

UNITED STATES GENERAL SERVICES
ADMINISTRATION

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MULTIPLE AWARDS SCHEDULE ADVISORY PANEL

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MONDAY, MAY 5, 2008

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AMERICAN INSTITUTE OF ARCHITECTS
1735 NEW YORK AVENUE, N.W.
SECOND FLOOR

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10:00 A.M.

PANEL MEMBERS:

ELLIOTT BRANCH, Chairman
DEBRA SONDERMAN
GLENN PERRY
THOMAS A. SHARPE, JR.

JACQUELINE JONES
JUDITH NELSON
ALAN CHVOTKIN
LARRY ALLEN
DON ERICKSON
APRIL STEPHENSON
THEDLUS THOMPSON

DAVID DRABKIN

ALSO PRESENT:

DAVID L. BIBB, Acting Administrator
PAT BROOKS, Designated Federal Official

PRESENTERS:

ROBIN BOURNE, Director, Policy Implementation
Branch, FAS

CHRISTOPHER POCKNEY, Partner, Government

Contact Services, Ernest & Young

CHRISTOPHER YUKINS, Associate Professor of
Government Contract Law, George
Washington University Law School

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

2 10:02 a.m.

3 MS. BROOKS: Good morning,
4 everybody.

5 I am Pat Brooks. I am the
6 designated Federal official for this Multi-
7 Awards Schedule Advisory Panel. And I welcome
8 everybody here for our first meeting this
9 morning.

10 First of all, I would like to
11 thank all of the panel members for accepting
12 GSA's invitation to participate in this panel
13 and you'll have an opportunity to meet all the
14 panel members in a couple of minutes.

15 I want to go over some
16 administrative -- a couple of administrative
17 details this morning.

18 First of all which I forgot to do.
19 Please turn off your cell phones and pagers.
20 We ask that you sit in any of the seats except
21 where you see the panel members or reserve
22 seats. But any of the other seating is free

1 and open.

2 The bathrooms are outside the door
3 there and to your right, both the men and the
4 women's bathroom is there.

5 There is water and coffee just
6 outside the door. You are free to partake of
7 that all day long. They will be refreshing
8 that as we go along during the day.

9 When we break for lunch, there are
10 a number of eating places along G Street and
11 Pennsylvania Avenues so you can walk up either
12 18th or 17th Street, up a couple of blocks and
13 find a variety of places there to grab
14 something for lunch.

15 We have sign-in sheet on the table
16 there where you have the material, so please
17 make sure that you sign in today before you
18 leave.

19 We also have there copies of the
20 presentations and other historical pre-reading
21 material for the panel. If you did not get a
22 copy of the material there, all the documents

1 that the panel will be using will be posted to
2 our web page. They're either posted there
3 already or will be posted there later on.

4 The web page for the panel is
5 www.gsa.gov/masap. Again, all of our
6 documents to include minutes of the meeting
7 and any other documents will be posted there.

8 For some rules of engagement.
9 This panel was established in accordance with
10 the Federal Advisory Committee Act. This
11 assure that the public and outside group have
12 input in the Government's decision.

13 The Federal Register notice that
14 announced this meeting provided guidelines on
15 how we can -- you can present your views. If
16 you will note on the agenda today, we do have
17 a couple of scheduled presenters.

18 Each of these presenters will have
19 approximately five minutes for their
20 respective presentations and the remaining
21 time during their presentations will be for
22 the panel members here to ask questions.

1 Please note that for today's
2 meeting, we have also allotted additional time
3 for other people to make comments or you to
4 raise an issue.

5 Since you did not pre-register for
6 this similar to the -- as the other two
7 gentlemen did, how we're going to do this is
8 there are index cards on the table there. So,
9 if you're interested in making comments this
10 afternoon or presenting an issue to the panel
11 this afternoon, please put your name and
12 organization on the index card and pass to me.
13 We will do these on a first-come, first-serve
14 basis. Number them as I get them and we will
15 try to accommodate as many people as possible.

16 We are allotting approximately
17 three minutes so, again, please if you want to
18 do a presentation, give me the card and make
19 sure that your comments are three minutes or
20 less.

21 During the panel deliberations,
22 there will be no questions from the audience.

1 Remember this is a first meeting and so it's
2 the deliberations of the panel here that we
3 will be listening to.

4 If you do have questions regarding
5 the process that we're using or any other
6 information regarding the panel, please see
7 me. I'll be here or catch up with me during
8 break.

9 Any questions?

10 Okay. Then it is my pleasure and
11 honor to introduce the Acting Administrator of
12 GSA, Mr. David Bibb.

13 David went to work one morning
14 last week in his usual position as Deputy
15 Administrator and left for home as the head of
16 the agency. But that's okay. He's been there
17 before. And everyone who works at this agency
18 knows that he has the ability and the
19 credentials to keep GSA moving in the right
20 direction.

21 In fact, we know David as
22 thoughtful, progressive and an innovative

1 leaders who has helped GSA meet several
2 challenges that's it's faced over the past 37
3 years.

4 Of special interest today is his
5 solid support for the panel we've formed to
6 examine the Multiple Work Schedule Program.
7 Like former Administrator Doan, David is eager
8 for the panel to get to work and is excited
9 about the recommendations that will be
10 forthcoming.

11 David began his career as a
12 Management Intern with GSA in Atlanta. Prior
13 to his appointment as Deputy Administrator, he
14 has held several executive-level positions
15 including Assistant Commissioner for Planning
16 and Deputy Commissioner in the Public Building
17 Services and Deputy Associate Administrator
18 for Real Property in the Office of Government-
19 wide Policy.

20 Given that he's from Tennessee,
21 the Volunteer State, his deep passion for
22 public service should come as no surprise.

1 Ladies and gentlemen, please
2 welcome GSA Acting Administrator, David Bibb.

3 MR. BIBB: Thank you, Pat.

4 Just don't carry that volunteer
5 stuff too far. I do like to get paid for what
6 I do working for GSA.

7 I will say, no. This meeting was
8 not on my calendar last Monday, but I'm very,
9 very glad to be here this morning. So, good
10 morning to everyone on the panel. From the
11 public a lot of interest in what's going on
12 here today.

13 Some of the first things I had to
14 do when I became -- Ms. Lurita left and I
15 became Acting Administrator, there were a
16 number of things on the calendar. Do we go on
17 with this? Do we put this one on hold? Do we
18 defer this one? This panel there was never
19 any doubt in my mind that we go ahead with it.

20 Lurita thought it was a good idea
21 but there are many of us in the agency who
22 believe that what you're going to be doing is

1 vital to the success of GSA. And I certainly
2 support it 100 percent going right ahead with
3 the panel and I appreciate the fact that
4 that's happening and we're here today.

5 I think today marks the start of a
6 process that's going to place GSA in the best
7 possible position to insure that our Multiple
8 Work Schedule Program remains what we think it
9 to be, the premier Government-wide vehicle for
10 providing taxpayers and customer agencies the
11 best possible prices and value.

12 And I'll talk more about this, but
13 the growth of the schedule as most of you has
14 been phenomenal and I was looking at the
15 numbers through March of this year just the
16 other day and we are again at a new record
17 level. We're ahead of March of last year by
18 about -- between two and three percent. It
19 continues to be very popular. The schedules
20 are very popular for the reasons I said. They
21 are great prices, they are easy to use, we
22 offer about everything under the sun and

1 that's the result of a great partnership
2 between the Government and the private sector.
3 And, of course, on this panel we have both
4 represented.

5 But we want to stay there and
6 nobody has to use the schedules. Nobody has
7 to use most of GSA services. So, the best way
8 to keep a good thing a good thing is to take
9 a good look at yourself periodically and I
10 think that's very important that we do that
11 with -- certainly with our highest visibility
12 and most used set of acquisition vehicles
13 which the schedules represent.

14 I do want to congratulate everyone
15 involved in forming this panel. I want to
16 thank Bob Flack from the Office of Government-
17 wide Policy and Dan Ross from the Office of
18 General Counsel for conducting the training.
19 I think you just receive, I guess -- did those
20 guys do that? Good. They wrote it down so I
21 hope that came off as planned.

22 Most of all I want to express my

1 deep gratitude to each of the panel members
2 for graciously committing your time and
3 expertise to this important endeavor.

4 I think it's appropriate that we
5 meet here at the AIA because we're going to be
6 talking about the same sorts of things that
7 building design folks talk about. Structural
8 analysis, not of a facility, but of a set of
9 acquisition vehicles, design quality and some
10 possible remodeling will all be part of your
11 job. it reminds me that there are times when
12 GSA has renovate a Federal courthouse without
13 shutting down the facility. A daunting
14 challenge to say the least. Similarly, the
15 Multiple Award Schedule Program (MAS) as I
16 think everybody knows for short, will continue
17 to function as usual as you inspect, probe,
18 analyze and write your proposals.

19 So, thanks to the AIA for today's
20 meeting place and for an apt metaphor.

21 To the panel I know that your
22 final product will be carefully considered and

1 will be a great list of recommendations that
2 will help GSA best perform its core mission of
3 supplying Federal agencies with goods,
4 services and work space at best value.

5 We assembled this Blue Ribbon
6 Commission to review our GSA schedules and
7 negotiations procedures and pricing policies
8 and to provide object, definitive guidance to
9 Government clients, Government contractors,
10 Federal procurement and auditing professionals
11 and together you represent some of the
12 nation's best, brightest and most experienced
13 procurement experts.

14 Why do we take our route? I've
15 touched on this already. Very simply. No
16 single organization owns the franchise on good
17 ideas. We value expert, outside impartial
18 advice to compliment our own employees'
19 thinking and we have both on this panel. And
20 I know this group will provide just that.

21 The panel is comprised of members
22 from large and small agencies, from fast local

1 supply, acquisition operations and acquisition
2 management, from industry, from the CAO
3 Council and from the auditing and the legal
4 community.

5 I want to extend my special thanks
6 to Chairman Elliott Branch who is the
7 Executive Director for Contracts from the
8 Naval Sea Systems Command. Elliott, we very
9 much appreciate you taking this on. And to
10 our designated Federal official, Pat Brooks,
11 from GSA's Office of the Chief Acquisition
12 Officer.

13 I also want to acknowledge David
14 Drabkin, GSA's Acting Chief Acquisition
15 Officer and Jim Williams, Commissioner of the
16 Federal Acquisition Service for their help in
17 getting this panel up and running.

18 As Jim Williams has said, the
19 schedule program is a GSA success story and in
20 many ways the backbone of our array of
21 procurement vehicles. The schedules program
22 was a great idea from the very beginning. It

1 enables us to negotiate the best prices for
2 our client agencies on all the items they need
3 to fulfill their missions of service for the
4 American people. That's never more important
5 during times of national emergency and the MAS
6 Program contracts are not only used to support
7 our every day business practices. They are
8 also utilized to support emergency and
9 disaster situations.

10 Therefore, the health and well-
11 being of the program is important for many
12 reasons, but not least of these is because
13 they impact the quality and the timeliness of
14 service we provide when timeliness could
15 translate to lives saved.

16 There are currently 39 different
17 GSA schedules with more than 17,000
18 contractors. Products and services provided
19 cross just about all industries with a few
20 exceptions such as weapons for the Department
21 of Defense. GSA schedules have an enormously
22 bright future in my opinion. Revenue as I

1 said is already up again through March to a
2 new record level and this panel will help to
3 pave the way to even more impressive results
4 with policy recommendations for the next
5 decade.

6 And when I say revenue is up,
7 we're not looking for revenue to be up just
8 for the sake of revenue to be up. I believe
9 and I think many of you also share the believe
10 that the schedules are a great vehicle for
11 providing both great price and best value
12 service. And that translates eventually into
13 a better operating Government and to the best
14 value for the taxpayer. So, we're not just
15 trying to grow the business. But I believe
16 greater use of the schedules means better
17 Government and a better deal for the
18 taxpayers.

19 The panel has several goals and
20 objectives to provide advice and
21 recommendations on the pricing and price
22 reduction provisions of the MAS Program to

1 determine whether changes to these policies
2 and provisions are required or advisable to
3 insure that FAS negotiates prices that enable
4 Federal customers to award orders that
5 represent best value and result in the lowest
6 practicable cost alternative.

7 To provide a balanced assessment
8 through panel members who represent as I've
9 kind of gone over this before. Stakeholders
10 from Government and industry, agencies that
11 use the MAS Program, industry partners that
12 hold MAS Program contracts and contracting
13 officers that negotiate and award MAS
14 contracts. This process will be open and
15 transparent and the ultimate beneficiaries
16 will be our citizens.

17 While average taxpayers may never
18 know the name of this panel or its members, be
19 assured that I do and persons all across the
20 Federal procurement community do.

21 On behalf of all of us, let me say
22 that I truly appreciate your skill, passion

1 and spirit of public service.

2 Thank you all very much.

3 MS. BROOKS: Okay. Well, I would
4 like to thank you, Mr. Bibb, for coming over
5 and spending a few minutes with us.

6 Now, I would like to introduce the
7 Chairman of the Panel, Mr. Elliott Branch. As
8 Mr. Bibb stated, Elliott is the Executive
9 Director for Contracts with Naval Sea Systems
10 Command. In that position he has contractual
11 oversight over one of the nation's most
12 complex ship building and weapon systems
13 procurement programs.

14 In addition to his Government
15 service, Elliott has also been in private
16 industry. He's quite familiar with the
17 schedules program as both a user of the
18 program and in private industry with the firm
19 that also held a Federal Supply Schedule.

20 So, I turn it over to Elliott.

21 CHAIRMAN BRANCH: Thank you, Pat.
22 Mr. Bibb, thank you for coming over and

1 kicking us off this morning.

2 What I'd like to do is just go
3 around the room and have the panel members
4 introduce themselves, talk a little bit about
5 their experience and to answer a single
6 question at a fairly high level. And that's,
7 what will the success of the panel's work look
8 like when we're done? So, I will start that
9 out.

10 I'm currently, as Pat has
11 mentioned, Executive Director at the Naval Sea
12 Systems Command for Contracts, but I have been
13 in this business most of my adult life and
14 I've bought everything from asbestos handler's
15 coveralls and paper clips to submarines.

16 I spent some time in the private
17 sector working for a small services firm as
18 their director of contracts as well as a
19 practicing consultant. So, I was a consumer
20 of the schedules from that perspective. And
21 as a Government employee have been a user of
22 the schedule in my 30 years of service in this

1 profession.

2 So, I'm very, very anxious to see
3 that the work of this panel results in three
4 things.

5 The first of which is the most
6 competitive price for the taxpayer. I
7 believe, you know, when we all have that
8 visceral reaction on April 15th about our tax
9 dollars, that reaction is less visceral if we
10 believe as citizens that our tax dollars are
11 being efficiently and effectively spent. And
12 I believe that from a procurement standpoint
13 we do that when we can insure folks that they
14 are getting the most competitive prices.

15 That said, we must strike a
16 balance. Those of you in the audience who
17 represent companies or industry associations
18 are our commercial partners. And we
19 understand that we are in this with you for
20 the long haul. So, the pricing structure that
21 we talk about must result in prices that are
22 fair to you, that provide a fair return to

1 your stakeholders and your owners as well.

2 And, finally, the third and I
3 think perhaps the most important thing that we
4 can do is to make sure that the processes that
5 GSA uses to administer the schedule programs
6 are absolutely transparent to all of the
7 stakeholders, whether they be users in other
8 Federal agencies, whether they be the folks in
9 GSA who put the schedules in place, whether
10 they be the contractors who bid using the
11 schedules or whether they be the taxpayer.

12 So, at the end of the day, my
13 metric against success will be measured
14 against those three criteria.

15 And with that, I'll pass the mic
16 to Ms. Judith Nelson.

17 MS. NELSON: Good morning. Thank
18 you, Mr. Bibb.

19 My name is Judith Nelson. I
20 currently serve in the GSA's Federal
21 Acquisition Service, Office of Acquisition
22 Management as an Industry Specialist and

1 Policy Analyst. So, that puts me square in
2 the middle of the Multiple Award Schedule
3 Program.

4 Prior to coming to GSA, I spent 18
5 years in industry. And working both with the
6 multiple award schedules, primary with the
7 multiple award schedules and on the GWACs
8 side, both with GSA and other agencies.

9 And I think that if I were to say
10 what success looked like for the panel, there
11 are three things that I would look at.

12 Over the last few years, the
13 schedules program started as a product-
14 oriented vehicle and it has now become largely
15 a service-oriented vehicle. Not to say that
16 we don't have a very high level of products,
17 but I don't think that the pricing policies
18 have kept up with services and I'd like to see
19 the panel look largely and strongly at how we
20 deal with pricing and how we deal with the
21 policies around pricing and disclosures around
22 pricing. So, that would be one thing.

1 I'd also like to see some clarity
2 and goals around how GSA's procurement
3 contracting officers and agencies, customer
4 agencies, are able to look at those policies
5 to get both best cost and best price at the
6 end of the day on behalf of the customer
7 agencies and ultimately the taxpayers. As
8 well as some clarity and transparency as
9 Elliott said between what we as GSA are
10 expecting, what industry is able to provide,
11 what the customer agencies as well as the
12 oversight community, because there are
13 different things that the oversight community
14 are looking for. What GSA is looking for,
15 what the customer agencies are looking for and
16 what industry is providing up front. And I'd
17 like to see some transparency as well as some
18 concordance there.

19 MR. CHVOTKIN: Good morning.

20 I'm Alan Chvotkin. I'm the
21 Executive Vice President and Counsel for the
22 Professional Services Council. Service is our

1 middle name.

2 The Professional Services Council
3 is a trade association. We represent over 330
4 companies, all of them sell technical and
5 professional services to the Federal
6 Government and many of them are GSA Schedule
7 providers.

8 And this is going to get redundant
9 very quickly and may already be redundant in
10 terms of the views of success. But as we go
11 through changes in this 21st century, with
12 changes in the market and the marketplace, the
13 growth of service just mentioned, I think it's
14 important that the schedules programs
15 generally be the best that they can be for the
16 buying agencies, the greatest opportunity for
17 largest participation by industry and a
18 competitive marketplace and for the taxpayers
19 to make sure that there is a fair value and
20 great results.

21 It will be a real challenge. This
22 is a great set of programs, yet it has some

1 challenges today and I'm hoping that the panel
2 will be able to address those and develop a
3 set of recommendations.

4 And, Mr. Bibb, thank you for your
5 continued leadership and support for this as
6 well.

7 MS. STEPHENSON: Good morning.
8 I'm April Stephenson. I'm Director of the
9 Defense Contract Audit Agency.

10 I've been in the auditing
11 community since graduating college, so I've
12 had over 21 years with DCAA. I started out as
13 an auditor trainee and worked my way up
14 through various positions, including most
15 recently being the Deputy Director and now
16 Director.

17 I do appreciate the opportunity to
18 serve on this panel and I appreciate the
19 invitation from GSA.

20 As far as success of this panel
21 it's going to be multi-faceted, I believe.
22 But I think at the end result we need to have

1 fair and reasonable prices for our customers
2 and for the taxpayer. And I think to get
3 those fair and reasonable prices and to insure
4 that we've got a process for that, we need to
5 hear from all stakeholders, not just industry
6 but from Government organizations as well.
7 What's working, what's not working, what can
8 we do better.

9 Then based on those oral comments
10 and written comments that may be given to the
11 panel, we need to do data analysis ourselves
12 to really develop sound conclusions. Oral and
13 written comments may not be enough. Perhaps
14 that's the auditor in me, but I always feel
15 that data analysis and really peeling back the
16 various different parts of this and really
17 getting to root causes of issues to develop
18 sound recommendations will be very important
19 for the panel.

20 MR. PERRY: Good morning,
21 everyone.

22 Thank you, Pat and Mr. Bibb and

1 GSA for asking me to be part of the panel.

2 I'm from the Department of
3 Education and I can say that I've been proudly
4 part of the Federal acquisition work force for
5 quite a number of years.

6 And when I went back and looked at
7 the history of layout, going back over the
8 last 20 years or so, from my viewpoint as a
9 customer agency of GSA, always have seen an
10 evolution of the use of the schedules from
11 what it was in the '80s to what it is now as
12 a fairly significant integral part of the
13 agency's ability to partner with industry to
14 get our work done.

15 To my purpose for our agency, it's
16 well over a third of our business
17 relationships up through the Multiple Awards
18 Schedule contracts. So, I have a great
19 interest in making sure that it works for both
20 our employees, works for the agency and works
21 for industry in order to get our work done and
22 meet our mission.

1 I also bring to the table as part
2 of the leadership of the team of the Chief
3 Acquisition Office's Counsel, my interest on
4 behalf of all agencies to make sure this works
5 well. And I think there are some things that
6 we could do.

7 We can suggest and recommend, I
8 think, a success from the panel to help that
9 work, to make sure the schedules work the best
10 they can in the 21st century based on the
11 things that we're using them for in order to
12 get our work done.

13 And I look forward to the
14 experience.

15 MR. SHARPE: Good morning. My
16 name is Tom Sharpe. I'm Senior Procurement
17 Executive, Department of Treasury.

18 My background includes about 15
19 years with the Federal Government and a decade
20 with IBM, all of it acquisition and
21 procurement.

22 I'm pleased to help GSA. I look

1 forward to participating on the panel to
2 improve the value of the Multiple Awards
3 Schedules to the Departments and to the
4 taxpayers, particularly focused on services.

5 Treasury is a large user of MAS.
6 About 28 percent of our spending goes through
7 GSA.

8 MR. DRABKIN: Good morning, boss.
9 Thanks for appointing me.

10 I'm David Drabkin and I'm the
11 Acting Chief Acquisition Officer for GSA.

12 I look for success in helping us
13 deal with an issue which no matter what we do
14 will be controversial.

15 Pricing on the GSA Schedules,
16 pricing of Government contracts no matter
17 vehicle it's on, particular in a time of war
18 and an economic downturn, is always
19 controversial. There are those that believe
20 the Government should be the absolute lowest
21 price that's available in the marketplace and
22 others who believe that the Government ought

1 to get prices commensurate with how the
2 Government buys.

3 Whether changes are appropriate to
4 the GSA schedule pricing policies is what this
5 panel ought to recommend. And if changes are
6 appropriate, then what we need from the panel
7 is a basis for making those changes.
8 Empirical matters, whether it's peeling back
9 the numbers or other matters that form a basis
10 for making those changes. And then
11 recommendations for what those changes would
12 be, whether we do it unanimously or whether we
13 have divided opinion or whether we have
14 alternative suggestions. And because our
15 office and Mr. Bibb will be left to making
16 changes if changes are appropriate when the
17 panel is done and we'd certainly like to have
18 a package that will at least help address the
19 controversy that will come no matter what
20 changes or if we don't make changes occurs.

21 MS. JONES: Good morning,
22 everyone.

1 I'm Jacqueline Jones. I'm from
2 upper Washington with Region 10 of GSA.

3 I've spent 20 years with GSA in
4 the schedules program and as our partner here
5 from the Department of Education stated, I
6 seem them evolve and come a long way.

