UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
MULTIPLE AWARD SCHEDULES ADVISORY PANEL
MEETING

FRIDAY, MAY 1, 2009

The meeting came to order at 9:00
a.m. in room L1301 of 2200 Crystal Drive,
Arlington, Virginia. Elliott Branch,
Chairman, presiding.

PRESENT:
ELLIOTT BRANCH   NAVAL SEA SYSTEMS
                        COMMAND
ALAN CHVOTKIN   PROFESSIONAL SERVICES
                        COUNCIL
DAVID DRABKIN   GENERAL SERVICES

                        ADMINISTRATION

JAN FRYE   DEPARTMENT OF VETERANS

                        AFFAIRS

JACQUELINE JONES   GENERAL SERVICES

                        ADMINISTRATION

JUDITH NELSON   GENERAL SERVICES

                        ADMINISTRATION

DEBRA SONDERMAN   DEPARTMENT OF INTERIOR

DONNA HUGHES   DESIGNATED FEDERAL

                        OFFICIAL

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

2   9:12 a.m.

3   CHAIRMAN BRANCH: Okay. We have a

4   quorum, so we're going to get started this

5   morning.

6   Pat, do you have any

7   administrative announcements? All right, then

8   let's proceed to the draft report.

9   Everybody's had an opportunity to

10   look at it. So I guess what's probably best

11   is to simply go around the room and see if

12   anybody has any substantive comments. So, I

13   will start with you, Alan.

14   MEMBER CHVOTKIN: Mr. Chairman,

15   thank you.

16   I think we're making good

17   progress. And I hope we an close this off

18   very, very quickly. There are still some gaps

19   that I thought there was additional

20   information to come. The report in the

21   current form with one discussion which I know

22   we're going to have about how to address

1 individual views about the recommendations.

2   I think most of my comments are

3 editorial, and not substantive but there is

4 some gaps in the information and I was hoping

5 that we would have been a little further down

6 the path in terms of near final report than we

7 are at this point. But I don't have any

8 substantive comments about the material that

9 I reviewed. Most of them editorial, extra

10 words and typos and style more than substance.

11 Thanks.

12   CHAIRMAN BRANCH: Judith?

13   MEMBER NELSON: The only comment

14 that I have is, well again some editorial but

15 not substantive and not even as to individual

16 views regarding the recommendations, is in

17 regard to the appendix I'd like to be able to

18 provide data. The data that we have stems

19 back to the beginning of the panel. We're now

20 a year in. And there was a request to provide

21 data, and I'd like to get a list from the

22 panel of what specific data we have because it

 1 would be, in some cases, reasonably easy to

 2 pull together. But I'm hoping that today we

 3 can come up with a final list of sales under

 4 SINs, or what SINs exist or exactly what needs

 5 to be incorporated into the appendix so that

 6 I can provide it for the report.

 7   CHAIRMAN BRANCH: Thank you.

 8   David?

 9   MEMBER DRABKIN: Thank you to

10 whoever rewrote by sections of the report. I

11 was pleased to see how well --

12   COURT REPORTER: You're not on.

13   MEMBER DRABKIN: I didn't want

14 everybody to hear that anyway.

15   And I did notice that there were

16 two definitions left unaddressed and I'm

17 prepared to dress those when we get to that

18 section. I have suggested language for both.

19   CHAIRMAN BRANCH: Thank you.

20   Jackie?

21   MEMBER JONES: Well, I have

22 editorial comments as well. But also there

 1 are some areas of technical concern that I

 2 have made notes on. And I don't know if you

 3 want me to get into the specifics of those

 4 now, but just regarding the technicality of

 5 some of the terms that are being used in the

 6 report versus terms that are used on a daily

 7 basis as a part of common practice.

 8   CHAIRMAN BRANCH: My question to

 9 you would be to make those terms consistent

10 with you understanding of the process, would

11 that change in any significant way the content

12 of the report? If not, we can deal with when

13 we look at the editorial issues?

14   MEMBER JONES: Well, one of the

15 issues that I'll point out now just as an

16 example. On page 5 where it's referenced that

17 the contracts are awarded for a base of five

18 years with three unpriced option periods:

19 That's inaccurate. So there are other areas

20 that I had found too that need to be properly

21 addressed from a technical standpoint.

22   CHAIRMAN BRANCH: Why don't we

1 look at those when we go through and look at

2 the editorial comments.

3   Thanks.

4   Debra?

5   MEMBER SONDERMAN: I think, like

6 everyone else, I have lots of editorial

7 comments. And I do agree with Larry Allen

8 that the dissenting opinion, it breaks the

9 flow of the report where it is. So I would

10 like for us to talk about where to put that

11 today so that we give it appropriate -- so

12 that it's acknowledged, but it just doesn't

13 seem to work where it is.

14   And when we get to page 12, I

15 would like to discuss the comment that's on

16 there because I think as I read it, the third

17 comment on the page, that seemed to be a

18 different issue to me and I couldn't tell who

19 had made the comment.

20   CHAIRMAN BRANCH: All right.

21 Well, it doesn't appear that we have any

22 substantive issues with the report. So I'd

 1   suggest at this time we simply go through it

 2   page-by-page and move through it with the goal

 3   of pretty much wrapping this up today.

 4   MEMBER SONDERMAN: So is Pat

 5   actually going to make these edits as we go

 6   through? I mean, is that the process we're

 7   going to use, or are we going to physically

 8   mark and then hand our respective edits to

 9   someone else.

10   CHAIRMAN BRANCH: Let's see if we

11   can make these edits are we go today.

12   MEMBER DRABKIN: Yes, I would

13   recommend that. Otherwise for sure we got to

14   meet again.

15   MEMBER JONES: I have a question,

16   though. Why is this version different than

17   the one that we saw the last time.

18   CHAIRMAN BRANCH: I think Lisa

19   cleaned this up kind of editorially and

20   basically captured the substance of the our

21   discussion. So this one is a little different

22   than the last draft we looked at.

 1   MEMBER JONES: But some of it

 2 seemed to have changed drastically. Like some

 3 of the content from the previous version is

 4 not in this one.

 5   CHAIRMAN BRANCH: Well, if we're

 6 missing content, why don't we page through it

 7 and those places where you see that we're

 8 missing content, let's address that at that

 9 point.

10   MEMBER JONES: This is a print of

11 which version?

12   MS. BROOKS: Again, Lisa took the

13 version that we had at the March meeting. And

14 based upon the discussions there, then she

15 revised it and drafted this version. So this

16 is the version, the latest version that she

17 went me based upon the comments made at the

18 March meeting.

19   MEMBER SONDERMAN: Is it possible

20 to bring up the lights slightly in the room?

21 For the blind.

22   CHAIRMAN BRANCH: The middle-aged.

 1   All right. So let's just start on

 2   page, I guess the first page of the report

 3   page 4 and go through it.

 4   MEMBER SONDERMAN: Who is writing

 5   the executive summary? I want it before we

 6   get to page 4.

 7   CHAIRMAN BRANCH: I've got that.

 8   MEMBER SONDERMAN: You have that?

 9   Okay.

10   CHAIRMAN BRANCH: Comments on page

11   4.

12   MEMBER SONDERMAN: I'm waiting for

13   Pat to get here.

14   CHAIRMAN BRANCH: Okay.

15   MEMBER SONDERMAN: So are we just

16   going line-by-line? Here we go. Line 2 here,

17   Pat. The word "represents" should be past

18   tense, "represented." Right of the first

19   paragraph, "Multiple Awards Schedules Programs

20   commonly referred to as the GSA schedule

21   program," we really ought to have a comma

22   after the second "program." Right there.

1   "Represented" spell out the eight.

2   On all these cases were we have numbers in

3   numbers, they should --

4   CHAIRMAN BRANCH: Below ten.

5   MEMBER SONDERMAN: Below ten they

6   should be eight P-E-R-C-E-N-T.

7   "Of the Federal Government's total

8   procurement spending" and spell out "fiscal

9   year 2008." We can use "FY" later.

10   That's true. We should spell out

11   the "General Services Administration" that

12   first time.

13   I don't have anything else in

14   section 1. Does anybody else have anything?

15   CHAIRMAN BRANCH: Any other

16   editorial? We're just going page-by-page.

17   Other editorial comments?

18   MEMBER JONES: Well, yes, I have

19   quite a few of them.

20   CHAIRMAN BRANCH: All right.

21   MEMBER JONES: And I'd just say in

22   general, some of the half paragraph sentences

 1   really bother me through here, throughout the

 2   report. So I don't know if we're going to now

 3   start to do that line-by-line or --

 4   CHAIRMAN BRANCH: Line-by-line.

 5   Let's go. If you've got proposed changes to

 6   the language, let's hear them.

 7   MEMBER JONES: Okay. I'll start

 8   then.

 9   In the fourth line down where it

10   says "Due in part to changed times," my

11   suggestion is in the context of the meaning of

12   this and what we're trying to convey here is

13   to say due in part to a changing environment

14   or changing environments. Because what does

15   "changed times" really mean?

16   MS. HUGHES: Are you in paragraph

17   2?

18   CHAIRMAN BRANCH: She's in

19   paragraph 1. Actually, I think you could

20   probably just get rid of "in part to changed

21   times" and you could say "Due to the changes

22   in the nature and responsibility of Federal

1 agencies."

2   MEMBER SONDERMAN: There you go.

3 That's better. And just delete.

4   CHAIRMAN BRANCH: Yes.

5   MEMBER SONDERMAN: You've already

6 got that here.

7   CHAIRMAN BRANCH: You've already

8 got that.

9   MEMBER SONDERMAN: Changes in the

10 nature and responsibilities.

11   CHAIRMAN BRANCH: Right.

12   MEMBER SONDERMAN: And delete up--

13 yes.

14   CHAIRMAN BRANCH: I don't think

15 you need that other "the." I think you can

16 just "Due to changes in the nature and the --"

17   MEMBER SONDERMAN: "Due to changes

18 in the nature and responsibilities of Federal

19 agencies?

20   CHAIRMAN BRANCH: Yes.

21   MEMBER NELSON: The use of the --

22 I'm sorry. They've put in -- "has doubled and

1 the use of the mass program increased

2 dramatically." I'd like to take the passive

3 voice, like these are the passive voice. Last

4 line. "Spending in the last decade doubled."

5   MEMBER SONDERMAN: "Spending has

6 doubled in the last decade."

7   MEMBER NELSON: Right.

8   CHAIRMAN BRANCH: Right. So just

9 take out "growth." No. Okay.

10   MEMBER SONDERMAN: So at the

11 beginning of that clause, after the comment --

12   CHAIRMAN BRANCH: Right. There

13 you go.

14   MEMBER SONDERMAN: Delete the

15 comment.

16   MEMBER DRABKIN: I think just for

17 the sake of accuracy you have to add the word

18 "over" before the word "double."

19   MEMBER SONDERMAN: You mean over

20 double?

21   CHAIRMAN BRANCH: You mean more

22 than --

 1   MEMBER DRABKIN: They've over

 2   doubled.

 3   CHAIRMAN BRANCH: You mean more

 4   than doubles? I think that's probably --

 5   MEMBER DRABKIN: Or more than

 6   doubled.

 7   MEMBER NELSON: So going forward

 8   as a general rule when we come across the

 9   passive voice, we will put it in the active.

10   MEMBER SONDERMAN: So take out

11   past on the last line. Your last program

12   past, that one.

13   CHAIRMAN BRANCH: Okay.

14   Everybody's satisfied with the first

15   paragraph? Okay.

16   Next paragraph.

17   MEMBER NELSON: Yes. In the first

18   line where it says "The GSA MAS Program

19   website explains," I would take that out.

20   Well, I should say "Website explains the

21   program by stating" and just say "provides the

22   opportunity for all agencies, even those in

1 remote locations." Now why would we reference

2 the website's explanation here?

3   MEMBER SONDERMAN: We're quoting

4 from the website, presumably.

5   CHAIRMAN BRANCH: Right. Yes.

6   MEMBER SONDERMAN: So we're trying

7 to be good doobies and acknowledge our

8 sources.

9   MEMBER DRABKIN: It's not in the

10 GSAM.

11   MEMBER SONDERMAN: Really? That's

12 interesting.

13   CHAIRMAN BRANCH: Any other

14 comments on that paragraph? All right. Let's

15 move on.

16   MEMBER SONDERMAN: Wait a second.

17 Oh, man. Right here. "GSA MAS," do we mean--

18 that doesn't seem like it's quite the right

19 subject verb agreement "also offer."

20   CHAIRMAN BRANCH: Well, maybe not.

21   MEMBER SONDERMAN: To ask

22 contracts also offer?

 1   CHAIRMAN BRANCH: Well --

 2   MEMBER SONDERMAN: MAS, I don't

 3 know. What's the right there? Wait. Wait.

 4 Wait.

 5   CHAIRMAN BRANCH: No, take that

 6 out.

 7   Well, while I certainly honor my

 8 own parentage by trying to adhere to the rules

 9 of good grammar, I don't know that we want to

10 go as far as to put "sic" in and those sorts

11 of things. That's part of the quote. So as

12 unartfully --

13   MEMBER SONDERMAN: Is that part of

14 the quote?

15   CHAIRMAN BRANCH: Yes.

16   MEMBER SONDERMAN: Okay. I'm

17 sorry.

18   CHAIRMAN BRANCH: Yes.

19   MEMBER NELSON: I withdraw my

20 comment.

21   CHAIRMAN BRANCH: Okay. Other

22 comments on that paragraph? Most of that

1 paragraph I think is quote. Okay.

2   Background?

3   MEMBER SONDERMAN: Pat, in this

4 paragraph, there are a number of numbers. If

5 you could write out those numbers like the FAS

6 organization has three within the three -- a

7 couple of more lines down. There you go.

8 Right there.

9   Is it 41 or is it 39?

10   MEMBER NELSON: It's 38.

11   CHAIRMAN BRANCH: That's a number.

12   MEMBER NELSON: That's a number.

13 You know, it's a moving target because we

14 periodically consolidate based on requirements

15 and changes.

16   CHAIRMAN BRANCH: All right.

17   MEMBER NELSON: But it's currently

18 38.

19   CHAIRMAN BRANCH: All right. So

20 that's a number. And I think --

21   MEMBER SONDERMAN: Right. Over 10

22 you can use numbers, under 10 write it, use

 1 letters.

 2   CHAIRMAN BRANCH: Right.

 3   MS. BROOKS: Spell out the number?

 4   MEMBER SONDERMAN: That's the

 5 rule. We all know the rule.

 6   MEMBER CHVOTKIN: Mr. Chairman, in

 7 that same area instead of "four total of," I

 8 think the better phrase is "Using our nine

 9 centers that procure products and services

10 using or through 39 schedules." Not "for a

11 total." Three times nine does not total 38.

12   CHAIRMAN BRANCH: You're right.

13 So "using a total." So take "four" out and

14 insert "using." And "schedules" should not be

15 capitalized.

16   MS. BROOKS: Yes, it should be.

17   CHAIRMAN BRANCH: No, it

18 shouldn't. Not here, because you're talking

19 schedules generically.

20   MEMBER SONDERMAN: Yes.

21   CHAIRMAN BRANCH: If you were

22 talking about a specific schedule.

 1   MEMBER SONDERMAN: Then it's

 2   capitalized.

 3   CHAIRMAN BRANCH: Then it's

 4   capitalized. But if you were talking about

 5   schedules generically.

 6   MEMBER SONDERMAN: You want to

 7   argue, David disagrees. I can tell by the

 8   look on his --

 9   MEMBER DRABKIN: No.

10   MEMBER SONDERMAN: Okay.

11   MEMBER DRABKIN: No. I was

12   advising my colleague not to argue with

13   Elliott about English.

14   MEMBER SONDERMAN: That's why I

15   use the Chairman.

16   CHAIRMAN BRANCH: Any other

17   comments in that paragraph? We need to--

18   MEMBER SONDERMAN: You mean the

19   bottom line?

20   CHAIRMAN BRANCH: Yes.

21   MEMBER JONES: I have a comment.

22   Okay. We'll wait for the save.

1   Okay. It is in the last paragraph

2   where we say "these acquisition centers are

3   responsible for maintaining standing

4   solicitations" but then when we talk about the

5   VA schedules we say "they manage nine standing

6   solicitations." So we need to be consistent.

7   CHAIRMAN BRANCH: Okay. All

8   right. So we would change "manage" to

9   "maintain."

10   MEMBER JONES: Well, I think

11 managing is a better term. Because actually

12 they're managing the programs, the schedule

13 programs that they have.

14   CHAIRMAN BRANCH: Okay. So we

15 need to resolve, I guess, this inconsistency.

16 Does anybody have any strong religious

17 feelings about "managing" versus

18 "maintaining"?

19   MEMBER SONDERMAN: "Managing"

20 works for me.

21   CHAIRMAN BRANCH: All right. So

22 we want to change that to "managing" as well.

1   Any comments on the first

2 paragraph in background? Okay.

3   Let's move on.

4   MEMBER SONDERMAN: On page five

5 there in the first paragraph the next to last

6 line, that apostrophe on "contractors'" it

7 either needs to be eliminated because we're

8 just talking about plural contractors, or if

9 we want to have it possessive, the apostrophe

10 needs to go on the outside of the S.

11   CHAIRMAN BRANCH: On the outside

12 of the S.

13   I have a comment, too. I think we

14 could simply stop that sentence there. I

15 don't know what "more than any other

16 procurement process in the Federal Government"

17 adds to that.

18   MS. BROOKS: Where are we?

19   CHAIRMAN BRANCH: First line. I'm

20 trying to understand why that's important

21 here.

22   MEMBER SONDERMAN: I'm not sure

 1   that it's accurate either.

 2   CHAIRMAN BRANCH: Yes, I have some

 3   questions about its accuracy. I think the

 4   people at Defense Logistics Agency might argue

 5   with you over that. So I would suggest that

 6   we just put a period here and take the rest of

 7   that sentence out.

 8   MEMBER NELSON: Works for me.

 9   CHAIRMAN BRANCH: Jackie, I

10   believe this is one of the places you had a

11   comment with respect to accuracy?   You had a

12   question as to whether --

13   MEMBER JONES: Yes, with the

14   unpriced options. That's not accurate.

15   MEMBER DRABKIN: Would you explain

16   what you mean by its not accurate?

17   MEMBER JONES: We don't have

18   unprices options.

19   MEMBER DRABKIN: We don't have

20   priced options.

21   MEMBER JONES: Yes, we do.

22   MEMBER DRABKIN: No, ma'am.

 1   MEMBER JONES: Yes, we do.

 2   MEMBER DRABKIN: Then what do you

 3 do when you exercise an option?

 4   MEMBER JONES: Well, when we award

 5 the contract --

 6   MEMBER DRABKIN: Yes.

 7   MEMBER JONES: -- we establish

 8 option period pricing and re-evaluate it at

 9 the option period to determine it to still be

10 found reasonable.

11   CHAIRMAN BRANCH: If I can

12 interject for just one second.

13   Pat, while we're having this

14 colloquy could you fix all the -- could you

15 fix that five and that five so we just kind of

16 keep things moving while we discuss the

17 mechanics of this? Thank you.

18   MEMBER DRABKIN: Well, is there a

19 single case of which you're aware where when

20 we exercise the option at the end of the five

21 years the prices in the option, new option

22 period didn't change?

 1   MEMBER JONES: Are there cases

 2   where they haven't?

 3   MEMBER DRABKIN: Is there a single

 4   case where it has not changed?

 5   MEMBER JONES: Yes.

 6   MEMBER DRABKIN: Really?

 7   MEMBER JONES: Yes.

 8   MEMBER DRABKIN: Okay.

 9   MEMBER JONES: When we award them

10   based on fixes escalation.

11   CHAIRMAN BRANCH: Well, yes, I

12   have a question. Because having been a

13   schedule holder, I don't ever recall

14   submitting 20 years of pricing. So are what

15   we're saying is that we've got five years of

16   base pricing and we're extrapolating that five

17   years to 20 years and before we exercise the

18   options, we re-evaluate that to see if

19   escalation is the only factor that's affected

20   the pricing?

21   MEMBER JONES: Well in this case

22   why is it even important whether they're

 1 priced or unpriced?

 2   MEMBER DRABKIN: Because an option

 3 which unpriced is not an option.

 4   MEMBER SONDERMAN: That's what I

 5 learned.

 6   MEMBER DRABKIN: That's what we

 7 teach.

 8   MEMBER JONES: Okay. So we have

 9 contracts with the base period and three five

10 year option periods. We have different

11 mechanisms --

12   CHAIRMAN BRANCH: Let me offer a

13 suggestion that perhaps conveys the reality

14 here. So we have a contract that's awarded

15 for a base of five years with an opportunity

16 to extend the contract term for an additional

17 15 years. That's really what I think I'm

18 hearing.

19   MEMBER SONDERMAN: What point are

20 we trying to convey in this paragraph?

21 Because I mean I have -- well, it's been a

22 very, very long time since I worked in

 1   commercial buying. But is it commercial

 2   practice to establish contracts for 20 years?

 3   MEMBER CHVOTKIN: You come back to

 4   the earlier question. But I think what we're

 5   trying to convey is the quote Evergreen"

 6   nature of the schedules program. It is a

 7   different -- I'm not aware of too many

 8   commercial buying activities that have 20 year

 9   contracts, although I'm sure there are some.

10   But I thought that Jackie's suggestion by just

11   taking out the word "unpriced" three option

12   periods or up to three option periods of five

13   years each conveys it just different than your

14   suggestion, Mr. Chairman, which is there's a

15   single 15 year extension. I would suggest

16   that in that second sentence you say "The MAS

17   contracts are awarded for a base of five years

18   with up to three option periods of five years

19   each."

20   CHAIRMAN BRANCH: I think, and not

21   to put words in my colleague's mouth, but I

22   think Mr. Drabkin's point was if it's not

1 priced, it's not an option. That "option" is

2 a term of art, so --

3   MEMBER DRABKIN: But you know, as

4 more I think about it the point I'm trying to

5 make is not a point that the panel has spent

6 any time on, and that is the evaluation of the

7 whole concept of Evergreen and whether you can

8 have a 20 year contract and whether that makes

9 sense.

10   And the answer to Alan's question

11 certainly during the 1423 Panel we heard

12 information from companies that established

13 long term vendor relationship, not necessarily

14 20 years but contingent upon certain factors

15 which if certain anticipated factors occur,

16 the contract would end and there would be a

17 recompetition. But since we haven't addressed

18 Evergreen in our recommendation or to the

19 Administrator in terms of an additional issue

20 to review, perhaps raising it here isn't the

21 right answer.

22   So some way to express this in a

 1   way that doesn't raise the issue that we're

 2   not prepared to address seems to me to be the

 3   right way to go.

 4   CHAIRMAN BRANCH: Well, let me

 5   make a suggestion. Let me suggest that we

 6   just kill that paragraph after the first

 7   sentence and combine the first sentence with

 8   the next paragraph.

 9   MEMBER NELSON: I actually

10   disagree. I think whatever -- whatever -- if

11   we were to have addressed it, wherever our

12   recommendations may have gone at this point,

13   it would not be relevant. The bottom line is

14   in the background is what is currently

15   existing. And if we take out the word

16   "unpriced," here is the current existing

17   status of the program, which is it's a five

18   year base period with at the discretion of the

19   contracting officer three five year options

20   through the Evergreen clause. And that's the

21   current status of the program.

22   CHAIRMAN BRANCH: Okay. So is

 1 everybody good with simply taking out the word

 2 "unpriced" and moving on?

 3   MEMBER DRABKIN: Yes.

 4   CHAIRMAN BRANCH: Okay. Pat,

 5 delete "unpriced."

 6   MEMBER DRABKIN: Do we need a

 7 footnote that also explains in this context

 8 the unique clause we have on cancellation so

 9 that the reader understands that while my

10 colleague is correct, the exercise of the

11 option is at the discretion of the contracting

12 officer unlike almost any other Federal

13 contract we have a 30 day cancellation clause

14 for no reason, any reason, by either party

15 another unique aspect that affects schedule

16 contracts?

17   CHAIRMAN BRANCH: We can put that

18 in a footnote, but I would ask the question is

19 that important enough to put in the actual

20 body?

21   MEMBER NELSON: I would agree with

22 David. Because when you're talking about a 20

1   year contract, there's a reason why we have

2   that cancellation clause and to protect the

3   Government under such a lengthy contract.

4   MEMBER DRABKIN: Well, it's not

5   just to protect the Government. It also

6   protects the vendor because where else can a

7   vendor say "I'm done," and walk away in 30

8   days without facing T for D or poor past

9   performance? I mean, the protections are

10   mutual.

11   CHAIRMAN BRANCH: No. I totally

12   agree with you. My only question is is that

13   a significant enough feature that we should

14   address it in the text and not in a footnote?

15   Now I don't know about you guys,

16   but you know five pages in I'm not really

17   reading footnotes anymore.

