104:2,9 105:6 106:5,8 108:3 109:1 111:4 113:7,11,13 117:5 117:11 120:6,9 121:2 122:3,10 124:10,17 125:12	126:13,20 129:6 129:12,15 130:11 130:16 131:14,16 132:4,5,17,18,22 134:16 135:7,17 136:4,14 137:9,20 137:21 138:12,14 140:22 141:3,20 142:3,6 143:22 151:6,16 153:6,8 153:22 154:13,19 154:21 157:11,13 157:20,22 159:6 160:15,22 161:5 162:14,22 163:9 163:10 164:13,20 165:2 168:1,9,15 169:3,7 170:7,14 173:5,7,15 175:6 178:10 180:3,20 182:18 183:5 184:18,20 186:20 188:16 190:15 191:17 192:4 195:9 196:15 197:17 198:1,4,9 198:10,15 199:7 199:12,21 200:18 201:20 202:3 203:3,14 204:3 205:16,20 206:5 206:18 209:10 210:7 212:1,10,12 214:1 215:11,21 216:2,12 217:15 218:15 219:10 220:4,7 221:10 222:4,8,19 225:17 225:19 226:5,6 227:17,17 228:5,9 228:13,14,15,15 229:4 230:4 232:20 233:15 234:14 235:8 237:1 238:11 239:2,10,14 240:10 241:19 242:2,7,11,17,20
--	---	---	---	---

243:1,6,20 244:10 245:5 246:2,5 247:13 248:4,17 249:22 250:5,15 thinking 44:13 74:7 127:2 132:9 159:1 182:7 225:15 226:21 231:17 thinks 189:8 third 4:21 48:16 136:21 137:10 176:4 233:10 thirdly 123:22 THOMAS 1:19 thoroughness 170:19 thought 80:2 121:9 121:10,11 163:22 167:4 173:1 185:15 196:21 206:9 231:5 240:4 248:20 thoughts 28:17 three 4:3,4 6:15 7:9 94:13 95:2 145:13 152:5 222:15 246:14 247:17 250:11 threshold 5:12 51:22 97:12,22 111:11 throw 14:8 51:19 throwing 50:14 tie 141:4 222:1 tier 155:4,5,5 ties 20:8 tighten 42:8 tighter 41:22 tightly 20:22 time 5:20 15:7 22:10 53:4 56:9 59:8 60:4 64:8,22 70:1 74:19 78:5 85:13,18 89:15 100:5 106:18 113:2,5 116:1 118:20 119:18 151:6 152:21	157:20 164:16 175:18,19 177:2,3 179:14,18 182:17 182:18 193:20 194:2 195:5 207:16 209:3 216:10 217:8,18 217:22 220:16,21 220:22 222:12 241:10 244:13 245:10 250:4 times 10:11 82:6 161:12 176:9 189:1 220:3 time-frame 65:11 time-frames 234:18 Title 66:15,16 today 3:5 10:18 49:7 54:5 64:18 71:22 100:19 131:18 164:2 183:16 192:7 193:12 200:14 209:12 235:14 236:11 244:7 245:14 250:18 today's 6:9 11:21 200:8 246:18 token 72:4 told 194:9 Tom 1:22 15:22 31:21 34:18 37:15 48:5 49:1 51:9 55:2,7 56:13 62:7 66:1 74:11 77:2 79:3 81:2,3 83:16 87:19 94:19 97:8 102:15 113:10 115:17 117:22 121:7 130:13 132:21 133:1,19 133:21 134:2 140:18 149:1,6,12 165:22 167:5 177:17 178:14 179:16 184:10 191:11 193:3 204:2 205:20	206:7 210:8,21 214:7,16 215:5 tomorrow 249:19 Tom's 36:9 39:13 154:18 192:4 213:7 tool 6:19 22:5,18,19 23:7,13 27:14,17 45:13 55:9,16 58:14 62:8 67:14 72:22 73:3,4,6 74:16 77:17 83:17 83:19 94:1 96:19 toolbox 27:12 55:10 62:9 toolkit 10:13 200:9 200:11 tools 10:13 13:7 22:21 