7 I began in the single award
8 schedules when we had those, based on awarding
9 requirements type contracts to products and
10 how we evolved in the services arena.

11 It's been a very good program. It
12 continues to evolve and I believe that we can
13 evolve and even go further in meeting the
14 needs of our customers.

15 The things that I would like to
16 see as an outcome for this panel is to
17 recommend a pricing policy that's transparent
18 to both industry and contracting officers
19 within GSA.

20 Number two to leverage our buying
21 power. We spent millions and billions of
22 dollars acquiring services and products for

1 our customer agencies and I believe as a
2 single customer we can leverage our buying
3 power accordingly.

4 And I would also like to see
5 consistent policies for the COs when
6 evaluating pricing and awarding contracts. I
7 would like to see some consistency in those
8 policies and practices.

9 And I believe as we work to
10 develop a recommendation as a panel for moving
11 forward with the pricing policies as it
12 relates to the most favorite customer in the
13 schedules program, I believe that we will be
14 able to come up with a recommendation that
15 meets the needs of all stakeholders.

16 MR. ALLEN: Good morning.

17 I'm Larry Allen. I'm President of
18 the Coalition for Government Procurement. The
19 coalition is a nonprofit association of some
20 370 companies that sell commercial services
21 and products to the Federal Government.

22 Our members come from all walks of

1 the GSA and VA Multiple Awards Schedule
2 programs. So, we bring with us a very broad
3 depth of understanding of the program from
4 across it's many spectrums.

5 I've been with the coalition for
6 18 years in various capacities. And proud to
7 work on this panel on making the schedules
8 program the best it can be.

9 In terms of what I'm looking for,
10 I think it's important that this panel come up
11 with actual actionable recommendations that
12 will keep the schedule program at the
13 forefront of the Government's commercial item
14 and service acquisition scheme.

15 Things like looking at the clauses
16 that make up the programs to see whether or
17 not they make sense in a 21st Century
18 marketplace, both commercial marketplace and
19 a Federal marketplace.

20 I think that it is appropriate to
21 look at everything that goes into making up
22 the schedules program today. And as Ms. Jones

1 to my right said, consistency in application
2 is also a hallmark and that's difficult for a
3 panel like this to execute. But if we are
4 clear in our recommendations and they are
5 actually acted upon, then I think we can go a
6 long way towards removing some of the
7 confusion that today exists. Streamline the
8 program itself, insure some reasonable
9 compliance along the way and end up with a
10 program that continue to delivery great
11 values.

12 MS. THOMPSON: Good morning.

13 I'm Thedlus Thompson. I'm the
14 Senior Assistant General Counsel with GSA, the
15 Office of General Counsel.

16 And for the last 10 years of my
17 career with GSA I've really been steeped in
18 MAS issues, whether it's policy, regulation,
19 translational issues or protests.

20 Currently, I provide counsel to
21 the FAS policy offices. I also work with the
22 Office of Chief Acquisition Office in terms of

1 regulations. I've also provided counsel to a
2 couple of different schedule, 36 and 70.

3 I also provide counsel to our
4 Office of Small Business and needless to say
5 I've also defended numerous protests over the
6 years.

7 What I would like to see from this
8 panel is just to insure that MAS pricing
9 continues to meet our statutory authority
10 which is to provide contracts and orders that
11 result in the lowest overall cost alternative.

12 MS. SONDERMAN: Good morning.

13 I'm Debra Sonderman. I'm the
14 Director of the Office of Acquisition and
15 Property Management and the Senior Procurement
16 Executive for the Department of the Interior.

17 I've been at Interior for more
18 than 10 years and prior to that worked at the
19 Department of Treasury for 10 years. Did a
20 short stint at Navy and prior to that the
21 Small Business Administration, all in
22 procurement-related positions.

1 Like others on the panel, over the
2 last 10 years, I have watched use of the
3 schedules program increase fairly dramatically
4 within the acquisition process at Interior.
5 So, that last year, awards against schedules
6 accounted for about 40 percent of the dollars
7 that we awarded from Interior, both for our
8 own internal customers and for agencies where
9 we do assisting agency procurements.

10 So, this is tremendously important
11 for us as an agency and I think for the
12 Government as a whole.

13 Pricing against the schedules is a
14 point of frustration for contracting officers,
15 for contractors, for program managers and, of
16 course, for the oversight organizations who
17 seem to frequently come in after the fact and
18 look at either our documentation or the way we
19 described the process and question our
20 contracting officers about whether they
21 actually did receive the best value or the
22 best price for the Government.

1 And so I think my hope for this
2 panel is that we will be able to, in addition,
3 I love the idea of consistency. That would be
4 -- that would be fabulous if we are able to
5 actually come up with recommendations related
6 to that. But we need practical suggestions on
7 how our contracting officers, not just GSA
8 contracting officers, but the contracting
9 officers in the customer agencies so that they
10 can execute orders and actions against
11 schedule contracts in a way that insures that
12 there is better transparency about the process
13 for everybody who is involved and that we
14 actually do feel confident that we're getting
15 good value for the taxpayer.

16 MR. ERICKSON: Good morning.

17 My name is Don Erickson. I'm
18 Director of Government Relations for the
19 Security Industry Association.

20 I came on this panel from a little
21 bit of a different perspective. I spent
22 several years working on Capitol Hill on

1 Government reform issues. Then went into the
2 IT community working for a large manufacturer
3 and now represent about 400
4 manufacturers/integrators of electronic
5 physical security equipment.

6 And I think it would easier for me
7 to say that my colleagues have stolen my
8 thunder as the final panelist here. But I
9 suppose thinking about their recommendations
10 and my own and their expectations, what comes
11 to mind perhaps is the hippocratic oath. And
12 it's do no harm. Do no harm to Government
13 users of the schedules program, do no harm to
14 the contracting community, do no harm to
15 taxpayers and perhaps most importantly, do no
16 harm to the principle of competition and fair
17 and reasonable pricing.

18 So, I want to thank Administrator
19 Bibb for allowing me to be on this panel. I'd
20 like to than my colleagues for the opportunity
21 and look forward to working with all of you.

22 CHAIRMAN BRANCH: I would like to

1 thank all the panel members for those opening
2 statements and I think I hear some themes
3 emerging here, if I can just summarize.

4 I think perhaps the most important
5 thing that we can do as a panel is to bring
6 back to the Administrator and the acquisition
7 policy makers in GSA are actionable
8 recommendations. So, we will strive to bring
9 them back them back things that can actually
10 be architected and implemented to make the
11 schedules more efficiently.

12 I also have heard several themes
13 sounded here that these schedules need to be
14 workable. So, they need to be usable by
15 industry, by various Federal agency
16 contracting officers, by the administration
17 themselves in their practice and operation.
18 And one of the key pieces of that is the idea
19 of clarity. And that's clarity in operation
20 so that we get consistent application of
21 scheduled guidelines from the schedule program
22 down to the contracting officer in the most

1 remote outpost of the Federal Government if
2 you will, as well as a clarity in structure.
3 So that both Government and industry
4 understand how the schedules work in a way
5 that's very transparent.

6 And finally an idea that we should
7 achieve fair and reasonable pricing consistent
8 with the changes in the dynamics of the
9 schedules as they are used for the 21st
10 century. I think it was raised and quite
11 aptly that the schedules program really
12 started out as one for goods more than
13 services. But as we have reshaped the way
14 Government operates, services have become a
15 significant if not the predominant thing that
16 we purchase from the schedule program.

17 So, hopefully, you've heard from
18 the panel members with respect to their
19 expectations grouped around several broad
20 themes. But at the end of day what we hope to
21 produce is actionable.

22 I'd like to turn to a little bit

1 of administrative business if I can. Both
2 handed out to the panel members and I believe
3 available to the public were a couple of
4 documents. Our Advisory Charter as well as
5 the by-laws for the operation of this panel.
6 So, if we could take just a very, very quick
7 look at the charter, I think it's very useful
8 for us to establish up front exactly what the
9 scope of this panel is.

10 And this panel has been chartered
11 to look at a very, very particular set of
12 schedule issues. And to quote from the
13 charter. Specifically, we will review the
14 most favored customer provisions and the price
15 reduction policies and provisions in the
16 context of current commercial pricing
17 practices.

18 Some necessary conditions to that
19 I believe are cited in the last couple of
20 lines of the charter that we have to satisfy
21 competition requirements, protect the best
22 interest of the Government to make sure that

1 we're operating in the context of an
2 acquisition system that has integrity, as well
3 as promoting the effective, efficient and fair
4 award and administration of Multiple Award
5 Schedule program contracts.

6 So, this is our charter. Our
7 scope for the work of the panel for the next
8 few months.

9 Does anyone have any questions or
10 is there any discussion with respect to our
11 scope?

12 Okay. Hearing none, let me move
13 on to our by-laws.

14 I believe everyone has a copy of
15 the by-laws.

16 We stated Purpose of the Schedule.
17 We covered that in the charter so I won't go
18 over that again. I will remind folks that
19 this panel is constituted pursuant to the
20 authority of the Federal Advisory Committee
21 Act. The charter filed with the Congress on
22 April 14th of this year, and that we will

1 report to Mr. Bibb as the GSA Administrator.

2 The panel has approximately 15
3 members, 11 of whom are from Government
4 agencies, 4 who are citizen representatives of
5 the panel. Most of us are here today absent
6 Mr. Essie who had pressing business at
7 Homeland Security and Ms. Scott from GSA.

8 You've heard from Pat Brooks. Pat
9 is our DFO, so she is the convener for our
10 advisory committee. That means that she will
11 approve the agenda for all of our meetings,
12 provide administrative support, and publish
13 all meeting notices. So, the ground rules for
14 this are any panel member should contact Pat
15 if there are topics that they would like to
16 suggest for our meetings, as well as the
17 general public.

18 The general public may suggest
19 things for the panel to deliberate on and they
20 should do that through the designated Federal
21 official.

22 You know, if you look at the idea

1 of dyads, there are a number of us on these
2 panels and to plug into any of the panel
3 members individually, the mathematics gets
4 combinatorial. So, I would ask everyone to
5 get any of their inputs, whether they be panel
6 members or members of the public to Ms.
7 Brooks.

8 We are doing transcripts --
9 verbatim transcripts of this panel. So, Pat
10 will be responsible for assuring that those
11 transcripts are reproduced and they are public
12 documents. So, they will be available.

13 This panel is one that will work
14 on the principle of open meetings. And there
15 will be no executive sessions for us. We will
16 publish those meetings in advance and we had
17 a discussion this morning with respect to
18 ground rules and be assured that the panel
19 will not deliberate virtually. There will be
20 no e-mail exchanges amongst us that would more
21 appropriate take place in the public forum.

22 In the event that we might want to

1 hold a closed meeting due to proprietary
2 material or sensitive material we will not do
3 so unless we request and obtain the approval
4 of the Administrator of GSA. So, there will
5 be no closed meetings unless there are
6 extraordinary circumstances that occur. I
7 don't imagine that we will be in a situation
8 where we will hold many closed meetings. This
9 is too important an issue I believe to the
10 stakeholders to close discussion, to have
11 discussion from plain view.

12 When we deal with recommendations,
13 we will disposition those by vote. It is my
14 firm hope and conviction that given the
15 consistency with respect to outcomes, that we
16 can reach a consensus on the recommendations
17 to be given to the Administrator. But in the
18 event that we can't, there will be some
19 transparency with respect to the different
20 points of view on the panel.

21 My role as Chair is really to work
22 with the designated Federal official, Ms.

1 Brooks, with respect to scheduling topics for
2 the meeting to make sure that our
3 deliberations are structured and profitable.
4 So, I will be taking on that role.

5 Ms. Brooks will be our convener as
6 I said and to provide staff support.

7 We had a little FACA training this
8 morning and I say this for the benefit of the
9 public because I think this is very important.

10 Everyone on the panel is serving
11 as a volunteer. So, our agencies are bearing
12 the cost and time and effort to get us here.
13 Those who are representing industry
14 associations have graciously donated their
15 time and resources to serve on this panel on
16 what I think is a very, very important issue
17 in Government acquisition today.

18 So, I would like to thank my
19 fellow panel members for giving up the time
20 and putting the effort into our deliberations,
21 but essentially this panel has no budget, will
22 run for no expenses.

1 Now, as we start to understand the
2 issues, inherent in considering the Price
3 Reduction Clauses and the other pricing
4 mechanisms and multiple award schedules, we
5 may decide to break up into subcommittees to
6 again, if you will, make the work of the panel
7 more effective. But if we do so, then it's my
8 expectation that those subcommittees would
9 report out at our public meeting.

10 So, is there any questions or
11 discussions on the by-laws by which this
12 advisory committee will be governed?

13 MS. STEPHENSON: Elliott, I just
14 have a question on the voting. When you said
15 it's consensus, are you envisioning that with
16 the 16 panel members, 9 members would be the
17 majority and that everyone else would have
18 their views given as either a dissenting or
19 just alternative views?

20 CHAIRMAN BRANCH: Absolutely.
21 Absolutely.

22 So, we will form consensus by

1 vote, if necessary, with ample opportunity for
2 those who have an alternative point of view
3 given an opportunity to express those into the
4 record.

5 MS. BROOKS: I am not -- make one
6 correction. I am not a voting member of the
7 panel.

8 CHAIRMAN BRANCH: Okay. Other
9 questions, comments on the by-laws?

10 Okay. I think we have one other--
11 we are ahead of schedule which is where
12 acquisition people like to be.

13 So, I think we're going to deal
14 with one other administrative issue and then
15 we will break for lunch.

16 Pat, the issue is scheduling
17 meetings?

18 MS. BROOKS: Yes. I had asked all
19 of the panel members here to look at your
20 calendars. One of the requirements for these
21 meetings is that we must give the public 15-
22 days advance notice.

1 Our next meeting is scheduled for
2 May 22 over at the GSA Auditorium. Given the
3 audience, public participation and everybody's
4 schedule, we wanted to -- I wanted to get some
5 tentative dates for meetings after May 22nd.

6 What we had anticipated when we
7 initially set up the meeting is that -- I'm
8 sorry, set up the panel, is that we would like
9 to have meetings every couple of weeks. That
10 may not be possible given the issues and the
11 kind of background, research that may be
12 required by me and, you know, of the panel
13 members. But I would like to get some dates
14 now so that I can look at finding a place as
15 well as doing the Federal Register,
16 appropriate Federal Register notices.

17 MS. STEPHENSON: Ms. Brooks, I
18 just had a suggestion that Mondays seem to be
19 -- Monday mornings seem to be a good time. I
20 know a lot of people on the panel may have
21 travel plans for the rest of the week.
22 Certainly for me, I would prefer Monday

1 mornings.

2 I've got several dates. I didn't
3 know if you wanted each one of to go through
4 the dates for maybe June, July and August that
5 we're available?

6 MS. BROOKS: I would suggest
7 throwing out a couple of dates so that at
8 least we can all agree here what the potential
9 dates may be for June and July, recognizing
10 that there is vacation time coming up during
11 that time period.

12 MS. STEPHENSON: For me, Monday
13 mornings are best. Any date, June or July I'm
14 open except for the first week in June.

15 MS. BROOKS: Okay.

16 MS. NELSON: Are we anticipating
17 that the further meetings are going to be full
18 day or --

19 CHAIRMAN BRANCH: I think it
20 really -- at this point I think it depends on
21 the scope of the issues that we hear. And
22 then I think we'll have a better sense of that

1 this afternoon.

2 So, what I'd like to do is at
3 least schedule the next couple of meetings to
4 be full-day meetings. And as we kind of parse
5 the issues and decide how we're going to
6 tackle them, I think we've got some
7 flexibility with respect to adjusting both the
8 duration and frequency of the meetings.

9 MR. ALLEN: Just to follow up on
10 Mr. Stevenson's comment.

11 Most Mondays seem to work for me
12 for June and July. That seems fine. My
13 staff, however, is now cringing down the
14 street as I've just said that, but there you
15 have it.

16 CHAIRMAN BRANCH: Okay. Do we
17 have a sense that Monday meetings will work
18 for most folks? Or is there an alternate date
19 someone would like to suggest?

20 MS. NELSON: Jackie, is travel a
21 problem for you for Monday mornings?

22 MS. JONES: No. I can fly in on

1 Sunday.

2 MS. BROOKS: Okay. Then how about
3 then the next meeting. It's May 22nd. The
4 following meeting would be Monday, June 9th.

5 MS. JONES: I'm not available that
6 day, Pat.

7 MR. ERICKSON: Pat, I may have a
8 conflict that same day, the 9th.

9 MS. STEPHENSON: For me actually
10 it's the 16th on is probably best.

11 MS. BROOKS: Okay. So, Monday,
12 the 16th?

13 MR. CHVOTKIN: Sure.

14 CHAIRMAN BRANCH: Okay. Yes.
15 That's fine.

16 MS. BROOKS: Okay. After again
17 you look at your calendars, then do go ahead
18 and send me recommendations for some dates
19 after the 16th. Then I will look at the
20 availability and see what the most popular
21 date is and then send the announcement out
22 accordingly.

1 CHAIRMAN BRANCH: What I would
2 like to see us do then for the next meeting
3 having received some public input at this
4 meeting, would be to be ready to engage in a
5 discussion of the types of issues we believe
6 we must discuss to make recommendations to the
7 Administration, as well as suggestions as how
8 we might attack that work.

9 Given that outcome at the next
10 meeting, I think we can best determine a
11 rhythm for a meeting in both terms of
12 frequency and duration for the rest of the
13 life of the panel.

14 So, I'll ask that we all come on
15 the 22nd of May ready to talk about some of
16 the issues that we think are central to
17 providing GSA recommendations and how we might
18 wish to attack that either as a body or in
19 subcommittees, the need to obtain expert
20 testimony, if you will, from other parties and
21 so forth.

22 MR. ERICKSON: Elliott, just a

1 question on establishing work groups.

2 Would those be established by
3 consensus is that something you have the
4 authority just to create?

5 CHAIRMAN BRANCH: Well, I believe
6 that we operate more effectively when we put
7 people who have energy around questions. So,
8 I would hope that we could establish those
9 work groups by consensus. It's not my
10 intention to create a committee structure and
11 assign folks to look at various tasks or even
12 to necessarily break us up into subcommittees.
13 So, hopefully we would come to agreement of a
14 plan of attack for this work.

15 Are there any other questions or
16 comments with respect to logistics?

17 MS. JONES: I have a question,
18 Elliott.

19 In terms of you said come prepared
20 to discuss the types of issues. Are you
21 talking about problem areas or setting the
22 groundwork in terms of authorities. I need a

1 little bit more clarification.

2 CHAIRMAN BRANCH: Okay. This is
3 what I would like folks to be ready to discuss
4 at the next meeting.

5 I think it's very important for us
6 to determine if there is a problem statement.
7 I say "if" because I think we owe it to the
8 Administrator and the public to keep an open
9 mind about the effectiveness of current
10 operations. So, let's come prepared to talk
11 about whether there is a problem statement
12 and, if so, what it is. To talk about the
13 constraints that any set of solutions may have
14 to address. And to be ready to talk about
15 what issues we would have to consider in
16 addressing the problem statement, given the
17 constraints and some ideas about the plan of
18 attack as to how we might address those
19 issues.

20 MS. JONES: Thank you.

21 CHAIRMAN BRANCH: Other questions
22 or comments from the committee?

1 MR. PERRY: Just a comment on the
2 timing of the meetings.

3 I would say that I would like to
4 see us do what you suggested on the 22nd and
5 then try to get also before we start getting
6 into the summer to get as much -- have the
7 opportunity to get as much input from the
8 public on those areas for the -- all we can.
9 At least try to get together a couple of times
10 in June so we can get that data so then we can
11 then go back and then start to deliberate on
12 the data that it's being presented to us.

13 CHAIRMAN BRANCH: Okay. Point. I
14 think a point well taken, Glenn.

15 Do we have the ability to solicit
16 comments in the Federal Register?

17 MS. BROOKS: It's in the Federal
18 Register notice for each meeting. It does
19 provide the guidance for the public to be able
20 to present. It asks them to notify me, you
21 know, with the request for the presentation.

22 And if you'll look at today's

1 agenda, we do have a couple of people on
2 there. But, again, because of -- we had some
3 additional time for this meeting with the
4 cards that I talked about earlier. We will be
5 able to take some additional presenters this
6 afternoon for people to make comments or to,
7 you know, raise issues for the panel.

8 I look to that process to be the
9 main process to get the public views before
10 the panel. So, I'm anticipating that in the
11 future meetings that we will have a lot more
12 from that.

13 Plus there are also other -- if
14 there are recommendations for even people from
15 the other Government agencies, some of our
16 customer agencies, to do presentations also,
17 please have them contact me.

18 CHAIRMAN BRANCH: Other questions
19 or comments?

20 MR. CHVOTKIN: Mr. Chairman,
21 being mindful of what Ms. Stevenson suggested,
22 maybe this afternoon if at all possible, even

1 as early as this afternoon, we might have a
2 few minutes to discuss the data collection
3 that we might look for and types of
4 information that would be helpful. And then
5 get that process underway whether they are
6 requests from GSA or other Federal agencies
7 for that kind of data. I think that would be
8 very valuable to have whatever we can have
9 available to us by the 22nd. That will help.

10 CHAIRMAN BRANCH: Okay.

11 I think we have time in the
12 schedule to accommodate that. So, we should
13 be able to do that this afternoon.

14 Any other questions or comments?

15 Okay. Hearing none, we are at
16 about 11:00. A little ahead of our schedule.
17 So, in order not to disrupt the flow of public
18 presentations this afternoon, we will take an
19 extended lunch hour and we will be back here
20 at 1:00 to begin an overview of the Multiple
21 Awards Schedule Program.

22 Thank you.

1 (Whereupon the hearing was
2 recessed at 11:03 a.m., to reconvene at 12:59
3 p.m., this same day.)
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1 card and pass that to me, so when we get to
2 that point then I will call out the name and
3 the organization and then you could come up
4 and make your comments or raise your issues at
5 that time.

6 I think the index cards are also
7 on the table outside where you picked up the
8 material.

9 Okay.

10 For the beginning of the afternoon
11 session I'd like to introduce Mr. Robbin
12 Bourne.

13 Robin is with the Federal
14 Acquisition Services. He's the Director of
15 the Policy Implementation Branch. And we
16 asked Robin to give us kind of a history and
17 evolution of the Multiple Awards Schedule
18 Program.

19 I think he's going to go through
20 from the initial 1982 policy up to where we
21 are now. He has said for the panel members
22 it's up to you. You can ask questions during

1 the presentation or wait until the end. He's
2 willing to do whichever or what you would like
3 for him to accommodate.

4 Okay. Robin.

5 MR. BOURNE: Thank you, Pat.

6 Well, good afternoon.

7 Thanks for having me here. As Pat
8 said, I'm going to try to go through sort of
9 the history of the schedules.

10 I think the panel members got last
11 week sort of a summary of what's taken place
12 over the last 58 years. And it's also
13 available out on the table I saw.

14 I'm going to speak to some notes
15 that are hopefully a little briefer and touch
16 on what I think are the highlights during the
17 course of that time.