18   MEMBER DRABKIN: Well, I take your

19   point. And it's not important enough to go in

20   the text. So never mind.

21   MEMBER CHVOTKIN: Mr. Chairman?

22   CHAIRMAN BRANCH: Alan?

 1   MEMBER CHVOTKIN: If we're ready

 2   to move on to the last sentence of this

 3   paragraph, well I think there is some

 4   anecdotal information that this 20 year period

 5   of time that does save contractors some

 6   administrative costs. There's also associated

 7   costs with it.

 8   I would suggest that this sentence

 9   read "This possible total of 20 years period

10   of performance provides benefits to both

11   Government agencies and vendors."

12   CHAIRMAN BRANCH: Okay. David?

13   MEMBER DRABKIN: Yes. I think

14   there would be a significant number of vendors

15   who would argue that our option exercise

16   process doesn't save them a penny,

17   particularly the ones that have what's called

18   a preaward survey that lasts longer than 12

19   months.

20   CHAIRMAN BRANCH: So, David, I'd

21   ask you to repeat -- or Alan, rather. I'm

22   sorry. I'd ask you to repeat your suggested

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 1   modification for Pat's benefit.

 2   MEMBER CHVOTKIN: In the last

 3   sentence of that paragraph I would strike

 4   everything after the phrase "period of

 5   performance" and insert "provides benefits to

 6   both Government agencies and vendors."

 7   CHAIRMAN BRANCH: Everybody

 8   comfortable with that change?

 9   MEMBER NELSON: The only thing I'm

10   not comfortable with is editorial. I think

11   we're going back and forth between contractors

12   and vendors. So we just have to look for some

13   consistency, Mr. Chairman.

14   CHAIRMAN BRANCH: No, I agree with

15   you. And since we started with contractors, I

16   think contractors is probably the way we ought

17   to go.

18   MEMBER SONDERMAN: And I think the

19   S needs to be dropped from "years" after 20.

20   "20 year period of performance."

21   CHAIRMAN BRANCH: Okay. Next

22   paragraph.

 1   MEMBER SONDERMAN: I'm sorry. And

 2   "of." So "this possible total of 20 year

 3   period of performance." That it's possible 20

 4   year of performance.

 5   CHAIRMAN BRANCH: Yes. You can

 6   take out "total of."

 7   MEMBER SONDERMAN: Take out "total

 8   of." And "of."

 9   CHAIRMAN BRANCH: Yes. You can

10   take out -- yes, there we go.

11   MEMBER SONDERMAN: Yes.

12   CHAIRMAN BRANCH: Next paragraph.

13   MEMBER SONDERMAN: You need to

14   spell out "indefinite delivery indefinite

15   quantity" and you're missing an I from the

16   acronym, the second I.

17   CHAIRMAN BRANCH: Yes. Pat, you

18   got the I in the wrong place. You've got it in

19   front of the slash. It needs to be behind the

20   slash, the second I. And I think you need a

21   comma there. Right there.

22   MEMBER SONDERMAN: After

 1   "delivery"?

 2   CHAIRMAN BRANCH: Yes.

 3   MEMBER SONDERMAN: See, that's the

 4   next state of the art technology thing when

 5   you shine it on the screen, it appears on her

 6   computer. That's what we need; some

 7   enterprising vendor out there, there's a good

 8   business opportunity for you.

 9   CHAIRMAN BRANCH: We need to go

10   back fool's cap and quill pens.

11   MEMBER NELSON: I think there is a

12   company actually.

13   MEMBER SONDERMAN: Is this listing

14   of the guidelines, do they appear that way

15   with numbers in GSA's published information.

16   MEMBER NELSON: Yes.

17   MEMBER SONDERMAN: Okay.

18   MEMBER JONES: I have a comment

19   before we leave this paragraph. Right there

20   where your cursor is where it says, and I

21   don't see quotes here, so where it says "all

22   orders and activities large or small in a

 1 remote locations" rather than saying "are

 2 provided the same services," would it be best

 3 to say "have access to the same services"?

 4   MEMBER SONDERMAN: I like that.

 5   And I think three more lines down,

 6 one two three, at the beginning of the line,

 7 I think that's "price" not "cost." We don't

 8 really know what the cost is, or do you

 9 disagree?

10   CHAIRMAN BRANCH: Well, I think we

11 may have picked that up in that it mimics the

12 statute. Fees is, you know, lowest overall

13 cost to the Government. So we might want to

14 add "to the Government" there.

15   MEMBER JONES: Okay. Well, I'm

16 going to say something about it again. In the

17 last sentence before the number of topics for

18 the guidelines, I think we need something else

19 there stating these guidelines cover and then

20 we have the number it lists.

21   CHAIRMAN BRANCH: We could

22 probably change that to "the following

 1 guidelines."

 2   MEMBER DRABKIN: Mr. Chairman, I

 3 think that changes it. Because as I

 4 understand it, the 12 items is the totality of

 5 the schedules order and guidelines. And so by

 6 saying "the following guidelines," it may

 7 convey to a reader that that we've selected 12

 8 out of a larger number.

 9   CHAIRMAN BRANCH: Oh, okay. I take

10 your point. I think it's a good one.

11   MEMBER JONES: Well, the way it

12 was originally submitted in the basic schedule

13 ordering guidelines, the portion that I worked

14 up, what it said was some of the following

15 contractual considerations and actions are

16 covered by the guidelines or by these

17 guidelines. And then there was the number

18 list after that.

19   MEMBER CHVOTKIN: I might suggest,

20 Mr. Chairman, that just in this sentence if we

21 said "The GSA guidelines provide useful

22 information for placing orders against the

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1 schedules" I think we'll have conveyed that

2 message that Jackie wanted to as well.

3   So the sentence would read "The

4 GSA guidelines provide useful information."

5 You've got that phrase.

6   CHAIRMAN BRANCH: Yes. I guess

7 what I get left hanging, though, then why does

8 the list follows. So I think your structure

9 is better, but I would like to add another

10 sentence that say these "guidelines include."

11 And then you've got a good transition into the

12 list.

13   Yes. That's it.

14   MEMBER SONDERMAN: Okay. So down

15 there "date system" singular. And I think you

16 can take out "the." "According to Federal

17 procurement data system --"

18   CHAIRMAN BRANCH: Actually, you

19 could take out "the data" as well. That's

20 redundant.

21   MEMBER SONDERMAN: Right,

22 "According to the Federal procurement data

1   system." Okay. So just take out "data."

2   CHAIRMAN BRANCH: Right.

3   MEMBER SONDERMAN: And the S after

4   it.

5   CHAIRMAN BRANCH: And the S after

6   it.

7   MEMBER SONDERMAN: Something Pat

8   knows well. That S on "system." Yes. Right

9   there.

10   So can we say "FY 2008"? Because

11   there may someone at the next millennium who

12   is looking at this. I'm sorry. Go on, David,

13   lighten up.

14   MEMBER SONDERMAN: Roger. Some

15   graduate student will be very grateful for

16   your six.

17   CHAIRMAN BRANCH: Or alternately,

18   there will be some current graduate student

19   who will think we're referring to 1908.

20   MEMBER SONDERMAN: Indeed.

21   So I'm guessing that those numbers

22   are some artifact of the Federal procurement

1   data system?

2   CHAIRMAN BRANCH: No. Those are

3   actually department codes that come from the

4   consolidated chart of accounts.

5   MEMBER SONDERMAN: Well, that's

6   not the Treasury's, but -- well. Yes. That's

7   not the Treasury's acquisition code, which is

8   10.

9   CHAIRMAN BRANCH: Right.

10   MEMBER SONDERMAN: I think they

11 are misleading in this context and not --

12   CHAIRMAN BRANCH: I think you

13 could get rid of the numbers. I recognize 17

14 as the Navy's number on the consolidated chart

15 of accounts. I'm not sure anybody cares about

16 that level of acrana.

17   MEMBER SONDERMAN: Right.

18   CHAIRMAN BRANCH: So we could

19 simply list the departments.

20   MEMBER SONDERMAN: Yes. And then

21 you could put "the" in, you know, at least for

22 the departments I worked for, the Department

 1   of the Navy and the Department of the

 2   Treasury.

 3   MEMBER CHVOTKIN: Mr. Chairman, in

 4   the first sentence I think the word "Top"

 5   could be lower case T.

 6   CHAIRMAN BRANCH: You're

 7   absolutely right.

 8   MEMBER JONES: Right. After 2008

 9   that should be past tense. No. That's not

10   where I meant the "the" goes. I'm sorry, Pat.

11   I wasn't paying attention. It's Department of

12   the Air Force --

13   CHAIRMAN BRANCH: Right.

14   MEMBER JONES: -- and Department

15   of the Navy.

16   MS. HUGHES: Okay.

17   MEMBER SONDERMAN: I'm sorry.

18   CHAIRMAN BRANCH: But before we go

19   on, we have a case problem. So we need to

20   make the case consistent if we're going to use

21   -- actually, that probably -- poor Pat. That

22   should probably be capital "Department of the"

1 capital "Air" capital "Force" really.

2   MS. HUGHES: Like so?

3   CHAIRMAN BRANCH: Yes. And

4 actually, I think you may be able to fix that

5 with the format case command. I think you may

6 be able to select all that text. And I think

7 there's a command that says format case, which

8 may save you some time.

9   MEMBER SONDERMAN: Change case?

10   CHAIRMAN BRANCH: Yes, change

11 case. Yes. And tell it you want sentence

12 case. Yes, highlight all of it and then

13 format change case, sentence case. I think

14 that works. Change case. Title case.

15   MEMBER SONDERMAN: Title case.

16   CHAIRMAN BRANCH: Close enough.

17   That's interesting. So it's not

18 smart enough to know the "of" should be lower

19 case. Close enough, I think. Yes. Okay.

20   And I guess if you're going to

21 "the" there, yes, so it should be consistent.

22 And that should be Department of the Navy.

 1   That's interesting. So why don't

 2 we do that with everything? Why do we do that

 3 with the military departments and not --

 4   MEMBER SONDERMAN: The civilian?

 5   CHAIRMAN BRANCH: Yes.

 6   MEMBER SONDERMAN: Treasury,

 7 Treasury has a "the" in it and so does

 8 Interior.

 9   CHAIRMAN BRANCH: Does it?

10   MEMBER SONDERMAN: Yes.

11   CHAIRMAN BRANCH: Okay.

12   MEMBER SONDERMAN: It depends on

13 the circumstance.

14   CHAIRMAN BRANCH: All right.

15   MEMBER SONDERMAN: I mean it's

16 Department of the Navy because the Navy

17 includes the U.S. Navy and the U.S. Marine

18 Corps, so it's a more inclusive thing. Like

19 Department of the Interior includes, you know,

20 550 million acres of the public land.

21   CHAIRMAN BRANCH: Got it. All

22 right.

1   MEMBER SONDERMAN: Along with many

2   other wonderful things, the national icons.

3   And the Treasury which includes

4   the U.S. Mint and the Bureau of Engraving and

5   Printing.

6   CHAIRMAN BRANCH: Okay. All

7   right. So I think this is one of the things

8   that we need -- I think that's the first thing

9   on the data list in this next paragraph.

10   So, Judith, you were wondering

11   what we think we needed I think?

12   MEMBER NELSON: Yes.

13   CHAIRMAN BRANCH: Okay.

14   MEMBER NELSON: I think now's a

15   good time if we come up with a list. I have

16   figures for 2008.

17   CHAIRMAN BRANCH: Okay. All

18   right. Next paragraph.

19   MEMBER JONES: Excuse me for a

20   second. Didn't I have that as an attachment

21   to the schedules background piece, a list of

22   all of the schedules and sales for FY '08.

 1 Where'd that go?

 2   MEMBER NELSON: That did exist,

 3 but there was in our discussions some other

 4 items that were requested.

 5   CHAIRMAN BRANCH: Okay.

 6   MEMBER NELSON: And I just wanted

 7 to get a full list of what the panel wanted.

 8   CHAIRMAN BRANCH: Yes. What we

 9 needed to do.

10   MEMBER SONDERMAN: So, Pat, in the

11 second sentence there "business" should be

12 plural, "businesses."

13   CHAIRMAN BRANCH: And I think,

14 actually, that should be "schedule sales,"

15 because we refer to the program as a schedule

16 program. So I think that's schedule sales.

17   MEMBER SONDERMAN: Singular

18 "schedule" as opposed to multiple.

19   CHAIRMAN BRANCH: Yes.

20   MEMBER SONDERMAN: First word.

21 Right there.

22   CHAIRMAN BRANCH: Right there,

 1   "schedule." Yes, that should be "schedule."

 2   Since we're talking about the entire program

 3   and not a group of schedules.

 4   MEMBER NELSON: The only thing

 5   that I would clarify in here, the schedules

 6   program crosses both the schedules that are

 7   held. And somewhere we should actually

 8   clarify at the beginning, this didn't occur to

 9   me until we get to the sales, but in the

10   beginning and particularly since we talk at

11   the background about those schedules that are

12   at the VA, this sales figure is only for those

13   schedules that are held within FAS. There's

14   another, I don't know, $7, $8 billion for the

15   schedules that are in VA. So we need to

16   clarify here that these are those 38 that are

17   at FAS

18   MEMBER JONES: Shouldn't we

19   include VA, too?

20   MEMBER NELSON: Yes. I think that

21   we should add those in. But do you see what

22   I'm saying?

 1   CHAIRMAN BRANCH: I guess the

 2 question is do we have that data?

 3   MEMBER NELSON: I do. I have it

 4 upstairs. But --

 5   CHAIRMAN BRANCH: Okay. So I

 6 guess the note here really ought to be -- I

 7 would leave this alone and really ought to be

 8 go fix that sales figure.

 9   MEMBER SONDERMAN: So the 36.8

10 make it whatever it was --

11   CHAIRMAN BRANCH: Right.

12   MEMBER SONDERMAN: -- including

13 the VA.

14   CHAIRMAN BRANCH: And you could

15 say "schedule sales for FY 2008, including the

16 Department of Veterans Affairs total" and then

17 whatever that number would be.

18   MEMBER CHVOTKIN: Mr. Chairman, at

19 the risk of incurring wrath, when we talked

20 about this in the MAS background on page 4 of

21 the paper copy, we said that there were 38

22 schedules, three portfolios, nine acquisition

1 centers, 38 schedules and then talked about

2 additional delegated authority to VA for

3 managing nine. And so ell me just for

4 accuracy, is it 38 plus nine or is 29 plus

5 nine? Are there 38 schedules managed by GSA

6 and nine by the VA?

7   MEMBER NELSON: Correct.

8   CHAIRMAN BRANCH: So I think we're

9 okay there.

10   MEMBER SONDERMAN: Say that again.

11   MEMBER NELSON: There are 38

12 schedules managed within FAS and nine by the

13 VA.

14   MEMBER SONDERMAN: Is it nine

15 schedules?

16   MEMBER NELSON: Nine schedules

17 managed by the National Acquisition Center or

18 VA --

19   MEMBER SONDERMAN: Department of

20 Veterans Affairs.

21   MEMBER NELSON: And 38 schedules

22 managed within the Federal Acquisition

1 Service.

2   MEMBER SONDERMAN: Right. Well,

3 and that's just the reason I'm asking is we

4 don't -- see Alan. What we say is that the VA

5 National Acquisition Center manages nine

6 standing solicitations. We don't say those

7 are schedules. So perhaps we should say

8 schedules to be consistent. Manages nine

9 schedules.

10   CHAIRMAN BRANCH: I think that's a

11 valid point. Or if you don't want to change

12 the sense of that, you could say "manages

13 standing solicitations for nine schedules."

14 Okay.

15   I think you can get rid of the

16 word "standing," though.

17   MEMBER CHVOTKIN: And the word

18 "contracts" at the end. "Manages nine

19 schedules."

20   CHAIRMAN BRANCH: No. Yes. Right.

21   MEMBER CHVOTKIN: Right, sorry.

22   CHAIRMAN BRANCH: Okay.

 1   MEMBER SONDERMAN: Just leave the

 2   period there.

 3   CHAIRMAN BRANCH: Yes. You need to

 4   take the space. There you go.

 5   MEMBER SONDERMAN: So are we

 6   taking five minutes now to identify all of the

 7   data that we want to put in the appendix?

 8   CHAIRMAN BRANCH: I think that

 9   probably is best done in context. And so as

10   we go through the report, you know let's

11   identify what data we need. I think that's

12   probably easier.

13   MEMBER SONDERMAN: And is that an

14   attachment or an appendix? Because in some

15   cases we refer to it as an appendix. Right

16   here in the text it's referred to as an

17   attachment.

18   CHAIRMAN BRANCH: Yes. Let's

19   change that to "appendix."

20   MEMBER SONDERMAN: Yes, we punted

21   on the table of contents.

22   CHAIRMAN BRANCH: Yes, let's just

1   change that to appendix.

2   MEMBER SONDERMAN: Okay. And I

3   think that would be Appendix 2, because

4   Appendix 1 is the panel membership, Pat. Or

5   Appendix B.

6   MEMBER JONES: I have a comment

7   here. In the first reference where we were

8   talking about the total schedules and the

9   acquisition centers, we made a distinction

10   between the GSA schedules and the VA

11   schedules. And here we're combining the sales

12   total for both. Is that important to

13   distinguish the two here?

14   And the reason I say that is

15   because in the schedules background piece that

16   we had during the last meeting there was a --

17   well, it show showing the total volume of

18   sales for services versus products to show and

19   products and services combined to emphasize

20   our point that the scheduled sales for

21   services is the majority now and the

22   preponderance of sales under the schedules,

1 which is somewhat the foundation for our

2 recommendations.

3   CHAIRMAN BRANCH: I guess I'll

4 just venture an opinion. I think the point

5 here is to just give folks a general sense of

6 the magnitude of the schedules program in

7 total. So I don't know that it needs to be

8 split out here. We may want to do that

9 elsewhere. But here this is more context.

10   MEMBER DRABKIN: And you tell them

11 up front that you've concluded them so if

12 later on we separate things out, I think it's

13 -- no, I think that's right. I think they

14 need to understand the magnitude of the

15 program overall and then later on if we have

16 special points to make on parts of the

17 program, we'll address it there.

18   MEMBER SONDERMAN: So a question:

19 Does the 17,000 include the Veterans Affairs'

20 contracts and does the 80 percent being held

21 by small businesses --

22   MEMBER NELSON: No. And I have

1 those figures also.

2   MEMBER SONDERMAN: Okay. So all

3 of those numbers need to be adjusted to full

4 scope of the program?

5   MEMBER DRABKIN: To be consistent

6 with the sentence that precedes it.

7   MEMBER NELSON: So when we get

8 done with the edit here, I'll be able to pull

9 the numbers and correct them if we highlight

10 it.

11   CHAIRMAN BRANCH: Okay.

12   MEMBER DRABKIN: And since we have

13 Appendix 2 mentioned in the end of this

14 paragraph, perhaps in the Appendix is where we

15 can make the distinction; total program split

16 out between GSA and VA. You can do a split

17 between products and services. In the

18 Appendix we can put all the figures. And they

19 are whatever they are, including contractors.

20 Maybe we should agree on what we want

21 displayed in the Appendix now that we're here.

22   MEMBER SONDERMAN: I think that's

1 what I asked.

2   CHAIRMAN BRANCH: Yes. I mean for

3 this -- but I think they're two slightly

4 different points. I think as we go through

5 the report we want to identify the information

6 that we want for that piece of the report as

7 opposed to sitting here and brainstorming

8 across 27 pages. Because we may get through

9 it and find that we lose context. I think

10 David's point is since we know we want to see

11 this data, how do we want to see it displayed

12 in Appendix 2.

13   MEMBER DRABKIN: Right. At this

14 point we're at a decision point. And it seems

15 to me predicated on the preceding two

16 sentences we want to have total number of

17 contracts and the program, and then we want to

18 see a split between VA and GSA.

19   We want to see a total number of

20 small businesses and we want to see a split

21 between GSA and VA.

22   We want to see a total dollars in

1 the program and then we want to see a split

2 between GSA and VA.

3   And we want to see a total number

4 of contracts and --

5   MEMBER NELSON: Slow down.

6   MEMBER DRABKIN: Total number of

7 contracts and then a split between GSA and VA.

8 So it basically mirrors what we just talked

9 about in the preceding two sentence.

10   MEMBER CHVOTKIN: And I would also

11 add to David's list I think we have the sales

12 by schedule for FY '08 already. And there was

13 a question at the last meeting whether we

14 wanted to look at it over a two or three year

15 period of time, but I think we're okay with

16 just '08 data for this purposes.

17   MEMBER SONDERMAN: So all of these

18 things that David just enumerated would be

19 2008 data only. That's what we're going to

20 put in the Appendix.

21   CHAIRMAN BRANCH: Right.

22   MEMBER NELSON: Going to what Alan

1 said, we're talking schedule sales by -- sales

2 by individual schedule, there was a point at

3 which the panel asked for schedules sales by

4 SIN, special item number. Are we still

5 looking for that or was it just for the

6 context for the panel's review?

7   CHAIRMAN BRANCH: I think that's

8 probably just for the context of our review.

9 I think that's too granular. You know I

10 think, and this is probably the subject for

11 another appendix let's see if it's appropriate

12 when we get to that. We probably want to see

13 a breakout between services and supplies, but

14 not here.

15   MEMBER DRABKIN: Consistent with

16 your admonishment earlier, Mr. Chairman, I

17 think what we should address right now is what

18 we need for right here. This way we don't

19 have to guess if later on in the report this

20 issue raises itself and we can add it or

21 create another appendix. Let's make sure we

22 do what you admonished us to do, sir.

 1   CHAIRMAN BRANCH: Point well

 2   taken. I'm back in my box.

 3   MEMBER DRABKIN: It's so rare

 4   that I get to make a point that you assume is

 5   well taken, Mr. Chairman. Thank you.

 6   MEMBER NELSON: Pat, can you just

 7   add in your list total sales by schedule?

 8   CHAIRMAN BRANCH: Do we really

 9   want to do that? I don't think we really want

10   to do that.

11   MEMBER DRABKIN: Unfortunately the

12   sentence, the third sentence says "the

13   available schedule programs and the sales

14   volume for each?

15   CHAIRMAN BRANCH: Oh, so it does.

16   But I'll ask the question again: So do we

17   really want to do that? You know, I guess I

18   would suggest we just take the sentence out.

19   MEMBER DRABKIN: Okay. And then

20   put Appendix 2 in parenthesis and let it

21   follow the second sentence?

22   CHAIRMAN BRANCH: Yes. And my

 1 point would simply be I think we need -- you

 2 know data generally falls into one of two

 3 categories. It's either interesting or it's

 4 interesting and useful. And while I think

 5 total schedule sales might be interesting

 6 here, I'm not sure that it would be

 7 interesting and useful for our purposes here.

 8   MEMBER JONES: I think it would be

 9 if it at some point we decided we wanted to

10 show the total schedule sales by products and

11 services and breaking the amount into the

12 three separate categories.

13   CHAIRMAN BRANCH: Yes. And

14 heeding the good counsel of my colleague Mr.

15 Drabkin, as we go through the report I think

16 we can make a judgment later on as to whether

17 that might be something we want to do. But

18 for here, you know to support the narrative,

19 I think those first three things are

20 sufficient.

21   You know, total number of

22 contracts in the program since we've talked

1   about GSA managing some of the schedules and

2   VA managing some, that's useful to know what

3   the magnitude is, what the split is.

4   Small businesses I think, again,

5   important total dollars in the program

6   important.

7   I'm not sure at this point total

8   sales by schedule adds to the narrative.

9   MEMBER DRABKIN: And in addition

10 this information is available on the website.

11 Someone wants to go get, they can go get it.

12 So it's not like we're depriving them of

13 information that we've discovered uniquely

14 through the work of our panel.

15   CHAIRMAN BRANCH: So I think the

16 way to accomplish that would be to take that

17 last sentence or the portion of the -- well,

18 take that out most definitely. And then in

19 the narrative above take out everything from

20 the capital "The" to "Appendix 2." Take out

21 the "The" as well and just "Appendix 2" in

22 parentheses at the end of that sentence, or

1   "see Appendix 2."

2   Yes, I would put that in

3   parentheses. And the period goes inside the

4   parenthesis.

5   Poor Pat. Pat, you need a period?

6   Put the period back at the end of "business."

7   There you go. There you go. And put the

8   period back at the end of "business." Because

9   the parenthetical comment is a sentence in and

10   of itself.

11   MEMBER NELSON: Okay. I hate to

12   do this. Now that we are including the VA,

13   the Veterans Administration has a different

14   industrial funding thing. So --

15   CHAIRMAN BRANCH: Well, I had a

16   question about that sentence, or actually the

17   first two sentence. Because I'm not sure they

18   really convey how that works. And essentially

19   the contractor remits that fee.

20   MEMBER NELSON: The contractor

21   remits the fee.

22   CHAIRMAN BRANCH: Yes.

 1   MEMBER NELSON: There's no

 2 question in regard to that. And it is tacked

 3 onto the top of the negotiated price.