23:8 27:12 27:13 63:1 73:22 200:9,11 top 98:7 161:21 185:19 torn 81:17 83:16 toss 197:22 tossing 217:5 237:19 total 15:18 32:14 45:12 46:3 57:14 91:2 188:13 totally 53:19 84:4 119:7 track 248:14 trail 248:15 train 23:16 trained 192:10 training 182:22 188:17 tram 127:5 transactions 182:11 transcripts 148:20 242:6,9 translated 213:10 transmission 17:20 transparency 8:1 169:5 transparent 224:11 transportation	17:22 trash 158:1 Treasury 134:20 treat 7:20 184:5 tried 104:10,18 202:13 triggered 167:4 triple 145:7 tripped 126:14 trivial 242:13 trouble 24:2 true 6:10 26:12 45:21 69:15 188:6 199:5 truly 38:11 98:5 try 29:13 95:15 103:20 135:9 136:15 142:7 148:9 201:18 204:19 236:14 240:1 248:1 trying 19:16 24:22 27:21,22 32:15 44:22 47:12 48:22 49:16 51:13 54:6 79:6 82:2 85:17 97:16 101:19 102:4 103:19 104:4 105:7,21 172:13 192:16 207:9 239:15 tube 19:18 20:2 turn 2:5,18 149:3 184:16,17 210:14 248:14 turned 164:21 twice 81:3 two 3:9 6:15 7:9 53:17 58:3,7 60:6 104:17 105:8 106:22 113:21 118:7,17 122:3 137:11,14 141:20 143:13,20 152:15 157:21 166:22 183:19 193:5 203:12 226:6 236:10,19 240:14	245:12 249:14 two-fold 10:16 tying 141:3 type 9:14 13:17 26:14 53:6 55:14 55:15 58:20 59:8 59:10,15,21 61:13 68:19 72:14,15 79:3,15 116:1,7 192:13 194:7,10 194:18 195:2,14 197:8,22 198:6 199:14 200:13 201:6,12 202:8 205:9 206:2 208:3 208:11 210:1,16 211:11 212:5 214:5 215:21 219:3,18,21 types 8:19 69:10 72:13 74:1 115:20 144:18 147:9 220:9 T&M 62:1 72:7 80:15,17 91:3,4,10 114:12 119:2 197:7,7,21 216:14 216:16,22 217:18 217:22 218:9
U				
ultimately 41:15 60:14 75:19 86:4 157:18 172:9 unable 94:20 190:3 unattractive 50:11 uncertainty 59:3 243:21 uncomfortable 139:10 205:19 uncover 179:2,9 uncovered 178:9 undergo 167:13 underlying 137:14 166:19 173:8,11 173:13 188:3 underneath 57:11 160:3				

<p>understand 29:10 30:5,9 56:7 64:14 81:18 86:15 116:6 130:15 144:7 174:14 192:3,5,12 196:20 204:5,12 210:22 211:1 217:7 235:7 245:4</p> <p>understandable 79:15</p> <p>understanding 31:1 64:12 192:6 235:11</p> <p>understood 88:2 126:5 166:2 229:16</p> <p>undertake 156:18</p> <p>unhappy 227:12</p> <p>Union 2:16</p> <p>unique 4:13 9:4 32:3,4,7 53:20 73:19 153:16 157:19 198:19 204:21</p> <p>UNITED 1:1</p> <p>universe 74:8 197:13</p> <p>unreasonable 235:17</p> <p>unwilling 18:13</p> <p>un-priced 100:9</p> <p>update 186:21 187:11</p> <p>updated 186:13</p> <p>upper 2:15</p> <p>up-front 100:6</p> <p>use 9:13 15:12 19:18,18,19 20:19 22:7 23:1 25:6,11 27:14,16 32:4,7,13 34:6,14,21 35:4,13 41:20,21,22 42:6 42:11,11,14 48:14 50:4 55:13,16 57:8 57:13 