18 And as Pat mentioned, if you got
19 questions, panel members, if you feel it's
20 important it's often times better to address
21 them at the moment while we're in the context
22 of that topic.

1 Anyway, the Schedules Program was
2 actually established in 1950, a year after GSA
3 was established. At the time, it was the
4 focus on commercial products and associated
5 maintenance. They were both single award and
6 multiple award contracts. And as it is now,
7 it's really -- it's a two-step process.

8 GSA establishes the base contract
9 vehicle which is referred to us as Schedule
10 Contract. And the ordering activities
11 complete the process by going out with
12 requests for quotes for their requirement and
13 establishing competition at the task order
14 level where the rubber meets the road. That's
15 really where it takes place.

16 The value at the outset and
17 continues to be lowest overall cost to meet
18 the needs of the Government. Today it's often
19 times referred as best value evaluation.

20 Back when I started and I think at
21 the outset, although I did not start at the
22 outset, there were set offer closing dates,

1 meaning that there was -- the solicitation hit
2 the street, there was due date and late was
3 late. So, an offer didn't get in there, then
4 they were out for that contract period which
5 at the time were one-year base period, I
6 believe, and two option years.

7 A lot of agencies actually signed
8 up in a fashion that the schedules at that
9 time were mandatory use for those agencies
10 that agreed to that.

11 And at that time they were also
12 required to order the lowest price that met
13 their needs. So, not quite to the lowest
14 overall cost at the very outset. But the
15 lowest cost to meet their needs. Which at
16 that point, again, focused on low price as
17 opposed to overall cost where we are today.

18 And as of now for the products, it
19 was a firm fixed price contract type. Today
20 we also have labor, hour, time and materials
21 available for services where a justification
22 has been provided.

1 So, we jump sort of just a quick
2 32 years to the MAS Policy Statement of 1982.
3 I think the critical thing in that policy
4 statement was the way in which GSA negotiated
5 prices and there was a discount sales and
6 marketing data sheet that had to be filled out
7 by the offeror having to provide on at least
8 the top 10 products being offered, a breakdown
9 of the sales, both standard sales and
10 nonstandard. Standard being those that were
11 sold pursuant to a published price list and
12 the policies that were set forth within that
13 price list. And the nonstandard sales were
14 those that deviated from those policies.

15 In 1990, a mass improvement
16 project was initiated, was headed up by
17 Carolyn Alston who at the time was with the
18 Office of Acquisition within the Federal
19 Supply Service, having come over from the
20 Office of the General Counsel.

21 And that resulted in a slight
22 revision to the DSMD and I think there was

1 less focus on the 75/25 rules which was where
2 75 percent of the sales had to be at the
3 published or policy-driven price as opposed to
4 the -- it allowed 25 percent to be at the
5 nonstandard level.

6 In 1994, there was a significant
7 change where all of the schedules became
8 nonmandatory. A lot of people, I think,
9 thought well that will be the death of the
10 Schedules program because people have always
11 felt that the pricing was suspect. I would
12 say that they didn't understand the pricing an
13 dhow to use the vehicle. But the schedules
14 actually flourished after 1994. Sales jumped.

15 1994 to 1996 time frame we also
16 had FARA/FASA became known as Clinger-Cohen.
17 There we had a revision or an overhaul of 1982
18 mass policy statement.

19 A couple of the big changes were a
20 change in the Price Reduction Clause. Up to
21 that point the Price Reduction Clause really
22 has sort of two prongs. There's an internal

1 or contractor facing prong where when GSA
2 negotiates the pricing, they tie the pricing
3 to a particular customer or class of customers
4 that deemed to be the basis of award customer.

5 Any reduction in pricing to that
6 identified customer subsequently during the
7 course of the contract would have resulted in
8 that becoming the new GSA -- and jumping into
9 another area.

10 Any reduction to pricing to that
11 customer results in a change to the GSA
12 Schedule price that mirrors. So, if we start
13 off here or here or equal, any reduction you
14 go down accordingly.

15 The second prong is the one facing
16 Government sales. And prior to 1994/1995 the
17 price reduction clause impacted sales such
18 that if a contractor sold to the Government at
19 a lower price and this is whether or not they
20 sold on a vehicle or outside the vehicle. If
21 they sold to the Government, now this is on
22 the vehicle. Sales through the schedule at a

1 lower price resulted in that being the new
2 schedule price. So, what you had was a
3 scenario where really any large sale where in
4 the open market competition would have driven
5 the prices down, that really drove the sale
6 outside of the Schedules program and hence the
7 Schedules was largely a small purchases arena
8 prior to 1994 because of that price reduction
9 implication on the Government sales through
10 the vehicle.

11 At that time also there was
12 another significant change, at least in the IT
13 industry. Prior to that time any sale in the
14 IT schedule in excess of \$50,000 had to be
15 synopsisized. Once again, the result in that
16 case was that someone would come in saying,
17 I've got a better price, better product. I
18 don't have a schedule, so the Government buyer
19 would have to go full and open, gain, driving
20 sales off the schedule into the open market
21 which was a longer term process, more
22 resources, more time for both the Government

1 parties and the industry partners.

2 In the end of 1994 with FARA/FASA
3 the FAR was actually changes to emphasize
4 acquisition of commercial product services in
5 a manner consistent with commercial practice.
6 Again, the focus was on best value and
7 awarding task and delivery orders. The focus
8 there is to consider non-price factors
9 impacting overall cost.

10 In '95, Industrial Funding Fee was
11 implemented. That was really a switch for
12 GSA, rather than being appropriated in those
13 area managing the schedule in a lot of other
14 GSA areas. They became self-supporting so
15 there was at the time a one percent Industrial
16 Funding Fee embedded in the Schedule price
17 after negotiation and that was what paid the
18 salaries of those people managing the program.

19 In '95, the maximum order
20 limitation was removed. That's an incredibly
21 significant event. Prior to that, one friend
22 of mine used to refer to it as the customer

1 going down the aisle at K-Mart and being told
2 by the clerk. Sorry, you got to stop shopping
3 here. You have to go over to Walmart or
4 Target. You can no longer get anymore
5 products. You've exceeded the amount you can
6 buy here.

7 With the lifting of the maximum
8 award limitation or the elimination of it, you
9 still have the maximum order threshold. The
10 reason that's significant is because of the
11 maximum order of threshold sometimes important
12 in implementing the price reduction clause as
13 it affects commercial sales. It's been a
14 long-standing understanding that commercial
15 sales that are firm fixed price, above the
16 maximum order with specified delivery dates
17 and such does not trigger a Price Reduction
18 Clause in those contracts. There may be some
19 that have a different establishing rules and
20 that language might not apply the same way.
21 But for the most part, that's the significance
22 of the maximum order at this time.

1 Also in this '94/'95 time frame in
2 the fall of '95, the IT acquisition center
3 which had been part of what's now ITS, the
4 Information Technology Service. At the time
5 it was IRMS. Moved over and joined the
6 Federal Supply Service once again as it had
7 been, I think, back in the early '70s.

8 So, n w all of the schedules
9 managed by GSA were part of the Federal Supply
10 Service. I'll touch on that later. They're
11 also Federal Supply Service for medical
12 supplies and services which are managed by the
13 VA pursuant to a delegation from GSA.

14 Again, part of FARA/FASA was the
15 elimination of the discount sales and
16 marketing data replaced by the commercial
17 sales practices format. This no longer had
18 the 75/25 standard -- nonstandard rule and
19 moved to a scenario where we were looking at
20 essentially how the vendor or contractor went
21 to market commercially. We wanted to see all
22 of their commercial sales practices, how they

1 take, regardless of the customer.

2 We look at that snapshot and make
3 a determination as to what is an appropriate
4 target for the GSA Schedule price to come up
5 with a fair and reasonable price
6 determination?

7 Again, some features that came
8 into play in the mid-1990s. Contractor team
9 arrangements. This provided an opportunity
10 for those vendors or contractors who did not
11 have a solution encompassed in their own
12 schedule, they could team with others to
13 provide a response to a requirement that did
14 meet the needs -- the entire needs of the
15 Government office that was issuing the request
16 for quote.

17 So, it enabled the contractors to
18 operate much as they do in the commercial
19 marketplace.

20 Also, blanket purchase agreements.
21 This was a method by which the Government
22 buying activity if they knew that they were

1 going to have a requirement by its nature was
2 going to either be recurring over time or they
3 knew that they could aggregate requirements
4 over a period of time and go after them at one
5 time to gain better pricing impact.

6 They would do they. They would go
7 out to industry with a request for quote and
8 came in they were going to establish a blanket
9 purchase agreement for those products or
10 services that would extend over a period of
11 time. Which they would go out in that process
12 competitively but it would allow them to
13 establish either a single or multiple award
14 BPAs and then purchase directly off of those
15 BPAs.

16 In the single award case there
17 would obviously be no further competition
18 unless they chose to do so. They don't have
19 to use the BPA.

20 In the multiple award situation
21 they can set up the rules and tell the vendors
22 how they're going to operate. And I would

1 imagine in most cases in multiple award
2 scenario, they do compete each requirement but
3 they don't necessarily have to. Again, they
4 want to tell the vendor community how they're
5 going to operate when they establish the BPA
6 and then follow through and do that.

7 1997. Small business goals could
8 be achieved and counted when purchases were
9 made against the Schedule.

10 Also in '97, variable contract
11 periods came into play. I mentioned before
12 there had been the issuance of the
13 solicitation of a fixed date, a due date and
14 then a fixed contract period. All the
15 contracts died on the same day.

16 Variable contract periods resulted
17 in standing solicitations, always open.
18 Vendors could come in at anytime. Also moved
19 into an environment where modifications were
20 available for the contractor community to come
21 with it at anytime which resulted in there
22 always being fresh and new, latest and

1 greatest technology and products available on
2 the Schedules.

3 It also eliminated a practice that
4 had been in place, I think mainly in Federal
5 Supply Service prior to the IT center coming
6 over. But referred to as bake-offs where they
7 didn't have multiple suppliers of the same
8 identical product. They would actually sort
9 of have a price competition amongst those
10 offering the same products and then choose
11 one.

12 In '98, Worldwide Coverage was
13 introduced. Prior to that you'd had
14 essentially a national contract, 48 states,
15 D.C. and maybe Alaska and Hawaii and there had
16 also been an international Schedule. So, that
17 was a separate Schedule for all those vendors
18 who chose or would like to offer their
19 products or services beyond the continental
20 U.S. to the OCONUS community.

21 With the change, all of the
22 Schedules introduced a special item number

1 where they could just change the scope of
2 their base contract to include overseas
3 market.

4 In '98, the purchase card of
5 credit card was introduced. All Government
6 activities were starting to issue those cards
7 to buyers, some at fairly large limits. The
8 Schedules did at the time and still do have a
9 requirement that contractors must accept the
10 Government credit card below the purchase
11 threshold. It's their choice above it.

12 Well, over let's say, over a six-
13 year period in the late '90s and finalized in
14 2004, we had the whole phenomenon of adding
15 services to the Schedules Program. It really
16 began and this is professional services and
17 services other than those just associated with
18 the maintenance of the products.

19 The Total Quality Management or
20 TQM Schedule was introduced in about 1995.
21 The IT Professional Services were added in
22 '96. And they've grown fairly successfully to

1 the point where they're now about 70 percent
2 of the Schedules' volume.

3 In '98, there was a special time
4 out and reflect, I think they called it.
5 Actually GSA got together with the Air Force
6 and developed special ordering procedures for
7 services. Those were later introduced and
8 went through a FAR case and finally got
9 implemented into the FAR in 2004 and 8.4.
10 They actually were in the solicitation of the
11 IT Schedules. Contracts had them in their
12 ordering procedures back in 2000, I believe.
13 But they weren't in the FAR so that created
14 some concerns, especially with the GAO audit
15 that went out to look at how DOD was buying
16 services.

17 In April of '98, there was the
18 introduction of a new technology, SIN. This
19 eliminated what had been a practice within a
20 lot of the Federal Supply Schedules of having
21 -- well, having one new item introductory
22 schedule. So, again, all new types of

1 products or services went into this one
2 contract as opposed to going onto the
3 contracts that, you know, provided
4 complimentary or similar items.

5 June of '98, you have the first
6 instance where specific environmental
7 attributes were added to the Schedule. This
8 was Energy Star and there was an icon
9 developed. I think it was developed by EPA,
10 but it was annotated on the schedule price
11 list as well as on the electronic tools to
12 indicate to the Government buyers that those
13 were products that met those standards.

14 '99, a corporate or consolidated
15 Schedule was introduced. This is one Schedule
16 contract which encompassed all of the various
17 special item numbers.

18 Members of the panel don't
19 understand the term "special item numbers".
20 That's just a phrase to denoting sort of a
21 categorization of product types. On most
22 Schedule it's fairly narrowly defined, but it

1 can be very broadly defined on some Schedules.

2 So, you have this corporate
3 contract, because there were still the
4 individual contracts in place and you still
5 have the now called a consolidated contract.
6 The special items numbers on those two
7 vehicles or that one vehicle with two names
8 are different but correspond to each of the
9 individual SINS on the individual contracts.

10 So, a SIN on the IT Schedule has a
11 corresponding SIN and vice versa with all of
12 the individual Schedules.

13 In March of 2000 you had Evergreen
14 Contracting introduced. That was a
15 significant change again. It went from what
16 had been pretty much three-year contracts to
17 contracts with a five-year base period and
18 then five -- three five-year options. So, a
19 potential of a 20-year contract period.

20 So, one five-year base, three
21 five-year options.

22 Then we move into some of the

1 electronic features. GSA Advantage was
2 introduced in the mid' 90s and by -- so, with
3 GSA Advantage which is an electronic on-line
4 buying tool that was available to all of the
5 Federal agencies. Used heavily for market
6 research, used much less to date for actual
7 purchases, although a lot of agencies in DOD
8 will go part of the way for their purchase and
9 then they'll jump off to their own internal
10 system, I think for systems reasons.

11 But it's a requirement as of
12 October of 2000 that all awarded contracts
13 have their products and services up on
14 Advantage within six months of contract award.

15 eOffer was introduced in March of
16 2000. That's a cradle to grave electronic
17 process. Coming in electronically, has some
18 filters so that the offers are usually
19 cleaner, but the contracting officers
20 evaluate, negotiate, award and administer the
21 contracts electronically. Requires a digital
22 certificate.

1 So far GSA has -- I think
2 continues to make available two free digital
3 certificates for each vendor and then all of
4 the GSA contracting officers have a digital
5 certificate as well.

6 And this eOffer system is a
7 company by eMod which does what it sounds.
8 You can do the modifications electronically
9 and that's regardless whether or not you came
10 in with your initial offer electronically,
11 even if you came in the paper process, you can
12 still jump over to an e-Mod and this is tied
13 to the solicitation writing system which now
14 generates most of our Schedule solicitation
15 and any refreshes to them electronically.

16 There are three state and local
17 purchase programs that are directly tied to
18 the Schedules program. Those three are the
19 1122 program, which is for drug interdictions
20 specifically. There are 45 states that
21 participate in that program. One of the
22 unique features of the 1122 program is that

1 they almost across the board have to go
2 through a state point of contact to access the
3 contractor in their buying initiative.

4 Cooperative purchasing is specific
5 to the IT Schedule. It's for any purpose but
6 only the Group 70 IT Schedule. It was
7 pursuant to the E-Gov Act of 2002.

8 To date, that's the only one.
9 There is an initiative and I think a House
10 Bill that has been passed by one party -- one
11 side of the house and it's awaiting approval
12 on the other side for the security product
13 schedule, Schedule 84. So, that continues to
14 get approval through the legislative process
15 which we are under the impression that it
16 will. Then that would be also available
17 through cooperative purchasing meaning that
18 you could -- any state or local Government
19 could access that Schedule for any purpose.

20 In Section 833 of the 2007 Defense
21 Authorization Act, there was a disaster
22 recovery purchasing provision. That provide

1 that state and local governments can access
2 any Schedule but only for the purpose of
3 recovery from a Presidentially-declared
4 disaster.

5 Another program that doesn't get
6 too much attention but did at a time when it
7 was implemented was the Multiple Awards
8 Schedule Express program. That was
9 implemented about a year ago. And it provides
10 an expedited process of review and award if
11 they get to that point. It's for specific
12 Schedules and special item numbers on those
13 Schedules. To date, there have probably been
14 about 50 or 60 successful submissions through
15 that process.

16 I also wanted to cover the
17 electronic tools that are available to access
18 the Schedules and in some cases other GSA
19 Government-wide vehicles.

20 There's GSA Advantage which I
21 talked to already. It's an on-line buying
22 tool. It's very produce specific. There's e-

1 Library which is a good reference tool for all
2 those companies that are on Schedule, as well
3 as all of the products and services that are
4 available. You can do word search and
5 geographic search.

6 I talked about e-Offer, e-Mod.
7 There's also e-Buy. e-Buy is an electronic
8 request for quote tool. It's very significant
9 in that it meets the Defense Department's
10 requirements under Section 803 of the 2005
11 Defense Authorization Act, which require them
12 to not just go out to three or more companies
13 to get proposals under the Schedule process,
14 but actually receive three or more responses
15 or be able to explain why they didn't and that
16 they went out to a number sufficient to have
17 expected to have gotten that level of
18 response.

19 The e-Buy tool allows them to meet
20 that requirement because it essentially goes
21 out to either all or to those specific
22 companies targeted, but also provides

1 notification to all companies that have their
2 SINS identified for that request for quote.
3 And so they all can see it and respond to it.

4 And if they do respond, they all
5 have to be considered on an equal basis.

6 Also as I mentioned before. I'll
7 just give you a little picture of how the
8 Schedules are managed. The delegation, you
9 know, the authority is within GSA. The
10 Federal Supply Service which is a combination
11 of the prior FTS and FSS organizations.
12 Manages all those Schedules except for those
13 given to the VA by delegation. And they're
14 managed across seven regional acquisition
15 centers within the Federal Acquisition
16 Service.

17 And I think that concludes what I
18 had prepared. And open to any questions from
19 the panel or not.

20 CHAIRMAN BRANCH: Questions for
21 Robin?

22 Larry?

1 MR. ALLEN: Robin, I appreciate
2 the background on that. I think that's a good
3 synopsis of the program to date.

4 Obviously, a lot of care went into
5 putting this together and I know you have some
6 first-hand experience.

7 As we set out the agenda for this
8 group, are there a couple of things that you
9 think work particularly well in the Schedules
10 program as currently constructed. And are
11 there a couple of things that you might
12 recommend that this panel look at?

13 MR. BOURNE: Well, I think what
14 has always worked extremely well is the
15 utilization of the schedules in a proper
16 manner by any activity that requires those
17 products or services that are available on
18 schedule and also are wanting to consider
19 purchasing from someone that has a Schedule
20 contract. And that's what I would always go
21 out and tell the buyer community.

22 When we went out and talk to an

1 agency, I said if what you want is available
2 and the companies that you want to be able to
3 consider have a schedule, then there's no
4 better way to do it. Just make sure you go
5 out and establish a true, competitive
6 environment at the task order level.

7 In terms of hurdles, I think
8 everyone is aware that the Trade Agreements
9 Act is a hurdle but that's right now I think
10 sort of a moot point. But there have been
11 several initiatives I think -- I don't know,
12 a couple, three years ago, the SARA, Services
13 Acquisition Reform Act and maybe its second
14 iteration as well, both had initially
15 provisions in it which would have exempted
16 commercial items from the Trade Agreement Act.

17 But that is a problem for any of
18 these Government-wide vehicles, whether they
19 be Schedules or GWACs because they for the
20 most part are addressing the Trade Agreement
21 by American Act issue by saying that they're
22 going to address it at the contract level.

1 And due to the high volume of purchases it
2 immediately goes well above the \$193,000 or
3 \$194,000, the Trade Agreement threshold,
4 throwing it into a scenario where you can't
5 buy a lot of stuff that you and I can buy
6 across the street. And which many Government
7 offices can buy just by going around the
8 corner below the thresholds that are on --
9 apply to those.

10 You can go buy stuff under
11 \$194,000 and get stuff that's not TAA.

12 The other one, the big issue, is
13 non-contract items often referred to as open
14 market items. They often come into play at
15 ODCs for the large integrators. But what you
16 have there is to me and this is me speaking.
17 You asked me the question. I'm responding.
18 So, it's not necessarily Office of Acquisition
19 Management's position. But I think that the--
20 that issue should be looked into by this
21 panel. I think it's a huge issue that right
22 now you have an inability because Schedules

1 are designated as commercial contracts,
2 therefore, they can't utilize cost
3 reimbursement contract type. And I would say
4 that there are similar vehicles that are
5 designated noncommercial that access all of
6 those -- the cost reimbursement contract type.
7 And they provide essentially the identical
8 solutions. So, I think that's an issue that
9 the panel would do well to look at.

10 MR. PERRY: Could you expand on
11 that a little bit because -- to bring to the
12 table.

13 So, how does that translate into
14 price which is something that we're charged
15 with looking at?

16 MR. BOURNE: Well, the FAR
17 prohibits the use of cost reimbursement
18 contract type for the acquisition of
19 commercial items. So, when you have a vehicle
20 such as the Schedules which have been
21 designated to provide acquisition for
22 commercial products and services, it doesn't

1 have that contract type available to it.

2 One of the other contract types
3 out there are GWACs and MACs, these multiple
4 award contracts --

5 MR. CHVOTKIN: Excuse me.

6 MR. BOURNE: Yes.

7 MR. CHVOTKIN: Just to understand
8 your point on the commercial items.

9 Is it they when using FAR Part 12
10 procedures and I'm looking for the
11 relationship between FAR part 12 procedures
12 and purchases under 8.4?

13 MR. BOURNE: The Schedules
14 contracts are put in place utilizing FAR Part
15 12 procedures.

16 So, the other vehicles, the GWACs
17 or MACs which had been designated
18 noncommercial, can utilize cost reimbursement
19 contract type.

20 The interesting thing that I think
21 the panel might look at is that the solutions
22 that are facilitated through all of these --

1 each of these vehicles, the Schedules, MACs,
2 GWACs are in many cases identical.

3 You can look to some companies
4 that have not had the GWACs, MACs
5 historically. Have competed very
6 successfully, providing the same solutions
7 that's through the Schedule scenario. And how
8 that impacts pricing is that the Schedules
9 award in the services area, labor categories
10 with labor rates.

11 The GWACs award labor categories
12 with labor rates.

13 I think the distinguishing factor
14 in terms of the GWACS is that they narrow the
15 field. They award to a limited number of
16 contractors based on a technical evaluation
17 and price comparison. And the Schedules of
18 course are looking not one company versus
19 another. They're looking at how the company
20 itself goes to market making a fair and
21 reasonable price determination based on that
22 picture and then depending upon the agency

1 using the ordering procedures properly, and
2 establishing the competitive environment
3 amongst a true competitive field at the time
4 of the task order.

5 So, you can get the vendors that
6 are truly competitive in that field to compete
7 at the task order -- at the time of the task
8 order.