 4   CHAIRMAN BRANCH: I understand.

 5   MEMBER NELSON: But the fee is a

 6 fee to the ordering activity as many of our

 7 colleagues have stressed.

 8   CHAIRMAN BRANCH: Well, I guess

 9 here's kind of my point, and not to be too

10 arcane about it. But if you're an operations

11 person writing orders against this, the fee is

12 totally transparent to you. The only people

13 who really care about that in government or

14 the policy folks who sit down and say why

15 would I want to go use GSA as opposed to

16 putting my own vehicle in place, because I can

17 take essentially a percent of cost out of the

18 prices I get. So my only question is, and

19 again it's not a strongly held one, as we help

20 who aren't in the business understand this,

21 you know I believe the way it's phrased it

22 almost leaves this impression that there's

 1   this kind of separate transaction, you know

 2   almost a line item on the order that says one

 3   each widget and then another line item that

 4   says industrial funding fee .75 percent.

 5   That's really the only thought I'm trying to

 6   get at.

 7   MEMBER DRABKIN: And if we leave

 8   that there, we should distinguish that the VA

 9   only charges a half of percent.

10   MEMBER NELSON: And on services

11   one percent.

12   MEMBER FRYE: Half of a percent.

13   MEMBER DRABKIN: Well, let me

14   suggest that, first, my colleague misspoke,

15   didn't intend to misspeak, but the IFF is not

16   added to the fee that we negotiate with the

17   vendor. The fee we negotiate with the vendor

18   includes the fee in it. They don't then add

19   .75 percent to our fee. And she didn't intend

20   to misspeak with the speed with which she

21   spoke. But I want to make sure that the

22   transcript is correct.

 1   Secondly, I do think we should

 2   point out the differences in the fees since

 3   we've made a distinction above about Veterans

 4   Affairs, which means we probably should have

 5   a general sentence that says the MAS program

 6   operating costs are funded through the payment

 7   of an industrial funding fee period. For GSA

 8   that funding fee is .75 percent. For VA the

 9   IFF is .5 for products, .1 -- whatever it is

10   for services. This fee is not collected in

11   addition to the price of the item or services

12   but included in it, or words to that effect.

13   CHAIRMAN BRANCH: Well, let me

14   offer a simpler construction to yours. I

15   think you could say "An industrial funding

16   fee, which is included in contract prices," or

17   "schedule contract prices." And then you

18   could start to talk about the various

19   breakdowns of, you know, yours is .75, the

20   VA's is whatever it is.

21   MEMBER NELSON: Let me offer

22   something even more simple. How about exactly

 1 what you or David said and not get into what

 2 the industrial funding fee is and we put it

 3 into the appendix along with everything else?

 4   CHAIRMAN BRANCH: It works for me.

 5   MEMBER DRABKIN: And for me. And

 6 then we don't have to try to explain on the

 7 face of it where there are differences in

 8 fees, et cetera.

 9   CHAIRMAN BRANCH: And I guess the

10 other question is so is it really important

11 other than to know that there is a fee? I

12 mean is that data really important? I don't

13 even know that we need to put that in an

14 appendix.

15   MEMBER NELSON: Can't we just say

16 the program is industrially funded?

17   CHAIRMAN BRANCH: Yes, so that's

18 my suggestion.

19   MEMBER DRABKIN: I think knowing

20 that a portion of the audience for our report,

21 even though we're sending it to the

22 Administrator, there's another larger portion

 1 of the audience who will be reading this

 2 report, and that will be our friends on the

 3 Hill. I do think that we need to provide them,

 4 not the Administrator, with information that

 5 will help them understand this question lest

 6 they think that the fee is huge or the fees

 7 collected.

 8   I do think if this was only going

 9 to the Administrator, we wouldn't need to

10 explain it at all.

11   CHAIRMAN BRANCH: So why don't we

12 add then an Appendix 3 that it simply contains

13 industrial funding fees for supplies and

14 services broken out by GSA and VA.

15   MEMBER DRABKIN: I think that will

16 be perfect.

17   CHAIRMAN BRANCH: Okay. All

18 right. We're comfortable with that paragraph

19 at this point? Okay.

20   MEMBER CHVOTKIN: Mr. Chairman, I

21 have two other comments in light of the

22 change.

 1   CHAIRMAN BRANCH: All right.

 2   MEMBER CHVOTKIN: In the first

 3 sentence, might I suggest "Are funded through

 4 a payment of a small" and we use some

 5 modifier? I mean three-quarters of one

 6 percent it -- that may draw people's attention

 7 to the amount of -- some buyers might not thin

 8 it's a small amount.

 9   MEMBER NELSON: Yes.

10   MEMBER CHVOTKIN: But I'm trying

11 to get the difference between a percent or

12 some other charges that we see on assisted

13 vehicles or other activities where the amounts

14 are different.

15   So I'll stop on that and see how

16 you want to resolve the use of that modifier.

17   MEMBER SONDERMAN: I recommend

18 that you not include a modifier, being one of

19 those who are referred to in the last

20 sentence. I think that invites, you're asking

21 for it because while you think it's small,

22 somebody else may not. So why put it in

 1   there? It is what it is.

 2   MEMBER CHVOTKIN: Yes --

 3   MEMBER SONDERMAN: So either be

 4   factual -- that's an evaluative --

 5   MEMBER CHVOTKIN: Yes, it's-- I

 6   agree. As I reflect on that, it's a small

 7   percentage that's a big number. And I

 8   remember when I was in the District and we

 9   went to GSA to have us do all the contracting

10   to do Y2K remediation, and the fee amounted to

11   the annual budget to run the Office of

12   Contracting and Procurement. So, small might

13   -- on a percentage basis it is small. But a

14   small number of a very large number is still

15   a very large number. So we might excite

16   passions that we best let lie. Okay.

17   MEMBER SONDERMAN: So, Pat, I

18   think you need to take the A --

19   CHAIRMAN BRANCH: The A, the extra

20   A.

21   MEMBER SONDERMAN: -- up in the

22   first line of the paragraph right there.

1   "Payment of an industrial funding fee."

2   CHAIRMAN BRANCH: And with that --

3   MEMBER SONDERMAN: And then you

4   have a duplicative sentence near where your

5   cursor is, right there. One line down. "The

6   fee is reflected in the total amount of the

7   contract price." You've already covered that

8   by saying it's included in the contract

9   prices.

10   CHAIRMAN BRANCH: Okay.

11   MEMBER SONDERMAN: I believe.

12   CHAIRMAN BRANCH: Yes, we did.

13   Which is included in the contract prices.

14   Any other comments on this

15   paragraph?

16   With that --

17   MEMBER JONES: I have a --

18   MEMBER CHVOTKIN: Is this the

19   first time we're using the FAS? I don't

20   remember using FAS previously. So either we

21   write it out --

22   CHAIRMAN BRANCH: I think you're

 1 right.

 2   MEMBER CHVOTKIN: -- or come up

 3 with and change it to GSA or something else?

 4 Did we use it? Did we? All right.

 5   MEMBER SONDERMAN: Yes, it's on

 6 page 4.

 7   MEMBER CHVOTKIN: Okay.

 8   MEMBER SONDERMAN: In that

 9 paragraph that you previously opened up with

10 standing solicitations.

11   MEMBER CHVOTKIN: Okay.

12   CHAIRMAN BRANCH: Okay. So if

13 there are no more comments on this paragraph,

14 it is 10:30. I think it might be time to take

15 a 15 minute --

16   MEMBER JONES: Elliott, I have a

17 comment.

18   CHAIRMAN BRANCH: Oh. All right.

19 I spoke too soon.

20   MEMBER JONES: The last sentence

21 there in that paragraph, "The IFF process and

22 percentages a source of controversy for some

 1   customers of the MAS program." That's new.

 2   I haven't seen that before. Are we leaving

 3   that in there?

 4   CHAIRMAN BRANCH: Okay. So don't

 5   we take ten and let's come back and talk about

 6   that. Because while I think that may be a

 7   true statement, I'm not sure what it adds to

 8   the background here.

 9   MEMBER FRYE: It adds a lot of

10   controversy that may be unnecessary.

11   CHAIRMAN BRANCH: Yes. So Pat's--

12   MEMBER SONDERMAN: And then for

13   the VA schedules, does the IFF go back to FAS?

14   CHAIRMAN BRANCH: Okay.

15   MEMBER SONDERMAN: So we need to

16   fix that as well.

17   CHAIRMAN BRANCH: So let's take

18   ten, or nine now. Pat's computer clock is the

19   official clock. So if everybody will be back

20   at 10:40 by her clock icon.

21   (Whereupon, at 10:32 a.m. a recess

22   until 10:44 a.m.)

 1   CHAIRMAN BRANCH: Okay. We have a

 2   quorum, so let's get started again.

 3   I think where we left off we had a

 4   question about that last sentence as to

 5   whether we wanted to eliminate that sentence

 6   as to now cause undue controversy.

 7   MEMBER CHVOTKIN: Vote aye.

 8   MEMBER DRABKIN: Yes.

 9   CHAIRMAN BRANCH: All right.

10   MEMBER SONDERMAN: Yes. Perhaps

11   that would fit better in the findings or

12   recommendations section if there's something.

13   CHAIRMAN BRANCH: Okay. So gone.

14   Okay. All right. Next, the MAS

15   process.

16   MEMBER SONDERMAN: Elliott, when I

17   was looking at this it seemed to me that these

18   three segments weren't quite in the right

19   order. I agree with GSA going first, but it

20   seems like that vendor and perhaps (a) need to

21   change "vendor" to "contractor" to be

22   consistent. But that section should be moved

1   up before "Agency ordering contracting

2   officer." Because you have GSA in the vendor

3   and then the ordering agency. Beautiful.

4   And then in the agency section

5   there's a reference, it's like the next to the

6   last thing, it says DO/TO. We need to spell

7   out "deliver order/task order."

8   And then in the contractor section

9   the third bullet, is it "update commercial

10 practices" or "update commercial prices

11 continuously"? I wasn't sure what point we

12 were trying to say.

13   MEMBER NELSON: Actually, I would

14 say that it's commercial practice disclosures.

15   CHAIRMAN BRANCH: Well, but I

16 think the broader question, at least I hear a

17 broader question in Debra's query which is is

18 it that we're asking them to update their

19 commercial practices in general or their

20 general pricing practices?

21   MEMBER CHVOTKIN: It's pricing.

22   MEMBER JONES: Technically it

 1   should be commercial sales practices.

 2   CHAIRMAN BRANCH: Ah, okay.

 3   Commercial sales practices.

 4   MEMBER NELSON: Again, I would add

 5   the word "disclosures."

 6   CHAIRMAN BRANCH: Okay.

 7   MEMBER JONES: Well, rather than

 8   update it's "commercial sales --

 9   CHAIRMAN BRANCH: Sales

10   disclosures?

11   MEMBER JONES: --"practices

12   disclosures," it technically should say

13   "disclosure its commercial sales practices."

14   CHAIRMAN BRANCH: Ah, okay. So

15   "disclose its commercial sales practices

16   continuously."

17   MEMBER SONDERMAN: We're trying to

18   start with a verb.

19   And in the paragraph that follows,

20   does anybody want to add any other things to

21   the bullets or change anything to the bullets.

22   MEMBER JONES: To the contractors,

 1   but I have some others too on the agency. But

 2   in the contractors section the last line "Keep

 3   its offering of products/services."

 4   CHAIRMAN BRANCH: I think maybe

 5   why don't we just say "keep its offering

 6   current"? Because then --

 7   MEMBER SONDERMAN: But then you

 8   take out products and labor categories.

 9   CHAIRMAN BRANCH: Yes, just take

10   all this out. Does that make sense?

11   MEMBER SONDERMAN: It's brief.

12   MEMBER NELSON: I think it does

13   make sense because you get into a situation of

14   it's not just its pricing, but it's its

15   policy, it's its warranties, it's its terms

16   and conditions. So --

17   CHAIRMAN BRANCH: Okay. Other

18   comments on this? All right. Any changes to

19   the roles and responsibility to the GSA

20   contracting officer?

21   MEMBER JONES: Again, to be

22   consistent in the third bullet we're saying

1 "vendor specific" and it should be

2 "contractor." And again the first bullet,

3 too.

4   And why do we even have to say

5 "contractor-specific"? Can't we just say

6 "negotiate discounts and Ts and Cs"?

7   MEMBER SONDERMAN: Well, because I

8 think there are some that are contractor-

9 specific, aren't there?

10   MEMBER JONES: Well, in some cases

11 but not in all.

12   MEMBER CHVOTKIN: Actually, there

13 are more frequently contract specific as to a

14 family of schedule then they are contractor

15 within a schedule.

16   MEMBER NELSON: So you want me to

17 change it back to "contract-specific"?

18   CHAIRMAN BRANCH: Contract-

19 specific.

20   MEMBER SONDERMAN: And then in the

21 first bullet of that section, change "vendors"

22 to "contractors."

 1   CHAIRMAN BRANCH: And I think we

 2   take capitalization out of "commercial sales

 3   practices." We are not talking about the

 4   form, we are talking about a process. Okay.

 5   Contractor bullets okay?

 6   MEMBER SONDERMAN: So we've said,

 7   let me ask -- well, are we now moving into the

 8   context of referring to those contracts which

 9   the Federal Acquisition Service manages?

10   Those schedules which the -- because we've

11   attend GSA training, disclose commercial

12   practices to GSA. I'm just asking to

13   recognizing the context as distinct from the

14   Department of Veteran Affairs.

15   MEMBER FRYE: I don't know if we

16   need to go that far or not for VA.

17   MEMBER SONDERMAN: Well, I just

18   want us to be aware that we've -- I think

19   we've moved into the realm of what we mostly

20   discussed. So --

21   MEMBER NELSON: We can simply take

22   out to GSA. The requirement is the same.

 1   CHAIRMAN BRANCH: How about "To

 2   the scheduled contracting officer"?

 3   MEMBER NELSON: To the first

 4   point, the name of the training is Pathway To

 5   Success.

 6   CHAIRMAN BRANCH: Okay. Are we

 7   satisfied with the bullets under contractor?

 8   MEMBER JONES: On the first

 9   bullet, "Attend GSA training such as Pathway

10   to Success," really it's a mandatory training.

11   So we could say "Attend mandatory Pathway to

12   Success training."

13   MEMBER NELSON: It's not mandatory

14   across the entire program. It's not mandatory

15   for all of the schedules and all of the

16   solicitations.

17   MEMBER JONES: Okay.

18   CHAIRMAN BRANCH: Okay.

19   MEMBER SONDERMAN: I think you

20   have an extra space at the end of that section

21   on contractor.

22   MEMBER JONES: My question is if

 1   it isn't applicable to all the schedules, then

 2   why are we referencing it?

 3   CHAIRMAN BRANCH: But I thought

 4   that was a point of such as, which you know

 5   implies that that's an example. So my

 6   assumption was, correct me if I'm wrong, that

 7   there was training available to schedule

 8   contract holders. Is Pathway to Success the

 9   only training?

10   MEMBER JONES: That's preaward,

11   though.

12   CHAIRMAN BRANCH: Okay.

13   MEMBER JONES: That's prior to

14   becoming a contractor.

15   CHAIRMAN BRANCH: So that's it? I

16   mean, that's the only training a contractor --

17   okay. So "such as" would imply that there is

18   another training available.

19   MEMBER JONES: My point is we're

20   talking about contractor training. And that's

21   a preaward type training.

22   MEMBER NELSON: Correct. And the

 1   next bullet says "submit proposals." So that

 2   preaward as well.

 3   CHAIRMAN BRANCH: Okay. So I

 4   think if we want to be precise here, we could

 5   change that to "offeror/contractor" or --

 6   MEMBER JONES: Yes. That's what we

 7   would need to do to be precise.

 8   CHAIRMAN BRANCH: Anybody have

 9   strongly held opinions about that caption?

10   MEMBER SONDERMAN: I think that's

11   overly arcane --

12   MEMBER NELSON: I think we're

13   going to have to go through the entire --

14   MEMBER SONDERMAN: -- I think when

15   we talk about contractor whether we have a

16   contract with them or not.

17   MEMBER NELSON: -- thing --

18   MEMBER SONDERMAN: The general

19   community. If we're going to do that, then we

20   should change all the places that we've

21   changed it to contractor, just to say vendor.

22   CHAIRMAN BRANCH: Okay. So I

 1 think I'm hearing a consensus that this

 2 conveys the sense of what we believe industry

 3 does with respect to schedules? And in that

 4 case, we'll leave it.

 5   Okay. How about agency ordering

 6 contracting officer?

 7   MEMBER NELSON: I would change

 8 agency. I know that we didn't contemplate

 9 state and local and others, but I would simply

10 say "authorized ordering activity." Because

11 there are many programs and that allow for

12 other users than Federal agency as well as the

13 Federal agency can authorize other users. So

14 if we could just say "an authorized ordering

15 activity," which is actually the language in

16 the solicitation.

17   MEMBER SONDERMAN: Because it

18 could be somebody with a purchase card, for

19 example, who is not a contracting officer to

20 be--

21   CHAIRMAN BRANCH: Right. And I

22 think in some cases it could be one of our

1 prime contractors as well.

2   MEMBER NELSON: Right.

3   MEMBER SONDERMAN: On that last

4 bullet -- oh, you already changed it or did it

5 drop off? Is there something on the next

6 page.

7   CHAIRMAN BRANCH: Ah, okay.

8   MEMBER SONDERMAN: I think that's

9 supposed to be just "provide performance data"

10 as opposed to "past performance data."

11   CHAIRMAN BRANCH: Any strongly

12 held beliefs? Are we changing the sense of

13 the bullet by deleting that? Gone.

14   MEMBER JONES: Okay. In the

15 second bullet they don't solicit proposals,

16 they solicit quotes.

17   CHAIRMAN BRANCH: I'm not sure

18 that's accurate. In services contracts we

19 don't solicitation quotations. We call them

20 requests for task order proposals.

21   MEMBER DRABKIN: Not under --

22 under the schedule's rules you're asking for

 1   quotes whether its services, solutions or

 2   products.

 3   CHAIRMAN BRANCH: All right.

 4   MEMBER NELSON: We can't put out

 5   an RFP under a --

 6   CHAIRMAN BRANCH: No. Yes, we

 7   don't call them RFPs.

 8   MEMBER SONDERMAN: We call then

 9   RFQs.

10   MEMBER DRABKIN: Right. The

11   program calls them RFQs. Outside of the

12   schedules program, you're right, Elliott,

13   people do call them a lot of different things.

14   CHAIRMAN BRANCH: Yes. So I've

15   changed that to quotes.

16   MEMBER NELSON: Real quick if you

17   go down to the next paragraph we've got -- I

18   think we spell FedBizOpps -- is that how we

19   spell FedBizOpps?

20   MEMBER SONDERMAN: Yes.

21   CHAIRMAN BRANCH: Yes.

22   MEMBER NELSON: Double P.

1   MEMBER SONDERMAN: Yes, it is.

2   MEMBER CHVOTKIN: Also in that

3   first sentence "Tt was consistent with the

4   Competition Contracting Act as implemented in"

5   or we need something -- some other phrase. A

6   comma after "Act as implemented in Part 6."

7   MEMBER JONES: Can we go back up

8   to the order and activity bullets? I had some

9   more comments there.

10   On the fourth one down, "Evaluate

11   to achieve the best value award." Is more

12   accurate to say "Evaluate quotes to make best

13   value award"?

14   MEMBER SONDERMAN: Or evaluate

15   responses, or something. Yes.

16   CHAIRMAN BRANCH: Does that solve

17   everybody's --

18   MEMBER SONDERMAN: Something to

19   that effect.

20   MEMBER JONES: And then following

21   that "to issue the delivery order/task order

22   before they monitor" and the next line down.

1   MEMBER SONDERMAN: But I think we

2 just said when we say make an award, it's

3 assumed that there's some kind of document.

4   CHAIRMAN BRANCH: Okay.

5   MEMBER SONDERMAN: Because they're

6 actually --

7   MEMBER JONES: Yes, that's fine.

8   MEMBER SONDERMAN: -- you know if

9 somebody with a charge card makes a thing

10 through GSA Advantage, they don't issue --

11 they just --

12   CHAIRMAN BRANCH: Right.

13   MEMBER SONDERMAN: It's an online

14 thing.

15   CHAIRMAN BRANCH: Yes,

16 transaction.

17   MEMBER SONDERMAN: And there's not

18 a purchase order or anything like that. So

19 they make an award; that's it.

20   CHAIRMAN BRANCH: Okay.

21   MEMBER JONES: And one other

22 comment at the top. In the section where it

 1 says there are three primary parties, should

 2 we call them stakeholders. Because we refer

 3 to them as stakeholders elsewhere.

 4   CHAIRMAN BRANCH: I wouldn't

 5 change that. I mean, they are parties to the

 6 transaction. I mean it's --

 7   MEMBER JONES: Well, the sentence

 8 doesn't make sense. "There are three primary

 9 parties to a MAS schedule."

10   CHAIRMAN BRANCH: Well, I guess I

11 will gently disagree with you. Because the

12 contract has --

13   MEMBER JONES: Well, just say that

14 there are three primary parties involved in

15 the MAS process or just three permanent

16 parties to the schedule.

17   CHAIRMAN BRANCH: It's a

18 contractual framework and we call them the

19 parties. I mean every contract we --

20   MEMBER JONES: Okay. That's fine.

21   CHAIRMAN BRANCH: -- parties of

22 the first part, the second part.

1   MEMBER DRABKIN: Yes. Actually, I

2   wouldn't gently disagree, I would firmly

3   disagree.

4   MEMBER JONES: That is fine.

5   MEMBER NELSON: I would say that

6   there are multiple stakeholders outside of

7   those three parties.

8   CHAIRMAN BRANCH: Exactly. Okay.

9   I think I'm going to turn the

10 wheel back to Pat now.

11   MEMBER DRABKIN: In fact, I think

12 it's a travesty to allow us to get involved in

13 a discussion of who stakeholders are. Parties

14 are clear. God knows who the stakeholders are.

15   CHAIRMAN BRANCH: So we'll leave

16 our editing task for a minute and worry about

17 the logistics of lunch.

18   (Whereupon, at 10:05 a.m. off the

19 record until 11:11 a.m.)

20   CHAIRMAN BRANCH: Yes, we have a

21 quorum, so let's continue.

22   MEMBER SONDERMAN: Okay.

1   CHAIRMAN BRANCH: All right. Any

2 more questions on the bullets? Okay. Hearing

3 none, we're going to move on.

4   We're in paragraph --

5   MEMBER SONDERMAN: Consistent with

6 the competition.

7   CHAIRMAN BRANCH: Right.

8   MEMBER SONDERMAN: Second line,

9 right. Published in FedBizOpps. It says "in

10 the end."

11   CHAIRMAN BRANCH: Got it. And

12 Alan wanted to add something about how the

13 elaboration of the Competition In Contracting

14 Act in Part 6.

15   CHAIRMAN BRANCH: Yes, I think we

16 already got it.

17   MEMBER CHVOTKIN: Yes, he's

18 already got that. And I was going to add

19 "update" after your phrase "are published in

20 FedBizOpps and" my suggestion is either the

21 phrase "deemed to be" or "considered. One or

22 the other is fine. Make your choice, Mr.

 1 Chairman. Are "deemed to be" or "considered

 2 to be."

 3   CHAIRMAN BRANCH: Do we want to

 4 say what authority, under what authority?

 5 Because I guess that would be my question. So

 6 who has decided they're competitive?

 7   MEMBER SONDERMAN: Well, did the

 8 Competition In Contracting Act decide they

 9 were competitive?

10   MEMBER NELSON: I would go back to

11 the statutory authority.

12   MEMBER CHVOTKIN: But it's not

13 CICA? It's the authority under the Property

14 Act that --

15   MEMBER SONDERMAN: So then why are

16 we citing the Competition In Contracting Act

17 here? Maybe we should say "Consistent with

18 the Administrator's authority under the

19 Federal Property and Administrative Services

20 Act multiple award schedules are published in

21 FedBizOpps and are deemed to be competitive."

22   MEMBER NELSON: In the background

 1 we go to both statutory authorities. But I

 2 don't know -- I mean the statutory authority

 3 allows it for it to be deemed competitive

 4 under CICA. So the bottom line is what ends

 5 up happening is because of the statutory

 6 authority. It meets CICA requirements.

 7   MEMBER CHVOTKIN: So add the

 8 phrase "and" right there, Elliott. Okay. "And

 9 then as implemented by Parts 6 and 8."

10   MEMBER SONDERMAN: There you go.

11   MEMBER DRABKIN: Well, eight

12 really isn't an implementation. Eight is a

13 publication. The implementation is done in

14 the schedule rules and in our GSAM. I mean,

15 I know that it sounds like I might be --

16   MEMBER SONDERMAN: Okay. That's

17 fine. Then just leave it as it is.