58:10,13 59:20 60:4 64:15 67:17,19 68:7,10 68:19 70:8,14</p>	<p>71:14 72:5 73:4,6 73:12 74:18 75:2,3 75:10,18,21,22 76:10 78:5,10,20 79:19 81:12,21 82:12 89:13 90:18 94:2 113:15 119:14 122:5 124:11 129:18 130:7,10 131:2,20 137:3,4 141:22 143:13 146:2,9,20 152:20 156:2,3,7 157:18 190:1 191:14 194:20 200:5 206:21 207:5,11 216:9 217:15,18 240:6 247:11</p> <p>useful 54:4 58:15 164:3 168:2 177:19 227:20</p> <p>user 20:17</p> <p>uses 73:2 74:5 155:1</p> <p>usually 157:20</p> <p>utility 16:18</p> <p>utilization 136:10 243:14</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>VA 63:12 65:6</p> <p>valid 8:21 137:20 202:18 205:21</p> <p>validate 195:13</p> <p>value 18:10,16 37:20 38:13 40:20 49:6,20 87:5 140:7 140:20 141:7,13 142:17,18,19,20 187:18 192:17 197:8 227:18</p> <p>values 41:2</p> <p>varieties 69:10</p> <p>various 38:12 71:4 92:11 172:6 177:7</p> <p>vary 100:10</p> <p>vehicle 55:14 68:7 68:17,19 72:15</p>	<p>143:17 144:11,12</p> <p>vehicles 10:10 57:10 57:18 59:19 67:16 67:17,20,21 68:2,3 74:2 162:5,9,11 163:3 166:19</p> <p>vendor 19:22 40:17 42:13,13 82:4 98:10 106:14 122:15 175:2 189:15 218:4</p> <p>vendors 20:15 82:12,13 90:21 96:17 98:15 99:7 100:17 106:10 109:14 122:18 162:15 177:22 184:13 189:14 195:14 197:16 209:13</p> <p>verb 172:14</p> <p>verbs 124:19</p> <p>version 155:16</p> <p>versions 143:11</p> <p>versus 5:1 216:17 230:10</p> <p>vertically 238:6</p> <p>veteran-owned 56:17</p> <p>viable 6:18 74:22</p> <p>vibrant 49:13</p> <p>view 24:9 59:6 76:18 211:1 240:3 240:3</p> <p>viewpoint 204:4 205:3</p> <p>views 240:14</p> <p>virtually 67:22 213:14</p> <p>visibility 124:1 176:22 177:6</p> <p>visionary 200:14</p> <p>visiting 154:20</p> <p>vis-a-vis 98:9</p> <p>vitality 200:5</p> <p>voice 93:8</p> <p>voluntarily 206:4</p> <p>voluntary 199:9</p>	<p>201:14 202:1,21 203:10 204:9 215:9,12 216:1</p> <p>volunteer 204:10 234:5,8,11 237:4,4 237:6 239:16 243:16</p> <p>volunteered 222:20</p> <p>volunteering 234:17 240:21</p> <p>vote 148:17,20,21 151:3 170:1 185:17,19 186:3 190:7 219:12,13 221:17</p> <p>voted 159:21 179:19</p> <p>votes 150:3</p> <p>voting 149:3</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Wait 234:16</p> <p>waiting 138:16</p> <p>walk 2:7 15:8 214:2</p> <p>walked 229:6</p> <p>wall 22:22 23:1,3</p> <p>wander 249:3</p> <p>want 3:13 4:21 5:15 6:14 9:19 10:3,8 15:9 19:10,11 20:19 21:15,21 22:1,3,13,14 23:11 23:17 24:2,7,16 26:7 31:6,17 32:5 32:6 39:5,20,20 40:5,6 41:4,13 42:4,8,10 46:11,16 50:3,16 52:11 64:4 69:3 79:18 81:8 85:20 91:13 94:3,6 94:11 103:15 107:22 112:8 113:2,3,8 116:9,14 