9 MR. DRABKIN: I think we need to
10 go back just a minute, Robin, because I'm not
11 sure everybody has the same level of
12 background that perhaps you and I have in
13 terms of the authority for the Schedules.

14 Isn't it true that the Schedules
15 are awarded under the Administrator's
16 authority under the Federal Property and
17 Administrative Services Act and not under the
18 OFPP Act?

19 MR. BOURNE: That's correct.

20 MR. DRABKIN: And therefore isn't
21 it also true that when the Administrator
22 decided to apply FAR Part 12, FAR part 12 does

1 not apply by itself to the Schedules, only in
2 terms of when the Administrator-- and that
3 goes by the way for the rest of the FAR. It
4 only applies to the Schedules in as much as
5 the Administrator determines to apply them to
6 the Schedules?

7 MR. BOURNE: That's correct.

8 MR. DRABKIN: I think it's an
9 important distinction for everyone to
10 understand because some people don't
11 understand that there is that distinction.

12 MR. BOURNE: Yes.

13 MR. DRABKIN: The Administrator
14 has the sole authority to create the Schedules
15 and decide which rules that otherwise apply to
16 contracts will also apply to the Schedules.

17 MR. BOURNE: Correct. So, that's,
18 again, I think that's an area to look at
19 because --

20 MR. DRABKIN: And just to also be
21 clear. 8.4 is a reflection of decisions that
22 the Administrator made to apply different

1 rules and it's our publication of those rules
2 in the FAR for others to use.

3 MR. BOURNE: That's correct. And
4 we have the authority to amend those as
5 needed.

6 MR. DRABKIN: Right.

7 MR. PERRY: I don't if you are the
8 right person to ask.

9 From a policy perspective, I look
10 through the long list of things that have been
11 done and I kind of -- my time frame as I
12 earlier said probably in the last 10 to 15
13 years when I look at the list of things.

14 Has anyone gone back in your area
15 to look at the collective result of those
16 decisions or the things that were done on the
17 general marketplace for what the Schedule
18 purports to serve?

19 They tend to -- let me -- correct
20 me if I'm wrong.

21 It tends to look like we all of a
22 sudden we opened up the flood gates for what

1 business could be done through the Schedules,
2 significantly or exponentially. And then
3 after a certain point in time we've just sort
4 of been adding some things to enhance certain
5 sectors of those Schedules. But has anyone
6 taken -- is there any body of work that looks
7 at collectively what we did to the Federal
8 marketplace through those policies over the
9 last 10 to 15 years and the impact it has on
10 the pricing that now is being used to justify
11 the pricing that folks are proposing to you
12 for the Schedule contracts themselves?

13 MR. BOURNE: Well, I would say my
14 first thought is I would say that the SARA
15 Panel certainly had that with the 1423 Panel,
16 or whichever one you want to call it. Would
17 certainly have that within their purview and
18 they certainly did look at some of it because
19 they suggested that the IT community establish
20 a non-priced Schedule and I think that was an
21 acknowledgement that the pricing in services
22 really takes place at the task order level

1 when the requirement is articulated and the
2 vendors respond to that requirement as opposed
3 to the identification of a labor category and
4 a fixed rate associated with that in any of
5 these multiple award vehicles.

6 It really happens at the task
7 order again. And I think that was probably
8 the most comprehensive look that has been
9 done. I think again one of the things to
10 remember which I didn't touch on is that a lot
11 of the changes that took place in '94, '95
12 were the result of, I think, an
13 acknowledgement that the Government was unable
14 to get what it needed when it could use it
15 during the '80s.

16 You had a very common scenario,
17 especially in the IT community. You'd go out
18 with a request for quote for a large
19 opportunity. It would take 12 to 18 months to
20 award the contract followed by a protest which
21 often froze the requirement. And then at the
22 end of the year to settle the protest, you

1 had an obsolete solution.

2 So, there was, I think, an
3 acknowledge need to streamline the process so
4 that the buyer or the Government could access
5 commercial solutions in a timely manner, all
6 playing into price. Because we paid for all
7 the time and resources that were going into
8 bid and proposals, protests and all of the
9 associated drama.

10 MR. PERRY: I would agree with the
11 premise that it did streamline the process.
12 I think the question was still, have you at
13 GSA done anything to look at, because you just
14 -- in what you had just said, you said your --
15 the focus on what's happening at the ordering
16 agencies and how well they're completing the
17 task.

18 But what's happening at GSA? How
19 are you using that data or are you using that
20 data to feed what you're basically setting up
21 in the Schedules as sort of the baseline
22 pricing that's being put into those contracts

1 that they're still trying to get a better deal
2 on?

3 MR. BOURNE: Okay. Well, as you
4 may be aware, may not. Our access to the
5 buyer is limited to the degree to which they
6 want to involve us in many respects. In other
7 words, we're not directly involved with each
8 individual purchase.

9 The way the program works is the
10 vendor community responds directly to the
11 requiring activity with the response to the
12 request. And so they are establishing the
13 competitive environment in many cases,
14 independent of us.

15 What we did though was get
16 involved in many cases with some of the large
17 buys and are able to share best practices
18 among those activities that are using the
19 Schedules in a rather significant way. And
20 there's also an unbelievable amount of
21 training that's available, either formally
22 through outreach efforts like the GSA Expo

1 which recently concluded, on-line tutorials
2 available.

3 And, again, I think the contact that we
4 do have with the agencies, we are always aware
5 of the issues and concerns, the features that
6 they're taking advantage of. We get
7 complaints from both industry and Government
8 on how things are working and try to make
9 adjustments as necessary, but always wanting
10 to maintain the integrity of the program and
11 integrity of the pricing.

12 And your question seemed to be
13 focused solely on the pricing and I would
14 emphasize that all of the -- in some respects
15 you could refer to the Schedules as a very
16 early version of strategic sourcing as an
17 acknowledgment that the Government would do
18 well to aggregate its requirements. But I
19 think the Schedules, SmartBUY, strategic
20 sourcing, any of these efforts have shown that
21 the price doesn't get real until the money is
22 on the table. The money and the requirement.

1 So, again, I think critical that
2 focus be placed on proper use at the task
3 order level.

4 CHAIRMAN BRANCH: And we have a
5 couple of questions. Can we have Judith and
6 then Debra?

7 Okay. Debra.

8 MS. SONDERMAN: Robin, when you
9 were going through your history and commenting
10 about the transition from mandatory to
11 nonmandatory in 1994, you made a comment that
12 use of the Schedules jumped at that point.

13 What things do you think led to
14 that jump in the use of the Schedules? I'm
15 asking for your opinion, not an official
16 policy.

17 MR. BOURNE: Well, I think it was
18 -- I think it was sort of the Perfect Storm.
19 You had the elimination of the Price Reduction
20 Clause impact on Schedule sales so that you
21 could not lower your Schedule price on a deal-
22 by-deal basis, what's referred to often as

1 spot pricing, which again mirrors commercial
2 practice. You price the opportunity.

3 You had the lifting or elimination
4 of the maximum or limitation. So, where it had
5 been previously a small purchases program
6 essentially with a cap at the MOL which was,
7 you know, ranged from under \$100,000 to
8 probably the highest MOL is probably \$500,000
9 or a \$1,000,000. All of a sudden you had the
10 ability for large IDIQ contract communities to
11 transition their requirements to a Schedule
12 solution if they chose. And they could follow
13 almost the identical procedures and yet
14 streamline the process by narrowing the field
15 and thereby narrowing the time and resources
16 required to pursue that opportunity.

17 It was those two things, I think,
18 were the primary reason were the ability for
19 the vendor community to price things
20 competitively on the Schedule and not be
21 penalized for doing so. And also the
22 associated lift on the cap which allowed much

1 greater opportunities to be facilitated
2 through the Schedule program.

3 MS. SONDERMAN: And how much of an
4 effect do you think the precipitous decline in
5 the Government acquisition work force in that
6 time period had on increased use of the
7 Schedules program?

8 In the '903, the acquisition work
9 force decline anywhere from 25 to 50 percent.

10 MR. BOURNE: Yes. DOD cut --

11 MS. SONDERMAN: Across the board.

12 MR. BOURNE: -- way back.

13 MS. SONDERMAN: Not just DOD.

14 MR. BOURNE: Okay.

15 MS. SONDERMAN: Civilian agencies
16 as well.

17 MR. BOURNE: Well, you know,
18 people might disagree. But I don't really
19 think that was that much of a factor. I think
20 -- I think what you had at the time and you
21 see it still today is an infinity for what
22 I'll refer to as the streamlined vehicles.

1 Whether it's Schedules, MACs, GWACs. Again,
2 it's the realization that full and open
3 competition results in a loss for everybody.
4 Too much time and resources devoted to going
5 after one opportunity.

6 Vendors having to pick and choose
7 which opportunities they go for because the
8 bid and proposal costs are too extreme. The
9 Government community is spending all this time
10 and effort and resulting in a protest and an
11 obsolete solution.

12 I think it was really a
13 realization that they needed to streamline the
14 process and part of that picture.

15 CHAIRMAN BRANCH: David and then
16 Don.

17 MR. DRABKIN: Yes. A couple of
18 things.

19 Back to Glenn's question.

20 I think it's important for us to
21 answer his question which was, you know, how
22 do we use our customer's pricing experience I

1 think to improve the pricing on Schedules?
2 You didn't mention the use of our IOAs who are
3 the folks that go in and look at -- look at
4 how vendors do business.

5 And you also didn't share with us
6 the preaward reviews that we do before we
7 exercise an option which focus primarily on
8 the pricing question.

9 And then last but not least, CICA
10 defines our Schedules as being complaint with
11 full and open competition, although it's done
12 differently. So, it's not a way to avoid full
13 and open competition. It's another way to
14 comply with the requirements for full and open
15 competition.

16 MR. BOURNE: That's true.

17 MR. DRABKIN: You talk about the
18 IOAs and the preaudit reviews.

19 MR. BOURNE: The audits?

20 MR. DRABKIN: Yes.

21 MR. BOURNE: Yes. The IOAs stands
22 for Industrial Operations Analysts. They're

1 a group of contract administration folks.
2 It's 200 plus individuals actually within the
3 Office of Acquisition Management. They are
4 located regionally and as Dave mentioned they
5 go out at several points during the contract
6 period. They'll go out initially within six
7 months of award to review the contractor's
8 systems, to make sure that they are adequate
9 in terms of being able to track and report
10 contracting pricing.

11 They also explain to them their
12 contractor's responsibilities under the
13 Schedules program and make sure that they
14 understand all those responsibilities.

15 They then come back one or two
16 more times during the five-year base period to
17 review the contractor's performance under
18 their Schedule contract to include looking at
19 individual task orders and make sure that
20 they're complying with the scope requirements.
21 Looking at their systems, make sure that
22 they're adequately reporting and tracking

1 their sales.

2 So, there are a number -- there's
3 a checklist of items that they go through on
4 each visit. And they meet individually with
5 representatives from the contractor to make
6 sure that the contractor again is fully
7 cognizant of all of its responsibilities and
8 adhering to the responsibilities under the
9 contract.

10 The preaward audits done by the
11 Office of Inspector General, the Audits Branch
12 within GSA. Of the 18,000 schedule contracts,
13 I would guess that approximately 200 or 300 is
14 -- is Dick still --

15 CHAIRMAN BRANCH: About 70 a year.

16 MR. BOURNE: About 70 a year. It
17 used to be more, I think. So, that 70
18 contracts are chosen each year for a preaward
19 audit and I wouldn't compare 70 to 18,000
20 because there are not 18,000 new contracts up
21 for option every year. It's probably out of
22 a population of 400, 500 say.

1 And typically they will target the
2 larger contracts but they also try to make
3 sure that they spread those preaward audits
4 across all of the Schedule contract programs
5 so they're not focusing just say on the IT
6 Schedule vendors because they happen to do a
7 large percentage of the business. But they
8 choose companies from each of the products and
9 service areas.

10 They'll go during that process.
11 They will look at a data call using
12 encompassing about six months of commercial
13 sales -- all commercial sales. They'll look
14 at that, go through it with a fine tooth comb,
15 identify any -- any wires, any things that
16 don't seem to conform with the vendor's
17 disclosure under the Commercial Sales
18 Practices Charts that came in with the
19 proposal.

20 And then the idea is to identify
21 those critical areas that the contracting
22 officers should focus on in the contract

1 negotiations in arriving at the fair and
2 reasonable price.

3 Do you want to add anything to
4 that, Dave?

5 MR. DRABKIN: You're answering the
6 question. We were just asking.

7 MR. BOURNE: Yes. Okay.

8 CHAIRMAN BRANCH: Don?

9 MR. ERICKSON: Yes. Thanks,
10 Elliott.

11 Just shifting gears slightly.

12 I just want to ask you to
13 elaborate a little bit about the mass express
14 program. I do remember when it was
15 established, there was quite a bit of hoopla
16 about it, a lot of excitement.

17 I do occasionally hear from
18 perspective contractors who express concern
19 about the process for getting on schedule.
20 And I now you noted that 50 to 60 -- it's
21 about 50 to 60 successful stories about
22 contractors -- companies getting on schedule.

1 Would you talk a little bit more
2 specifically about impediments and feedback
3 you're getting from perspective contractors as
4 they go through the process? And whether or
5 not -- and, lastly, whether or not the 50 to
6 60 success stories match up to what your
7 original projections may have been when the
8 program started?

9 MS. JONES: Well, I think probably
10 most of the people remember how it started.
11 It was actually Lurita Doan. I think it was
12 her first public speech. She was the
13 Coalition for Government Procurement and she
14 stated that her goal was to have contracts
15 awarded in 30 days. And that wasn't just
16 some. It was all contracts -- scheduled
17 contracted awarded in 30 days.

18 She coming from the vendor
19 community having gone through the process and
20 being well aware that there are many in
21 industry who would say that it's a real dog
22 fight to get a Schedule contract. Which is

1 sort of an ironic statement because there are
2 many in Government say, gosh. They just give
3 them out like candy and the pricing is awful.

4 Well, you know that I don't agree
5 with that latter statement. But, anyway, in
6 implementing that program, there was a
7 realization that with the resources that GSA
8 has, not every contract is going to be awarded
9 in 30 days. So, the focus was on how can we
10 meet the objective in a reasonable manner.

11 And so specific contracts were targeted
12 initially which were primarily a product where
13 there's a commercial price list and there were
14 parameters set around the program which
15 resulted in sort of a finite group of vendors
16 being qualified within those specific item
17 numbers identified. And the idea has been to
18 expand the program once the initial
19 implementation has resulted in some best
20 practices and some lessons learned to make it
21 more achievable as we go forward.

22 I think about a year ago it was

1 expanded in a fairly significant fashion where
2 originally there had only been, I think, three
3 or four contracts and maybe 10 or 15 special
4 items numbers. That was about tripled or I
5 think right now there's 15 or more contracts
6 and probably 70 or 80 special items number
7 available through that process including some
8 services areas.

9 And it's largely targeted. The
10 parameters that were developed were largely
11 targeted to address small business concerns so
12 that they could come in. And one of the
13 associated eligibility criteria I'll call it
14 is that the vendor must first taken either in
15 person or on line a program called Pathways to
16 Success. The idea of which is to impress upon
17 the contractor all of the responsibilities
18 attendant with holding a GSA Schedule
19 contract. And what it really means and, you
20 know, to let them sit back and say, am I
21 really ready to get into this ball game? Or
22 should I wait or should I come in as a partner

1 and go through a reseller and get my products
2 in that way.

3 And do I really want to hold the
4 schedule myself. Because there are a lot of
5 companies that come in, they're not really
6 aware of what they're getting into and they
7 have, I'd say an unrealistic expectation that
8 the phone is going to start ringing.

9 I've over the years gotten many,
10 many calls from contractors who say, you know.
11 I've got my schedule. I've had it for six
12 months and I haven't gotten a phone call yet.
13 And I said, well, the sales are made by
14 relationships and you have to establish those
15 either direct with the customer or through
16 your vendor partners.

17 But, anyway, so that's sort of --

18 CHAIRMAN BRANCH: All right. In
19 order to keep us on schedule I'm going to
20 reserve the prerogative to ask the last
21 question, to thank Robin for giving us a very
22 informative perspective on the history of the

1 Schedule program.

2 Going back to comments you made
3 about the idea that we might look at the cost
4 reimbursement model that is found on GWACs
5 versus what we do on the Schedule, has it been
6 your experience that when you look at the
7 population of vendors who generally bid for
8 Schedule contract that they employ somewhere
9 in their commercial activities a cost
10 reimbursement model?

11 MR. BOURNE: Yes.

12 CHAIRMAN BRANCH: All right.

13 Well, with that, Robin, thank you very much
14 for coming to share your insights on the
15 program with you and now we'll move onto the
16 next presenter.

17 MR. BOURNE: Okay. Thanks for
18 having me.

19 MS. BROOKS: Okay. Our next
20 presenter for the afternoon is Mr. Christopher
21 Pockney.

22 Christopher is with -- Ernest and

1 Young. He's the Director of Government
2 Contract Services.

3 Chris, you have five minutes. And
4 then the panel will also ask you questions.

5 MR. POCKNEY: Thank you, Pat.

6 I appreciate the opportunity to
7 address the panel here. For those of you who
8 don't know me and certainly recognize some of
9 you.

10 I've been involved in Government
11 contracting for 28 years now. I think since
12 1991 I've had a significant involvement in my
13 practice with the Multiple Awards Schedules,
14 both on the GSA and the VA sides.

15 My remarks today are presented in
16 the light of really the experience of a
17 practitioner in the field. Their views and
18 not necessarily the views of my friends,
19 although they wouldn't necessarily disagree
20 with me either. I'll say that.

21 Because of the brief amount of
22 time for this first meeting, I just want to

1 very briefly talk about three pricing related
2 topics that are related to the price
3 reductions clause. And go to the question of,
4 do we still need a price reductions clause?
5 And if we do, what sorts of changes are
6 needed? And then two particular topic areas
7 where we see particular problems in the day-
8 to-day practice.

9 No one I think would argue that
10 the Government needs to be assured that it's
11 obtaining fair and reasonable prices when it
12 procures supplies and services.

13 There's no debate there. The
14 question is, how is that goal to be met and
15 does the price reductions clause still support
16 that goal or does it indeed frustrate it in
17 some cases?

18 We should be under no illusions
19 that there are low costs associated with the
20 price reductions clause in its present form.

21 In dealings with the contractor
22 community, the frustrations that are express

1 with it I think are real and maintaining the
2 current price reductions clause and the way
3 it's applied is a real deterrent to some
4 contractors either obtaining Schedule
5 contracts or maintaining them.

6 Now, it's difficult to produce
7 statistics that would support exactly how many
8 are deterred or who drop. It's a bit like a
9 free trade agreement. It's easier to see the
10 jobs that are lost than the new ones are
11 created by the existent or the creation of a
12 rule.

13 But certainly my experience and
14 I've been involved probably a distressing
15 number of False Claims Act cases that have
16 arisen out of price reductions type issues.
17 Believe it does get the attention of
18 contractors when those cases are publicized
19 and some of them decide that they no longer
20 want to have these contracts or they will no
21 longer pursue them.

22 So, the first point to be made, I

1 think, is that the Price Reductions Clause and
2 the Pricing Policy for these contracts needs
3 to be looked at in the overall context of
4 established Government pricing policies and
5 pre-emptly the Truth in Negotiations Act.

6 And the underpinning policy of
7 TINA and it's a sound economic theory that
8 underlies it, is that competition is the most
9 effective way to control prices. And there can
10 be no doubt that the Schedules today are
11 hugely competitive.

12 You only have to look at the
13 number of contractors who are on Schedule,
14 particularly if you look at the largest, IT
15 70, to understand that. Huge numbers of
16 contractors are available to fulfill a
17 particular requirement.

18 It would be interesting if the
19 panel would seek research to determine just
20 how many orders both in numbers and
21 particularly in dollar volume are actually
22 placed pursuant to a competitive process. And

1 Robin Bourne in his remarks that he just made,
2 I think, underline that, that on many of these
3 IT solutions, task order buys, those are
4 almost always competitive.

5 So, the first question to be
6 answered is. Where a task order or an order
7 is awarded with competition, why would the
8 price reductions clause ever apply to such an
9 order?

10 We don't apply TINA to firm fixed
11 price or even cost reimbursable competitive
12 procurements. And that there's no good reason
13 that I could see that we would apply a post
14 award price adjustment retroactively to a
15 competitive procurement under the Schedules
16 either.

17 So, that's the first point that I
18 would urge the panel to look at. Why should
19 we continue to apply price reductions to
20 competitive orders?

21 That's inconsistent with the
22 principle. We don't apply redundant or

1 unnecessary regulatory requirements when there
2 isn't a Government interest to be protected
3 because it's already protected.

4 Then secondarily, I would urge the
5 panel to look at whether certain Schedules or
6 certain SINS already subject to so much
7 secondary competition through the number of
8 contractors who are already included on that
9 Schedule, that in fact the price reductions
10 clause again may be redundant in terms of
11 providing protections to the Government that
12 are already provided through other means.

13 Very quickly, a couple of other
14 points. Bundle pricing and Robin referred to
15 this, I think at least indirectly, when he was
16 talking about IT Solutions in particular.

17 The price reductions clause was
18 built really for a commodity procurement type
19 of environment and is increasingly moving away
20 to a bundled services and solutions type of
21 requirement that's being fulfilled.

22 When there is bundled pricing,

1 it's almost impossible to apply the price
2 reductions clause in any reasonable manner to
3 compare a bundled commercial price to a bundle
4 Government price for a service type solution.
5 nevertheless, we see extraordinary and
6 sometimes extreme efforts by Government
7 auditors to do that with severe distortions
8 and punitive impacts upon contractors.

9 Finally, let me urge the panel to
10 look at the question of resellers and the
11 pricing of resale contracts.

12 Many resellers only serve the
13 Government marketplace. Those contracts are
14 priced on the basis of a negotiated mark up
15 from an estimated acquisition cost.

16 There are many auditors who
17 nevertheless try and apply the pricing on the
18 basis of a retroactive look at actual
19 acquisition cost for an actual order and then
20 seek to apply a price reduction potentially or
21 even I've seen False Claims Acts allegations
22 made on the basis that a specific agency was

1 not charged the actual acquisition cost plus
2 the mark up.

3 I think there's two problems with
4 that approach. One is, contractors have to
5 make quotations to Government agencies and
6 they're quoting fixed price orders. Those
7 Government agencies don't expect to then be
8 charged something other than what they're
9 being quoted.

10 And, second, to argue that this
11 contracting is supposed to be done on the
12 basis of cost plus a percentage of cost has
13 obvious legal problems and conflicts with
14 other contracting policy.

15 I thank you for the time and I'll
16 be happy to answer any questions the panel may
17 have.

18 CHAIRMAN BRANCH: Are there any
19 questions?

20 David?

21 MR. DRABKIN: Chris, thanks for
22 your comments. But I do want to go back and

1 explore your proposition that the sales under
2 the Schedules are competitive and, therefore,
3 the prices are -- I don't question the
4 underlying basis that if you have a
5 competitive market, the resulting price ought
6 to be the price the Government pays.