18   MEMBER DRABKIN: But it only

19 reflects the decisions that have already been

20 made, not the implementation process. We do

21 that through the GSAM or directive from the

22 Administrator.

 1   MEMBER CHVOTKIN: Why don't we

 2 take the parenthetical phrase out then "as

 3 implemented by"? Because if it's just on the

 4 Administrator's authority and after its

 5 published and deemed permitive.

 6   MEMBER SONDERMAN: There you go.

 7   CHAIRMAN BRANCH: Okay. So take

 8 out --

 9   MEMBER SONDERMAN: No. Leave the

10 "Competition In Contracting Act," right?

11   CHAIRMAN BRANCH: All right. So

12 just take out the subordinate clause.

13   MEMBER SONDERMAN: Yes, that.

14 Beautiful.

15   So MAS opportunities are

16 publicized? We use MAS as a singular term and

17 as a plural term, so it's -- I don't know.

18 It's a little bit weird.

19   MEMBER DRABKIN: Perhaps you

20 should begin the -- hold on one second. Maybe

21 you should say "The MAS open and continuous

22 solicitations are publicized."

1   MEMBER SONDERMAN: That's good.

2   MEMBER CHVOTKIN: Just use the

3 word "solicitations" there. The solicitations

4 are open and continuous.

5   MEMBER DRABKIN: That's true. You

6 don't "open and continuous." I apologize.

7   MEMBER CHVOTKIN: Don't apologize.

8 It was a good suggestion. Just didn't need

9 it.

10   MEMBER DRABKIN: Take out

11 "Continuous" as well, Elliott. I did that for

12 my colleague from FAS.

13   CHAIRMAN BRANCH: Okay. So we

14 have "Consistent with the Administrator's

15 authority under the Federal Property And

16 Administrative Service Act of 1949 and the

17 Competition In Contracting Act, MAS

18 solicitations are publicized in FedBizOpps are

19 deemed to be competitive awards." Everybody

20 satisfied with that sentence?

21   MEMBER SONDERMAN: Well the

22 solicitation is an award to be -- you know, to

 1 put a fine point. So you could just --

 2   CHAIRMAN BRANCH: Why don't we

 3 just take "awards" out.

 4   MEMBER SONDERMAN: Remove the word

 5 "awards."

 6   CHAIRMAN BRANCH: Okay.

 7   MEMBER SONDERMAN: Yes. "They are

 8 deemed to be competitive." I think that's the

 9 point we're trying to make.

10   CHAIRMAN BRANCH: Yes, I think so.

11   I think we can take out that first

12 -- okay. Any other comments on that

13 paragraph?

14   MEMBER CHVOTKIN: Elliott, you

15 need to reinsert the word "awards" before the

16 phrase "deemed to be." And "awards are" --

17 Debra show him --

18   CHAIRMAN BRANCH: I thought we

19 wanted to take out "awards" because

20 solicitation -- oh, "and awards are deemed to

21 be competitive."

22   MEMBER SONDERMAN: That's good.

 1   CHAIRMAN BRANCH: Okay. Other

 2 issues on that paragraph?

 3   MEMBER SONDERMAN: Do we care

 4 about the use of the word "items" in the next

 5 to last line? Does that limit us when we talk

 6 about services?

 7   MEMBER DRABKIN: I don't think so.

 8 Don't take it out because I believe

 9 "commercial items" are defined as being both

10 product and services.

11   CHAIRMAN BRANCH: Okay. All

12 right. Next paragraph, questions?

13   MEMBER CHVOTKIN: Comma after the

14 word "schedule" and then comma after the word

15 "contracts." "The MAS schedule contracts,

16 like all contracts" comma.

17   MEMBER DRABKIN: Actually, I would

18 argue that you consider removed that

19 parenthetical because they are not like

20 indefinite delivery/indefinite quantity

21 contracts under Part 16 nor are they covered

22 by the provisions in FASA which authorized the

 1   use of IDIQs. Their authority stems directly

 2   from the Administrative Service and Property

 3   Act.

 4   MEMBER CHVOTKIN: It didn't get to

 5   authority. Let's take the phrase out. I

 6   don't think it adds to the discussion anyway.

 7   For different reasons I'd agree with Mr.

 8   Drabkin.

 9   CHAIRMAN BRANCH: Okay. So that

10   I've taken that phrase out.

11   MEMBER CHVOTKIN: The last word in

12   that should be "prices" not "pricing." "The

13   MAS contract awarded for individual prices."

14   CHAIRMAN BRANCH: Okay. This goes

15   lower case again.

16   MEMBER NELSON: On an editorial

17   note, I think we've been writing program with

18   a small P.

19   CHAIRMAN BRANCH: And as it should

20   be. And actually, as I think about it,

21   "schedule" probably ought to come out because

22   "multiple award schedule schedule contracts"

1 doesn't make sense.

2   MEMBER SONDERMAN: Right. I agree.

3 And do we need to spell out GSAM? Is this the

4 first time we used GSAM?

5   MEMBER DRABKIN: I think it is.

6 And that would be the General Services

7 Administration Acquisition Manual.

8   CHAIRMAN BRANCH: I wonder how

9 that got there?

10   MEMBER SONDERMAN: Do we need

11 "The" at the beginning of that sentence, at

12 the beginning of the paragraph?

13   CHAIRMAN BRANCH: Good point.

14   MEMBER NELSON: Elliott, when's

15 the last time you saved this document?

16   CHAIRMAN BRANCH: I like working

17 without a net?

18   My computer is set to autosave.

19   MEMBER NELSON: I don't care.

20   MEMBER SONDERMAN: Now we know

21 why.

22   CHAIRMAN BRANCH: This sentence,

1 is that accurate? "The offeror discloses

2 pricing and discounting practice to its

3 customers or classes of customers?

4   MEMBER SONDERMAN: I had put in

5 "offered." It discloses the offeror discloses

6 or provided or something, there's some verb

7 that needs to be --

8   CHAIRMAN BRANCH: Right. Yes.

9 We're missing a word. So I think "offered"

10 needs to go here.

11   MEMBER NELSON: So "The

12 contractor--"

13   CHAIRMAN BRANCH: Well --

14   MEMBER SONDERMAN: Well, here

15 we're talking about an offeror.

16   CHAIRMAN BRANCH: Yes, we are

17 talking about offeror.

18   MEMBER SONDERMAN: Provided to its

19 customers. The offeror disclosed pricing and

20 discounting practices provided to its

21 customers or classes of customers."

22   CHAIRMAN BRANCH: Right. Where I

1   have the light, Pat.

2   MEMBER NELSON: I actually would

3   end the sentence at "customers" and leave off

4   "that receive its best discounts."

5   CHAIRMAN BRANCH: Okay. Yes.

6   MEMBER NELSON: Because the

7   disclosure should actually be full.

8   CHAIRMAN BRANCH: Should be full

9   and then --

10   MEMBER NELSON: And then the

11   negotiations are based on the --

12   CHAIRMAN BRANCH: So a period here

13   at "customers." And then take out the rest of

14   that sentence.

15   MEMBER SONDERMAN: Small case on

16   contracting officer.

17   CHAIRMAN BRANCH: Yes.

18   CHAIRMAN BRANCH: Oh, and I forgot

19   in the fourth line there after "manual," I

20   guess we should put in parentheses GSAM

21   because we do use that abbreviation.

22   MEMBER JONES: Do we need that

1 last sentence there, "The basis of award

2 customer may be different for each SIN or

3 product line"? Okay. Well, then I have a

4 suggested revision to that.

5   Rather than saying "may be

6 different for each SIN or product line," we

7 could just say "under a single contract."

8   CHAIRMAN BRANCH: But I think that

9 begs the question what under the single

10 contract may have a different basis for award.

11 If you're going to leave that sentence, you

12 need to talk about what piece of the contract

13 -- I guess what component of a contract could

14 have a different base of award from another

15 component of the contract.

16   MEMBER NELSON: The reason why I

17 lie the sentence the way that it stands that

18 it moves -- it feeds one of the

19 recommendations that goes forward, which is

20 the customer's desire to see in a general

21 level the basis of award, what type of class

22 of customer or category of customer.

 1   So if they're different for

 2   different SINs or different product lines,

 3   this feeds directly into that.

 4   CHAIRMAN BRANCH: That's a very

 5   good point. I would vote we leave the sentence

 6   as it's written.

 7   MEMBER JONES: Okay. And I'm

 8   going to say that that could be accurate if we

 9   were talking about products. But typically we

10   don't negotiate a different basis of award

11   customer SIN-by-SIN. That's not typical. So

12   I'm just trying to put it in a context where

13   it's in accordance with the way we do things

14   practically.

15   CHAIRMAN BRANCH: Well the "may"

16   is permissive, so it implies that it may be

17   and it may not be.

18   MEMBER NELSON: But in most cases

19   not.

20   CHAIRMAN BRANCH: I don't know

21   that we have data that I'm comfortable with

22   making that assertion. I mean, GSA folks have

 1   to help me out here.

 2   MEMBER NELSON: I'm sorry. What?

 3   CHAIRMAN BRANCH: You know, I

 4   think the sentence as drafted is fine.

 5   Because "may" is a permissive word which means

 6   that it may be a different and it may not be

 7   different. And I think Jackie's point was but

 8   it usually isn't different. And I don't know

 9   that we've ever had a discussion or looked at

10   any data to support that assertion.

11   MEMBER NELSON: I think that in

12   Jackie's area, which is services, it often is

13   not. But in products it often is.

14   CHAIRMAN BRANCH: So my point --

15   so I go back to my point which is that's what

16   "may" was designed to cover. Okay.

17   No other comments. Let's move on

18   to the next paragraph.

19   MEMBER NELSON: The only thing is,

20   and I hate to do this, is we say "product

21   line" and product line of course is specific

22   to products.

 1   CHAIRMAN BRANCH: Okay. So as I

 2   understand this as we've now gone through this

 3   for a year, products lines would be covered by

 4   SINs. SINs are an all inclusive nomenclature

 5   for everything on the schedule.

 6   MEMBER NELSON: Right. So we'll

 7   just leave it. If nobody has a problem, we'll

 8   just leave it.

 9   CHAIRMAN BRANCH: So I think we

10   could just put a period there after "SIN" and

11   call it a day.

12   MEMBER NELSON: Yes.

13   Within the worksheet?

14   CHAIRMAN BRANCH: Yes.

15   Are we ready to move on to the

16   next paragraph?

17   MEMBER SONDERMAN: "Can" and "not"

18   need to be made into one word in the third

19   line, second and third words, just omit the

20   space between them.

21   And we need a footnote. We have a

22   quotation, but we don't reference the

1 quotation speaking of Stunk and White. So we

2 need to add a footnote to that unless you

3 think that is that entirely --

4 　　　　　　CHAIRMAN BRANCH: I don't believe

5 -- I think that's an attribution to --

6 　　　　　　MEMBER SONDERMAN: From

7 538.270(a), that's the entire thing?

8 　　　　　　CHAIRMAN BRANCH: Yes. Yes. I

9 don't see an intervening end quote there. So

10 the beginning quote starts with "The," the end

11 quote is at the end of the paragraph. So I

12 think the attribution is there.

13 　　　　　　MEMBER SONDERMAN: Okay. And

14 that's complete.

15 　　　　　　Are we moving on to the next

16 paragraph?

17 　　　　　　MEMBER DRABKIN: That's not a FAR

18 clause.

19 　　　　　　MEMBER SONDERMAN: What? No.

20 　　　　　　CHAIRMAN BRANCH: So we need to

21 fix this.

22 　　　　　　MEMBER SONDERMAN: You're moving

 1   onto the next paragraph?

 2   CHAIRMAN BRANCH: Yes.

 3   MEMBER SONDERMAN: The GSAM

 4   clause?

 5   CHAIRMAN BRANCH: Right. I think

 6   that's a GSAM reference.

 7   MEMBER SONDERMAN: I would

 8   recommend that we include this clause and its

 9   alternate as attachments. Since that's really

10   what we were originally formed to look at, it

11   might be helpful to have them in the records

12   in the report somewhere.

13   CHAIRMAN BRANCH: So --

14   MEMBER SONDERMAN: In one of the

15   appendix. In the appendices.

16   CHAIRMAN BRANCH: Well, let's say--

17   MEMBER SONDERMAN: But if you

18   don't agree --

19   CHAIRMAN BRANCH: No, no, no. I

20   agree. I think that's Appendix 4. But I

21   guess I'm backing up to the sentence is only

22   the alternate used?

 1   MEMBER NELSON: If in any case

 2 anything other than the alternate is used, it

 3 is used erroneously because the prescription

 4 in the FAR and the GSAM specifically call out

 5 that the alternate is to be used?

 6   CHAIRMAN BRANCH: Okay. I mean,

 7 that is a true statement. That's just a

 8 surprise. I mean you rarely see a contract in

 9 which the alternate is the prescribed clause.

10   MEMBER NELSON: It's come up

11 because of disaster recovery.

12   CHAIRMAN BRANCH: Oh, okay.

13   MEMBER SONDERMAN: So there is a

14 FAR prescription for a GSAM clause? David

15 says no.

16   MEMBER NELSON: It is.

17   MEMBER SONDERMAN: Judith says

18 yes.

19   MEMBER DRABKIN: We'll need to

20 check. It would seem to me out of the

21 ordinary for the FAR to prescribe a GSAM

22 clause. The FAR itself might require a

1 clause, GSAM may have a replacement for it.

2 But we need to go back and read the two. And

3 as much of the FAR as I have memorized, I

4 haven't memorized this part.

5   MEMBER NELSON: Either which way,

6 there is only one Price Reduction Clause that

7 is across -- because the Department of

8 Homeland Security has designated that all GSA

9 multiple award schedules are prescribed for

10 disaster recovery, there's only one Price

11 Reduction Clause, and it is all one.

12   CHAIRMAN BRANCH: Okay.

13   MEMBER DRABKIN: This part is

14 factual.

15   CHAIRMAN BRANCH: Right.

16   MEMBER DRABKIN: And we can clean

17 this up.

18   CHAIRMAN BRANCH: This is a

19 technical correction. We'll come back to it.

20 Okay.

21   So I guess we're onto IV, the MAS

22 Panel.

 1   MEMBER CHVOTKIN: Mr. Chairman,

 2   after the first sentence, after the

 3   "conveying," I think we ought to include in an

 4   appendix the charter that the Administrator

 5   signed.

 6   CHAIRMAN BRANCH: Okay. So right

 7   here that would be Appendix 5.

 8   MEMBER NELSON: I would recommend

 9   that the charter actually be the first

10   appendix.

11   MEMBER SONDERMAN: I agree. Oh,

12   it doesn't follow ---

13   CHAIRMAN BRANCH: Yes, I don't

14   have the --

15   MEMBER SONDERMAN: It offends your

16   sense of order.

17   CHAIRMAN BRANCH: Well, I know

18   that the way I would read this would be to

19   detach the appendices from the report and

20   probably flip side-by-side. So that would

21   probably make me a little cranky, but then I'm

22   a little bit sick and twisted. So if you want

 1 to make it Appendix 1, I have to theological

 2 objections to that.

 3   MEMBER DRABKIN: Elliott, we have

 4 to discuss this theology that you live by.

 5   MEMBER NELSON: He's just cranky.

 6   MEMBER CHVOTKIN: Let it go in the

 7 order that it appears in the report and I

 8 would recommend after the first sentence we

 9 insert a new sentence that says "The charter

10 for the panel is included in Appendix X."

11   CHAIRMAN BRANCH: Okay. I would

12 change "they" to "the panel" or the "the panel

13 members." Because the panel in and of itself

14 is impersonal. It cannot hear.

15   MEMBER DRABKIN: Pat, and I'd add

16 the word "members." And I would recommend

17 that we just delete the word "stakeholders."

18   CHAIRMAN BRANCH: Well, actually,

19 you could combine those sentences. You could

20 say "The panel met 14 times and heard oral

21 presentations."

22   MEMBER SONDERMAN: "From several

1 individuals and organizations."

2   CHAIRMAN BRANCH: Right. I would

3 just combine the number -- there. I think

4 that's cleaner.

5   MEMBER DRABKIN: And make

6 "individual" plus, "organizational change" to

7 "organizations." Delete the word

8 "stakeholder."

9   CHAIRMAN BRANCH: Well, that

10 raises a question. So do we want to lump all

11 of the presentations in a single appendix or

12 do we want to enumerate them separately?

13   MEMBER NELSON: I vote lump them

14 all in one and simply put a page before them

15 and say, you know, Ukins and the date that it

16 was given and then his presentation and then,

17 you know the next one. Whether or not they

18 were given orally. And even if we say, you

19 know Ukins presented orally, so-and-so

20 presented. You know, Nick Aconomo, presented

21 in writing.

22   CHAIRMAN BRANCH: Okay.

 1   MEMBER CHVOTKIN: So if we follow

 2   that recommendation, then we can delete the

 3   last sentence. That would be Appendix 6. And

 4   then if I understand that correctly, we will

 5   subnumber the presentations in Appendix 6.

 6   CHAIRMAN BRANCH: Right.

 7   Actually, so you would change that to "and

 8   took testimony" or "received presentations

 9   from several individuals and organizations.

10   Appendix 6." Kill the last sentence. So we

11   would take "oral" out of here and say "and

12   received presentations." And then that way

13   that would given any oral or written

14   presentations.

15   MEMBER SONDERMAN: It makes me

16   feel like the queen.

17   MEMBER DRABKIN: Well are you in

18   our book, Debra.

19   MEMBER SONDERMAN: Thank you.

20   MEMBER DRABKIN: Pat, you want to

21   delete the word "heard" as well.

22   MEMBER NELSON: That's not what I

 1   heard from your staff.

 2   MEMBER SONDERMAN: They're the

 3   ones who gave me the "God Save the Queen" mug.

 4   MEMBER CHVOTKIN: Mr. Chairman,

 5   did I understand your statement, and just from

 6   a process that we're going to include in our

 7   written report the full text of the

 8   submissions that have been made to the panel

 9   in this document?

10   MR. LAMB: Well, that was

11   certainly the inference that I took from the

12   narrative. Now, I don't know that we've had

13   a discussion on that. So if we wish to do

14   something else, now is the time to have that

15   discussion.

16   MEMBER CHVOTKIN: Just to

17   recommend both to speed up the time it takes

18   to produce the final report as well as to

19   minimize the cost and the bulk of it is to

20   refer people to maintain in the appendix a

21   listing of the presentations made and the

22   supplemental material. And refer people back

1 to the website for as long as it exists, and

2 we might generate a couple of file copies or

3 CDs that captures the website. But, boy, this

4 is going to take an awful lot of electrons.

5   MEMBER SONDERMAN: Right. Let's

6 save some trees.

7   CHAIRMAN BRANCH: I think that's a

8 good point. So with that understanding, the

9 words don't need to change, but Appendix 6

10 would probably simply be a listing of the

11 presentations and a URL reference back to the

12 website.

13   MEMBER DRABKIN: We just need to

14 make sure that for posterity that we don't

15 lose that material. And if its only resident

16 on a website, then there is the possibility

17 that it will go. Now that will be or

18 challenge. I mean we can produce a digital

19 copy and save a digital copy. But I don't

20 want us to lose that information. You know,

21 five years from now probably nobody cares

22 about maintaining the website anymore and

1 they'll chop it.

2   MEMBER NELSON: Can I suggest that

3 we meet halfway? In an electronic version, I

4 think that the report has to have it. And

5 that in the print version perhaps not because

6 certainly it is going to go to certain

7 stakeholders who are not going to want to

8 individually go find the URL and go there, be

9 that the Hill or be that our Administrator.

10 You know, I can just see David going "Yes,

11 I'll go look that--", or I can Jim Williams

12 saying "Judith, go find." Quite frankly, I'd

13 rather already have it put in there because

14 otherwise Jim's just going to say to me,

15 "Judith, go get it." So quite frankly, let's

16 just do it up front.

17   So if we could do it

18 electronically and in any paper ones that we

19 produce, have the URL.

20   CHAIRMAN BRANCH: Well, and the

21 paper ones could be scanned and made PDF so

22 you would also have an electronic version of

1 those. So I mean mechanically we could

2 accomplish a full electronic copy. And I

3 think that's a good suggestion.

4   I think we would need to give some

5 thought to who would be custodian of that,

6 knowing the event somewhere down the road the

7 website's gone away and --

8   MEMBER SONDERMAN: I'll bet the

9 Federal Advisory Committee Act has some

10 guidelines for how proceedings of FACA panels

11 are retained.

12   CHAIRMAN BRANCH: Okay. And I see

13 Pat nodding north and south. So if we can

14 simply leave this with the understanding that

15 we will store this information consistent with

16 the requirements of FACA, I think we could

17 probably move on. Okay.

18   Next paragraph.

19   MEMBER SONDERMAN: I think in the

20 second sentence, I think "spend" should be

21 "spending" Spend is a little too jazzy for

22 our formal report.

 1   MEMBER DRABKIN: Actually, no, I

 2 disagree. It's a term of art amongst our

 3 profession.

 4   MEMBER SONDERMAN: I understand

 5 that it's a term of art under our profession.

 6 But we're not writing this paper necessarily

 7 for members of our profession who understand

 8 the terms of art. So then let's find a word

 9 that captures what we're trying to say in

10 clear and unambiguous language.

11   CHAIRMAN BRANCH: All right. So I

12 will suggest that we change that to "the

13 preponderance of the dollars spent."

14   MEMBER SONDERMAN: Okay.

15   MEMBER DRABKIN: Or just

16 "expenditures."

17   MEMBER NELSON: You can't say

18 "Federal spending"?

19   MEMBER DRABKIN: Leave it with

20 "dollars spent," that's fine.

21   MEMBER NELSON: Federal spend

22 doesn't work?

 1   MEMBER SONDERMAN: Are we ready to

 2   move on to the next paragraph?

 3   MEMBER JONES: I have a question.

 4   And I know when we went over this when we were

 5   working on the definition of solutions. But

 6   where it says "the combined purchase of

 7   products and services to meet a need usually

 8   with a result that is not presently available

 9   in the marketplace," why do we make that

10   statement, not presently available in the

11   marketplace?

12   MEMBER DRABKIN: Because solutions

13   are unique to specific requirements and they

14   are the result of a unique combination of

15   products and services to respond to a

16   particular requirement.

17   MEMBER JONES: Well, maybe there's

18   a more clearer way to state that. Because we

19   are acquiring commercial products and services

20   on the schedules. I understand that the

21   combined, you know may not be available under

22   a single schedule or a single contract, but

1   they are still commercial in nature in terms

2   of the agencies placing orders for them.

3   Now, like it or not, they're doing

4   solutions under the schedules --

5   MEMBER SONDERMAN: Maybe if we put

6   "unique" in front of the word "need." I've

7   lost it in the paragraph. "The combined

8   purchase of products and services to meet a

9   unique need."

10   MEMBER DRABKIN: Okay. And then

11 put a period. And also just be clear.

12 Nothing suggests that this is not commercial.

13   MEMBER SONDERMAN: Right.

14   MEMBER DRABKIN: In fact, it is in

15 fact the commercial practice --

16   MEMBER SONDERMAN: To do that,

17 right.

18   MEMBER DRABKIN: -- and it's

19 important to get this point across because

20 there are many people who argue that it's not

21 commercial because nobody else is buying that

22 solution, that unique solution. But everybody

 1   is solving or buying solutions in the

 2   commercial marketplace that way.

 3   MEMBER SONDERMAN: Right.

 4   CHAIRMAN BRANCH: So we can, Pat,

 5   I think we can kill the rest of that. I think

 6   you need to close the parentheses. But other

 7   than that, I think that's fine.

 8   MEMBER SONDERMAN: Inside the

 9   period. Right. Where you are.

10   MEMBER DRABKIN: Just to make

11   sure. I mean, at the 1423 Panel we spent a

12   great amount of time discussing, some might

13   say arguing, with some of our colleagues over

14   whether solutions and services were commercial

15   if they were unique to the organization who

16   bought them. And when you peeled back unique,

17   it was for security services. It was tailored

18   to, let's say, a military base. But the same

19   kinds of services were being bought by

20   commercial firms for their installations. And

21   so I think it's an important concept that we

22   not lose and that we remind everybody of so

1   that they don't ultimately say later on "Well,

2   wait a second. That solution is not

3   replicated anywhere else." The process of

4   obtaining the solution is; the products and

5   services that make up the solution is. We

6   want to make sure they knew we believe its

7   commercial.

8   CHAIRMAN BRANCH: Right. Right.

9   It's the unique configuration of commercial

10 products and services. That's what a solution

11 really is.

12   Okay. Next paragraph.

13   MEMBER CHVOTKIN: Mr. Chairman,

14 you might add that phrase "that unique

15 configuration of products and services to meet

16 a unique need" instead of simply "the combined

17 unique configuration of products and

18 services."

19   CHAIRMAN BRANCH: Just to avoid

20 using "unique" twice, then I would suggest we

21 change that second "unique" to "specific."