118:6,7 119:21 120:22 125:3 128:10,21 133:20 136:22 137:2,5,7 138:10,15 142:10 142:21 143:13</p>	<p>145:11,12 146:18 146:19 153:9 155:4 158:4 164:4 172:21 175:4 177:21 180:15 198:20,22 202:4,4 203:3,21 206:19 209:21 212:3,9,17 213:8 215:8,17 216:6 217:14 219:9,9 220:2 223:10 227:4,20 229:20 239:3 246:5 247:11 250:3</p> <p>wanted 19:5,5 38:18 50:9 53:2 96:11 110:14 240:12</p> <p>wanting 219:7</p> <p>wants 55:20 97:9 194:7</p> <p>warehouse 20:16 40:1</p> <p>warfare 213:9</p> <p>Washington 1:13 1:14</p> <p>wasn't 145:16</p> <p>way 3:15 8:4 9:12 10:21 13:11 15:4 16:7,20 20:19 21:6 28:6,15 29:7 39:5 40:3 44:13 52:21 70:6,10 71:6 76:7 76:7,8,21 90:16 98:7,17 102:2 103:2,13 111:8 112:11,13,14 113:12 122:2 124:11 126:20 127:3,4 129:22 134:18 144:15 145:4 162:2,8 166:12 172:18 184:10 191:18 192:4 194:8 198:16 199:9 202:22 205:11</p>
--	--	--	--	--

207:15,21 208:2 208:18 212:2,4 213:19 214:8 218:5,16,16 219:17,22 220:1 224:20 229:6 231:4,22 240:5 241:19 ways 45:1 86:7,10 88:22 105:4 228:11 241:14 website 223:15,16 223:17,19 224:11 Wednesday 3:6 222:4 233:7 week 181:4 220:3 245:11 249:12 weeks 7:9,9 236:11 250:11 well-defined 58:18 58:19 went 34:8 106:3 151:12 225:12 229:17 weren't 48:9 71:13 wether 70:7 we'll 82:15 143:20 148:21 149:5 151:2 186:2 224:11 225:21 233:2,4 241:4,20 248:15 249:1,14 249:15 250:7 we're 2:20 4:19 14:4 19:6,7 20:13 25:4 27:18 28:19 28:20 31:2 32:15 38:2 41:16,17 42:20,22 43:7,9,10 43:13 46:17 48:21 49:10,15 51:12 54:6,9 56:14 68:12 68:14 69:12 75:15 77:12 80:5,10 81:4 81:6,9 82:2,19 88:17,20 89:4,22 90:10 91:18 95:9 98:8,15 103:14	105:7,9,11,13 110:22 113:12 114:14 115:22 116:4 119:18,19 125:5 126:20 127:1 129:16,19 130:16 131:13,14 131:16,17 135:17 136:8 138:16 146:1,17 147:1,4 149:3 154:19 162:21 187:19,20 207:8,18 209:11 212:20 213:20 219:1 220:14 221:6 224:13 242:18 248:4,16 we've 3:1 4:14 7:21 8:4,6 21:6 32:16 43:15 48:13 51:3 51:15 54:18 61:18 62:3 67:14 72:5,18 73:10 74:14 81:22 83:3,6 84:8,10 89:18 99:18,20 101:6 109:9,15 122:12,12 130:21 130:21 137:16 140:17,19 141:7 151:18 153:8,12 153:22 154:13 158:12 161:5 162:19 164:20 165:17,18 166:20 167:21 170:7 180:20 202:13 210:3 222:5,6,7 223:4 229:15 231:11 242:4 244:10 250:4 whatsoever 181:17 wheels 17:19 whichever 166:12 Wide 160:11 widget 145:11,12 willing 18:15 145:1 177:19 207:22 208:20 236:1,3	241:9 wind 83:2 Winnemuka 182:14 winning 94:16 winter 247:10 wire 13:3 wisdom 46:19 107:17 132:14 wish 25:7 194:11 wishes 184:15 198:13,13 withdraw 32:7 187:6 wold 52:19 wondering 32:18 125:21 225:4 word 32:4,7,13 46:22 47:1 64:5 81:21 83:1 