7 But it seems to me that our
8 experiences at some agencies, not DOD now
9 required by 803 to solicit everybody or get
10 three bids or do a justification. But at
11 least the civilian side of Government not
12 required to do that.

13 Sometimes at best they solicit
14 three vendors which is all that's required
15 under the maximum order threshold. In some
16 cases it's been suggested that they suggest
17 the vendor they want and two others they know
18 won't respond.

19 Would you say that that's
20 competitive market that results in a price
21 that meets the competitive standard you
22 propose?

1 MR. POCKNEY: Well, I agree that
2 there are some apparent problems with the
3 particular scenarios that you laid out. But
4 I think, you know, that points to a need for
5 better training and better process within the
6 Government for the contracting officers.

7 I think most contracting officers
8 are interested in getting a good deal and many
9 of them drive a hard bargain. I certainly
10 hear more complaints from the contracting
11 community about cut throat competition and my
12 Schedule price is merely a club that's the
13 ceiling that contracting officers beat me over
14 the head with. And more often than not,
15 they're asking what kind of a discount will
16 you give me from that?

17 And that's where there isn't even
18 a competition in place.

19 I don't dispute that there should
20 be more competition in soliciting Schedule
21 vendors to fulfill needs. But I think, you
22 know, we can probably throw scenarios or

1 anecdotes back and forth all day and I think
2 there's a shortage of real data as to, in
3 fact, how much competition is taking place in
4 the solicitation of orders and what dollar
5 volume of acquisition under the Schedules is
6 covered by that competition? And I think that
7 would be important data for the panel to know
8 in its deliberations.

9 MR. DRABKIN: And that's a good
10 point and I think someone else has already
11 talked about data and the need for it.

12 But the second part of that, the
13 area where it seems to me that we have the
14 most difficulty is not in the area where we're
15 buying goods at a fixed price off the shelf,
16 but it's in the area where we're buying
17 services. And particularly not where we're
18 buying services based upon a fixed price, but
19 where we're buying services using time and
20 materials.

21 And at least it appears to me.
22 I'm not saying it's true, but the argument

1 that I hear and the arguments and the issues
2 that I see stem from in no small part the fact
3 that one company defines its labor categories
4 one way and another company defines its labor
5 categories just enough different so that when
6 you get a bid back from both, there's no real
7 way to compare those prices. I mean, to have
8 a real competition because I real competition
9 is apples against apples or outcomes against
10 outcomes. Most of the T&M contracts aren't an
11 outcome contract. It's a -- I want four
12 bodies and I want, you know, this breakdown of
13 those four bodies and I want them for 40 hours
14 a week.

15 So, how does your argument about
16 competitively arrived at prices apply to that
17 scenario which, you know, it's not an
18 anecdote? It's actually true.

19 MR. POCKNEY: Well, let's take a
20 T&M contract outside of the schedules first.

21 There's competition for those
22 every day just as there is competition for T&M

1 orders under the Schedule. In many cases, the
2 Government designates the categories of labor
3 that it wants the contractors to bid against,
4 irrespective of how close or how far that is
5 from the actual categories that the contractor
6 uses internally.

7 So, the contracting officer has
8 the ability to require the contractors to bid
9 against a one-size fits all and in my
10 experience, many of them do that.

11 Now, let's say if they don't,
12 which is -- which is your case there. So,
13 that they're now relying -- they have a need.
14 They've expressed that need in a Statement of
15 Work and they're asking contractors to bid a
16 solution which will include a technical
17 approach against that need.

18 Well, we're clearly in an area of
19 a best value procurement here not a pure, you
20 know, this is not a sealed bid. Lowest labor
21 rate wins in each category.

22 There has to be judgment by the

1 procuring authority when they are awarding,
2 you know, against that sort of a requirement.
3 And the price reductions clause, I don't think
4 is going to help them there in terms of
5 deciding what is the best value for me to make
6 this award to? If you're going to award a T&M
7 contract, control of the cost does not begin
8 and end with a procurement or the labor
9 categories. It has to be exercised throughout
10 good management during the performance of the
11 contract. And no price reductions clause or
12 any other clause is going to save the
13 Government from bad management if it doesn't
14 exercise proper oversight during performance.

15 I think the commercial community
16 understands that. That's the only way to
17 control the costs. And hopefully the
18 Government does as well.

19 CHAIRMAN BRANCH: Okay.

20 Jacqueline.

21 MS. JONES: I just wanted to speak
22 from an operational standpoint and to answer

1 your question, Glenn, about are we using the
2 data from agencies competition to view
3 Schedule pricing?

4 And the answer to that is, when we
5 go to exercise an option, contractors are
6 required to update DSP information. And
7 because of the Price Reduction Clause changes
8 that say that there will be no Price Reduction
9 Clause for sales to Federal agencies, we don't
10 look at that pricing in terms of what agencies
11 have achieved in the competition.

12 But to address the issue on
13 competition, operationally what we're seeing
14 out there is that you're right. An engineer
15 to one company can be something totally
16 different than it is to another company. And
17 to have a true competition you really have to
18 look at the qualifications of the labor
19 category that the company is proposing.

20 You know, one company can have an
21 engineer that requires a master's degree with
22 15 years of experience and another company

1 could propose an engineer with let's say two
2 years of experience without an engineering
3 degree. And you can't compare those two in
4 terms of pricing.

5 So, at the task order level, yes.
6 There is a competition, but the agencies
7 really have to be careful that they are
8 getting a true competition. Because in some
9 of the preaward audits that we receive back,
10 that's been a rising issue in terms of
11 companies providing the qualifications and
12 experience for the labor that they have in
13 their contract.

14 CHAIRMAN BRANCH: Other questions?

15 Yes. Glenn?

16 MR. PERRY: Could you expand a
17 little bit. I'm not getting this.

18 Could you explain a little bit
19 more what -- I assume you're pretty much --
20 most of your work is around services. So, or
21 body of work?

22 MR. POCKNEY: Not necessarily, no.

1 MR. PERRY: Not so. Well, I'm
2 thinking services so where is the -- what's
3 this causing you to do, I guess, in your
4 experience in responding to agency requests.
5 And where does it -- you refer to this making
6 people wanting to deter from competing or
7 deter from, I guess, even having a Schedule
8 contract or dropping out of the Schedules or
9 deciding not to respond to task order
10 competition requests.

11 What's happening there? Can you
12 talk about that at all? And then what would
13 drive you to drop out or deter from bidding on
14 something in terms of this?

15 MR. POCKNEY: Well, it's
16 necessarily that I will, but I talk to
17 contractors who do in my practice.

18 But the concern is this. You
19 know, if we step back to the macro level first
20 and we look at TINA, where is cost of pricing
21 data required with the ability to post-award
22 audits of that and to make retroactive price

1 adjustments of agreed-to prices?

2 Particularly, on fixed price contracts.

3 That's only done where the
4 contractors award it as a sole source
5 negotiation. If we have adequate price
6 competition, the policy and it's a sound
7 policy, I believe, is the Government is
8 protected by the fact of that adequate price
9 competition. And there's no need to go do
10 post-award audits and to do retroactive price
11 adjustments.

12 So, why as a policy matter should
13 a contractor under the Schedule who received
14 a fixed price order let's say under
15 competitive procedures for a task order be
16 potentially subject to a retroactive audit and
17 a retroactive price adjustment of that
18 competitively determined fixed price?

19 There isn't a sound policy reason
20 to make an exception for the Schedules which
21 are after all by and large commercial items to
22 say that we should do post award audits and

1 retroactive price adjustments of those orders.

2 Now, you can move on from those
3 orders to those where there wasn't competition
4 and you can have a debate about whether those
5 should be subject to post award audits and a
6 retroactive price reduction under the price
7 reductions clause. And there would be some
8 would argue. Well, if we don't do this, if we
9 don't allow price reductions audits of these
10 competitive orders, what's to stop a
11 contractor from proposing a price that's too
12 high?

13 And I think we have a name for
14 contractors who do that and that's the loser
15 in a competitive procurement. That's not the
16 way you, you know, you win orders in the
17 Government marketplace.

18 And there's a huge amount of cut
19 throat competition for these task orders. And
20 I think very seldom would you find that
21 contractors get to charge their that's on the
22 Schedule. They all look at each others'

1 prices on GSA Advantage and they start
2 sharpening the pencil from there.

3 So, I think it's -- it's unfair.
4 It's bad policy to expose contractors to those
5 risks. And they take those risks into account
6 when they consider whether or not to take on
7 these types of contracts.

8 MR. PERRY: Can I follow up?

9 Okay. Is it something that's
10 going on, for example.

11 My experience is if we award a
12 competitive Schedule or a fixed price, it
13 hasn't been my experience that anyone goes
14 back to you and says. Oh, by the way I found
15 out that you -- whatever you use as a basis
16 for coming up with that fixed price with the
17 Schedule rates were, you know, somehow went
18 down.

19 Is it a pervasive practice from
20 the agencies that you're seeing that happen or
21 we're not understanding and not administering
22 these correctly?

1 MR. POCKNEY: No. The specific
2 orders themselves are not subject to those
3 post award audits. What are subject to post
4 award audits are the contracts, the mass
5 contracts as a whole under the price
6 reductions clause, the GSA or the VA OIG go
7 and conduct those audits.

8 And let's say they believe that a
9 particular price should have been reduced.

10 Now, typically what they will do
11 is estimate that as a percentage, okay, of
12 what is the price reduction that applies
13 there. And then go apply it to all sales that
14 have taken place under the entire mass
15 contract, regardless of the fact that
16 potentially 90 percent of those sales were, in
17 fact, under competitively conducted
18 procurements.

19 So, there's no sound basis from a
20 policy perspective to retroactively adjust
21 those prices.

22 MR. CHVOTKIN: Okay. I have a

1 question for you, Chris.

2 As I understand your three
3 propositions they are -- there's no other type
4 of competitive vehicle that's subject to
5 essentially a post award audit and price
6 reduction, that there are some sectors where
7 there's robust competition which would control
8 the price, that as we move into an era of
9 solutions pricing, it's very difficult to
10 unbundle that to understand what the price
11 reduction should be. And then lastly,
12 resellers to the Government have a different
13 pricing model which should really not subject
14 them this.

15 So, as I look at these
16 propositions like the question that I'd like
17 you to kind of address is, are there some
18 Schedules in which we should remove pricing
19 altogether?

20 MR. POCKNEY: Well, that was a
21 proposal of the Acquisition Advisory Panel, I
22 think, to experiment with an IT Schedule where

1 really those would be competitive, on-line
2 procurements for specific requirements. And
3 I think that's an interesting model for
4 certainly this panel to think about more and
5 to investigate.

6 I'm not saying, I'm certainly not
7 arguing that you should remove pricing from
8 the Schedules. I think it probably serves a
9 couple of Government interest to have it
10 posted there. I think it's to the
11 Government's advantage to have GSA Advantage.
12 Because I know that contractors look at their
13 competitor's Schedules and their competitor's
14 pricing and they react to it. They react to
15 what they see there.

16 So, I think that's in the
17 Government's interest to maintain that.

18 And for those very small, you
19 know, quantity one type purchases, I think you
20 need the equivalent of a catalog that you can
21 access. But I think a huge volume of the
22 dollars that are conducted under Schedule

1 programs today, are large orders that are done
2 with varying degrees of competition and the
3 focus should be on enhancing that competition
4 and relying upon that to insure fair and
5 reasonable pricing, rather than this very
6 unwieldy administratively cumbersome and
7 certainly from contractors' perspective, kind
8 of haphazard and sometimes unjust pricing
9 mechanisms.

10 MR. CHVOTKIN: Thank you.

11 CHAIRMAN BRANCH: Yes. April.

12 MS. STEPHENSON: Help me
13 understand this price reduction just a little
14 bit more.

15 When I look at one of the contract
16 clauses on the price reduction, it talks about
17 the relationship of the contractor's
18 commercial pricing or discount arrangements
19 applicable to the identified customer which
20 disturbs the relationship, shall constitute a
21 price reduction. And it gives one of the
22 examples. Revises the commercial catalog

1 price list, Schedule or other document upon
2 which the contract award was predicated to
3 reduce prices.

4 Now, in a situation where the
5 contractor has given the price to the
6 Government and that it appears as though based
7 on this contract clause has then reduced it to
8 another customer and then be subject to the
9 Price Reduction Clause and be required for
10 this clause to report that to the contracting
11 officer and adjust from that period forward.

12 I don't think there's a
13 retroactive. It's from the period that they
14 offered that forward.

15 Why would a contractors be in a
16 situation where they would offer someone down
17 the road a lower price, a lower discount than
18 what they did to the Government?

19 Help me understand why that would
20 be a problem.

21 MR. POCKNEY: Well, it happens
22 every day. I mean it's a very dynamic

1 commercial marketplace, particularly in
2 certain industries. So, are price reductions
3 being offered every day? Yes. They are.

4 The easiest example is the one you
5 read for contractors to deal with and that's
6 where they just change the list prices. And
7 those aren't really the problem from an
8 administrative and a cost standpoint for
9 contractors that they deal with.

10 Their biggest problem is keeping
11 track of the potentially thousands, tens of
12 thousands and in some cases hundreds of
13 thousands of products, individual line items,
14 that they have on the GSA Schedule and their
15 corresponding potentially tens of thousands of
16 customers that they also have. And trying to
17 track. Because most companies -- I know a
18 lot of people don't like to believe this but
19 most companies do not have information systems
20 that give them ready access to transaction
21 prices for every product they sell. It simply
22 doesn't happen for very large companies with

1 these huge numbers of products and customers.

2 And so being able to manage

3 compliance with that contractual requirement,

4 which I think most contractors want to do.

5 They don't want to be out of compliance with

6 their contract requirements. Takes a huge

7 amount of not just IT effort, but in many

8 cases manual effort as well to go and

9 investigate, you know, why do we see this

10 exception to agreed upon pricing? And it

11 becomes a huge effort and it's a costly effort

12 the contractors have to deal with.

13 And that's what makes them

14 reluctant then if, okay. The auditors can

15 come in later and can look back all the way to

16 the beginning of the contract. That's how the

17 retroactive price adjustment would take place

18 is looking back and saying. Well, we think

19 this event back here was an unreported price

20 reduction. And so we think all of the orders

21 all the way back to that point in time you owe

22 a refund with interest to the Government or

1 maybe even we're going to talk to the
2 Department of Justice. We think you
3 deliberately didn't report this price
4 reduction. And that's where the problem is.

5 And contracting officers in GSA
6 tend to try and negotiate very broad
7 categories of basis of award or tracking
8 customers for the purposes of this clause. In
9 fact, there were some discussion of the Mass
10 Express program during Robin's presentation
11 and it's a requirement of award of a contract
12 under Mass Express that you must agree to all
13 commercial customers as the tracking customer.
14 And if you do that, that means I've got to
15 maintain, I've got to track the Government's
16 prices and discounts against all of my
17 commercial customers for every product I have
18 on the Schedule. And that's not a trivial
19 effort.

20 MS. STEPHENSON: Can I just follow
21 up on a question?

22 On the very simplest, it sounds as

1 though what you said is, at the time they gave
2 the bid to the Government may not always give
3 the deepest discount that's available because
4 that deeper discount was given down the road
5 to someone else, at a very simple term.
6 That's almost what it sounds as though you
7 were saying. That competition, that
8 competitive price may not have had that
9 deepest discount.

10 MR. POCKNEY: It may or may not.

11 MS. STEPHENSON: And I think if
12 you're looking for best value and if you're
13 looking for a process that's going to give the
14 Government a discount that's available, I
15 think it's only fair that the Government be
16 aware of that deepest discount. And I think
17 that could be the justification for a price
18 reduction. I'm saying at the most simple
19 term. I realize that there are other
20 complexities out there.

21 But I am just trying to understand
22 the application and where the issue comes in

1 the price --

2 MR. POCKNEY: I appreciate your
3 point there, but we don't do that if we're
4 conducting a competitive procurement on the
5 Part 15 of the FAR. If we have adequate price
6 competition, generally no cost data is
7 required at all to determine whether, you
8 know, the profit is this big or this big of
9 the winning bidder. What we care about is the
10 price competition and we rely upon that to
11 insure that the Government receives a fair and
12 reasonable price.

13 If we have a competitive
14 procurement for commercial items that are on
15 the Schedule, why do we care whether or not
16 the Government got the deepest discount that's
17 ever been given? The Government is not
18 entitled by law or rule to the deepest
19 discount that there is. It's entitled to a
20 fair and reasonable price.

21 It may be that the deepest
22 discount was given on a much, much bigger

1 order in the commercial world.

2 I've seen an example. This was a
3 False Claims Act case where a single sale of
4 one unit of a product, okay. A single sale of
5 one unit resulted in a false claims action of
6 \$10 million against a contractor for giving
7 that single instance of a discount.

8 MS. STEPHENSON: I understand
9 quantities and I didn't mean to imply that if
10 you sold 1,000 units versus 10 units you'd
11 give the same discount on the 10 as the 1,000.
12 That's not what I meant. All things being
13 equal, you would hope that when the bid came
14 into the Government it would be the deepest
15 discount.

16 But just to clarify here, it
17 doesn't sound as though that's always the
18 case. And I think that's something the panel
19 should take into consideration when it's
20 looking at what's going to be the best value
21 to the Government when we're purchasing off
22 the Schedule? It's just something for the

1 committee to take into consideration.

2 I just wanted to make sure I
3 understood what the contractors were actually
4 doing.

5 CHAIRMAN BRANCH: Larry, did you
6 have a question?

7 Are there any other questions of
8 Mr. Pockney?

9 Okay. We want to thank you for
10 coming and sharing your view with us this
11 afternoon.

12 MR. POCKNEY: Thank you very much.

13 CHAIRMAN BRANCH: It's about --
14 it's a little after 2:30. So, why don't we
15 take a break until 2:45 and we'll hear from
16 Professor Yukins.

17 I like to manage room on the
18 quorum rule so when we have six advisory
19 committee members plus our FDO we will go
20 wheels up whether anybody else is in the room
21 or not.

22 So, 2:45 please.

1 (Whereupon, off the record from
2 2:33 p.m. to 2:45 p.m.)

3 CHAIRMAN BRANCH: Okay. I have
4 2:45 on my watch and we have a quorum so we're
5 going to get started.

6 Our next presentation will be by
7 Professor Chris Yukins of George Washington
8 University. The Co-Director of the Government
9 Procurement Law Program there.

10 Chris, welcome. Thank you for
11 sharing some of our time today.

12 PROFESSOR YUKINS: Thank you, Mr.
13 Chairman.

14 Thank you for this opportunity to
15 address the General Services Administration
16 Advisory Commission on Multiple Award Schedule
17 Pricing Policies.

18 As many of you know, our
19 procurement law program at the George
20 Washington University Law School is the
21 leading program of its kind in the nation.
22 And we in the program teach and write on the

1 GSA Multiple Awards Schedule contracts
2 regularly. I, therefore, appreciate the
3 opportunity to review these important policy
4 issues with the Advisory Commission.

5 Just on a personal note, I'm also
6 a Counsel with the law firm of Arnold and
7 Porter but my views today are decidedly those
8 of a professor not of a practicing lawyer.

9 In my brief remarks I'd like to
10 touch on three issues.

11 First, that the Commission's work
12 to improve procurement here in the United
13 States should not be views in isolation. Many
14 nations around the world are struggling with
15 similar policy questions and I would encourage
16 the Commission to share lessons learned with
17 your counterparts abroad.

18 Second, the pricing policy should
19 only be the first step to broader reforms in
20 the GSA Schedule program. GSA Schedule
21 contracts represents roughly ten percent of
22 Federal procurement and it is absolutely

1 imperative that the Schedule contract reflect
2 new best practices and not all compromises.

3 GSA is a world leader in this type
4 of contracting and GSA has a moral obligation
5 as a leader in the field to make the Schedules
6 as strong as possible.

7 Third, in improving the Schedule
8 contracting program, it is imperative that GSA
9 continue to improve the transparency,
10 competition and integrity of Schedule
11 contracting. Much of that reform is already
12 underway. I would urge the Commission to
13 press forward to embrace broader reforms to
14 set a strong foundation for the Schedule
15 program in this century.

16 As I noted in a forthcoming
17 article in the Public Contract Law Journal
18 which I previously shared with the Commission,
19 the startling thing about reforms in this area
20 is that they are occurring all over the world.

21 The European Commission in 2004
22 issued a directive which specifically endorsed

1 what the Europeans call framework contracting,
2 what we know as indefinite delivery and
3 indefinite quantity or IDIQ contracting or
4 Schedule contracting which works essentially
5 the same way.

6 I'm going to skip a little ahead
7 here to stay within my time limit.

8 At the same time, the United
9 Nations Commission on International Trade Law,
10 UNCITRAL, is rewriting the 1994 UNCITRAL model
11 procurement law. I'm an advisor to the U.S.
12 delegation to the UNCITRAL Working Group 1
13 which bring together procurement experts from
14 around the world to discuss proposed reforms.

15 Among other things the UNCITRAL
16 Working Group hopes to bring framework or IDIQ
17 contracting into the United Nations Model
18 Procurement Law. To do that, the working
19 group has developed three different models of
20 IDIQ or framework agreement.

21 I'm just going to use the board
22 here to illustrate those.

1 There are three basic types that
2 they've identified of this IDIQ, what we'll
3 call framework contracting just to use their
4 term.

5 And all three of them are
6 reflected in the 2004 European directives.
7 And I'm going to break these models into two.

8 This is the initial award step and
9 then we have a second step here of what the
10 Europeans refer to as mini-competitions.

11 In the first model, you have what
12 I would call a let's say a fixed term. And
13 what happens in the initial award, you
14 determine the basis on which the subsequent
15 awards, what we would call orders, the
16 Europeans call these contracts. They call
17 these agreements. They call these contracts.
18 We call these contracts -- we call these
19 orders, which is important from a legal
20 perspective because it makes you realize how
21 arbitrary it is that we call these orders
22 instead of calling them contracts.

1 If we call them contracts, we
2 trigger a lot of other legal requirements.
3 Europeans take that next step. They call it
4 contracts.

5 Okay. So, Model 1 is where you
6 fix the terms and then you award based on
7 those fixed terms. This is an approach that
8 only the European could love. We Americans,
9 it drives us nuts. We say, why wouldn't you
10 have competition in the second stage when you
11 can have competition? No, no, no. They don't
12 like the disruption. They like the comfort of
13 having this approach.

14 The second is really more like our
15 IDIQ under FAR part 16 where there will be a
16 limited number of awardees and then there will
17 be mini-competitions here afterwards. And
18 it's -- the structure is very similar to our
19 FAR Part 16.

20 The third which are called and
21 they're really broke off -- they are broken
22 off as a separate model in the European

1 Commission's Directives. The UNCITRAL, United
2 Nations' effort has scrunched them together
3 based on a White Paper the United States
4 submitted.