22   MEMBER SONDERMAN: Okay.

 1   MEMBER DRABKIN: "Configuration of

 2   --"

 3   MEMBER SONDERMAN: "Of commercial

 4   products and services to meet a specific

 5   need."

 6   MEMBER DRABKIN: -- and then would

 7   you put "commercial" after the word "of"?

 8   Right. And then put the word "commercial"

 9   after the word "of."

10   MEMBER SONDERMAN: Right there.

11   Yes.

12   MEMBER DRABKIN: I think you need

13   to add the word "a" between "meet" and

14   "specific."

15   CHAIRMAN BRANCH: Yes. Okay.

16   Next paragraph.

17   MEMBER SONDERMAN: Five lines

18   down, right in the middle, do we need the word

19   "trade." "The schedule contractor community

20   and their representatives." Do we need the

21   word "trade representatives"? "The schedule

22   contractor community" you consider yourself

1   part of the schedule contractor community.

2   CHAIRMAN BRANCH: Well, I would

3   change "contractor" to "contract." And then

4   you could probably kill the rest of the

5   phrase. So it's "The schedule contract

6   community" which includes GSA, the

7   contractors, the user agencies or brethren

8   from oversight, anybody else who writes a

9   check on April 15th.

10   MEMBER SONDERMAN: So, Elliott,

11   you wanted to say " the schedule contract

12   community."

13   CHAIRMAN BRANCH: Period.

14   MEMBER DRABKIN: Period.

15   CHAIRMAN BRANCH: Yes, I don't

16   think you need --

17   MEMBER SONDERMAN: All that other

18   stuff?

19   CHAIRMAN BRANCH: Yes. I mean if

20   anybody really cares what that phrase means,

21   they have but to look at the appendix and see

22   who gave us testimony, so --

 1   MEMBER DRABKIN: You do realize

 2   that if we were in the consulting business

 3   right now, we'd be reducing our fee making the

 4   report shorter.

 5   CHAIRMAN BRANCH: Well, I would

 6   prefer to think of it as an increasing our fee

 7   because we would be spending more hours on

 8   making the report shorter. At least that's

 9   how I used to bill.

10   MEMBER SONDERMAN: We're creating

11   value by refining our terminology.

12   MEMBER CHVOTKIN: That sentence

13   where "The Panel determined at the start of

14   its deliberations that our primary focus" or

15   "that its primary focus would be."

16   CHAIRMAN BRANCH: "That the

17   primary focus," yes.

18   MEMBER SONDERMAN: "That its

19   primary focus."

20   CHAIRMAN BRANCH: Well, no. But

21   then you got two its very close together. So

22   "We determined at the start of our

1 deliberations that." No, you're fine.

2   MEMBER FRYE: Now wait. Should

3 end users be hyphen?

4   CHAIRMAN BRANCH: No.

5   MEMBER FRYE: Above that line

6 right down -- right there?

7   MEMBER SONDERMAN: Customer end

8 user agencies? I don't know.

9   CHAIRMAN BRANCH: Yes.

10   MEMBER SONDERMAN: Yes?

11   CHAIRMAN BRANCH: That should be

12 type two zero one three and then hit ALT X.

13 I mean if you're going to do this right, it

14 should be an end dash, it should not be a

15 hyphen.

16   CHAIRMAN BRANCH: And for the

17 record, I'm a classically trained accountant.

18   MEMBER SONDERMAN: It's okay.

19   MEMBER NELSON: I ran the public

20 accountant --

21   CHAIRMAN BRANCH: So did I.

22   MEMBER SONDERMAN: So do we need

 1   the word "ultimate"?

 2   CHAIRMAN BRANCH: No.

 3   MEMBER SONDERMAN: On "the ability

 4   of Federal agency customers"?

 5   CHAIRMAN BRANCH: Okay. Good.

 6   MEMBER SONDERMAN: And is there a

 7   reason to have "best value" in quotations?

 8   Haven't we talked about best value elsewhere

 9   and best value is the basis of award and it's

10   in the FAR and --

11   CHAIRMAN BRANCH: Yes. Take out

12   "agency." "Best value for the user."

13   MEMBER SONDERMAN: "Best value for

14   the user."

15   CHAIRMAN BRANCH: Well, period.

16   MEMBER SONDERMAN: Yes.

17   CHAIRMAN BRANCH: I think you

18   could put a period --

19   MEMBER SONDERMAN: "Best value."

20   CHAIRMAN BRANCH: Period.

21   MEMBER SONDERMAN: "Represent best

22   value" period.

1   CHAIRMAN BRANCH: Yes. Since we

2 have talked about it and there's an understood

3 definition of what that means.

4   MEMBER SONDERMAN: And is "as a

5 result" actually that doesn't seem to apply.

6   CHAIRMAN BRANCH: No.

7   MEMBER SONDERMAN: I think the

8 next sentence should "The panel also

9 reviewed."

10   CHAIRMAN BRANCH: Right. Okay.

11 Yes, that should be capitalized.

12   MEMBER JONES: Up top where you

13 have the squiggly green line under the "the,"

14 there should be an "and" before that.

15   CHAIRMAN BRANCH: Yes. Good.

16 Good cut.

17   MEMBER NELSON: Can I just ask

18 what does currency mean?

19   MEMBER SONDERMAN: It is up to

20 date as opposed to whether it's a dollar or a

21 pound or a Kuna.

22   CHAIRMAN BRANCH: No, no. I think

1   that was in the context of our recommendation

2   that GSA work with the agencies and the

3   contractors to make sure that the schedules

4   actually represented what the marketplace

5   desired at this point in time.

6   MEMBER DRABKIN: Can we move to

7   the next paragraph?

8   CHAIRMAN BRANCH: Okay. Other

9   issues, other findings?

10   MEMBER NELSON: There needs to be

11 a comma after "methodology" in line 5. Going

12 up to line 4 just for consistency, say "Future

13 needs of its authorized ordering activity," or

14 "its customers."

15   CHAIRMAN BRANCH: Just customers.

16   MEMBER NELSON: Just leave

17 "customers."

18   CHAIRMAN BRANCH: Yes. Just take

19 out "customers."

20   MEMBER SONDERMAN: Pat, have you

21 saved recently?

22   CHAIRMAN BRANCH: And I would

 1 change "providers" to "contractors" so we're

 2 just consistent with that.

 3   I'm a little concerned about this

 4 phraseology in the next to the last line here.

 5 You know, we spent a lot of energy trying to

 6 reconcile that to the goals of the systems.

 7 I mean, we went around lowest overall cost to

 8 the Government, most favored customer pricing,

 9 basis of award customer. I'm not sure we want

10 to introduce this thought here because I think

11 at the end of the day we really agreed that:

12 (a) As a practical matter you awarded

13 contracts based on a tracking customer which

14 was not necessarily the most favored pricing;

15 and secondly the goal was really the lowest

16 overall cost to the Government.

17   So I would change that to say

18 "Perceived usefulness of the existing process

19 for achieving the objectives of the MAS

20 program at the contract level."

21   MEMBER SONDERMAN: And, Pat, two

22 lines above your cursor where your cursor

 1   currently is, take out the word "ultimately."

 2   Because we said ultimately a lot.

 3   Judith, are you comfortable with

 4   "ordering agency" there? Do you want to say

 5   "ordering activity"?

 6   MEMBER JONES: Just anyplace where

 7   we have agency, I think it should be replaced

 8   with "activity."

 9   MEMBER CHVOTKIN: And continuing

10   on, I don't think the word "perceived" adds

11   any value here. I think we focused on the

12   "usefulness of existing processes." Delete

13   the word "perceived."

14   MEMBER SONDERMAN: So, Elliott,

15   are you comfortable with having "achieving"

16   twice in the same sentence?

17   MEMBER NELSON: It's a long

18   sentence.

19   CHAIRMAN BRANCH: I can live with

20   the parallelism. Although now that you bring

21   my attention to it, I think we could probably

22   make that last "MAS" go away. I don't know

1 that we need to say "MAS program at the MAS

2 contract." I mean, we already understand that

3 all contracts are MAS contracts and what

4 ordering activities do is issue orders.

5   MEMBER SONDERMAN: So you want to

6 say "for achieving the MAS programs objectives

7 at the contract level"?

8   CHAIRMAN BRANCH: Yes. I think

9 that's sufficient without changing the

10 thought.

11   MEMBER SONDERMAN: "Achieving the

12 MAS program objectives" so you don't have to

13 have so many "of the."

14   CHAIRMAN BRANCH: Okay. So let's

15 move "MAS program" back in front of

16 "objectives" and get rid of this prepositional

17 phrase here. And then that can come out.

18   MEMBER CHVOTKIN: And I would open

19 the last sentence by saying "to guide its

20 deliberations the Panel posed the following

21 questions."

22   CHAIRMAN BRANCH: Yes. I think

1   that's good. "To guidance its deliberations"

2   comma. Yes. Yes.

3   MEMBER SONDERMAN: I thought we

4   had four questions.

5   MEMBER NELSON: We had five.

6   MEMBER SONDERMAN: We ended up

7   with five? Okay.

8   CHAIRMAN BRANCH: We had five and

9   it was because I guess there was an implicit

10 question in my four and Jackie wanted to make

11 that explicit, which was the first questions.

12   MEMBER SONDERMAN: Okay.

13   CHAIRMAN BRANCH: Where does

14 competition take place?

15   MEMBER SONDERMAN: Well so we

16 added that in the writing of the report?

17   CHAIRMAN BRANCH: Actually, we

18 added that back in our deliberations.

19   MEMBER SONDERMAN: Okay.

20   CHAIRMAN BRANCH: Because I had

21 started with the -- I guess two through five

22 and we had some discussion about whether we

 1   actually got competition --

 2   MEMBER SONDERMAN: Right.

 3   CHAIRMAN BRANCH: -- at the

 4   contract level due to the nature of the

 5   formation process.

 6   MEMBER NELSON: It's in the

 7   transcripts.

 8   MEMBER SONDERMAN: Yes. I trust

 9   you.

10   The last bullet seems to need to

11   an article. "If a fair and reasonable price

12   determination at the MAS contract level is not

13   beneficial." And the final clause is "then"

14   not "than."

15   CHAIRMAN BRANCH: Well, two

16   things. We need a comma about "beneficial."

17   MEMBER SONDERMAN: Yes.

18   CHAIRMAN BRANCH: And a comma

19   there.

20   MEMBER SONDERMAN: So not a comma

21   after "determined."

22   CHAIRMAN BRANCH: Okay. Yes, not

 1   a comma there.

 2   MEMBER SONDERMAN: Right.

 3   Are we ready to go on to the next

 4   paragraph?

 5   CHAIRMAN BRANCH: Okay. Let's

 6   move on.

 7   MEMBER NELSON: I have a comment.

 8   This statement, the very bold statement

 9   "services are more difficult to define than

10   products at the schedule level." I think it's

11   too general of a statement. I think our sense

12   as far as findings was that you can't define

13   what fair and reasonable pricing for services

14   was difficult, more difficult to define. But

15   I mean you can define the service, that's not

16   the difficulty. You can define where the

17   labor category is. You can define a firm

18   fixed price service. It's you're not defining

19   a statement of work.

20   CHAIRMAN BRANCH: Right.

21   MEMBER NELSON: And you can't

22   define a fair and reasonable price or a best

 1 value; that was where we found the difficulty.

 2 So I think --

 3   MEMBER SONDERMAN: So if we say

 4 "at the schedule contract level determining

 5 fair and reasonable prices for pricing for

 6 services is more difficult than for products"?

 7   CHAIRMAN BRANCH: Let me offer an

 8 alternate thought to that. To say "Services

 9 are more difficult to define than products at

10 the task order level" because that's really

11 the case. I mean, we can define, we know at

12 the schedule contract level what a labor

13 category is, at least in the context of what

14 an offeror bids. We know exactly how much he

15 bids. And if you look at the rest of that

16 paragraph, it talks to the unknowns around the

17 use and performance level of any particular

18 service requirement. So where it really gets

19 difficult is defining pricing. I guess

20 pricing -- well -- as I talk myself through

21 this, I talk myself out of it.

22   MEMBER NELSON: Right. I mean

1 quite frankly it's the same if you look at

2 seaport or someplace else.   You're going to

3 define a labor category, you're going to

4 define a price. But that doesn't mean that

5 it's going to be a best value price when you

6 put together the statement of work.

7   CHAIRMAN BRANCH: Which is why we

8 never define labor categories in seaport

9 contracts.

10   MEMBER NELSON: Well, understood.

11 But the price itself is, you know -- so back

12 to Debra's original --

13   MEMBER SONDERMAN: "At the

14 schedule contract level --"

15   CHAIRMAN BRANCH: "It is more

16 difficult to determine price reasonableness--"

17   MEMBER SONDERMAN: "For services

18 than--"

19   CHAIRMAN BRANCH: "For services."

20   MEMBER SONDERMAN: "-- for

21 products."

22   CHAIRMAN BRANCH: And then take

1 out that first, so that paragraph starts out--

2 　　　　　　　MEMBER SONDERMAN: "Determine fair

3 and reasonable prices" or "price

4 reasonableness." What do you want to say,

5 "fair and reasonable prices"?

6 　　　　　　　MEMBER NELSON: Since we've been

7 using fair and reasonable, let's stick with

8 it.

9 　　　　　　　CHAIRMAN BRANCH: Okay. Right.

10 Right. So that first sentences comes out,

11 right?

12 　　　　　　　Pat, I think you've got an extra

13 space there. Opps. And you need to get rid

14 of that bullet. Okay.

15 　　　　　　　MEMBER NELSON: And I think it's

16 "for products" -- "prices and products."

17 　　　　　　　CHAIRMAN BRANCH: "For products"

18 or "for services than it is in products."

19 　　　　　　　MEMBER SONDERMAN: "Than for

20 products."

21 　　　　　　　CHAIRMAN BRANCH: "And for

22 products," yes.

 1   MEMBER SONDERMAN: F-O-R.

 2   So do we need to adequately

 3 equated. It either equates or it doesn't. I

 4 mean --

 5   CHAIRMAN BRANCH: I guess I'm

 6 struggling with that sentence in its entirety.

 7 I think we need to start off in saying again,

 8 you know "In schedule contracts services are

 9 defined in terms of labor categories."

10 Because it's not in most cases. It's in

11 schedule contracts.

12   No, not there, Pat. Here. So

13 there. So take out "most cases" and put "in

14 schedule contract" comma.

15   And I would put a period there and

16 let's kind of work on that long run on

17 sentence.

18   MEMBER SONDERMAN: So start "No

19 consistent methodology is established that

20 equates to the commercial marketplace."

21   CHAIRMAN BRANCH: What is that? I

22 don't know what that means.

 1   MEMBER SONDERMAN: Well, is this

 2   where trying to get into the notion of does

 3   your systems analyst one equal my systems

 4   analyst one, is that what we're trying to

 5   convey?

 6   MEMBER NELSON: Yes, that's what I

 7   was going to ask is can we not -- if that's

 8   what we're trying to say at this point that

 9   they're not predefined by the Government as

10   opposed to in other contracts or in contracts

11   where they're not defined at all, sir, then

12   can we not just say "as individually defined

13   individually by the contractor" and make it

14   very simple and sweet?

15   CHAIRMAN BRANCH: Well, I guess my

16   question is what are we really trying to say

17   there because in the commercial marketplace

18   the reality of it is there is no rate card

19   that allows companies buying services to

20   compare apples to apples either. So what's

21   the point of that phrase?

22   I'm struggling with what we're

1 really trying to say with that phrase.

2   MEMBER CHVOTKIN: I think, Mr.

3 Chairman, if you look to the next sentence it

4 says "it's difficult to establish due to the

5 preponderance." We could probably take out

6 "the no consistent methodology" and just go

7 right to that very next sentence --

8   MEMBER SONDERMAN: Just the point.

9   MEMBER CHVOTKIN: -- which is the

10 point of the lead in.

11   CHAIRMAN BRANCH: I vote we kill

12 it.

13   MEMBER SONDERMAN: Second.

14   CHAIRMAN BRANCH: So let's just

15 take that out.

16   MEMBER NELSON: Well in the second

17 sentence though, in schedule contracts

18 services -- they are priced in terms of labor

19 categories.

20   MEMBER SONDERMAN: That's good.

21   CHAIRMAN BRANCH: Okay. That's

22 fine.

1   MEMBER SONDERMAN: Right.

2   CHAIRMAN BRANCH: Change it to

3   "price."

4   MEMBER SONDERMAN: Is it extremely

5   difficult?

6   MEMBER NELSON: Can we take the

7   modifier out and put it "may be difficult."

8   CHAIRMAN BRANCH: Yes, take the

9   modifier out.

10   MEMBER NELSON: Go to "may." It

11   some cases it's not difficult at all.

12   CHAIRMAN BRANCH: Yes. "It may be

13   difficult."

14   MEMBER SONDERMAN: So ditch the

15   "is," Pat, right before where you are. Yes.

16   There you go.

17   CHAIRMAN BRANCH: And I would

18   change this to reflect the guidance in Part 37

19   of the FAR if we want to say that. I mean, I

20   have -- I guess I have some difficulty drawing

21   that conclusion without referring to an

22   authority and essentially we've been told in

1 the regulation to describe things in terms of

2 performance based acquisition. So I would

3 recommend we change that to "In accordance

4 with FAR Part 37," you know.

5   MEMBER DRABKIN: Don't type that

6 in yet.

7   CHAIRMAN BRANCH: Okay.

8   MEMBER DRABKIN: Not only won't

9 you find it there, but FAR Part 37 does not

10 apply per se to the schedules program.

11   CHAIRMAN BRANCH: Well, I

12 understand that it doesn't apply to schedule

13 program. But as a policy we've been told

14 whenever we buy services, whatever the method

15 of formation is, we ought to be describing on

16 the terms of outputs or outcomes. So the fact

17 that --

18   MEMBER DRABKIN: That's true, but

19 that in the requirements area and pertains to

20 the task and delivery order, not to the basic

21 contract document itself here.

22   CHAIRMAN BRANCH: Well, but so

1 does that sentence. I mean, if you read the

2 sentence it talks about ordering activities.

3 So what they should be doing with schedule

4 contracts. So I would suggest that we either

5 want to cite some authority for that in terms

6 of policy, or you could probably just kill the

7 sentence. Although I think the point of --

8 yes, I think you could probably just kill the

9 sentence.

10   And so this is what I would

11 recommend. Kill this sentence, in most cases.

12 Okay. Then I would take this sentence and

13 move it to here. So the way that would read:

14 "The key elements are A, B and C and in such

15 cases the value of the Price Reduction Clause

16 is less relevant." Okay.

17   MEMBER NELSON: I actually think

18 that the sentence, the final sentence, is that

19 finding, so to speak, is addressed as David

20 drafted the recommendation in both the-- I'm

21 not sure that we even need that final sentence

22 because --

 1   CHAIRMAN BRANCH: So then just

 2   kill everything from "in most cases."

 3   MEMBER SONDERMAN: And there's no

 4   reason to have the sentence ahead of that

 5   either. Because we've already said that

 6   services comprise the majority of purchases in

 7   the MAS schedule in our facts.

 8   CHAIRMAN BRANCH: Right. So just

 9   kill it from sentences on down.

10   MEMBER SONDERMAN: Let's ditch the

11   whole paragraph.

12   CHAIRMAN BRANCH: Okay.

13   MEMBER SONDERMAN: I'm sorry. He's

14   right. We need to eat.

15   MEMBER NELSON: From here?

16   CHAIRMAN BRANCH: Yes. From

17   services. In the words of Ken Oscar who was

18   a leader in our community at one point, "Too

19   many words, take them out."

20   MEMBER DRABKIN: Even though lunch

21   hasn't arrived, could we take a short break.

22   CHAIRMAN BRANCH: Yes. Why don't

 1   we take five.

 2   (Whereupon, at 12:15 p.m. a recess

 3   until 12:39 p.m.)

 4   MEMBER SONDERMAN: Yes. That

 5   paragraph that we've been struggling with, the

 6   third sentence, the one that starts "It may be

 7   difficult to establish a fair and reasonable

 8   price at the contract level," starts out

 9   talking about the contract level. But then it

10   ends with talking about a particular service

11   requirement which applies to an order that

12   would be placed against a contract. So it

13   seems like there are two different thoughts.

14   We either need to -- I don't know. That whole

15   business about the preponderance of unknowns

16   around the use of performance levels of any

17   particular service requirement --

18   MEMBER NELSON: If I could offer,

19   perhaps we say "It may be difficult to

20   establish a fair and reasonable level price at

21   the contract level given that statements of

22   work are established at the task order level."

1   CHAIRMAN BRANCH: Okay.

2   MEMBER SONDERMAN: Okay.

3   CHAIRMAN BRANCH: I would say

4 that, but I would leave that last sentence.

5   MEMBER NELSON: Yes.

6   CHAIRMAN BRANCH: You know, I

7 would say "the key elements in pricing

8 services at the task order level are."

9   MEMBER SONDERMAN: There you go.

10   MEMBER DRABKIN: So where do you

11 want to make the change?

12   CHAIRMAN BRANCH: Okay. So you

13 just want to take that --

14   MEMBER SONDERMAN: Right. "It may

15 be difficult to establish a fair and

16 reasonable price at the contract level."

17   CHAIRMAN BRANCH: Okay. Just

18 period?

19   MEMBER SONDERMAN: Well, we could

20 say "because statements of work are written"

21 or --

22   CHAIRMAN BRANCH: "At the task

 1   order level."

 2   MEMBER SONDERMAN: "At written at

 3   the task order level?

 4   CHAIRMAN BRANCH: Right.

 5   MEMBER SONDERMAN: Or we could say

 6   "services are specified at the task order

 7   level."

 8   CHAIRMAN BRANCH: Do you have a

 9   preference?

10   MEMBER SONDERMAN: No.   I'm just

11   offering alternatives.

12   CHAIRMAN BRANCH: Is that what you

13   want?

14   MEMBER SONDERMAN: And then take

15   out "due to the preponderance of unknown"

16   everything to the period.

17   CHAIRMAN BRANCH: Right.   So after

18   "level," put a period.

19   MEMBER SONDERMAN: Put a period,

20   yes.

21   CHAIRMAN BRANCH: And then that

22   becomes the key element --

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 1                 MEMBER SONDERMAN:  Leave that "in

 2   pricing services --"

 3                 CHAIRMAN BRANCH:  --"in pricing

 4   services at the task order level."

 5                 MEMBER SONDERMAN:  -- "at the task

 6   order."

 7                 MEMBER DRABKIN:  Is that it?

 8                 MEMBER SONDERMAN:  Oh, David.

 9                 CHAIRMAN BRANCH:  I'm good.

10                 MEMBER SONDERMAN:  Does that cover

11   everything?

12                 CHAIRMAN BRANCH:  Any other

13   comments on that paragraph?

14                 MEMBER DRABKIN:  Next paragraph.

15                 MEMBER CHVOTKIN:  I've got a

16   couple of suggestions here.

17                 MEMBER NELSON:  Isn't "majority"

18   singular?