89:13 108:5,20 127:11 129:21 134:18 139:22 157:18 161:3 169:12,16 169:17 187:11 208:15 wording 148:11 words 29:9 30:15 31:16 36:1 77:21 77:22 78:4 95:17 96:21 101:16 169:20,21 172:10 173:6 201:19 215:12,22 work 2:22 3:13 5:2 8:12 12:15 25:22 28:22 29:17 33:21 34:6,15,22 35:4 36:5,12,20,21 37:9 38:6,15,16 39:7 40:4 43:16,17 47:11,15 51:9 54:15 61:2,6 64:3 64:16 88:20 98:6 99:21 101:12 103:20 104:20 110:20 112:2 118:14 123:17 126:4,8 127:8	153:5 164:21 167:16 193:11 197:18 202:22 203:18 204:21 216:16,16 233:9 233:11,13 241:5 243:10 245:1 worked 164:13 188:22 workforce 23:21 192:7 working 13:10 77:21 101:9 235:4 241:6 works 32:1 33:4 34:3 86:5 112:7 227:3,6,7 229:9,11 249:20 world 44:2 182:9 193:21 worried 207:8 215:19 worrying 139:2 worse 211:9 247:6 worth 205:17,17 206:6 worthwhile 160:21 wouldn't 64:2 135:9 142:21 145:21 173:10 174:7 176:2 180:15 181:19 231:22 wrestle 24:22 write 31:3 57:2 67:18 210:5 223:8 226:3,4 234:6 242:13 writers 107:22 145:14 writing 224:13 225:1 245:1 written 8:17 43:15 61:5,12 198:21 206:7 wrong 22:1 83:1 95:2 121:11 124:19 192:20 214:19 250:12	wrote 19:15 53:16 236:19 <hr/> X <hr/> X 96:5 110:9 <hr/> Y <hr/> yard 20:4 Yay 149:21 year 64:9 219:10 246:13 years 22:8 24:22 106:12 146:12 200:16 yore 137:13 <hr/> Z <hr/> Zone 56:17 <hr/> \$ <hr/> \$100 8:7 <hr/> o <hr/> 09 67:3 <hr/> 1 <hr/> 1 20:4 88:20 150:14 150:16 155:5 1st 250:11 1)To 90:14 1:00 151:7 1:10 151:13 10 1:10 105:17 151:5 155:4 10th 235:14,15,17 244:7 100 221:13 11 13:21 105:17 196:4 11:00 101:6 11:06 106:3 11:15 105:18 106:1 11:21 106:4 12 114:18 127:2 151:5 12th 244:10,18 245:16,21 246:1 12:10 151:12
---	---	--	--	--

13,000 196:5	200:2 201:1			
15 7:4 22:4 26:22	232:22 246:13			
53:5 101:7 214:10	52 220:3			
246:22	525 1:14			
16 66:7,11 67:2,9				
18 64:22	6			
18th 247:8	6 3:18 156:17 160:5			
18,00 196:3	200:2 201:1			
180 54:1	65 46:1			
19 163:7				
2	7			
2 88:21 143:5	7 66:4			
153:20 154:11	70 24:12,14 161:20			
155:5	162:14 183:8,9			
20 246:19	8			
2008 1:10	8 186:22			
21st 235:19 236:7,8	8th 247:4,7,16,19			
236:8	248:19 249:13			
22 163:7	250:10			
24th 236:9,10	8(A) 56:18			
244:15	8.4 43:3 181:11			
27 2:11	803 67:5 77:9			
27th 245:3	862 77:10 87:1			
3	9			
3 54:11 80:18	9th 249:13 250:10			
154:11,14,16	9:00 1:13			
155:6 184:6	90 196:6			
249:10				
3,4 246:13				
3:00 250:21				
30 48:6,12 198:21				
365 219:8,10				
37 43:4				
4				
4 151:18 154:1				
155:5 163:11,12				
185:6,13,17,22				
4th 249:10				
40 66:15 219:2,2				
220:3				
41 66:16				
5				
5 155:5 163:11,16				
186:6,8 187:9,15				