5 What the United States has argued
6 successfully to the United Nations Working
7 Group is these are all along a spectrum.
8 Unlike the Europeans, let's not deal with
9 these separately from this. Let's deal with
10 these as a continuum.

11 And here you have, this is always
12 open. By the way, the Europeans call this the
13 Dynamic Purchasing System. And, again, it's
14 in a separate article in their Directive. But
15 this is always open and then you have
16 competitions afterwards, leading competitions.
17 And this is directly analogous to our GSA
18 Schedules, this is Model 3.

19 What's been very interesting and
20 I'll go into this in more detail in my
21 statement is comparing how these line up and
22 then some of the dangers that you see emerging

1 when you realize that they are all part of a
2 continuum. Again, I'm not going to talk about
3 these at all because in the United States we
4 put competitions at a very high priority and
5 so we really wouldn't use this type of
6 contract very often.

7 By placing these three types of
8 framework agreements side by side, some
9 interesting issues have arisen especially when
10 we compared the second and the third types.

11 The side-by-side analysis shows,
12 for example, that the second type of
13 agreements, agreements that can only be joined
14 at one time in a vigorous threshold
15 competition may create artificial mini-
16 oligopolies, especially when the number of
17 awardees is limited.

18 The analysis also highlights the
19 importance of the initial competition to win
20 these types of IDIQ agreements which can be
21 again extremely vigorous.

22 So, the concern would be that you

1 would form a mini-oligopoly here in the
2 limited number of awardees. And you see this
3 in practice in the U.S. market. You see a
4 limited number of awardees on these FAR Part
5 16 IDIQs. It creates what is, in essence, a
6 semi-oligopolistic situation.

7 In the third type of framework
8 agreement and I'm sorry. Just to lead back to
9 this. We also have very vigorous competition
10 at this first stage.

11 In the third type of framework
12 agreement the Always Open Agreement is much
13 less likely that the small stable vendors will
14 be able to exert oligopolistic power. From
15 our own experience with the GSA Schedule
16 contracts, we know that thousands of vendors
17 can join this type of arrangement which
18 significantly dilutes the market leverage of
19 anyone vendor.

20 On the other hand, because this
21 type of arrangement is always open, a vendor
22 joining this type of arrangement may feel

1 little pressure to reduce his prices at the
2 time the vendor joins the arrangement.

3 So, when joining this first stage
4 here in this Type 3, the vendor is essentially
5 under very little price pressure and that
6 creates important ramifications for the second
7 stage.

8 First of all, what lessons does
9 this hold for the GSA Schedule contracts?

10 First, it shows that the GSA MAS program is a
11 leader in an important worldwide development.
12 Dynamic purchasing systems, framework
13 agreements are always open as the GSA Schedule
14 contracts are, are only just beginning to take
15 root in Europe.

16 Here in the United States in
17 contrast we have decades of experience with
18 these types of contracts and thus a great deal
19 of experience both good and bad to share with
20 the world.

21 This is a practical example. I
22 made a presentation in Ghana about a year ago

1 sponsored by the World Trade Organization. It
2 is very, very possible that Ghana would set up
3 a multi-country IDIQ or multi-country GSA
4 Schedules we would call it. And then Ghana
5 would serve as a purchaser for commodities for
6 other western African nations.

7 If we can get this right here in
8 the United States, we can transport those
9 lessons to Ghana and make the system work
10 better in Ghana and across western Africa.
11 This is a very high stakes game
12 internationally because we are providing
13 lessons to other countries.

14 At the same time this side-by-side
15 analysis highlights an inherent weakness in
16 the GSA Schedules system, the very weak price
17 pressures on vendors as they first join these
18 Always Open Agreements. Although the price
19 adjustment and Price Reduction Clauses and the
20 commercial sales practices disclosure required
21 by the Schedule contracts all put pressure on
22 the vendor to reduce his prices. Ultimately,

1 other competing vendors, a source of price
2 pressure in any normal competition are
3 essentially irrelevant when a vendor joins the
4 MAS contracts.

5 Any competitive pressure and this
6 is the third lesson. Any competitive pressure
7 on Schedule vendors must, therefore, come from
8 other sources. From the vendors' own
9 commercial price discounts to the price
10 adjustment, Price Reduction Clause and from
11 the mini-competitions held between Schedule
12 holders as they compete for specific
13 opportunities.

14 Thus we can see again there are
15 two sources of price pressure on GSA Schedule
16 vendors.

17 One, their own commercial pricing
18 which exerts downward pressure for the price
19 adjustment or Price Reduction Clause.

20 And, two, the mini-competitions
21 held among vendors.

22 As I'm sure the Commission will

1 hear, using the most favored customer clause,
2 the Price Reduction Clause is a means of
3 insuring reasonable prices is very cumbersome
4 and expensive. It means subjecting vendors to
5 extensive auditing and it drive away vendors
6 that fear the cost and liabilities of
7 compliance.

8 Using the most favorite customer
9 clause means employing a small army of
10 auditors which may explain why we almost never
11 see the solution in developing nations or even
12 elsewhere in our own Government.

13 Finally, the most favorite
14 customer clause can have the perverse effect
15 of discouraging discounts in the private
16 sector. This is an important impact for the
17 Price Reduction Clause. It can have the
18 perverse effect of discouraging discounts in
19 the private sector for vendors will be
20 reluctant to drop their commercial prices if
21 it means corresponding reductions in their
22 Government prices.

1 In other words, the Price
2 Reduction Clause as a most favorite customer
3 clause can have the unintended consequence of
4 artificially inflating prices in the
5 commercial sector. And there's economics
6 literature on this. It talks about most
7 favorite customer clauses. They do create an
8 artificial void to prices because of the
9 collateral impact on the other potential
10 customers.

11 What would happen then if GSA
12 abandoned the Price Reduction Clause? The
13 most favorite customer mechanism has a Section
14 1423, the SARA Panel suggested GSA do for
15 certain information technology service
16 contracts.

17 Doing so would mean GSA could
18 share the costs and difficulties created by a
19 most favorite customer clause. At the same
20 time, however, abandoning the protections of
21 the Price Reduction Clause would point up some
22 very serious faults in second stage

1 competitions. The competitions down here.

2 The mini-competitions among
3 eligible Schedule holders that are so
4 important in an Always Open arrangement, first
5 in transparency.

6 The most obvious problem with the
7 mini-competitions held among Schedule contract
8 holders is the lack of transparency. Although
9 billions of dollars float through the Schedule
10 system, there is no requirement to
11 opportunities, competitions or awards under
12 Schedule contracts be transparent, although
13 transparency of that kind of a standard
14 requirement in even the most primitive
15 procurement systems around the world. As a
16 result, it is almost impossible to monitor
17 failures in the MAS system competition.

18 Second, the competitions that
19 occur under the GSA Schedule contracts are all
20 too often hollow and meaningless. FAR Sub-
21 part 8.4 allows customer agencies enormous
22 discretion and all too often the competitive

1 procedures are twisted to accommodate a
2 favored vendor. Because there is so little
3 transparency, it is difficult to monitor or
4 correct these failures in competition.

5 Integrity and Accountability.

6 Finally, because the competitor rules are so
7 lax and there is so little transparency,
8 integrity and accountability suffer. In a
9 perverse twist vendors are effectively
10 encouraged to break procurement integrity and
11 ethics rules to gain access to insulated
12 procurements because there is so little true
13 transparency or competition.

14 And while there is increasing
15 accountability through big protest, that has
16 taken years to achieve and the accountability
17 still has significant gaps. How then should
18 GSA remedy all this?

19 First, GSA should increase
20 transparency in competition for Schedule
21 orders. This probably means mandating the use
22 of the GSA 4-Buy system to publicize

1 opportunities and awards to the world. This
2 could perhaps be accomplished by requiring
3 that all Schedule opportunities and awards be
4 posted on e-Buy and that these opportunities
5 and awards be republished world-wide through
6 fedbizopps.gov. And the United States has
7 very serious international obligations to
8 publicize opportunities under the world trade
9 agreements, government procurement agreements,
10 under various bilateral free trade agreements.
11 Not having this transparency is a source of
12 potential liability.

13 GSA should insure fair and open
14 competition for Schedule orders. This would
15 mean giving many more vendors notices of
16 opportunities, especially larger opportunities
17 and structuring competitions to accommodate
18 competition rather than a favorite vendor.

19 This would probably means as a
20 practical manner that GSA would have to
21 dictate to its customer agencies how
22 competitions must be run or GSA could

1 facilitate competitions, for example, by
2 hosting on-line reverse auctions for
3 commodities.

4 If transparency and competition
5 are enhanced, greater integrity will almost
6 certainly follow. At the same time, GSA
7 should insure greater accountability in
8 Schedule contracting by making it clear that
9 slipshod contracting practices can and will
10 be stopped by protests.

11 Why though should GSA take the
12 high road on these issues? Why shouldn't GSA
13 simply accommodate its customer agencies by
14 letting lax procedures undermine transparency
15 competition, integrity and accountability?

16 The answer is actually surprising
17 and goes to the heart of GSA's survival. I am
18 convinced that GSA stands at a crossroads.
19 GSA can take the low road and allow its
20 contracting practices to sprawl out of
21 control. In the short term, that may attract
22 customer agencies helping to reduce

1 transaction costs and to purchase from
2 favorite vendors.

3 In the long term, however, that
4 would like doom GSA to irrelevance.

5 I'm convinced that GSA must
6 instead take the high road if it is to
7 survive. It would be far too easy for a
8 private company and Amazon.com, for example,
9 to replicate loose procedures with lax
10 transparency, marked competitions and little
11 accountability.

12 If GSA is to avoid being replaced
13 by a commercial company, GSA must insure that
14 this processes guarantee maximum transparency,
15 competition integrity. And that its
16 contracting systems fully accommodate the many
17 other requirements that set Federal
18 contracting apart.

19 Ultimately, a private company and
20 Amazon.com for example could not hope to take
21 on that role. If GSA can prevail in that role
22 as the leading centralized purchasing agency,

1 in the largest procurement system in the
2 world, it will continue to play an important
3 part in Federal procurement for many, many
4 years to come.

5 Thank you again for the
6 opportunity to address the Commission and I'd
7 be glad to take any questions.

8 CHAIRMAN BRANCH: Do we have any
9 questions for Professor Yukins?

10 Judith?

11 MS. NELSON: Thank you very, very
12 much. It was actually incredibly interesting.

13 I actually have a couple of
14 questions. First of all, you mentioned some
15 economics literature around the Price
16 Reduction Clause and the most favored customer
17 and the commercial pricing. And I don't know
18 if anybody else is interested in it, but I
19 certainly would be interested in seeing some
20 of that literature.

21 PROFESSOR YUKINS: I would be glad
22 to do that.

1 MS. NELSON: Okay.

2 CHAIRMAN BRANCH: If I could stop
3 you. If you could just get that site to Pat
4 so she can get it out to the Committee, I
5 think that would be a great benefit.

6 PROFESSOR YUKINS: Yes.

7 MS. NELSON: And then in your
8 recommendations or in -- I don't know if you
9 call them recommendations, but enhancing the
10 price pressures.

11 You brought out three things.
12 And, you know, and I'm sure you obviously
13 understand how pricing is done. And so of
14 course the way that the Schedule program
15 works, is that we have PCOs, Procurement
16 Contracting Officers who negotiate with the
17 vendor and Schedule pricing is established.
18 And then the vendor goes directly -- works
19 with the agency or ordering -- I want to say
20 an ordering activity because not only is the
21 Federal buyer an ordering activity and an
22 order is placed, when a BPA or a task order.

1 And except in the case really of
2 assisted acquisition services, GSA is out of
3 the picture. So, it doesn't -- generally,
4 we're not in the picture. There are other
5 vehicles like NASA soup that do stay directly
6 in the picture and that procurement comes
7 through them.

8 So, we do put out guidance for
9 both our vendors and our ordering activities
10 on how to use the Schedule and there is
11 guidance in the FAR plus there's, you know,
12 manuals on how to use it both on-line and not.

13 So, here when we talk about GSA
14 should insure fair and open competitions for
15 Schedule orders, this -- I'm wondering in what
16 you're thinking about, the practicality of how
17 to do that since we're not involved in that
18 process.

19 Our IG doesn't go out to the other
20 agencies. We're not involved in the ordering.
21 And so the question that I'm asking is, you
22 know, in a practical sense, how would you look

1 to implement something like that? The best we
2 can put out in the world is guidance. So, how
3 do we insure open competition in Schedule
4 orders when Interior or someone goes out to
5 place the order?

6 PROFESSOR YUKINS: The practical
7 answer is to push as much as possible through
8 the eBuy system. And you really have to think
9 carefully. Why is eBuy. Why I introduce my
10 students to the GSA system, there are all
11 these databases. There's the Schedule Sales
12 Query, the GSA Advantage, there's a GSA
13 eLibrary. These are all publicly available
14 databases.

15 When I want to show them eBuy I
16 literally have to -- I asked around the room.
17 I said, which of you students actually has a
18 password to get into to eBuy? And we break
19 into eBuy so I can show it to the students
20 upon the screen. It's absolutely crazy to
21 have the eBuy system walked off like that.
22 And it really reflects in my candid opinion,

1 it reflects poorly on the agency because it's
2 suggesting the agency is trying to hide
3 something.

4 The eBuy system should be opened
5 up and if you open it up and you force a
6 transaction through there, at least the
7 opportunities will be transparent. And it may
8 be more difficult to drive the awards onto
9 eBuy because very often times, you know, their
10 complexerance is a service vibe. A complete
11 services package is difficult to post through
12 eBuy perhaps. But at the very least, the
13 opportunities will be transparent.

14 And often times you'll see
15 sophisticated contracting commands,
16 particularly in the DOD, they will have their
17 own web site like an internal bulletin board
18 with opportunities and that's linked up into
19 fedbizopps and that would be the same idea.
20 Take eBuy and put it up on fedbizopps so that
21 everybody all over the world could see at
22 least the opportunities. The awards is a

1 harder question.

2 And how you actually structure the
3 competitions to maximize competition, that's
4 a harder question. In the IDIQ awards that
5 you see under FAR Part 16, you'll often see
6 steps to competition, how you have to conduct
7 the competition. And GSA could take the same
8 approach. I think it would vary from Schedule
9 to Schedule, depending on what's being bought.

10 CHAIRMAN BRANCH: Debra?

11 MS. SONDERMAN: In that same
12 paragraph on number 2 on page 5. You
13 recommend looking at -- well, I interpret what
14 you say as setting thresholds for larger
15 opportunities that would be more publicly
16 available.

17 What is in your head when you use
18 the word "larger"? Is there some dollar?

19 PROFESSOR YUKINS: I think there
20 is an historical consensus in the United
21 States that anything over \$25,000 should be
22 fully publicized. My personal view is to take

1 the threshold to \$25,000 to make it simpler.

2 I have to say, often times these
3 issues get played out very effectively when
4 you throw them on the international stage and
5 Jean Grier who is, you know, half a block from
6 here, she negotiates these international
7 agreements. She has not squarely addressed
8 the issue of IDIQs or the GSA Schedules in the
9 context of the Government Procurement
10 Agreement. But I think Jean would be the --
11 I don't want to speak for her, but my guess is
12 she would say. Look, make it uniform. Make
13 it -- make the threshold for publicizing
14 uniform across the Government \$25,000.

15 Alternatively, you could take the
16 threshold that's used for the Government
17 Procurement Agreement and for most of our
18 bilateral free trade agreements which right
19 now is \$194,000. That's another possible
20 threshold.

21 I like the \$25,000. My intuition,
22 my guess is that where it came from was a

1 sense that the average American public pays
2 about \$25,000 a year in income taxes. So, if
3 we're going to spend that taxpayers money,
4 gosh darn it, we're going to publicize it.

5 MS. SONDERMAN: Okay. Thank you.

6 CHAIRMAN BRANCH: David?

7 MR. DRABKIN: I'm not sure where
8 to begin, Chris.

9 Well, let's start with eBuy is not
10 a transactional database. eBuy is fedbizopps
11 with Schedule and every scheduled vendor has
12 access to eBuy. But your recommendation that
13 we open it up to the publici so that they can
14 see is similar to what the 1423 Panel
15 recommended in terms of increasing
16 transparency of task and delivery orders
17 without regard to what kind of contract it's
18 placed on.

19 The next issue about \$25,000.

20 First of all, historically, it's very young.
21 It only resulted as a result of CICA when the
22 limitations were initially placed and that was

1 1984. So, it's not that old and it was based
2 upon a look at we actually did then and it
3 used to be the small purchase limitation. And
4 now when FACA became subsumed as the
5 publication requirement but that was only --
6 because I believe if you look at GAP, there is
7 \$25,000 is somewhere in GAP, I think.

8 So, I don't know that \$25,000 is a
9 magic number, but I'm pretty sure it has
10 nothing to do with what people paying with
11 their taxes in 1984 because you were paying
12 \$25,000 in taxes in '84, you were doing pretty
13 well.

14 But I am curious about how you
15 think GSA should play the role of -- it sounds
16 to me almost like policemen is what you're
17 asking for here. That we somehow police the--
18 the use of the Schedules.

19 Before you arrived, one of our
20 colleagues on the panel asked a question of
21 one of the presenters. What happened in '94
22 and '95 that changed the Schedules and they

1 went from hundreds of thousands or millions of
2 dollars worth of sales and all of a sudden we
3 were at almost \$32 billion a year? And the
4 answer unfortunately I don't agree with Robin.
5 I think the answer is, we move from GSA making
6 the choices on the Schedule on behalf of our
7 customers. We move that choice to the
8 customer making the choice within the rules
9 that will be set up.

10 So, how would you see GSA actually
11 being a policeman to its customers and what
12 impact do you think that would have on the
13 utility of the Schedules?

14 PROFESSOR YUKINS: I think in the
15 short term it would be very unpopular with the
16 customers. But I think in the long term from
17 a completely practical and political
18 standpoint, it would cement GSA's role as the
19 centralized purchasing agency of choice.
20 Because I think at the end of day those
21 customers, David, are accountable to Congress.
22 And those customers actually want policing.

1 I think practically speaking, for
2 example, you would set out more rigorous
3 competition requirements in the Schedule --
4 the Schedule agreement that both the customer
5 and the contractor would have to follow. That
6 would be -- again, that's adopting an approach
7 that we see in IDIQ contract in other agencies
8 that have multiple agencies as customers.

9 MR. DRABKIN: And when you're
10 talking about more rigorous competition
11 requirements, currently for DOD under 803,
12 they got to solicit everybody. They got to
13 get three vendors or they got to do a
14 justification. It doesn't apply to civilian
15 agencies, although you know language in S680
16 would apply it to everyone.

17 There is some discussion by Paul
18 Dennett about applying that rule to everyone.
19 Would that be sufficient rigor or are you
20 looking for something more than a rule?
21 Because currently the Schedule rule says if
22 it's under the maximum of the threshold, you

1 have to consider three vendors. It doesn't
2 tell you what consideration of three vendors
3 is.

4 So, what do you mean by rigor in
5 terms of competition? The 803 applied to
6 everybody else or some other method?

7 PROFESSOR YUKINS: I'm too much of
8 pragmatist to be able to say I think this rule
9 is the right rule. I think that one of the
10 geniuses of our system is that we have this
11 pragmatic dialectic where you try something,
12 see if it works. But in order to see that it
13 works, it has to be really very transparent.

14 I think the more that you could
15 use the eBay system, the more you could use
16 GSA Advantage. GSA Advantage, unless eBay as
17 I understand it is a transactional database.
18 So, you could drive more transactions.

19 And as you saw how those
20 transactions from a point. For example, is
21 one vendor getting too many of the orders or
22 getting a lot of orders? How is this

1 happening? Is it -- over time you would have
2 a better working sense on how you would
3 improve the rules if the rules aren't
4 sufficient.

5 I can't say one particular rule is
6 a panacea. I wish I could. I just can't.

7 MR. DRABKIN: Okay.

8 CHAIRMAN BRANCH: Larry and then
9 Debra.

10 MR. ALLEN: My question is. If
11 you wanted to populate all the Schedule things
12 back onto fedbizopps which once upon a time
13 was the rule for IT, what then would that have
14 in terms of an implication for the utility of
15 the Schedules program which is today an
16 expedited method of procurement? Would that
17 have the effect of taking the schedule back to
18 full and open competition? In which case, why
19 have the program or GSA?

20 PROFESSOR YUKINS: I don't think
21 so. For instance, if you go to frugal.com and
22 we've done this for -- we've done this in the

1 United Nations Working Group. There's a long
2 debate about opening things up too much in
3 framework agreements, making it too
4 cumbersome. I said, look. If I want to buy
5 teddy bears I can go to frugal.com and I can
6 do a search for teddy bears and within half a
7 second I've got 16 different teddy bears that
8 I want to buy.

9 If you set up GSA Advantage with
10 the type of searchings of frugal.com which is
11 a Google ancillary service has, you set up GSA
12 Advantage with that type of technology,
13 customers can find instantaneously what they
14 want. A lot of this is technological
15 questions.

16 I understand that Google has
17 invested in getting vendors to put XML into
18 their catalogs. Post their catalogs in XML so
19 that anybody can search for teddy bears at any
20 time and find vendors very, very quickly.

21 I don't think that's true of GSA
22 Advantage right now. I think GSA Advantage

1 still can be funky.

2 MR. ALLEN: How about fedbizopps
3 because you had mentioned that, you know, some
4 people had set up their systems so that things
5 appeared on eBuy would appear on fedbizopps?

6 PROFESSOR YUKINS: I was actually
7 referring to other -- to usually Defense
8 Department components, sophisticated
9 customers. Sophisticated buyers who want to
10 be able to control as I understand it the
11 solicitation process on their own system.
12 They just replicate that under fedbizopps.

13 MR. ALLEN: So, you're not
14 necessarily recommending that GSA do that?

15 PROFESSOR YUKINS: No. I think
16 GSA should do it. I think they should control
17 the data through GSA eBuy. And, again, I'm
18 not a technician, but I'm assuming that GSA
19 would be better served to control the data
20 through eBuy and then replicate it onto
21 fedbizopps.

22 MR. ALLEN: Why would you want to

1 replicate something on fedbizopps if it were
2 already on eBay and still maintain the
3 framework of a Schedules program?

4 PROFESSOR YUKINS: Because the
5 reason you use fedbizopps is because of our
6 international obligations. We tell our
7 international trading partners that all
8 opportunities are available. And frankly
9 that's -- Larry, that's turned into a giant
10 lie with the Schedules. We tell our trading
11 partners. We tell Germany, we tell France, we
12 tell England that all opportunities above a
13 certain threshold are publicized. And then
14 they say, well, what about Schedules? And you
15 really can't answer that question. It's a lie
16 and we can't lie in those international -- in
17 international relations because we'll lose
18 credibility.

19 MR. ALLEN: Would a solution be to
20 alter the international agreements rather than
21 to change this program around --

22 PROFESSOR YUKINS: No --

1 MR. ALLEN: -- because it wouldn't
2 just be the international stuff that's
3 affected?

4 PROFESSOR YUKINS: No. Because I
5 wouldn't want 10 percent of the UK procurement
6 market to disappear into a black hole for
7 American exporters.