19                 MEMBER SONDERMAN:  I think so.

20                 CHAIRMAN BRANCH:  Yes.  It's a

21   collective noun.  So you could phrase that to

22   say "the majority of the Panel expressed the
```

 1 belief," not "their belief."

 2   MEMBER SONDERMAN: Do we need to

 3 say "members"? If it's their belief, it's

 4 members.

 5   MEMBER DRABKIN: Well, rather than

 6 talking about belief --

 7   MEMBER SONDERMAN: Their view.

 8 "The majority of the Panel observed."

 9   MEMBER CHVOTKIN: I was going to

10 say "recognized."

11   MEMBER SONDERMAN: "Recognized

12 that meaningful competition."

13   MEMBER CHVOTKIN: "That

14 meaningful--"

15   MEMBER SONDERMAN: And take

16 "belief" out of it.

17   MEMBER CHVOTKIN: In the next

18 sentence it's not what GSA states, but "while

19 the law provides that competition requirements

20 have been met at the schedule level?

21   MEMBER SONDERMAN: Yes.

22   CHAIRMAN BRANCH: Great. And I

1 think you'd take out the rest of that clause.

2   MEMBER SONDERMAN: Yes.

3   CHAIRMAN BRANCH: From "because"

4 to the comma.

5   MEMBER SONDERMAN: Yes.

6   MEMBER CHVOTKIN: Yes.

7   CHAIRMAN BRANCH: Because the law

8 doesn't give a reason, it just says.

9   MEMBER CHVOTKIN: Correct. I

10 would actually go down to the phrase "there

11 are no." Because we talked about specific

12 quantities or performance outcomes for the

13 schedule items, and there is no head-to-head

14 competition. That's what's a true statement

15 at the contract level.

16   CHAIRMAN BRANCH: So to take out--

17   MEMBER CHVOTKIN: Take out "It is

18 without the benefit of any specific

19 requirements."

20   CHAIRMAN BRANCH: Right.

21   MEMBER CHVOTKIN: Down in lower

22 case "there."

1   CHAIRMAN BRANCH: And then that

2 becomes lower case?

3   MEMBER CHVOTKIN: Yes, sir.

4   MEMBER DRABKIN: Does it read what

5 you want it to read now?

6   MEMBER SONDERMAN: "Well the law

7 provides the competition requirements and at

8 the schedule contract level --"

9   CHAIRMAN BRANCH: Comma.

10   MEMBER SONDERMAN: Comma. Right

11 where you are, David, put the comma after

12 "level."

13   MEMBER CHVOTKIN: In the sentence

14 "The ordering agencies" an extra space.

15   CHAIRMAN BRANCH: Actually, to be

16 consistent --

17   MEMBER CHVOTKIN: "Ordering

18 activities."

19   CHAIRMAN BRANCH: -- those two

20 agencies should be "ordering activities," both

21 the line above that as well.

22   MEMBER SONDERMAN: It would be

1 less arcane to have that sentence say "GSA

2 does not disclose the basis of award to the

3 ordering activity."

4   MEMBER CHVOTKIN: And I would put

5 a comma after the phrase "basis of award."

6   MEMBER SONDERMAN: Right.

7   MEMBER CHVOTKIN: "To the order of

8 an activity" comma -- sorry, David. Instead

9 of the period, put a comma. Then I think what

10 I'm trying to do is, I think the ordering

11 agencies do know the extent of competition at

12 the schedule contract level because -=-

13   MEMBER NELSON: No, they don't.

14   CHAIRMAN BRANCH: No, they don't.

15   MEMBER NELSON: We've already

16 discussed that.

17   MEMBER CHVOTKIN: No. We've

18 already said up above that there are no

19 specific qualities and there's no head-to-head

20 competition.

21   CHAIRMAN BRANCH: Right. But I

22 don't even --

 1   MEMBER CHVOTKIN: The agencies

 2 don't know the basis of award. They do know

 3 the extent of competition.

 4   CHAIRMAN BRANCH: Oh, okay. I

 5 see.

 6   MEMBER NELSON: But I think,

 7 actually, maybe that is happening at the

 8 senior level at they do. But I think our

 9 findings, the sense of the findings was that

10 at the contracting officer level, at the

11 journeyman level that's actually not true.

12 That they don't understand the extent of

13 competition or the difference between Part 8,

14 Part 12, Part 15. That there is a lack of

15 understanding in competition and what is

16 happening. And that goes to these findings.

17   MEMBER CHVOTKIN: I agree. I'm

18 not trying to -- so I would have gone

19 something like a propose and may need a little

20 work. GSA does not disclose the basis of

21 award to the awarding activity, but the Panel

22 recommended or the Panel found that the

1 agencies or the ordering activities would

2 benefit from. And now what is the

3 substantially benefit from Part -- I don't

4 think it's the extent of competition and the

5 extent that they can rely on it. But I think

6 it's something else.

7   CHAIRMAN BRANCH: Okay. "Benefit

8 from this information" period. And then to

9 say "This information would provide the

10 ordering activity with an understanding."

11 Sorry. "To what extent." I'd take out all of

12 that to "to what extent." "They can rely on

13 that process to enhance their best value

14 determination."

15   MEMBER DRABKIN: I'm sorry. I

16 don't understand.

17   MEMBER CHVOTKIN: Of the extent to

18 which --

19   MEMBER SONDERMAN: Rather than to

20 the extent, how to best rely.

21   MEMBER DRABKIN: Okay. Yes.

22   CHAIRMAN BRANCH: I'm sorry.

1   MEMBER SONDERMAN: "How to best

2 enhance their best value determination."

3   CHAIRMAN BRANCH: Enhance or

4 support?

5   MEMBER SONDERMAN: Support,

6 enhance. Either way because the whole notion

7 is that you want to be able to say if the

8 basis of award was a small buy and I'm doing

9 a large buy, if the basis of award was a large

10 buy --

11   CHAIRMAN BRANCH: Right.

12   MEMBER DRABKIN: Is that what you

13 wanted to say?

14   MEMBER NELSON: Yes.

15   CHAIRMAN BRANCH: Well, I think an

16 understanding of --

17   MEMBER CHVOTKIN: Maybe it's the

18 information would help ordering activities

19 understand how to -- no.

20   MEMBER CHVOTKIN: Aren't we

21 trying--

22   CHAIRMAN BRANCH: Well, that's

1   what we want to understand.

2   MEMBER SONDERMAN: Aren't we

3   trying to get to fair and reasonableness so

4   that we can make an appropriate award? That's

5   th goal.

6   CHAIRMAN BRANCH: I understand the

7   basis of the schedule contracting officer's

8   price reasonableness determination.

9   MEMBER NELSON: Are we trying to

10 get to how GSA made the determination of fair

11 and reasonable at the base contract level? Is

12 that what we're trying to understand here.

13   CHAIRMAN BRANCH: Yes. Yes.

14   MEMBER NELSON: Or are we trying

15 to understand how that determination is going

16 to place into procurement at the task order

17 level? Because those are two different -- are

18 we trying to understand the acquisition

19 process or are we trying to understand the

20 procurement process here? One or the other.

21   CHAIRMAN BRANCH: Well, I think

22 we're -- one follows from the other. Because

 1   if I understand that your basis of award

 2   assumed a quantity of X, sold in units of some

 3   fraction of X, then I as an ordering activity

 4   officer then can say my quantities are

 5   significantly larger than that, they're

 6   guaranteed. Therefore, I'm going to

 7   aggressively pursue discounts, or alternately

 8   I'm only buying one of these because I'm in a

 9   remote location. And because I'm only buying

10   one of these, the basis of award is sufficient

11   for me to say that's a fair and reasonable

12   price

13   MEMBER NELSON: Wait. But so what

14   I'm saying is that above we've stated how GSA

15   makes its determination a fair and reasonable.

16   At this place we're saying what is the benefit

17   or lack of benefit to he or she making the

18   procurement, which is I would benefit by

19   knowing the basis of award is and that,

20   therefore, is going to allow me to make my

21   determination --

22   CHAIRMAN BRANCH: Right.

 1   MEMBER NELSON: -- on

 2   reasonableness.

 3   MEMBER SONDERMAN: But we've

 4   covered that in subsequent -- we cover how the

 5   ordering agency uses that or the ordering

 6   activity in subsequent discussion. It's on

 7   the next page.

 8   MEMBER NELSON: Well then maybe

 9   we're being prematurely redundant here.

10   CHAIRMAN BRANCH: I've been

11   prematurely redundant.

12   MEMBER SONDERMAN: Prematurely

13   redundant.

14   MEMBER NELSON: Well, to say -- I

15   mean I guess what I'm saying is is I don't

16   know why we're this in here at this point

17   then.

18   CHAIRMAN BRANCH: No. And I think

19   that's fair. And we could probably kill. If

20   you look at the paragraph after the dissenting

21   opinion, and we need to come back and resolve

22   that. But it appears to me we're saying the

1   same thing in that paragraph.

2   MEMBER DRABKIN: So what do you

3   want to do with the sentence?

4   CHAIRMAN BRANCH: So we would kill

5   -- I think we could kill everything after the

6   footnote. I mean, that would be my

7   suggestion. Because I believe if you look at

8   the bottom of page -- well, wait a minute.

9   No. No. No, don't do that yet. No.

10   MEMBER CHVOTKIN: Kill everything

11 after the phrase "benefit from this

12 information,"

13   MEMBER SONDERMAN: Right.

14   MEMBER DRABKIN: So where do you

15 want to kill it from?

16   CHAIRMAN BRANCH: I guess "benefit

17 from this information."

18   MEMBER CHVOTKIN: Recommend

19 deleting the last sentence in its entirety.

20   MEMBER DRABKIN: That's it?

21   MEMBER CHVOTKIN: Yes.

22   CHAIRMAN BRANCH: Okay. Has

1 everybody seen Larry's letter? You know, I

2 think he raises a very good point here. And

3 I would suggest that -- well, a couple of

4 things that kind of troubled me about where we

5 put this.

6   One, we kind of put it smack in

7 the middle.

8   And two, as it is a dissenting

9 opinion, I think while the dissenter needs to

10 have an opportunity to give voice to that, the

11 dissenter needs to go on record and say I

12 believe differently than the Panel.

13   So I believe it needs to be pulled

14 out and into an appendix. And it should only

15 be included if the dissenter is willing to put

16 their name on it.

17   I wouldn't pull it out in its

18 entirely. What I would so is I would leave

19 the first piece of that. I would say "The

20 panel had a significant dissenting opinion,"

21 period. And I would reserve an appendix for

22 it. And say "See appendix whatever." And I'd

1   lave it at and pull the rest of it out.

2   Are we okay with that?

3   MEMBER CHVOTKIN: I would have

4   your stand alone sentence as with the last

5   sentence. I mean "however, the Panel had a

6   significant dissenting opinion on this point."

7   CHAIRMAN BRANCH: Right.

8   MEMBER CHVOTKIN: And let it go at

9   the last sentence of the paragraph so it fits

10 consistently not as a bullet, David.

11   CHAIRMAN BRANCH: No. Yes. Yes. I

12 agree.

13   MEMBER CHVOTKIN: Or "There was a

14 significant dissenting opinion on this point."

15 "However, there was a significant dissenting

16 opinion on this point. See Appendix

17 whatever."

18   CHAIRMAN BRANCH: "However, there

19 was a significant dissenting opinion with

20 respect to this finding."

21   MEMBER DRABKIN: One second. Give

22 me one second. I'm going to go down and say

1   this.

2   CHAIRMAN BRANCH: Well, I guess

3   what I would suggest is that we're going to be

4   an dissenting opinion in there in an Appendix.

5   And the Panel member who dissents is going to

6   have to sign that, so since the findings only

7   cover the Panel members, it was clear that it

8   had to have been a Panel member that sent it.

9   So I don't know that it's necessary to say "by

10 one of the Panel members" in the report.

11   MEMBER NELSON: What, is it

12 something technical?

13   MEMBER DRABKIN: Yes.

14   MEMBER NELSON: What does GSA pay

15 for you?

16   MEMBER DRABKIN: Not to do this.

17   MEMBER SONDERMAN: Did we delete

18 the whole thing.

19   MEMBER DRABKIN: No.

20   MEMBER SONDERMAN: Are we starting

21 over?

22   CHAIRMAN BRANCH: You'd better

1 stop him before he kills again.

2   MEMBER SONDERMAN: Reset. So you

3 moved it to the end of the report?

4   CHAIRMAN BRANCH: I think the

5 consensus was that there's going to be a

6 dissenting opinion and you get to sign it.

7   MEMBER SONDERMAN: Ah.

8   CHAIRMAN BRANCH: And say it's

9 your dissent and we'll put it in full in an

10 appendix.

11   MEMBER CHVOTKIN: Yes.

12   CHAIRMAN BRANCH: And that's fair.

13 I think that addresses Larry's concern.

14   MEMBER SONDERMAN: It addresses my

15 concern, too.

16   CHAIRMAN BRANCH: Well, yes. And

17 mine as well.

18   MEMBER SONDERMAN: I need to get a

19 swine flu update. I'm sorry.

20   MEMBER DRABKIN: Somehow, it all

21 got saved. And we can go on to the next

22 paragraph.

 1   MEMBER SONDERMAN: In the last

 2 line of that paragraph, the word "even" it

 3 doesn't seem necessary. If you want to limit

 4 that to the non-GSA agency representatives,

 5 you could say "some of the agency

 6 representatives on the Panel." And I don't

 7 think you need the word "itself" at the end

 8 either.

 9   CHAIRMAN BRANCH: Yes. And I

10 guess back here at the top, I don't know if we

11 need assigned --

12   MEMBER SONDERMAN: Right.

13   MEMBER CHVOTKIN: That phrase "in

14 some instances" should probably go earlier.

15 "The Panel found that, in some instances, GSA

16 had limited data available for its own use as

17 well as for use of the ordering activities."

18   CHAIRMAN BRANCH: Well, the other--

19   MEMBER SONDERMAN: Didn't we find

20 that in all instances, though?

21   CHAIRMAN BRANCH: It's not clear

22 to me what data we're talking about either.

 1   I think we mean ordering data. So we may want

 2   to say that.

 3   MEMBER SONDERMAN: You mean order

 4   of pricing data?

 5   CHAIRMAN BRANCH: Yes.

 6   MEMBER SONDERMAN: Specific?

 7   CHAIRMAN BRANCH: Yes. I'm not

 8   sure that you know outside of what we put into

 9   FPS there's any ordering data.

10   MEMBER DRABKIN: Does this get it?

11   MEMBER SONDERMAN: I think so.

12   CHAIRMAN BRANCH: Yes. Yes.

13   MEMBER SONDERMAN: And that last

14   word in that sentence, yes, you got it. It

15   needs to be "activity."

16   MEMBER DRABKIN: Yes.

17   MEMBER CHVOTKIN: But you don't

18   need the "found" after "GSA." "The Panel

19   found that in some instances GSA had limited."

20   MEMBER JONES: Well, when we say

21   ordering and pricing data, we're not really

22   trying to collect pricing data from a

 1 technical standpoint. Why don't we just say

 2 ordering data?

 3   MEMBER CHVOTKIN: We're trying to

 4 collect pricing information about orders.

 5   CHAIRMAN BRANCH: Right.

 6   MEMBER CHVOTKIN: Pricing

 7 information about orders.

 8   MEMBER DRABKIN: Okay. Because I

 9 thought we were talking about more discreet

10 data in terms of what we bought and what it

11 was priced at when we bought it.

12   MEMBER SONDERMAN: So we're

13 talking about essentially line item data,

14 right, at that level of granularity --

15   MEMBER DRABKIN: Right.

16   MEMBER SONDERMAN: Which things

17 you bought and what we paid for them.

18   CHAIRMAN BRANCH: What did you

19 buy--

20   MEMBER DRABKIN: As opposed to

21 what code you bought in and --

22   MEMBER SONDERMAN: Right.

 1   MEMBER DRABKIN: -- what your unit

 2 price was. So how do we reflect that here?

 3   CHAIRMAN BRANCH: I think you

 4 could just say ordering data.

 5   MEMBER DRABKIN: Okay.

 6   CHAIRMAN BRANCH: Because that's a

 7 fairly inclusive term. No. That's the SIN,

 8 the price, the quantity.

 9   MEMBER DRABKIN: Do we have

10 agreement?

11   MEMBER SONDERMAN: I would change

12 "as well as" to "or." "GSA had limited if any

13 ordering data available for its own use or for

14 the use of the ordering activities."

15   CHAIRMAN BRANCH: Yes.

16   MEMBER SONDERMAN: You could take

17 out "the" in front of "ordering activities."

18   CHAIRMAN BRANCH: And I think --

19   MEMBER SONDERMAN: So do we --

20 this lack of useful data is preventing GSA

21 from achieving the core objective? What is

22 "the key objective" of the program. Which

 1   core objective are we referring to?

 2   CHAIRMAN BRANCH: That refers us

 3   back to footnote 1.

 4   MEMBER SONDERMAN: Okay.

 5   CHAIRMAN BRANCH: Which is the

 6   reference to the website. I mean, it's not

 7   the URL, but it essentially is the reference

 8   for that.

 9   MEMBER DRABKIN: No. Footnote 1,

10   I'm sorry, is FSS Procurement Information

11   Bulletin 04-2.

12   CHAIRMAN BRANCH: Right.

13   MEMBER NELSON: Its the FAR.

14   MEMBER CHVOTKIN: Well, regardless

15   of the reference, I don't think the data's not

16   been GSA termed, doing as good. So it hasn't

17   had that data for the last 35 years and it

18   seems to continue to go forward. So we

19   probably need a different way of

20   characterizing what the lack of data. Maybe

21   it's something else other than preventing GSA

22   from achieving its core objective. Minimizing

 1   GSA's ability to --

 2   CHAIRMAN BRANCH: Well, let's

 3   perhaps phrase that positively, I guess.

 4   Well, no. What we're really saying is if we

 5   had that data, GSA could do a better job in

 6   achieving the objective or the --

 7   MEMBER CHVOTKIN: I think if they

 8   had the data, GSA and the ordering activities

 9   could make better use of the schedules of the

10   program.

11   CHAIRMAN BRANCH: Right. Yes. It

12   could make more effective use of the schedule

13   program.

14   MEMBER NELSON: Well, hold on.

15   GSA is not here to make effective use of the

16   schedule program. The ordering activities are

17   here to make effective use of the schedule

18   program.

19   CHAIRMAN BRANCH: Okay. I see

20   your point.

21   MEMBER SONDERMAN: Well, I sure

22   hope you are --

 1   MEMBER CHVOTKIN: But you said

 2   there were really three part to this

 3   transaction, all of whom have a vested

 4   interested in an effective schedules program.

 5   And so maybe we ought to address that. If

 6   this data were available, the schedules

 7   program could be more effective to all --

 8   CHAIRMAN BRANCH: For all.

 9   MEMBER CHVOTKIN: -- for all --

10   CHAIRMAN BRANCH: For all parties.

11   And we define all parties.

12   MEMBER NELSON: Because I would

13   make this -- I would make the -- the

14   supposition that it's GSA's mission to put in

15   place contract vehicles that the ordering

16   activities can use to procure the goods and

17   services that they need to meet their mission.

18   Correct? So --

19   MEMBER SONDERMAN: No. I

20   disagree. And I think we've already talked

21   about this. What good is having a vehicle if

22   I can't rely on it to get goods or services at

1 a fair and reasonable price? It's not just to

2 put stuff in place, it's to have ones that we

3 can rely on in small orders as well as big --

4 or small quantities as well as bigger

5 quantities. That's good. Where management

6 tells me or have come to tell me about how

7 important --

8   MEMBER DRABKIN: We have to take

9 responsibility --

10   MEMBER SONDERMAN: -- it is -- at

11 how much value the schedules program brings my

12 agency.

13   MEMBER DRABKIN: In GSA we have to

14 take responsibility for the effectiveness and

15 value of the program, even if we may not be

16 the principal users of it. We are the owners

17 and providers of it. And so I think the

18 thought you're trying to express is the right

19 one. See if this captures that thought. And

20 maybe we can just stop at "parties."

21   MEMBER JONES: Well, I think if

22 the data was available, it could enhance GSA's

 1   negotiation position which is the objectives

 2   of the program, if you will.

 3   MEMBER DRABKIN: I think we talked

 4   about this at a number of levels. We talked

 5   about the GSA contracting officer being able

 6   to more frequently update the pricing in the

 7   schedules program when we talked about the

 8   ordering contracting officer being able to get

 9   better prices each and every time they placed

10   an order.

11   So it is --

12   MEMBER SONDERMAN: It is

13   multidimensional.

14   MEMBER DRABKIN: --

15   multidimensional. Now we could say those

16   things here if that's what you think we should

17   do. Or, we could just say "more effective for

18   all parties." Although, I guess perhaps the

19   contractors might not think its as effective

20   for them.

21   MEMBER CHVOTKIN: No. I think the

22   contractor community would love to see the

 1   transaction data both for competitive analysis

 2   -- as well as for their own sales as well as

 3   competitive analysis. I could tell you that

 4   many have no idea where a lot of their

 5   schedules program sales are being made.

 6   MEMBER DRABKIN: Well then I think

 7   then "the use of all parties" captures it all.

 8   MEMBER CHVOTKIN: And I concur.

 9   That I would just put a comma after the word

10   "available." "If data were available, the

11   schedules program would be more effective."

12   MEMBER SONDERMAN: You used "were"

13   instead of "was."

14   MEMBER DRABKIN: You keep on using

15   "were" instead of "was." Data in this case

16   being plural.

17   MEMBER SONDERMAN: Right.

18   MEMBER CHVOTKIN: Maybe "if" --

19   MEMBER NELSON: Actually, David,

20   grammatically data is always singular.

21   MEMBER DRABKIN: I was correct

22   then.

1   MEMBER SONDERMAN: Datum is the

2   singular of data.

3   MEMBER NELSON: No. No.

4   CHAIRMAN BRANCH: Data is a

5   collective noun, kind of like sheep.

6   MEMBER NELSON: And it's singular.

7   MEMBER DRABKIN: May I suggest

8   that rather than spending our valuable time,

9   we will have an editor look at this who

10 actually, you know, has a degree in English

11 maybe. That would help. Actually, a doobie

12 in a foreign language would probably be better

13 because they would speak English more

14 correctly.

15   MEMBER NELSON: More better?

16   MEMBER DRABKIN: No. I said more

17 correctly.

18   Okay. "If the data were

19 available, the schedules program would be more

20 effective for all parties." Okay.

21   Do we need the next sentence given

22 that sentence?

 1   CHAIRMAN BRANCH: I think not. I

 2 would kill the rest of the paragraph, frankly.

 3 I think it's thoughts that we certainly

 4 discussed. And if someone asked any one of us

 5 to elaborate on why we believe that data would

 6 make the program more effective, we would

 7 probably cite some of those reasons. But I'm

 8 not sure just a laundry list of reasons helps

 9 the report. So I would recommend we eliminate

10 the rest of the paragraph.

11   MEMBER DRABKIN: Hearing no

12 objection?

13   MEMBER SONDERMAN: I would

14 recommend that we consider adding "an

15 transparent" after "more effective." I've

16 always been for transparency.

17   CHAIRMAN BRANCH: Without

18 objection. I have no objection to that.

19   MEMBER DRABKIN: I mean, since

20 we're throwing in buzz words, how about "more

21 competitive transparent and effective."

22   MEMBER SONDERMAN: Oh, excellent.

 1   CHAIRMAN BRANCH: Current,

 2 accurate, complete, relevant, responsive. You

 3 know, and I'm glad to see after a year that we

 4 can still laugh about this. But I would

 5 admonish us all that we not write down

 6 anything we individually aren't willing to

 7 explain to a reader. So the more of those you

 8 put in, you need to reflect on what your

 9 explanation to the lay reader would be.

10   MEMBER DRABKIN: You know, but we

11 talked about it. We were talking about it in

12 terms of getting competitive pricing because

13 we would see the pricing. Transparency

14 because right now we said that both the

15 contracting officer at the schedule level and

16 the ordering level didn't know what the

17 pricing was. And effective in the sense that

18 we would be getting better value when the

19 transaction was done whether it was at the

20 schedule level or at the ordering level.

21   So I think these three words are

22 explainable and coincidentally, they seem to

 1 be consistent with the President's March 4th

 2 memo.

 3   CHAIRMAN BRANCH: No. And I will

 4 accept I think a rather elegant set of reasons

 5 for those three reasons. They meet my tests.

 6 So we'll be able to talk somebody through

 7 them.

 8   MEMBER CHVOTKIN: I look forward

 9 to seeing that explanation in the executive

10 summary.

11   CHAIRMAN BRANCH: Okay. All

12 right. Fair enough.

13   MEMBER NELSON: Mr. Chairman.

14   CHAIRMAN BRANCH: Fair enough.

15   MEMBER CHVOTKIN: Might I also

16 suggest with the next two sentences, we need

17 to integrate them into the preceding

18 paragraph.

19   CHAIRMAN BRANCH: I agree.

20   MEMBER CHVOTKIN: So now in the

21 next paragraph we're saying that actually

22 there is some information about orders

 1 available through Advantage, but agencies

 2 don't use it because --

 3   CHAIRMAN BRANCH: Right.

 4   MEMBER CHVOTKIN: -- it has some

 5 utility. We need to find a place to address

 6 that.

 7   CHAIRMAN BRANCH: So I would

 8 propose that we insert that right there after

 9 "ordering activities" and that whole paragraph

10 could come into that.

11   MEMBER CHVOTKIN: And that may be

12 able to be led by a "for example GSA has

13 capability" or "has information about orders

14 placed through Advantage."

15   CHAIRMAN BRANCH: Right. And in

16 order to really make it consistent with that

17 to take out the words "with any." So that

18 would read: "The Panel found that" as a

19 matter of fact you could take out "in some

20 instances." That should really read: "The

21 Panel found that GSA had limited ordering data

22 available for its own use or for the use of

1 ordering activities" then insert that

2 paragraph.

3   MEMBER SONDERMAN: Can I say

4 something here?

5   CHAIRMAN BRANCH: Oh, I'm sorry.

6   MEMBER DRABKIN: So, David, one

7 "to gather purchasing data," that phrase needs

8 to moved after "capability." "While GSA may

9 have the capability to gather purchasing data

10 for orders placed through its GSA Advantage

11 tool." After "capability." See?

12   MEMBER DRABKIN: Yes. Yes.

13   MEMBER CHVOTKIN: And to pick up

14 on Debra's point, either GSA has the

15 capability or they don't. So I don't think we

16 need the phrase "may have."

17   MEMBER SONDERMAN: I think they

18 mean they do not do it.

19   MEMBER CHVOTKIN: Well, GSA has

20 the capability. GSA has the capability it

21 does not take advantage of it or does not

22 utilize it, and many agencies don't use the

 1   tool because of its limited utility.

 2   MEMBER SONDERMAN: All right.

 3   Period.

 4   MEMBER JONES: Oh, where did that

 5   come from that statement that many agencies

 6   don't use it?

 7   CHAIRMAN BRANCH: I think it comes

 8   from the fact that while I may be able to look

 9   at data for my organization, I can't look

10   across the Government and see what's going on

11   with that vendor or in that particular

12   schedule with respect to --

13   MEMBER DRABKIN: But I think to

14   Jacqueline's question, the statistics

15   demonstrate it. GSA Advantage was less than

16   a billion dollars worth of sales out of a $38

17   billion program which suggests that customers

18   aren't using it and members of the Panel

19   themselves expressed that one of the reasons

20   they thought it was, is because of the lack of

21   information they can get in GSA Advantage. So

22   I think there's two things.

 1   MEMBER JONES: Well, I do know

 2   that a lot of customers use it for market

 3   research.

 4   MEMBER CHVOTKIN: Right. But not

 5   to place the orders.

 6   MEMBER JONES: Okay. But we're

 7   making a very broad statement by saying many

 8   agencies don't use it.

 9   MEMBER NELSON: Many agencies, I

10   mean we know statistically agencies don't use

11   it. And since services represent close to 70

12   percent and most of those services are with

13   the statement of work, they're not using it

14   for that purpose. And currently GSA Advantage

15   is not searchable by labor category, which is

16   one of the updates that the CIO is -- on the

17   priority list for the CIO.

18   So we know statistically that this

19   is a correct statement. For market research,

20   yes.

21   MEMBER JONES: But what we're

22   trying to say --

 1   MEMBER NELSON: And we have that

 2   statistically, we know that's true. But not

 3   for doing their actual procurement.

 4   MEMBER JONES: I understand. But

 5   what we're trying to say here is that GSA

 6   could enhance Advantage to become a tool for

 7   gathering that information. Is that not what

 8   we're trying to say?

 9   CHAIRMAN BRANCH: I don't think

10   that's what we're trying to say. Again, this

11   was an as-is finding.

12   MEMBER NELSON: Right.

13   CHAIRMAN BRANCH: And I think the

14   finding was that there is not a sufficiently

15   robust tool set for either use by ordering

16   activities or GSA to do any kind of market

17   analysis. Now what is going on in terms of

18   pricing and volume and activity amongst

19   schedule holder. So it's a limited utility.

20   MEMBER DRABKIN: And I think we

21   saw that in demonstrative evidence by the

22   usage and in anecdotal evidence by members of

 1 the Panel who related their agency's

 2 experience in using GSA Advantage.

 3   MEMBER JONES: Okay. Well I guess

 4 my question is then why are we mention

 5 Advantage? Are we mentioning it because we're

 6 saying that it has the capability to do this,

 7 but no one uses? And at the same token we're

 8 saying but if it were available, you know this

 9 is what it would do for the agencies if the

10 data were available. So, or does it matter

11 whether it's through Advantage or any other

12 tool or are we recommending Advantage as the

13 tool? Why are we mentioning it?

14   CHAIRMAN BRANCH: No. I think

15 there are two thoughts here, and they are

16 this:

17   That whatever data you really have

18 in an aggregate you have from an Advantage.

19 That data is limited because people don't use

20 the tool for transactions. And even if they

21 did use the tool for the transactions, the

22 capability to do the kind of data mining that

 1 you would want to do to see pricing trends and

 2 trends with respect to volume against SINs and

 3 other sorts of things that would help you

 4 shape better business arrangement don't exist

 5 within Advantage today.

 6   MEMBER DRABKIN: But I think see

 7 Jackie's point. There are two thoughts here,

 8 and I think they're disjointed.

 9   If you were to put a period where

10 the cursor is now blinking, it would gather

11 the first point that GSA has the capability to

12 gather purchase data, but we don't.

13   The second point dealing with

14 agencies not using the tool is not necessarily

15 because it doesn't gather data, it's because--

16   MEMBER SONDERMAN: It's other --

17 could be other issues, yes.

18   CHAIRMAN BRANCH: It's an even if

19 argument. And we have some ability to do this

20 using GSA Advantage. But even if we used that

21 capability, we wouldn't get much data because

22 agencies don't use Advantage very much.

 1   MEMBER DRABKIN: Right. So if we

 2 put a period at the end of the first thought,

 3 we've made a statement about the data, do we

 4 need the remainder of the sentence to make our

 5 point here which appears to be about data?

 6   CHAIRMAN BRANCH: Let me make a

 7 recommendation as to what that sentence would

 8 be. And it would be: "Moreover, many

 9 ordering activities do not use GSA Advantage

10 because of its limited utility. Therefore,

11 the amount of data available for analysis is

12 limited."

13   MEMBER DRABKIN: I'm sorry,

14 Elliott. I didn't get the last part of that

15 sentence.

16   CHAIRMAN BRANCH: No, that's it.

17 You got the whole thing.

18   So the thought is you've got some

19 capability to gather data using GSA Advantage,

20 you don't use it. But because we don't use --

21 okay. So this is where we need to fix it. So

22 "Moreover, many ordering activities do not use

1   GSA Advantage, not the tool, because of its

2   limited utility." And if you want to make

3   that clear: "It's its limited utility in the

4   procurement of services." You know, that

5   might help. Because I think for products its

6   pretty okay.

7   So what you then lead to is hey I

8   have limited capability and because most

9   people don't use it, I actually have limited

10   data. And that being the last sentence to

11   complete that thought.

12   MEMBER CHVOTKIN: Mr. Chairman, a

13   couple of suggestions if I may?

14   In the first line I would take out

15   the word "if any."

16   CHAIRMAN BRANCH: Yes. Absolutely.

17   MEMBER CHVOTKIN: And the commas.

18   Then in the second sentence where it says "but

19   it does not utilize it," I don't think that's

20   fully accurate. I think it says " but does

21   not take maximum advantage of it" instead of

22   "doesn't use much."

 1   MEMBER SONDERMAN: Well, let's not

 2 talk about taking advantage of GSA Advantage.

 3   MEMBER CHVOTKIN: Oh, I'm sorry.

 4 "does not make maximum use of the

 5 information."

 6   CHAIRMAN BRANCH: "Doesn't use it

 7 to its maximum benefit."

 8   So that's a question I'll ask the

 9 GSA folks in the room. Do you use the data

10 that comes out Advantage for any other purpose

11 than to know that there was a transaction

12 against a schedule? And does anybody do any

13 analytics against that data?

14   MEMBER NELSON: Yes.

15   MEMBER JONES: Okay. So I'm

16 looking at the recommendation 10 here that

17 says that the Administrator of GSA developed

18 a solution that captures pricing at the order

19 level and makes it available to the

20 contracting officers at both the schedule and

21 order level to conduct market research,

22 determine fair and reasonable pricing at the

1   contract level and competition at the order

2   level. But yet we're saying here that tool

3   should be -- we're implying that GSA Advantage

4   has something to do with that capability as

5   opposed to developing an alternate --

6   CHAIRMAN BRANCH: No. No. All

7   we're saying is this is the only capability

8   you have today.

9   MEMBER DRABKIN: I don't know what

10   everybody else was saying. Clearly GSA

11   Advantage is a potential source of data to the

12   extent its used to purchase goods and

13   services. But clearly the Administrator to

14   affect recommendation 10 would have to come up

15   with another tool or a solution which included

16   GSA Advantage as part of it, because $38 plus

17   billion moves through some other set of

18   systems, not GSA Advantage. But clearly there

19   is data in GSA Advantage which would go to a

20   portion of the recommendation in 10 to the

21   extent that it would reflect the transactions

22   that occur in GSA Advantage.

1   Does that make sense to you,

2   Jackie?

3   MEMBER JONES: I guess it doesn't

4   seem to me that that has to be done through

5   Advantage.

6   MEMBER DRABKIN: No.

7   MEMBER JONES: I mean, maybe they

8   could come up with a whole different --

9   MEMBER DRABKIN: Exactly.

10   MEMBER JONES: -- system.

11   MEMBER DRABKIN: They could

12   decide. Potentially I could see if they

13   accepted our recommendation, they could say

14   we're going to ditch Advantage, we're going to

15   ditch eBuy. We're going to create a

16   netcentric solution and have all of our

17   customers go through this netcentric -- I

18   mean, they could come up with any combination

19   or solution. We're not dictating one. We're

20   just commenting on one we found that exists.

21   MEMBER SONDERMAN: How the one

22   that's currently being used is being used or

 1   not.

 2   MEMBER NELSON: Not to mention

 3   there's the aspect of vertical pricing trends.

 4   CHAIRMAN BRANCH: Yes. You know,

 5   I mean I think we should focus on the first

 6   line of the sentence. So what we're saying is

 7   the Panel found. And I guess the question

 8   that I would pose to the Panel would be are

 9   any of the things in that paragraph that

10   reflect what we believe we found inaccurate or

11   in some way not convey the sense of our

12   finding as opposed to where the Administrator

13   might take the recommendation?

14   MEMBER CHVOTKIN: Mr. Chairman, I

15   support the paragraph. I think when we say

16   the procurement of services, I would add "or

17   solutions."

18   CHAIRMAN BRANCH: Okay. Okay. I

19   think that's a fair comment, Alan.

20   MEMBER DRABKIN: Where?

21   MEMBER SONDERMAN: Limited utility

22   in the procurement of services or solutions,

1   a couple of lines down from where you are.

2   MEMBER DRABKIN: Right here. Got

3   it.

4   MEMBER NELSON: At this point I

5   would ask since GSA has two systems that are

6   being used, is it appropriate since we talk

7   about Advantage, to bring in eBuy? Because

8   that is where the majority of, let's say,

9   certainly bids if not for some of our

10 customers actual procurements and buys are

11 happening. And so to not mention it at all

12 is, I think, detrimental. You know, and we

13 have the same thing that we can't capture an

14 adequate amount of data for several reasons

15 also. But not to bring it up, I think, is--

16   MEMBER DRABKIN: Unfortunately if

17 we bring it up, we'd have to point out that

18 eBuy captures no pricing data. It is right

19 now in its current iteration, but doesn't

20 capture it --

21   MEMBER NELSON: It captures it for

22 VA, though?

 1   MEMBER DRABKIN: It captures it for

 2   VA, eBuy does?

 3   MEMBER NELSON: Yes, because VA

 4   uses Connect.

 5   MEMBER DRABKIN: But they have

 6   something that they add to it, eBuy itself

 7   captures no data.

 8   MEMBER NELSON: Right. But

 9   currently, and we can talk about it, we have

10   available a Connect system which VA has taken

11   advantage of to use that GSA can make

12   available. So VA has done that. The system

13   that they use is one that we provided to them

14   and gave them technical support to do which

15   enables -- to talk to their system. So while

16   it doesn't currently capture the data and

17   changes would have to happen, we could go to

18   the same place of GSA Advantage does not

19   collect adequate data or data, but to say that

20   it's not where transactions to take place is

21   to almost ignore the fact that orders and/or

22   transactions don't take place anywhere else.

 1   CHAIRMAN BRANCH: Well, let me

 2   come at this from a different angle. As I

 3   recall, and you will correct me collectively

 4   I'm sure if I recall incorrectly, but most of

 5   the time we spent talking about GSA systems we

 6   spent talking about Advantage. And we really

 7   didn't talk about eBuy in depth or what it

 8   could do. So I guess I'm reluctant to now

 9   bring that into a finding since we didn't

10   spend a lot of time on it.

11   MEMBER FRYE: Correct.

12   MEMBER DRABKIN: And if it makes

13   you feel any better, I mean GSA Advantage

14   collects this data because a transaction takes

15   place in GSA Advantage for every single

16   agency. The eBuy solution that we've worked

17   for VA is exclusive to VA. The eBuy solution

18   as we present it to everybody else doesn't

19   have that capability.

20   You know I think when we get the

21   report to the Commissioner's office, I think

22   as the Commissioner evaluates the report and

1 sends his recommendations up to the

2 Administrator, I think that would be the place

3 for acquisition management point out that

4 while the Panel didn't --

5   MEMBER SONDERMAN: There are some

6 existing tools available that could be

7 considered.

8   MEMBER DRABKIN: -- cover it,

9 there was a tool not addressed by the Panel,

10 and that tool is the work we've been able to

11 do with VA.

12   CHAIRMAN BRANCH: Words that we're

13 putting in a footnote here. I mean, would you

14 just feel comfortable saying hey, you know,

15 there exists this additional system called

16 eBuy, but the Panel did not spend a whole lot

17 of time deliberating on that, while it

18 recognizes it may be a part of any solution

19 pursuant to recommendation time. And that's

20 another way to approach it.

21   MEMBER CHVOTKIN: We're at page 9

22 of the report, nobody will have read the

 1   footnotes at this point.

 2   MEMBER NELSON: Whatever. I just

 3   think to ignore eBuy altogether when the

 4   Department of Defense is using it for 803 and

 5   the commercial customers are going to use it

 6   for Section 863 and not even mention it in the

 7   report --

 8   MEMBER DRABKIN: Well, let's add

 9   the footnote as Elliott suggested, but let's

10   keep in mind -- I know what you're trying to

11   say.

12   MEMBER SONDERMAN: So what are we

13   going to say; eBuy doesn't do anything either,

14   you know?

15   MEMBER DRABKIN: But eBuy is not a

16   transactional system. It's a posting system

17   except for what you have a special connection

18   for VA. And we'll put a footnote in that says

19   there is something called eBuy, we've worked

20   something for VA. And then when you review

21   the report and send your recommendations up to

22   the Administrator, you may want to point out

1   that eBuy modified could address the solution

2   that the Panel recommends in number 10. But

3   the Panel didn't have any discussion

4   whatsoever about the capability of eBuy to

5   collect data. And we certainly talked a lot

6   about stuff.

7   MEMBER SONDERMAN: I have one

8   other thing to ask about, and it's the

9   placement of the next to last sentence. This

10   was also a finding of the Acquisition Advisory

11   Panel that originally followed a thing about

12   how data was limited. Do we need to move it

13   someplace else or --

14   CHAIRMAN BRANCH: I think we could

15   kill it.

16   MEMBER SONDERMAN: Take it out?

17   Okay. It works for me.

18   CHAIRMAN BRANCH: I think it's

19   parenthetical.

20   MEMBER DRABKIN: I don't think it

21   adds much to our findings.

22   MEMBER SONDERMAN: Right. Are we

1 ready to go on to the next paragraph?

2   CHAIRMAN BRANCH: Hearing no

3 objection.

4   MEMBER NELSON: David, could you

5 scroll down?

6   In the parentheses you have CSP.

7   MEMBER DRABKIN: Oh, you mean in

8 the next paragraph?

9   MEMBER NELSON: Yes.

10   MEMBER DRABKIN: That's the next

11 paragraph. Are we finished with this

12 paragraph?

13   MEMBER NELSON: Well, I'm just --

14 since we're there.

15   MEMBER SONDERMAN: Yes.

16   MEMBER DRABKIN: Are we finished

17 with this paragraph?

18   CHAIRMAN BRANCH: I guess the only

19 comment I'd make stylistically if we're going

20 to use block quotes, we don't need the

21 quotation marks.

22   MEMBER DRABKIN: Okay. Now we're

1   at CSP?

2   MEMBER NELSON: Yes. In the

3   parentheses, would we not just put CSP-1 since

4   we say that CSP practices form.

5   MEMBER DRABKIN: The change is

6   made. Any other thoughts?

7   MEMBER NELSON: I guess you get

8   rid of the same parentheses at -- I mean the

9   same quotation marks that Elliott --

10   CHAIRMAN BRANCH: And you need an

11 ellipse after the "and" or before the "may,"

12 I mean put it wherever.

13   MEMBER DRABKIN: I'm sorry?

14   CHAIRMAN BRANCH: You either need

15 an ellipse after the "and" in the first block

16 quote or before the "may" because they're not

17 contiguous. One is Section B and the other is

18 Section D.

19   MEMBER DRABKIN: Now I'm going to

20 really sound stupid. What's an ellipse?

21   CHAIRMAN BRANCH: It's the three

22 little dots.

 1   MEMBER DRABKIN: Two little dots

 2   or three --

 3   MEMBER SONDERMAN: The three

 4   little dots, you know, dot, dot, dot. Get

 5   into "Mamma Mia!"

 6   CHAIRMAN BRANCH: Or if you want

 7   to do this--

 8   MEMBER DRABKIN: Got it. I got it.

 9   I got it. I got it.

10   CHAIRMAN BRANCH: --by 18th

11   Edition of Bluebook style, I guess you can use

12   the three little asterisks on a separate line.

13   MEMBER DRABKIN: I got it. I know

14   about the three dots, but I didn't know they

15   were an ellipse. I didn't do well in English.

16   Philosophy was my.

17   Any comments about the paragraph

18   beginning "While the Panel heard."

19   MEMBER SONDERMAN: I think

20   members, the Panel members. I thought we

21   decided earlier that the Panel can't hear.

22   MEMBER NELSON: But the Panel has

1   done many things all through this.

2   MEMBER SONDERMAN: Okay. That's

3   fine. Well, all right. We'll have to have our

4   editor. Just leave it alone.

5   CHAIRMAN BRANCH: Before you move

6   on, did we really agree on that?

7   MEMBER SONDERMAN: Well, we heard

8   that. We did hear that.

9   CHAIRMAN BRANCH: Well, I know we

10   discussed it.

11   MEMBER SONDERMAN: That the

12   determination was of marginal value.

13   CHAIRMAN BRANCH: I mean, I know

14   we discussed it. And I guess the issue that

15   I have with the word "heard" without

16   attribution troubles me a bit.

17   The other thing is that I think

18   that that second thought came from -- well,

19   this is where I recall it came from. So I

20   think I raised the question why bother to have

21   schedule pricing at all for services. And I

22   think the conclusion was because under the

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 1 Administrator's authority you had to have

 2 pricing to create a binding contract at the

 3 schedule level.

 4   MEMBER DRABKIN: I also think you

 5 heard a different answer from the contracting

 6 officers, the GSA contracting officers who

 7 spoke to this issue to us I think in our first

 8 or second day of meetings. As I recall, I

 9 think it was the -- who was it? It was either

10 the product or the services people, one or the

11 other, said they needed it along with the

12 Price Reduction Clause and others said they

13 didn't need it at all. So I'm sure --

14   CHAIRMAN BRANCH: I think the

15 products guys because there was a second

16 meeting and I think the first CO we heard from

17 was the services CO and she said this is

18 actually pretty useless. I think it was the

19 product folks that said --

20   MEMBER DRABKIN: Who said they

21 needed it?

22   CHAIRMAN BRANCH: Right.

 1   MEMBER DRABKIN: And, of course,

 2 there's the requirement of CICA which says you

 3 have to consider price in order to have a

 4 contract.

 5   CHAIRMAN BRANCH: Right.

 6   MEMBER DRABKIN: I agree, I'm not

 7 sure this adds much to our report.

 8   CHAIRMAN BRANCH: I'd pull the

 9 paragraph. I would kill it. And that's my

10 take. Other thoughts it on?

11   MEMBER SONDERMAN: Well, it leads

12 into the discussion that happens next. And

13 that's the only reason to leave it in

14 potentially.

15   MEMBER DRABKIN: In that case, I'm

16 not sure it's a separate part. Maybe it

17 should be the first --

18   MEMBER SONDERMAN: Right. I think

19 it's --

20   MEMBER DRABKIN: -- sentence of

21 the next paragraph.

22   MEMBER NELSON: I think if we

1 could go back up a second, because I can't

2 see. Or back up to the commercial -- yes.

3 "GSA relies on its commercial sales practices

4 form," and then if you come down "if the

5 perspective contractor is unable to provide

6 what would constitute documented," I think

7 we're fine without that middle paragraph.

8   CHAIRMAN BRANCH: Yes, I agree.

9   MEMBER SONDERMAN: Okay.

10   MEMBER DRABKIN: Any objection?

11 No objection.

12   CHAIRMAN BRANCH: I'd kill it.

13   MEMBER DRABKIN: It's gone.

14   MEMBER SONDERMAN: I think are we

15 saying perspective contractor rather than

16 vendor. We have "vendor" at least twice in

17 that paragraph.

18   CHAIRMAN BRANCH: Right.

19   MEMBER NELSON: Can we just

20 simplify it if the prospective contractor is

21 unable to provide commercial --

22   CHAIRMAN BRANCH: Commercial

1   pricing.

2   MEMBER NELSON: Commercial

3   pricing, it may provide other documentation to

4   establish a basis of award.

5   MEMBER SONDERMAN: Yes.

6   MEMBER DRABKIN: I'm sorry, say

7   that again.

8   MEMBER SONDERMAN: Commercial

9   pricing.

10   MEMBER DRABKIN: Is it commercial

11 pricing, or commercial prices, or commercial

12 price list?

13   CHAIRMAN BRANCH: Or is it

14 commercial sales practices?

15   MEMBER JONES: Commercial sales

16 practices information.

17   MEMBER SONDERMAN: Is "practices"

18 plural?

19   CHAIRMAN BRANCH: Yes. It's

20 either practices or information.

21   MEMBER JONES: That is not really

22 consistent with what's in the solicitations

 1   about providing other documentation to

 2   establish a basis of award.

 3   MEMBER SONDERMAN: Turn your

 4   microphone on. Jackie, turn your microphone

 5   on.

 6   MEMBER JONES: Oh, I'm sorry.

 7   They have to have some commercial

 8   sales practices information, period.

 9   MEMBER NELSON: It's actually

10   consistent with what is in our policy. Is

11   that we have policy that gives guidance what

12   to do if their only sales are to the

13   Government.

14   MEMBER JONES: That still does not

15   negate the fact that they have to submit

16   commercial sales practices information.

17   MEMBER NELSON: Jackie, the policy

18   is that the product, the item whether or not

19   it be a service or a product must be

20   commercial in nature and we have guidance that

21   says if their sales are only to the

22   Government, how to establish a basis for

1 award. So it could be a contractor that has

2 no commercial sales. And it does happen in

3 cases where the contractor has been schedule

4 for multiple years and has moved from selling

5 to the commercial market to only to the

6 Government market.

7   MEMBER JONES: There's more

8 information there besides who they're selling

9 to and at what price. So my point is they

10 still have to provide commercial practice

11 information whether or not they're selling to

12 a commercial entity or Government because we

13 use other information off of that disclosure

14 as well.

15   I guess what we're trying to say

16 here is if they are unable to provide

17 commercial pricing information, it may provide

18 other documentation.

19   MEMBER DRABKIN: So we're almost

20 back to where we were?

21   MEMBER SONDERMAN: Yes, back to

22 where we were.

 1   MEMBER DRABKIN: Okay. Any other

 2 comments about this paragraph?

 3   MEMBER SONDERMAN: The last

 4 sentence doesn't need to have "ultimately."

 5 I think it should just start "The Government."

 6   MEMBER DRABKIN: Moving on, the

 7 next paragraph.

 8   MEMBER NELSON: David, I'd further

 9 like to edit that statement. It may not just

10 be the quantity. So if we could say "The

11 Government may not have" where did it go?

12   MEMBER SONDERMAN: "The Government

13 may --"

14   MEMBER NELSON: "May not have the

15 best marketprice --"

16   MEMBER SONDERMAN: "In the

17 schedule contract for the quantity and length

18 of time --"

19   MEMBER NELSON: "For the

20 requirement stated at the time any actual

21 order is placed." Because it may not just be

22 the quantity in the requirement.

 1   MEMBER DRABKIN: Aren't we really

 2 trying to say is that the Government may not

 3 get the absolute lowest price? I mean, we're

 4 trying to explain that the Government may not

 5 get --

 6   MEMBER SONDERMAN: In the schedule

 7 contract.

 8   MEMBER DRABKIN: -- on a schedule

 9 contract because it's not entitled to.

10   MEMBER SONDERMAN: At the schedule

11 level, right.

12   MEMBER NELSON: I'm sorry. I

13 misunderstood.

14   MEMBER DRABKIN: Okay. But I mean

15 the words here I don't think convey that

16 thought, which is we may have a schedule

17 price. That price may be fair and reasonable

18 and it still may not be the lowest possible

19 price you could get because of all the other

20 stuff that goes into determining the price

21 based upon the benchmark, customer and that

22 other stuff.

1   MEMBER NELSON: Right.

2   MEMBER DRABKIN: So how do we say

3   that?

4   MEMBER NELSON: So to very much