8 MR. ALLEN: All right.

9 CHAIRMAN BRANCH: Debra, you have
10 the last question.

11 MS. SONDERMAN: All right. Thank
12 you.

13 My question is, do you think our
14 need is to focus more on transparency because
15 you talked a lot about making things more
16 available for view? Or is it competition?

17 PROFESSOR YUKINS: I think with
18 regard to the second stage, the transparency
19 will enhance competition. I think bringing
20 more transparency to the second stage will
21 mean more vendors will engage. You'll
22 effectively have more competition.

1 With regards to the first stage,
2 that's actually a very interesting question
3 and something I really haven't touched on.

4 GSA has more data, more price data
5 than anyone else in the universe. It
6 understand -- can understand markets better
7 than anyone else in the world because it has
8 thousands and thousands and thousands of
9 vendors. It's unbelievably ironic that a PCO
10 negotiating with a contractor is only focusing
11 on that contractor's prices and isn't looking
12 at the thousands of prices to the right and
13 the left. That's crazy.

14 Enhanced competition in this first
15 stage by having the contracting officers use
16 those incredibly rich databases and say. Hey,
17 your competitor is offering this. Wow.
18 Instead, there's this focus of the commercial
19 sales practices and the Price Adjustment
20 Clause. Everything funnels down into what the
21 vendor's commercial prices are. And that
22 makes a lot of sense.

1 But also look collaterally. When
2 I buy a car I know everybody's prices and I
3 talk about it with the salesman.

4 Thank you for your patience, Mr.
5 Chairman.

6 CHAIRMAN BRANCH: Thank you for
7 sharing these incites with us this afternoon.

8 Thanks a lot.

9 PROFESSOR YUKINS: Thank you.

10 CHAIRMAN BRANCH: We've reached
11 the part today in which folks that had not had
12 an opportunity to notify Pat in advance will
13 be given an opportunity to offer some remarks
14 with respect to the work of the panel.

15 The first person requesting to do
16 that is Linda Rodden, Director of GSA
17 Compliance with Fedlink. So, Linda, you have
18 the floor. Yes, please.

19 MS. RODDEN: Okay. Thank you.

20 I have made comments or personal
21 comments based on over 25 years dealing with
22 GSA Schedules and all sides of the fence both

1 in Government and in private industry and as
2 a consultant.

3 I think one of the key things that
4 has been reiterated several times today is key
5 challenges of defining the role of the task or
6 delivery order versus the catalog price in
7 determining the reasonableness and the
8 position for price reduction in most favored
9 customer.

10 The big change happened in the
11 '90s. Prior to that the focus was on the
12 catalog, the GSA price. Post that the focus
13 has been on the task order, delivery order.
14 And that's a critical component when you're
15 looking also at the commercial marketplace
16 which tends to be kind of messy.

17 So, if GSA allows their
18 environment to be equally messy, they get
19 equally good competition.

20 Particularly in the services it
21 becomes an issue because Schedules has been a
22 place where commercial companies can bring

1 their commercial solutions to the Government
2 as opposed to IDIQs where they give response
3 to what the Government asks for. That has
4 been at the task order level traditionally
5 with the Schedules.

6 Commercially in services
7 particularly you can do a combination of fixed
8 price or service level agreement solutions
9 that have also labor hour and cost
10 reimbursable elements to it using your
11 commercial GAP processes.

12 When you look at the whole
13 solution environment, using price reduction
14 and most favorite customers tied to labor hour
15 rates, probably should be investigated because
16 labor hour rates and the cost of the effort--
17 price of the effort not necessarily correlate.

18 And in the commercial environment,
19 I have a lot of flexibility to provide the
20 best person to accomplish the needed objective
21 and not try to shoe horn into some artificial
22 category that might affect my price reductions

1 in the future or my ability to provide the
2 best solution possible.

3 So, I think that is a core
4 challenge to the panel is to really look at
5 that role for the task order versus the
6 catalog and then see whether again the price
7 reduction and the most favorite customers make
8 sense in that environment.

9 Thank you.

10 CHAIRMAN BRANCH: Thank you.

11 Does anyone have any questions for
12 Linda?

13 Brief remarks?

14 Okay. Thank you very much.

15 The next person who has asked for
16 an opportunity to speak is Mr. Steve Charles,
17 founder of immixGroup. So, you're welcome to
18 take the floor.

19 MR. CHARLES: Thank you.

20 My please to be here.

21 I've been helping commercial
22 technology company address the issue of full

1 disclosure of their commercial practices and
2 representing those practices on Schedule
3 contract offers and supporting those
4 disclosure with IG audits now for about 18
5 years.

6 And the thing that strikes me from
7 that very down in the weeds data world that I
8 live in is the dramatic difference from one
9 company to the next.

10 It is amazing to me not only the
11 differences across industry, from industry to
12 industry, but within an industry, within a
13 particular commodity category. How different
14 one manufacturer markets, sells, discounts,
15 engages partners. How different they are one
16 from the other. And how different as a result
17 our disclosures are when we put together a CSP
18 and an offer for a Schedule contract.

19 I bring this up because I would
20 encourage the panel to recognize this
21 granularity in the marketplace. Such
22 granularity exists across the various

1 commodity and industry segments, down to
2 company by companies on the product side. The
3 same is true on the services side.

4 And my overriding concern is that
5 in this interest to have consistency across
6 the Schedule program, that we might as in this
7 quest for consistent operations, consistent
8 interpretation, consistent policy that we
9 might actually lose the fact that the content
10 industry to industry, product versus services,
11 company to company, is really quite different.
12 And that the Schedule program was always
13 premised on a Schedule contract reflecting
14 that company's commercial practice, reflecting
15 it not driving its pricing.

16 And it's important that the result
17 in contract be a reflection of that company's
18 commercial pricing and not actually drive
19 commercial pricing.

20 Many of the folks who come into
21 GSA Advantage are commercial companies looking
22 to see what the Government is getting and my

1 clients are concerned that offering, you know,
2 and granting the most favored customer price
3 on a catalog that's open for all the rest of
4 the world to see, actually drives their
5 commercial pricing down. And so
6 philosophically the concern would be that
7 somehow GSA would be a market maker or a price
8 driver rather than actually a reflector of the
9 commercial marketplace.

10 Thank you.

11 CHAIRMAN BRANCH: Any questions
12 for Mr. Charles?

13 David and then Allen.

14 MR. DRABKIN: What would be the
15 problem with GSA being a market maker or
16 driving the price of the market if we are the
17 biggest consumer -- biggest single consumer in
18 that particular part of the market?

19 MR. CHARLES: Right. David, the
20 question is -- the premise of the question is
21 that you actually -- is if you actually buy
22 efficiently. And the truth of the matter is

1 that the Government requires selling in -- and
2 selling costs that actually exceed the
3 commercial.

4 I can go to the head of General
5 Motors or General Electric and work a top down
6 kind of arrangement. That doesn't work in the
7 Government. The commitment just isn't there.

8 MR. DRABKIN: With all due
9 respect, very few companies go to the heads of
10 General Motors or General Electric. We heard
11 from them on the 1423 Panel.

12 The average company deals with
13 their purchasing office just like they deal
14 with the Federal Government's purchasing
15 offices. And so again I ask, what would the
16 problem with GSA or the Government as a whole
17 setting market price where we are the single
18 biggest customer for that particular market?

19 MR. CHARLES: Right. No. I
20 understand the objective of the Multiple
21 Awards Schedule program. It's been the policy
22 objective to reflect the Government's overall

1 spend in the Schedule contract pricing and in
2 industry we've responded by granting volume-
3 based discounts in our Schedule contracts so
4 that the Government can actually avail
5 themselves of commensurate pricing discounts
6 for commensurate commitment.

7 And that's been industry's work
8 around to address your larger issue and I see
9 nothing wrong with that. What I do see wrong
10 with it is offering the best price I ever gave
11 anyone regardless of the circumstances for
12 Quantity 1 on the GSA Schedule. It's just not
13 workable in good business.

14 CHAIRMAN BRANCH: Okay. Alan.

15 MR. CHVOTKIN: Mr. Charles, you
16 focused on the pricing element. Does your
17 concern extend to the unique terms and
18 conditions that established the business
19 relationship between the Government and the
20 commercial marketplace as well?

21 MR. CHARLES: The terms and
22 conditions are an issue. The premise of the

1 Schedules in the early days when it was to
2 reflect commercial offered goods, putting
3 services to the side, was that we would be
4 offering the goods under the same terms and
5 conditions that we offer commercial customers
6 so that there wouldn't be a disconnect between
7 what we are offering under the Schedule
8 contract versus what we do commercial in terms
9 of how we sell, in terms of how we license our
10 software, in terms of how we might provide
11 maintenance and support, updates, upgrades and
12 so on.

13 The premise always was that there
14 was really very little difference.
15 Increasingly, we've seen Government unique
16 requirements. Energy Star came along.
17 Section 508, the various more recent standards
18 around power consumption. And so we're
19 starting to see requirements that are
20 Government unique that actually start to
21 disconnect our commercial practices, our
22 commercial pricing, our commercial terms from

1 Government requirements.

2 I've always thought that the
3 Schedules were unique in the sense that they
4 facilitated a commercial offerors ability to
5 offer what they offer commercially. Just
6 offer it to the Government. Whereas an IDIQ
7 contract, competitive offered under an RFP FAR
8 Part 15 procedure, allowed the Government to
9 define its requirements and for industry to
10 respond accordingly.

11 My bias is for the IDIQ contracts
12 to play that role where the Government
13 prescribes its requirements and makes its
14 demands. Whereas, the open for a commercial
15 offered same stuff we offer globally under
16 same terms and conditions at comparable
17 pricing.

18 CHAIRMAN BRANCH: Debra.

19 MS. SONDERMAN: So I just wanted
20 to carry out a couple of the examples you
21 offered to the next logical conclusion to make
22 sure I understand the point that you're

1 making.

2 So, since my particular agency is
3 especially concerned about conservation of the
4 environment, it's fine with you as long as you
5 and your other business colleagues are
6 offering commercial products that I ignore
7 your products because they're not Energy Star
8 compliance or because I care about my work
9 force that happens to have disabilities and
10 want to insure that the technology is
11 available to people with disabilities, that
12 I'm going to chose to buy products that do
13 comply with the Section 208 requirements.
14 That's all fine with you because somebody else
15 is going to come along who will meet my market
16 needs in their commercial offerings like my
17 washing machine and dryer at home which are
18 Energy Star compliant?

19 MR. CHARLES: Right. I believe
20 that history has shown both with Energy Star
21 and Section 508. Section 208 in particular
22 because it was structure to require

1 contracting officers to buy the most
2 accessible. Right. And so as a result,
3 industry has moved to provide ever
4 increasingly accessible products.

5 It was structured in a way that it
6 facilitated a marketing effort, where if mine
7 is more accessible than yours, you have to buy
8 mine. Right.

9 That was decided in law or at
10 least in the implementing regulations. And as
11 a result, industry moved.

12 There is always a transition time,
13 however, between where we started with 508 or
14 Energy Star and where we are 10 years later.
15 So, certain companies embraced it earlier and
16 brought things to market sooner and some
17 lagged. But the Schedule contract pricing
18 which seems to be what this panel is about
19 still should be base don what I sell
20 commercially and what I sell it for
21 commercially. And it's a tough call for GSA
22 to decide whether or not it will accept or

1 reject an item based on some emerging standard
2 for emerging requirement in the Government.
3 That's gray area.

4 CHAIRMAN BRANCH: I have, I guess,
5 a couple of related questions here.

6 So, as I look at the newspaper and
7 I listen to news radio, I understand that
8 people like Walmart are going green. And they
9 are imposing those sorts of requirements on
10 their vendor base. So, is it your suggestion
11 that an organization the size of the United
12 States Government with roughly equivalent
13 purchasing power would not exercise its
14 prerogative to impose those sorts of
15 requirements on a commercial pricing base?
16 And, if so, why not? If Walmart does that,
17 why not us?

18 MR. CHARLES: I think we need to--
19 I agree that the United States Government
20 through its purchasing power has been able to
21 move industry in many beneficial ways, both in
22 terms of lowering energy consumption as well

1 as improving accessibility for computing.

2 And I think that's great. The
3 contractors who offer their products take
4 years to evolve. The United States
5 Government does move markets. And everyone
6 responds as they can based on their product
7 road map -- road maps, their plans and the
8 marketplace is a very messy -- it's a very
9 messy thing. It doesn't just happen.

10 And so we need to accommodate this
11 transition, these transitions periods and yet
12 we are faced with a contract that says, give
13 us your commercial stuff by commercial
14 pricing, disclose how you sell it commercially
15 and we want the best price, while we're in
16 transition phases of the Government requiring
17 increased requirements of us.

18 So, it's -- there's tension there.
19 There just is and we need to have some way of
20 talking about that and negotiating that in our
21 Schedule contract negotiations so that these
22 things can evolve over time.

1 It took 10 years for Energy Star
2 to just become kind of de facto. No one
3 things about it much anymore. We're onto the
4 next level of standards. But that's 10 years.

5 CHAIRMAN BRANCH: Okay.

6 MR. CHARLES: It's two option
7 extension periods.

8 CHAIRMAN BRANCH: I'll ask my last
9 question and then I'll yield the times to my
10 colleagues.

11 Which is to your point with
12 respect to a fairly heterogenous environment
13 of commercial pricing at a very, very granular
14 level. So, how would you envision we might
15 look at structuring GSA pricing arrangements
16 so they are indeed reflective of rather than
17 drive by our requirements?

18 MR. CHARLES: Well, I think that's
19 -- I think that's a great question. And I've
20 always felt and I've always advised industry
21 that the Schedule contract, all the Government
22 is asking is for you to reflect what you

1 offer.

2 If you offer an expensive feature-
3 rich product and you can command a high price
4 in the commercial marketplace, then you should
5 be able to command that price on a Schedule
6 contract.

7 On the other hand, if you're -- if
8 you happen to be in an area that's fully
9 commoditized where there are many suppliers of
10 exactly the same spec, then it's all about
11 price. And your commercial sales data will
12 reflect that. And your pricing on your
13 Schedule contract catalog will reflect that.

14 So, there is a huge continuum here
15 between items that are brand unique and items
16 that are pure commodities. A very broad gray
17 scale. And the only solution I can think is,
18 let the offerors offer what they sell
19 commercially and just as the program has for
20 many years been tied to how the companies sell
21 and discount commercially, have that be
22 reflected in the contract.

1 It seems to me that that addresses
2 that wide, broad, gray scale of difference
3 from one company to the next. And that's true
4 for the product side as well as the services
5 side.

6 CHAIRMAN BRANCH: Okay. Thank
7 you.

8 David and then Larry.

9 MR. DRABKIN: Well, I think this
10 discussion bring up a point that has been the
11 subject of at least internal discussion in GSA
12 and I've heard some discussion outside of GSA.
13 And that is should the GSA Schedules be all
14 things to all people? Specifically, should we
15 offer things on the GSA Schedules for sale
16 that aren't compliant with Government policies
17 like the green policy or the Energy Efficient
18 policy or the 508 policy? And there are those
19 who have argued that as you mentioned that the
20 GSA Schedules are placed to sell commercial
21 items the way you sell in the commercial
22 marketplace. And there are others that say if

1 the Government for whatever reason has
2 determined as a matter of policy that the
3 Government should only buy energy efficient
4 stuff, then the only thing that should be on
5 GSA Schedules is energy efficient stuff.
6 Would that help the pricing policy if we took
7 everything -- if we only had on the GSA
8 Schedules that which was compliant with policy
9 either set by Congress or by the President?

10 MR. CHARLES: Well, the answer
11 would be very different from one company to
12 the next depending on how much they had
13 anticipated this requirement.

14 I am -- I have companies come to
15 me and say. If I jumped every time the
16 Government said they were going to require
17 something, some new technical standard or this
18 or that, I would be doing things that never
19 really panned out in the marketplace. Right.
20 And so for those people who say, I can only go
21 to Cooper Keno but once and talk to my
22 management about adopting, you know, some new

1 security standard. I need to know that the
2 Government is actually going to make it a
3 requirement and stick to it for the next five,
4 ten years.

5 That would be an argument in favor
6 of having contracts make these requirements
7 and the Government stick to it. Industry
8 would know then that you were actually serious
9 about enforcing it. But I'm sure there are
10 plenty of other folks who could argue the
11 opposite side of that. It's all about these
12 transition times which actually take years.
13 And the Government doesn't act as one. The
14 Government often says it's a requirement and
15 thou shalt. And 80 percent of the business
16 continues to go the old way and companies say,
17 I don't now. I'm not going to do anything.

18 MR. ALLEN: Well, my comment is
19 closely related to that. And I see a little
20 bit of each side. I think absolutely to
21 Elliott's point that, you know, the
22 Government should be -- if it feels like it

1 needs to buy green, it should have the ability
2 to buy green. However, in terms of how you
3 manage that from a contract standpoint on a
4 large program like the Schedules program that
5 supplies every Government agency, I think
6 there's a strong argument to be made that it
7 ought to be open to all commercial solutions.
8 And then you let the customer decide at the
9 time of purchase whether or not they have a
10 specific need for something that's 508
11 compliant or Energy Star or HSPD-12 or what
12 have you. Or whether or not they may have
13 some mission-oriented requirement that in
14 their opinion supersedes the need to comply
15 with a specific mandate.

16 And, in fact, you do see that
17 happening all the time. Section 508 rule
18 itself was written to allow just that type of
19 flexibility.

20 GSA is in the unique situation of
21 trying to serve as many customers as it can.
22 And I think, you know, one of the things that

1 Judith had said earlier is GSA can provide
2 guidance and education and encourage customer
3 use and customer practice, but that ultimately
4 it is the customer's decision to decide on a
5 specific set of circumstances what it needs to
6 buy.

7 So, I would hesitate to say that
8 at the Schedule level we ought to be removing
9 things from the program that don't meet a bona
10 fide Federal mandate for a variety of reasons,
11 one of which is Steve's point which is some
12 agencies have an interesting way of deciding
13 whether or not that mandate applies to them.
14 But also the very valid point that some
15 agencies that GSA serves may believe and may
16 have a waiver, may have a justification that
17 they don't need that stuff. GSA ought to be
18 in the position I think of being available to
19 serve as many of its constituents as possible.

20 CHAIRMAN BRANCH: Are there
21 anymore questions for Mr. Charles?

22 We certainly want to thank you for

1 your incites this afternoon.

2 Okay. Our last presenter, Mr.
3 Kevin Adams of Computer Discount Warehouse
4 Direct, LLC, CDW Government, Inc.

5 MR. ADAMS: Thank you.

6 A lot of comments I was going to
7 make have actually been answered or addressed
8 in the questions and answers between Linda and
9 Steve and your questions. And I want to thank
10 the panel for giving me the opportunity to
11 come on up.

12 I'm kind of unique in that I spent
13 20 years in the Federal Government. I'm a
14 retired Marine. And I'm not going to tell you
15 how long ago I retired so you can start trying
16 to guess my age. But I spent a lot of time in
17 the public sector.

18 And in my current role right now,
19 I run all the contracts for CDW Direct. We're
20 no longer Computer Discount Warehouse. We
21 changed our name a couple of years ago.

22 CDW Direct, LLC, which sells

1 primarily commercially. And CDW Government
2 which primarily sells into the public sector.
3 So, I have one foot commercial, one foot in
4 the public sector.

5 And I wanted to just point out a
6 couple of differences that I see between what
7 happens commercially and what happens in the
8 public sector and specifically Federal.

9 And the very first one is in the
10 commercial marketplace when we sign the
11 contract that's almost the beginning of the
12 end. Not the end of the beginning.

13 I've spent the money marketing.
14 I've spent the money selling. I've inked the
15 paper. I have the deal. And the Federal
16 Government so when I sign the contract
17 commercially, the revenue flows. When I sign
18 my GSA Schedule expenses flow.

19 I have to go on out and I have to
20 market my contract. I get plenty of help from
21 GSA, plenty of help from inside the
22 Government.

1 I actually have to invest the
2 money to market it, invest the money in sales
3 people to develop the relationships to
4 actually turn an order on the GSA Schedule.
5 And that perhaps might be one of the
6 fundamental differences why GSA gets calls
7 from contractors saying. I've had my contract
8 for six months, how come nothing is flowing?
9 Because they don't understand the differences
10 between the marketplace.

11 The other thing I'd like to point
12 out and there was plenty of discussion at the
13 GSA unique requirements or the Federal
14 Government unique requirements. Every single
15 one of those makes me incur a cost. If it's
16 just to take my commercial catalog and filter
17 it down for those items that I can sell on GSA
18 Schedule there is a cost involved.

19 When I look at how much I spent
20 for a dollar of revenue for a GSA Schedule
21 sale versus how much on contracting --
22 contract administration. How much I spend on

1 commercial contract. It's night and day.
2 It's by commercial catalog, sign the contract
3 for the commercial catalog. That's always
4 maintained. If there's a discount off the
5 commercial catalog, the customer gets it.

6 And I just wanted to disagree with
7 one comment I heard earlier from Mr. Yukins
8 and I hope I pronounced his name correctly.

9 He had an interesting perspective
10 on the Price Reduction Clause and how it might
11 artificially inflate commercial prices.

12 Well, in case of CDW, commercial--
13 there are people inside of CDW I have to
14 explain what common, Federal acronyms mean.
15 They don't understand the Federal Government
16 whatsoever.

17 Primarily, it's commercial
18 business. So, because there are other avenues
19 for the Federal Government to procure from
20 from GSA Schedule, one of the things that I am
21 finding is that we are actually limiting what
22 we're putting on GSA Schedule for the simple

1 fact that do the commercial deal. There are
2 other ways for the Federal Government to
3 procure from us, from GSA Schedule to preclude
4 an auditor from coming on in and going -- and
5 which I think is one of the fundamental flaws
6 of the Schedule program is that spot pricing
7 applies to -- doesn't apply to Federal
8 Government sales, but applies to commercial
9 sales. And I've spent a lot of time over the
10 years not just at CDW but at other companies
11 when an auditor comes on and what's the lowest
12 price we sold it commercially. And then tries
13 to apply that price retroactively to all of
14 GSA, either in a preaward attestation review
15 or they're coming on in trying to negotiate
16 the best price or post award when they're
17 trying to see if you were compliant with the
18 Price Reduction Clause.

19 So, one thing I'd like to
20 encourage this panel to do is to consider stop
21 pricing because it does happen commercially
22 and to somehow stick your head in the sand and

1 think that it doesn't for the price reduction
2 clause. It's really a burden to the
3 contractors.

4 And there's a saying that I have.
5 If it's never on my GSA Schedule, it can never
6 get audited. And I think personally I'd like
7 to see more on the Schedule because a lot of
8 Government customers enjoy buying from the
9 Schedules.

10 From a contractor perspective in a
11 lot of ways they understand it. You don't
12 have to explain. Here's why it's just like
13 GSA only different and so that's it.

14 Are there any questions?

15 CHAIRMAN BRANCH: Mr. Allen.

16 MR. ALLEN: A point of
17 clarification if you could confirm for the
18 rest of the panel members. CDW last week was
19 said in the Federal Times you ranked 39th on
20 the Schedule of sales with approximate
21 Schedule of sales last year of \$130 million.
22 Is that --

1 MR. ADAMS: Give or take.

2 MR. ALLEN: Is that right?

3 In other words, your comments --
4 what I'm getting at is your comments are
5 coming from a company that's an active part of
6 the Schedules program?

7 MR. ADAMS: Yes. Yes. Yes. We
8 are a big part.

9 And I believe we're actually
10 dropping.

11 MR. ALLEN: Yes. That's what the
12 sales figure shows that it was down from -- 10
13 places from last year.

14 MR. ADAMS: Yes. And a lot of
15 that is DOD moving to their own agency-
16 specific contracts, IDIQ, Part 16 contracts.

17 CHAIRMAN BRANCH: Okay.
18 Jacqueline and then David.

19 MS. JONES: I was just going to
20 say that spot pricing to your commercial
21 customers, is it prohibited? You can do that
22 as long as you notify your contracting officer

1 that you've had a change in your commercial
2 sales practices for the CO to evaluate and
3 review the changes that have been made to
4 determine whether or not your contract needs
5 some negotiation.

6 So, the mind set that we can't do
7 spot pricing commercially, we're stuck.
8 That's not the case.

9 The requirement is to disclose.

10 MR. ADAMS: Ma'am, I have 3,000
11 sales people, 130,000 items. If I could just
12 automate how I could disclose it, I would bury
13 my contracting officer.

14 CHAIRMAN BRANCH: David?

15 MR. DRABKIN: Yes. I was really
16 interested in the -- you said that your cost
17 to spend ratio on Federal versus commercial
18 was day and night different. But you didn't
19 tell us what it was. Can you do that without
20 disclosing any proprietary data?

21 CHAIRMAN BRANCH: I guess an order
22 of magnitude difference might be helpful.

1 MR. DRABKIN: Is the difference
2 between a quarter to a dollar for your
3 commercial customer and \$.50 or \$.75 to a
4 dollar for your Federal customer? What are
5 you talking about here?

6 MR. ADAMS: I'm adding up numbers
7 in my head.

8 MR. DRABKIN: Well, you don't have
9 to do it now. If you'd like to send that --
10 if you can and would like to --

11 MR. ADAMS: Yes. If I can figure
12 out a way to do it without disclosing any
13 proprietary information.

14 MR. DRABKIN: That goes to some
15 data that we'd be interested in.

16 MR. ADAMS: Sure.

17 MR. DRABKIN: Because we hear that
18 regularly. We heard that on the 1423 Panel.
19 But when we asked for examples, people didn't
20 give it to us. So, when you give us the
21 example, I mean you had to spent money to make
22 a sale for a commercial contract. You spent

1 that money before you inked the contract --

2 MR. ADAMS: Yes.

3 MR. DRABKIN: -- but you spend it.

4 And so we want to make sure that we understood
5 those two things. But that would be a very
6 interesting figure for us to have.

7 MR. ADAMS: I don't know if I can
8 get you exactly what you're looking for. My
9 comment was just to clarify the cost of
10 maintaining the contract after inking. I can
11 probably figure out a way to get you that that
12 doesn't disclose anything.

13 It will be much harder to figure
14 out how much it costs to get to the point
15 where I'm inking because I still have similar
16 costs involved in getting to that same point
17 and collecting all of the data that's required
18 for a submission to get a Schedule.

19 David, I'll do my best.

20 Thank you.

21 CHAIRMAN BRANCH: Thank you.

22 Thomas and then Glenn.

1 MS. SHARPE: Just a quick comment.
2 I head the difference in cost. What's the
3 difference in profitability?

4 MR. ADAMS: If you go pull CDW's
5 2006 annual report which is public, you will
6 see that commercially we are much more
7 profitable than we are on the Government side.

8 I don't know the magnitude off the
9 top of my head, but it's -- but it will break
10 it on down between commercial and public
11 sector. It won't break it down to individual
12 vehicles inside the public sector. And I'm
13 not able to give that out publicly.

14 But I'd be happy to send the
15 annual report to the committee.

16 CHAIRMAN BRANCH: Glenn.

17 MR. PERRY: I guess I'm sitting
18 here as kind of to more than one person that's
19 spoken recently.

20 I hear -- I hear about wanting to
21 just use the commercial pricing model or that
22 sort of thing. Help me understand or help us

1 out or help me out.

2 When the taxpayer looks at what we
3 do, we do have to deal with the reality of the
4 perception is, it's the Federal Government
5 that's buying these things. And I think
6 taxpayers understand that we're spending a lot
7 of their money to buy these things. So, we
8 have to address when you're spending that much
9 money. And admittedly I think we can talk to
10 us a little bit about what happens when you
11 get down to other levels. But at the end of
12 the day we are judged by collectively what
13 we're spending.

14 And I think, you know, how can we
15 do this in a way that addressed your issues
16 about the -- if it's about profitability or
17 cost or whatever it is. But on the other
18 hand, you got to address our issue is that we
19 shouldn't be perceived that if I can go down
20 and I'll use, I guess, my analogy is, let's
21 use laptops or something. You know, if the
22 public basis, whatever we do based on whatever

1 they're seeing on the commercial side for
2 laptops. And to them in their mind there
3 should be a way. It's one thing if you're
4 doing one-offs. And maybe I'm off by \$10,
5 \$50, \$100. It's another thing when they know
6 we're buying them for 10,000 people. And what
7 happens when we're off by \$50, \$100? You
8 know, where is that? What's going on there?

9 And so I think we're in a position
10 that we have to find a way here that the
11 pricing gives the public confidence that if
12 collectively we're doing that, buying like
13 that, that we're getting the benefit of doing
14 that.

15 I believe that you do that for
16 your large private sector customers. You're
17 not treating them as one-offs. I'm just --
18 it's kind of -- but I like during these --
19 during this process for industry to help us
20 find that way of fulfilling the expectations
21 taxpayers have of us when we're spending their
22 money to fulfill their needs and our missions.

1 MR. ADAMS: Some suggestions that
2 I'd like to offer the panel is I think it's
3 out there in the public domain and should be
4 that difficult to pick a view and select items
5 that are on the GSA Schedule. Look at their
6 GSA Schedule price and then do a price grabber
7 commercial price. And I would be very
8 surprised. There will be exceptions, but I
9 think GSA does a very good job of negotiating
10 Quantity 1 pricing versus commercial Quantity
11 1 pricing.

12 The difficulty is, is when you go
13 and buy 1,000 of them, it's not as transparent
14 what price the Government actually paid. So,
15 and perhaps we can figure out a way to make
16 that transparent what they pay. You can see
17 that there is discount happening -- spot
18 discounting all the time for the large buys.

19 There's -- I see -- I see
20 discounting happening and I have some account
21 managers who think a large buy is \$3,000 and
22 they'll start discounting at \$3,000,

1 especially if it's the end of the month and
2 they haven't made quota.

3 So -- but that's not readily
4 available. So, a lot of folks think that
5 right, wrong or indifferent that the GSA
6 Schedule price is the price that's actually
7 paid. And I think that secondary petition
8 that was spoken about numerous times today by
9 numerous folks in front of the panel at the
10 panel itself helps insure that the Government
11 gets that lower -- that lower price.

12 But I just don't know how you can
13 actually get that unless you get copies of the
14 orders or I don't know what means you have of
15 -- to get that data. But the actual Quantity
16 1 commercial price versus the GSA price and
17 then always make sure you're doing an apples
18 to apples comparison.

19 There are a lot of folks that will
20 quote you a very low price and then you call
21 them -- and then you call them up to actually
22 get it and you find there's shipping, there's

1 handling, there's this. By the time you
2 actually get the price that you're going to
3 pay, you'd been far better off just going with
4 the higher price.

5 I think, Steve, you said you best.
6 Every single company is different in how they
7 go about doing their business.

8 CHAIRMAN BRANCH: We're getting to
9 the end of our time so I'd like to wrap up the
10 questions.

11 Well, if you're not quite --

12 MR. ADAMS: I'm not off yet, I'm
13 sorry.

14 CHAIRMAN BRANCH: We're going to
15 wrap up the questioning with first Jacqueline
16 and then Judith and then I think we'll call it
17 a presentation.

18 MS. JONES: Okay. I just
19 basically have a comment.

20 We talked a lot about transparency
21 and earlier I mentioned when I was stating
22 some of the outcomes that I would like to see

1 as a result of this panel is consistency,
2 especially when the COs are evaluating offers.
3 And from the contractor's perspective knowing
4 what to expect from GSA COs when they are
5 evaluating and negotiating our offers.

6 And when you said that you had too
7 many items to disclose that that would be too
8 big of a task to accomplish, that's
9 concerning. And I think if we're going to
10 work together collaboratively between industry
11 and this panel to determine how we get to the
12 best value for the taxpayer, I think that
13 transparency is going to be really important
14 from both sides.

15 That's just a final comment that I
16 have.

17 CHAIRMAN BRANCH: Okay. Thank
18 you.

19 MS. NELSON: I actually am sort of
20 piggy backing on your response and making a
21 comment to Glenn's question.

22 And the PCOs who negotiate the GSA

1 Schedule contracts have multiple resources at
2 their disposal to make determinations for fair
3 and reasonable pricing. And a very standard
4 way at which they do that for products. For
5 professional services can grow much more
6 difficult because of project managers is not
7 always a project manager. The labor category
8 description could be very different.

9 But for products where you compare
10 apples to apples or where you have the same
11 product number and the identical product, PCOs
12 routinely. They don't have to. They may have
13 another way of doing it. Routinely will do
14 market research.

15 They may go out to the commercial
16 world and look and see what it's being sold
17 currently in the commercial world. And
18 certainly will go often and look on GSA
19 Schedule and see what's being offered on GSA
20 Schedule.

21 And, you know, often we'll say to
22 an offeror, you now, I understand what you're

1 selling it at in your commercial world but,
2 you know, it's available by 15 other vendors
3 at X, Y and Z price. And we'd like to see you
4 come in at a meet or beat or within, you now,
5 some reasonable level, somewhat higher,
6 somewhat lower.

7 So, they do -- many of the PCOs do
8 do a market research in order to determine
9 fair and reasonable pricing. Somewhat of what
10 you asked of how they can do that usually at
11 the unit price and then the way -- Kevin, is
12 that you're name?

13 MR. ADAMS: Yes, ma'am.

14 MS. NELSON: Yes. The way that
15 Kevin indicated the larger problem can come in
16 at the task order basis where there is less
17 transparency. The contract file would be
18 documented as to how they determine that fair
19 and reasonable and there are procurement
20 management reviews that would show that.

21 But at the task order level it can
22 be more difficult. There's less

1 transparently, certainly not to GSA, as to how
2 the fair and reasonable determination was made
3 for a task order or an order for, you know, a
4 PO for, you know, 50,000 of these units.

5 MR. PERRY: Thank you. Can I just
6 -- thank you.

7 But I think what you just said. I
8 was trying to put something on the table. I
9 think is that there's a disconnect somewhere
10 in there. And I think we need to address
11 whatever is going in between those -- between
12 what the agency is doing and what GSA thinks
13 what they're doing.

14 CHAIRMAN BRANCH: Okay. Mr.
15 Adams, thank you for your remarks this
16 afternoon and it's now about 4:00. And we
17 spent, I guess, our first day attacking this
18 and I'll make some observations and then give
19 the rest of my colleagues an opportunity to do
20 the same.

21 But the only thing that I walk out
22 of here understanding is this is a subject

1 rich with nuances and avenues for exploration.
2 So, I'm going to ask my fellow advisory
3 committee members to think of topics they want
4 to put on the agenda for the meeting of the
5 22nd, as well as people they may want to hear
6 from. And I also invite the general public
7 that's here with us today to, you know, to
8 either go back and confer with the
9 stakeholders you might represent or to think
10 about it on your own. And also contact Ms.
11 Brooks with topics you might like to see us
12 discuss or presentations that you might like
13 to offer us or to have others offer us.

14 So, her information or contact
15 details are available and she will be taking
16 those requests.

17 I guess I'd like to remember or
18 I'd like to remind folks that we have a very
19 specific charter. And as I listen to the
20 discussion and the deliberation today as well
21 as the remarks of our presenters, I guess I
22 feel the need to remind us to stay focused on

1 our charter. And that is not to say that we
2 cannot offer GSA observations about things
3 outside the charter which may indeed affect
4 the operation of the schedules. But we have
5 a very specific charter here to look at the
6 pricing structure of the Multiple Awards
7 Schedules. And in that I would like members
8 to come next meeting with some idea of
9 problems statements they might frame, data
10 that they may want to collect to, if you will,
11 examine those problem statements, as well as
12 some suggestions as to how we might want to
13 attack that.

14 So, just in closing before I turn
15 it over to any of the other advisory committee
16 members for any closing remarks, I'd like to
17 thank all of our presenters, both planned and
18 spontaneous today. Those of you who have
19 observed our proceedings for coming out and
20 evincing some interest in this topic.

21 I'd like to thank Pat Brooks for
22 doing an outstanding job in setting up today's

1 meeting and I have great confidence that she
2 will continue to shepherd us through our work
3 and I look forward to seeing the rest of you
4 in about 10 days, two weeks hence.

5 Any other comments folks want to
6 offer?

7 Glenn.

8 MR. PERRY: I have a couple of
9 requests for information.

10 One is the SARA Panel's
11 recommendations have come up on several
12 occasions. Could we get into the information
13 what those recommendations were since this is
14 -- so everybody is aware of those?

15 CHAIRMAN BRANCH: Okay. Yes.

16 MR. PERRY: And also, is there a
17 way we can get a little -- there was one
18 document received on the procurement manual,
19 acquisition manual for GSA so everyone is
20 clear on exactly what GSA is doing as far as
21 what you do with the pricing on the Schedules
22 versus what's left to the agency to do on

1 individual competitions?

2 Is there anything that speaks to
3 that?

4 CHAIRMAN BRANCH: If I'm hearing
5 the question right, is there anything that
6 speaks to preaward determination or price
7 reasonableness for the versus orders placed by
8 the agencies? To put words in your mouth?

9 MS. BROOKS: Judy, you were saying
10 because you have -- we gave you copies of the
11 8.4. There is some additional guidance?

12 MS. NELSON: The policy document
13 that came out that MAS policy document that
14 came out is from 1982. So, it's historical
15 and it's pre-FARA/FASA. Pre-Clinger-Cohen.
16 So, it belongs to -- just a historical
17 document.

18 FAR 8.4 has the current
19 regulations. But if you want just some
20 guidance material that we put out. Recently
21 GSA, the FAS office and GSA put out a new
22 handbook that has been put out -- given out to

1 customer agencies and vendors just went out at
2 Expo, the new version.

3 And I can have an electronic
4 version made available and send that to Pat if
5 you'd like that?

6 MR. PERRY: I don't know. That
7 might be help for you. I just thought if
8 everybody was working off the same
9 expectations of what's happening at GSA for
10 these, then that sounds like a very useful
11 document.

12 MS. NELSON: The regulatory
13 guidance is 8.4, but the guidance that goes
14 out to the customer agency just as a handbook
15 kind of thing, we can get that.

16 MS. THOMPSON: If I could just
17 clarify.

18 FAR 8.4 are the ordering
19 procedures --

20 MS. NELSON: Correct.

21 MS. THOMPSON: -- for the ordering
22 activities.

1 MR. PERRY: Right.

2 MS. NELSON: Now, if you're
3 looking for the internal guidance that's to
4 the MAS COs, we would need to go into the
5 clause manual and obtain that particular --

6 CHAIRMAN BRANCH: I guess that's
7 as I understand Glenn's question. So, we'd
8 like to see what's in the clause manual with
9 respect to giving guidance to your MAS CO.

10 MS. NELSON: Correct.

11 CHAIRMAN BRANCH: Okay. Allen.

12 MR. CHVOTKIN: Mr. Chairman, I
13 would like to suggest that there are two
14 groups that I think can provide enormous value
15 to us.

16 One is GSA IG Miller or one of his
17 representatives. I'd like to request that we
18 make an early invitation to Mr. Miller to come
19 to the -- before the panel.

20 I'd also be interested in it there
21 are any publicly released audits that from the
22 Inspector General's Office, particularly

1 experience on the preaward audits that might
2 be instructive for information about the
3 trends that the Inspector General has
4 identified on some of those.

5 I don't know, but I believe that
6 there may be some GAO program reviews and I'd
7 like to suggest that we at least explore
8 whether the Government Accountability Office
9 has done any work and if there's -- either
10 obtain copies of those or references to them.
11 Appropriate to have a presentation.

12 And finally the program management
13 reviews Judith mentioned. I don't know if
14 those are in any kind of form that might be
15 accessible or there might be some information
16 that's from a management review that can glean
17 from that that might be helpful to someone who
18 is supervising that process might be able to
19 provide some valuable information as well.

20 CHAIRMAN BRANCH: Okay. Dave, are
21 you going -- do you want to address any of
22 those or do you have other?

1 MR. DRABKIN: I was going to wait
2 and follow Tom.

3 CHAIRMAN BRANCH: Okay. Tom.

4 MS. SHARPE: Just on the idea of
5 topics. I think it would be helpful to get
6 some competition data. As I understand what
7 we're going to try to understand is how the
8 price is set for the Quantity 1 and then how
9 the prices are derived at the task order
10 level. And I think a piece of that is the
11 extent of competition.

12 CHAIRMAN BRANCH: Okay. I don't--
13 yes. Well, I think we'll have to look at that
14 because I -- do you keep those? Yes. Yes.

15 I think that would be helpful
16 data. I think we're going to have to take a
17 hard turn on whether we can actually get
18 meaningful data there. But I agree with you,
19 that would be helpful and we are --
20 unfortunately, there are a lot of
21 responsibility for lack of transparency with
22 respect to that at the agency level. I don't

1 know that we can really hold GSA responsible
2 for policing that.

3 MR. DRABKIN: And, Mr. Chairman,
4 to you remarks about scope. It did occur to
5 me while I was listening this afternoon that
6 while addressing the pricing clauses
7 themselves, it's certainly part of our -- it
8 is our mandate. I think there may be other
9 ways to skin that cat in the sense that one of
10 the things that we heard was about
11 transparency from a number of speakers. And
12 if we, for instance, were able to come up with
13 a solution that made the pricing more
14 transparent so that the ordering office
15 contracting officer can actually see what the
16 Government has paid for that item under
17 various circumstances, that the competition
18 and the pricing might improve dramatically
19 without changing a word and the pricing
20 clause.

21 So, it's certainly something that
22 as we understand the problems statement and

1 talk about it, there may be a number of ways
2 to solving this problem. But it's not just
3 one in terms of what's the right language in
4 the Price Reduction Clause.

5 And also I think it would be
6 instructive. Robin didn't mention it, but we
7 might want to find out about GSA's past
8 practices because we used to negotiate in
9 quantity discounts in Schedule contracts.

10 We used to have the price for one
11 and then the price for whatever the quantity
12 discounts were after that. And we pre-
13 negotiated those in advance. And we might
14 want to learn something about that and why we
15 -- why we, GSA, discontinued that practice in
16 terms of whether or not it's something we want
17 to consider that might help in this pricing
18 the price reduction itself.

19 It certainly might help our
20 customers who sometimes I think get in too
21 much of a hurry, don't think about negotiating
22 when they're buying more than one or even when

1 they're buying one. You buy one at the right
2 time of the year, you might get a great
3 discount because they want to get it off their
4 shelf.

5 CHAIRMAN BRANCH: True. Yes.
6 Just to respond very quickly.

7 I don't mean to narrow our scope
8 so that we're only looking at those clauses.
9 But I guess as I kind of listened to the
10 discussion, if we're not careful, my fear is
11 this will turn into an overall survey course
12 on Multiple Awards Schedule contracting. So,
13 I think we need to strike a balance between
14 being faithful to the scope and going off into
15 territory that is both unchartered as well as
16 unasked for.

17 So, a point taken.

18 Jacqueline and then Judith.

19 MS. JONES: It may be a little
20 premature to ask this question. But are we
21 going to approach products and services
22 separately?

1 CHAIRMAN BRANCH: I think that's
2 probably a question for discussion on the 22nd
3 when we talk about attack on the work.
4 Certainly, I think given I guess the very
5 different nature of products and services,
6 it's something that we're going to have to
7 seriously consider. I would certainly be open
8 to doing that.

9 Judith.

10 MS. NELSON: Just probably want to
11 -- two things.

12 The first is to tag over here to
13 what Allen said.

14 In addition to Mr. Miller and I
15 was going to suggest Andy Patchins, but you
16 know, Brian Miller would be great.

17 I'd also think it would be
18 instructive to invite Carolyn O'Brien who is
19 the PM for the VA Schedules.

20 CHAIRMAN BRANCH: Okay.

21 MS. NELSON: Who I think her
22 perspective in what's happening at the VA

1 Schedules, certainly what we do would have
2 enormous impact over there. And see what she
3 is finding is happening over there.

4 CHAIRMAN BRANCH: Okay.

5 MS. NELSON: They have very strict
6 policies how contracts are modified a little
7 different than how we do it over at GSA.

8 And just a point of information
9 for Mr. Chvotkin. Actually, on Schedules we
10 still do negotiate quantity and dollar volume
11 discounts. Certainly for products and even
12 for professional services we often find that
13 companies will come in and say, well. I'll
14 give you this price for one hour and if you're
15 going to commit to, you know, 500 hours --
16 consecutive 500 hours, I'll be willing to give
17 you, you know, this price. And if you're
18 going to commit to 2,000 consecutive hours in
19 the labor category, I'll certainly give you
20 this price.

21 So, we actually still do that.

22 MR. DRABKIN: But we have 18,000

1 contracts. Less than 10 percent of them
2 probably have those in it. And what we ought
3 to do is understand that process. It wasn't
4 a criticism of whether you're doing it or not.
5 We discontinued that routine process. We
6 should understand what it was and why and
7 whether it's appropriate or not as we look at
8 solving the problem.

9 That's all my question was.

10 MS. NELSON: Well, just a point of
11 clarification that the practice didn't go
12 away. But it certainly available to any
13 offeror who would like to do that and often
14 our PCOs will put that forward.

15 CHAIRMAN BRANCH: Okay. Very
16 good.

17 Any other closing remarks from
18 members of the panel?

19 Okay. Hearing none, then I guess
20 I'll turn it back over to Pat as the convener.

21 MS. BROOKS: I just want to remind
22 everybody for the May 22nd meeting will be at

1 the GSA auditorium.

2 I have some cards here for you to
3 submit to me your recommendations for either
4 topics or presenters.

5 What I'll do is do a collection.
6 I've got a number of suggestions here and I'll
7 get with the Elliott and we'll lay out a
8 schedule for the coming meetings.

9 With that, if there are no further
10 comments or questions, then the meeting is
11 adjourned.

12 (Whereupon, the above matter was
13 concluded at 4:13 p.m.)

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