5   simplify it, the contract price -- a fair and

6   reasonable price at the contract level may not

7   be the overall lowest --

8   MEMBER DRABKIN: Yes. Well --

9   MEMBER NELSON: Not be based on

10 the favorable -- most favored customer --

11   MEMBER SONDERMAN: I mean, why not

12 say --

13   MEMBER DRABKIN: Well, may not be.

14   MEMBER SONDERMAN: -- that it may

15 not be the best marketprice.

16   CHAIRMAN BRANCH: Well, it may

17 not--

18   MEMBER DRABKIN: It may well be

19 the marketprice under those market conditions,

20 but it's not the lowest price. Because the

21 market conditions for the sale are different.

22   CHAIRMAN BRANCH: But it may not

1 reflect the lowest price at which those items

2 have been sold.

3   MEMBER DRABKIN: Correct.

4   MEMBER SONDERMAN: Oh, that's

5 good.

6   MEMBER NELSON: By the contractor.

7   CHAIRMAN BRANCH: By the

8 contractor. So that's my recommended change.

9 "It may not reflect the lowest prices at which

10 these items have been sold by the contractor."

11   MEMBER SONDERMAN: So I think the

12 schedule contract may not reflect the lowest

13 price --

14   CHAIRMAN BRANCH: "The lowest

15 price at which these items have been sold by

16 the contractor." It may be the best price

17 under the circumstances.

18   MEMBER SONDERMAN: Right.

19   CHAIRMAN BRANCH: But these may

20 not be the best circumstances and therefore it

21 may not be the absolute best price.

22   MEMBER DRABKIN: How do we word

1   this? "The schedule contract price may not

2   reflect the lowest price --"

3   MEMBER SONDERMAN: "But the items

4   or services have been sold by the contractor."

5   MEMBER DRABKIN: Period.

6   MEMBER SONDERMAN: And delete the

7   res of that.

8   MEMBER DRABKIN: Okay. And that's

9   it? Don't we want to also capture however it

10 may be the best value that the Government's

11 entitled to, or it may be the best value under

12 the market conditions, or -- I mean because --

13   MEMBER SONDERMAN: It may be the

14 best price the Government can obtain for the

15 schedule.

16   MEMBER NELSON: Under similar

17 terms and conditions.

18   MEMBER DRABKIN: Again,

19 anticipating the audience that's going to read

20 this --

21   MEMBER SONDERMAN: Right.

22   MEMBER DRABKIN: -- they may not

 1 understand that the Government is not entitled

 2 to the lowest price every time we buy

 3 something just because we're the Government.

 4   MEMBER NELSON: Yes. I mean, in

 5 certain circumstances here, you know like they

 6 may have sold something at a lower price, but

 7 that one came off of a market -- off of an

 8 assembly line in China.

 9   MEMBER SONDERMAN: Sure.

10   MEMBER DRABKIN: Or the person who

11 got the lowest price bought a million of them

12 and had them shipped --

13   CHAIRMAN BRANCH: At the same

14 time.

15   MEMBER DRABKIN: -- one place all

16 at one time and we're going to buy a million

17 of them over three million transactions or

18 100,000 transactions shipped to a 100,000

19 different places. There's lots of reasons why

20 the Government doesn't get the lowest price.

21 And even here I'm worried that someone is

22 going to read this and not --

1   MEMBER SONDERMAN: Understand.

2   MEMBER DRABKIN: -- understand the

3   concept that we're --

4   MEMBER SONDERMAN: Trying to

5   convey.

6   MEMBER DRABKIN: -- that we're

7   trying to capture.

8   MEMBER NELSON: How about we put

9   in "for example" and put in two or three

10   example?

11   MEMBER SONDERMAN: That's a very

12   good idea. And we could use the example that

13   David just gave, perhaps, or that might be

14   extreme.

15   CHAIRMAN BRANCH: Well, let me

16   offer alternatives. Okay. So factors that

17   may influence price include single quantity

18   buys, country of origin, unique Government

19   requirements such as EnergyStar --

20   MEMBER SONDERMAN: Number of

21   delivery locations.

22   CHAIRMAN BRANCH: And number of

 1 delivery locations and just kind of leave it

 2 at that. So now you have this kind of broad

 3 spectrum of things that might influence the

 4 price in the marketplace --

 5   MEMBER SONDERMAN: I wouldn't

 6 throw EnergyStar under the bus.

 7   CHAIRMAN BRANCH: Okay.

 8   MEMBER SONDERMAN: It's a good

 9 thing.

10   CHAIRMAN BRANCH: Well, no, I'm

11 not throwing it under the bus.

12   MEMBER SONDERMAN: You're just

13 reflecting the reality that it may --

14   MEMBER NELSON: No. But he's

15 correct. The requirements that the industries

16 have to meet the environmental requirement of

17 the Government for procurement --

18   CHAIRMAN BRANCH: They're

19 recycling.

20   MEMBER SONDERMAN: Right.

21   MEMBER NELSON: -- raise their

22 cost.

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1   MEMBER DRABKIN: Well, how about

2   this? How about I'll add "or other

3   socioeconomic actions."

4   CHAIRMAN BRANCH: And I think

5   that's fine. Because I certainly make no

6   apology for the fact that my tax dollars go to

7   buy energy efficient or recycled things.

8   MEMBER DRABKIN: Or, that I buy

9   from Skilcraft as opposed to a cheaper

10   solution.

11   CHAIRMAN BRANCH: Exactly.

12   MEMBER DRABKIN: Because I am

13   supporting the work --

14   CHAIRMAN BRANCH: Exactly. So I

15   think socioeconomic factors is good. And I

16   think we're all comfortable with that.

17   MEMBER SONDERMAN: Yes.

18   CHAIRMAN BRANCH: Because it

19   reflects the values that --

20   MEMBER SONDERMAN: That we

21   espouse.

22   CHAIRMAN BRANCH: That we espouse.

 1   MEMBER DRABKIN: It reflects the

 2 direction that both the Congress and the

 3 President have given us. Okay. Good.

 4   MEMBER NELSON: Factors that may

 5 include the Government price, the differential

 6 in Government price.

 7   CHAIRMAN BRANCH: No. I would say

 8 influence price. Because so -- you know,

 9 Walmart is an example. Largest, you know

10 manufacturer in the world. They're driving

11 supply chain by saying hey we want grain, we

12 want sustainable, that's going to influence

13 their price. So it's not just our price.

14 Those are the types of factors that influence

15 a price between a buyer and a seller.

16   MEMBER DRABKIN: And besides, all

17 we wanted to do is just make sure that we put

18 something in here that at least causes someone

19 to think why isn't the Government getting --

20 I mean, and also keep in mind, you know if we

21 were at war and on a war footing where we turn

22 the whole economy to support a war effort, we

1 would be having a different discussion, like

2 they did in World War II. But we're not there

3 and haven't been there for decades.

4   MEMBER JONES: Under those

5 factors, though, that influence price I mean

6 actually can go either way. Rather than

7 saying "single quantity buys," would it be

8 best to say "order volumes"?

9   CHAIRMAN BRANCH: Yes, I'm fine

10 with the term "order volumes." I think that's

11 probably a better term.

12   MEMBER SONDERMAN: I think you can

13 take your comma after "include" out. There

14 you go.

15   MEMBER DRABKIN: Do I need a

16 colon?

17   MEMBER DRABKIN: All right.

18 Moving on to the next paragraph.

19   MEMBER SONDERMAN: Save.

20   MEMBER DRABKIN: Say again.

21   MEMBER SONDERMAN: Save.

22   MEMBER DRABKIN: I did. I keep

 1   hitting Control S.

 2   MEMBER SONDERMAN: Excellent.

 3   "For is" does it seem --

 4   MEMBER DRABKIN: What's that?

 5   MEMBER SONDERMAN: Someone was

 6   thinking about multiple things while their

 7   fingers were typing. "For is" does not

 8   belong.

 9   MEMBER DRABKIN: That wasn't me.

10   MEMBER SONDERMAN: I know it

11   wasn't you. Let's not go there.

12   CHAIRMAN BRANCH: I don't know.

13   what is -- I think price basis is price

14   reasonableness. And I think the "is" belongs

15   in the third line or that was the intention,

16   "is ever independently." So "option is"

17   should be "option is ever."

18   MEMBER SONDERMAN: Just "is," you

19   don't need "ever."

20   MEMBER DRABKIN: And I think if no

21   one has an objection, I would take out

22   "Exercising a period of performance

1   extension." It's exercising an option.

2   CHAIRMAN BRANCH: Yes.

3   MEMBER SONDERMAN: So I think you

4   need a comma after "reasonableness." "The

5   Panel also heard that the information used to

6   determine the price reasonableness, either at

7   time of award or when a subsequent analysis is

8   required at the time of exercising option."

9   Or "when exercising an option."

10   CHAIRMAN BRANCH: Right. "Or when

11   exercising an option," "or at the time of

12   option exercise" either one I think. But we

13   don't need the longer construction.

14   MEMBER SONDERMAN: "Is not

15   independently validated." "The Panel heard

16   that the information is not independently

17   validated or not validated by a third party."

18   CHAIRMAN BRANCH: "Is often not

19   independently validated."

20   MEMBER SONDERMAN: Right. Yes,

21   it's quite torturous.

22   CHAIRMAN BRANCH: Well, I think

1 what they're saying is basically whatever we

2 do to determine price reasonableness either a

3 contract order or an option exercise is rarely

4 validated by an independent source such as the

5 IG. That's the thought.

6 　　　　　MEMBER DRABKIN: Well, okay. But

7 we really need it, the award and option

8 exercise. I mean, can it read "The Panel also

9 heard that the information used to determine

10 price reasonableness is --"

11 　　　　　MEMBER SONDERMAN: "Is rarely

12 independently validated by a third party." Or

13 "rarely validated by a third party."

14 　　　　　MEMBER DRABKIN: And get rid of

15 all that other stuff in the middle?

16 　　　　　MEMBER SONDERMAN: "independent"

17 and "third party" are redundant.

18 　　　　　CHAIRMAN BRANCH: I agree.

19 　　　　　MEMBER DRABKIN: Yes.

20 　　　　　CHAIRMAN BRANCH: Well, I guess

21 you could have a third party -- why don't we

22 take out --

 1   MEMBER SONDERMAN: That's not

 2 independent?

 3   CHAIRMAN BRANCH: No. Why don't

 4 we just take out "is rarely independently

 5 validated."

 6   MEMBER NELSON: Actually, that's

 7 not what we heard from the IG. What we heard

 8 from the IG is that the data that the

 9 contractor submits 70 percent of the time is

10 not good data. But that when the

11 determination is made after the data is then

12 validated and corrected, then the fair and

13 reasonable determination is okay.

14   MEMBER DRABKIN: I wish that's

15 what the IG had actually said. It would have

16 been very helpful. But what the IG said was

17 that they did about 70 preaward surveys a

18 year, and we have 18,000 contracts. That 70

19 of the time the data that was submitted, the

20 initial data that was submitted that was

21 inaccurate. But never came back and said when

22 we made award, the data upon which the award

1 was ultimately made was accurate. The IG

2 never said that last piece.

3   MEMBER NELSON: I think they did.

4   MEMBER DRABKIN: No, actually they

5 didn't and I wish they had.

6   CHAIRMAN BRANCH: No. I remember

7 David hectoring them miraculously about that.

8   MEMBER SONDERMAN: Right. I do,

9 too.

10   CHAIRMAN BRANCH: And they stood

11 their ground.

12   MEMBER CHVOTKIN: And that's right

13 off the slides, too.

14   MEMBER DRABKIN: Right. Which

15 then resulted in a news story that said that

16 70 percent of the prices were wrong, which

17 wasn't what the IG said. It said 70 percent of

18 the data they reviewed, and they did 70

19 preaward reviews, was inaccurate at the time

20 it was submitted. It never addressed whether

21 it was accurate at the time award was made.

22   I wish they had said it was

1   accurate by the time they made award, but they

2   did not. But isn't our point here is that

3   based upon that, rarely do we get either a

4   preaward survey or a preaward audit rarely by

5   comparison to the whole program to verify or

6   validate price reasonableness? Isn't that the

7   point we're making here?

8   MEMBER NELSON: Yes.

9   MEMBER JONES: So why not just

10   call it preaward?

11   MEMBER SONDERMAN: So about four

12   sentences in there's a -- maybe that's where

13   it says the GSA OIG has cited the lack of

14   adequate price analysis in either pre or post-

15   award reviews by GSA personnel responsible for

16   schedule contract award. Maybe that's what we

17   need to start that paragraph with, is

18   something --

19   MEMBER DRABKIN: Okay.

20   MEMBER SONDERMAN: Because this is

21   challenging whether the data is good data, the

22   data on which the analysis is made.

 1   MEMBER CHVOTKIN: And I'm not sure

 2 on the third party validation on price

 3 reasonableness exists anywhere in Government.

 4 Price reasonableness determination that a

 5 contracting officer makes is never

 6 independently validated whether you're under

 7 the schedules program or not. So that

 8 sentence, here again, doesn't resonant as to

 9 the schedules or as to anything else.

10   I think that's why when we

11 struggled with this review back in February

12 and the March meeting we said let's get the IG

13 quote so we knew that and put in context. And

14 I think we're still -- or at least I'm

15 struggling with what is --

16   MEMBER SONDERMAN: Was that the

17 first --

18   MEMBER CHVOTKIN: -- that we want

19 to quote him for, and what do we want to quote

20 Andy about and then what do we want of that

21 quote.

22   MEMBER DRABKIN: Well, I think the

 1 first sentence is accurate. Now I've

 2 rewritten the next sentence. Does that

 3 capture it? I mean, validate is a problem.

 4 They never validate anything, but it is

 5 confirmed by a third party through either a

 6 preaward survey or a preaward audit accurate,

 7 or is that assuming facts not in evidence.

 8   CHAIRMAN BRANCH: Well, you know

 9 and it may be because we are getting long into

10 this process, but the more I listen to this

11 discussion the more I question the need for

12 this paragraph at all. Because I'm not sure

13 the issue as either raised by the IG or as we

14 understood the reality to be had a material

15 impact on our recommendations. So we're all

16 kind of offended as procurement folks because

17 the IG has once again given us half the truth.

18 But my question becomes is that half truth

19 have any material impact on what we're

20 recommending to the Administrator? And I

21 conclude that it doesn't. And I would just

22 submit we just need to take the paragraph out.

 1   MEMBER DRABKIN: I hear you,

 2   Elliott. And but for what I know is going

 3   around town already, I think I would say let's

 4   go ahead and take it out. But since I know

 5   that both the GSA IG and the VA IG have been

 6   to see their respective Committees on the

 7   Hill, have been to our own examiners; all of

 8   them disturbed by the recommendation of the

 9   Panel to eliminate the Price Reduction Clause

10   and not mentioning, by the way, to any of the

11   parties they've talked to about all the other

12   recommendations we've made which would

13   actually make pricing more accurate and

14   better, I think if you do not acknowledge that

15   the IG both ours and the VA IG came in and

16   made this observation, whether we agree with

17   or not, they made it. And I think if we do

18   not at least point to it factually in the

19   report, that we will accused later on of

20   reciting facts that were placed before us

21   because they weren't consistent with our view

22   of the world. I just --

 1   CHAIRMAN BRANCH: And I think your

 2 point is well taken, and it's fair. Then let

 3 me suggest this: That to the extent we can we

 4 need to simply quote the IG. And then instead

 5 of trying to fix this paragraph the word

 6 should be "notwithstanding the statement by

 7 the IG that the Panel recognizes that it is

 8 common for initial submissions of data not to

 9 be adequate. The key question in the process

10 of contract formations -- "

11   MEMBER DRABKIN: Slow down and

12 hold your thoughts, okay?

13   CHAIRMAN BRANCH: All right.

14   MEMBER DRABKIN: Okay.

15   CHAIRMAN BRANCH: "The key

16 question in the process of contract formation

17 is whether the data is adequate at the time of

18 contract award. The Panel heard no evidence

19 that schedule contracting officers were

20 awarding contracts without adequate data to

21 determine price reasonableness." Because I

22 think that's really what we're saying. We're

 1 saying, hey the IG said this. The key is not

 2 when you first start the negotiation, but

 3 where do you wind up when you end up. And

 4 we've heard no evidence to indicate that we

 5 weren't ending up in a good place because of

 6 the inadequacy of data.

 7   MEMBER CHVOTKIN: After we get the

 8 typing done, I would add a further sentence

 9 that says: "Nevertheless, the Panel addressed

10 in totality by looking at the --" We didn't

11 just look at price reduction, we looked at the

12 method of pricing --

13   CHAIRMAN BRANCH: Right.

14   MEMBER CHVOTKIN: -- at the

15 competition, at the information flow, a

16 variety of tools and techniques that are

17 probably reflected in the executive summary--

18   CHAIRMAN BRANCH: Right.

19   MEMBER CHVOTKIN: -- that led us

20 to our recommendations.

21   CHAIRMAN BRANCH: Right.

22   MEMBER CHVOTKIN: So it wasn't a

 1 singular focus, but a more comprehensive

 2 approach.

 3   CHAIRMAN BRANCH: So

 4 "Notwithstanding the Panel's recommendation

 5 addressed the potential risk of inadequate

 6 data for contract formation." And I would

 7 leave it at since we're in the findings.

 8   So we've pointed them to the

 9 recommendations and said, you know -- and if

10 you want to play with words, Alan, feel free.

11 No pride of authorship here.

12   MEMBER DRABKIN: Well, let's play

13 with it now because I missed parts of it.

14 "Notwithstanding the -- "

15   CHAIRMAN BRANCH: Let's go to the

16 first. "Notwithstanding the statements made

17 to the Panel by the GSA IG and counsel for the

18 VA IG, the key question in contract formation

19 addressed by the Panel was whether the data

20 available to the schedules contracting officer

21 is accurate and adequate at the time of

22 contract award."

1   MEMBER DRABKIN: "Accurate." What

2 did you say after "accurate."

3   CHAIRMAN BRANCH: "And accurate at

4 the time of contract award." Yes.

5   MEMBER DRABKIN: Okay.

6   MEMBER SONDERMAN: So can we make

7 such an unequivocal statement "no evidence

8 that the contracting officers were awarding

9 contracts without adequate data"?

10   CHAIRMAN BRANCH: I do not recall

11 anybody ever saying that they were aware of an

12 instance when a GSA contracting officer

13 awarded a contract with inadequate or

14 inaccurate data.

15   MEMBER DRABKIN: And I certainly

16 pressed all of the people who testified on

17 this issue to give us that information.

18   MEMBER SONDERMAN: And just for

19 everybody's, I was look at Pat had brought a

20 separate computer with the transcripts of the

21 meetings. It was the July 21st meeting when

22 GAO, the VA and the GSA IG representatives

1 testified.

2   So GAO went on at some length

3 about the dearth of preaward audits and how

4 they thought that that -- when I guess they

5 had done an audit of the schedules program and

6 found that -- recommended more preaward

7 audits. And then the IG stepped up their

8 activity and that yielded $3 billion in

9 savings, according to what Bill Woods told the

10 Panel.

11   MEMBER DRABKIN: Right. But those

12 were audits and those savings were achieved

13 before awards were made based upon the audits

14 or the audit recommendations from the IG.

15   MEMBER SONDERMAN: Right.

16   MEMBER DRABKIN: But no one had

17 said that the GSA contracting officers or the

18 VA contracting officers had made awards that--

19   MEMBER SONDERMAN: Without.

20   MEMBER DRABKIN: -- were based

21 upon inaccurate data. And I think when I

22 asked the VA IG if they believed that -- the

1   counsel for the VA IG, and when I asked her

2   whether she believed that the VA contracting

3   officers were doing their job in terms of

4   price reasonableness, I think her answer back

5   to me was she didn't know because they hadn't

6   done an audit of what they hadn't done audits

7   of. I believe that's in the transcript.

8   CHAIRMAN BRANCH: Right.

9   MEMBER DRABKIN: She didn't say

10   there was known. She said she didn't know.

11   CHAIRMAN BRANCH: Right.

12   MEMBER DRABKIN: Because she could

13   only talk about what she actually worked in.

14   CHAIRMAN BRANCH: Right. I mean,

15   the implication here, and it's one that I

16   frankly think is a dangerous one, is that the

17   only way that you can determine with certainty

18   that the data you have is accurate and

19   adequate is through the audit process. I

20   mean, that's really kind of what the IG is

21   saying to us. And, frankly, I think that

22   limits -- I guess it disempowers contracting

 1 officers to use their business judgment to

 2 determine what data is necessary to draw the

 3 conclusions that prices are fair and

 4 reasonable. And the last time I checked,

 5 auditors weren't warranted.

 6   MEMBER DRABKIN: Right. But the

 7 FAR as you recall, Elliott, does authorize a

 8 contracting officer when a question is

 9 raised--

10   CHAIRMAN BRANCH: Absolutely.

11   MEMBER DRABKIN: -- to either --

12 it doesn't have to be an audit, by the way,

13 they can do a preaward survey --

14   CHAIRMAN BRANCH: Right.

15   MEMBER DRABKIN: -- to determine

16 whether or not the contractor's systems are

17 reliable and, therefore they can rely on the

18 information --

19   CHAIRMAN BRANCH: Right.

20   MEMBER DRABKIN: -- or they have

21 an audit done to determine whether or not the

22 pricing was also reasonable.

 1   CHAIRMAN BRANCH: No. I agree. I

 2   think what we're trying to do, though, is to

 3   get at what I believe is a very dangerous

 4   point here. And that is to if you will, once

 5   you accept the assertion by the IG and the GAO

 6   that you cannot determine whether things are

 7   adequate without an audit, you must audit

 8   everything. And I think most of us know that

 9   makes no sense.

10   MEMBER SONDERMAN: Did they assert

11   that?

12   MEMBER DRABKIN: To be fair, I

13   don't think they asserted that. I think that

14   we --

15   CHAIRMAN BRANCH: Well, by

16   inference, yes.

17   MEMBER DRABKIN: -- inferred it

18   from the implication of some of the people who

19   made presentations.

20   CHAIRMAN BRANCH: Right.

21   MEMBER DRABKIN: But I don't

22   think, for instance, if Bill Woods was here

 1   today and we would question Bill Woods, he

 2   would ever say that you need to audit every--

 3   MEMBER SONDERMAN: One hundred

 4   percent.

 5   MEMBER DRABKIN: -- offer we

 6   received.

 7   CHAIRMAN BRANCH: No.

 8   MEMBER DRABKIN: My knowledge of

 9   Bill suggests that would never be the case.

10   And quite frankly, I don't think even my IG

11   would say that.

12   CHAIRMAN BRANCH: Well, and he

13   probably wouldn't. But on the other hand your

14   IG has said in response to your questioning,

15   as has the VA, I don't know because I haven't

16   audited everything.

17   MEMBER DRABKIN: Right.

18   CHAIRMAN BRANCH: And the

19   implication from that statement is the only

20   way to ever know is to audit everything.

21   MEMBER DRABKIN: So why don't we

22   instead make -- I mean, the first statement we

1   have, the first sentence I think everybody

2   agrees to. I think. But I think our next

3   sentence ought to say something like "The

4   Panel, consistent with the guidance in the

5   Federal Acquisition regulation, doesn't agree

6   or believe that an audit is required of every

7   contract proposal or quote and that the

8   contracting officer is free in his or her

9   discretion to ask for those when they believe

10 it's necessary."

11   What we are concerned about are

12 the things that we can do to improve the

13 contracting officer's ability to negotiate,

14 which is what we address in our

15 recommendations. Providing greater

16 transparency and more competition through

17 visibility into pricing.

18   CHAIRMAN BRANCH: And I think

19 that's a point well taken. I mean, I could

20 certainly support putting a sentence in there

21 that transitions that thought.

22   MEMBER CHVOTKIN: Do you remember

 1 what you said?

 2   MEMBER DRABKIN: Not at all.

 3   MEMBER NELSON: I would like in

 4 regard to this, David?

 5   MEMBER DRABKIN: Yes.

 6   MEMBER NELSON: I'd like to take

 7 the Panel, I was looking for the transcript in

 8 which Mr. Patchin testified. And despite the

 9 article that came out, we actually do have the

10 IG on record.

11   MEMBER DRABKIN: Okay.

12   MEMBER NELSON: And I'd like to

13 take on record reviewing the transcript.

14   On page 201 of the --

15   CHAIRMAN BRANCH: If we're going

16 to go on the record, could I simply ask you to

17 identify the date of the transcript for the

18 record?

19   MEMBER NELSON: July 21st.

20   CHAIRMAN BRANCH: Thank you.

21   MEMBER NELSON: And it's page --

22 well, where did we start it. It's page 201.

 1   And I'm talking to Mr. Patchin, so

 2   Ms. Nelson. I'll start here.

 3   "MS. NELSON: Understood. But the

 4   COs are following the guidance that is

 5   provided to them internally and by the GSAM in

 6   their negotiation strategies in order to do it

 7   when they have the data in front of them as

 8   appropriately." "It", being negotiate.

 9   "MR. PATCHIN: Jim, did you want

10   to" -- he's referring to Jim Corcoran who was

11   with him.

12   Mr. Corcoran responds.

13   "MR. CORCORAN: I think it's

14   important. I think maybe you're

15   misinterpreting what the GSA" -- probably why

16   "GSA was not offered MFC Pricing Line means."

17   We're not talking about what was

18   negotiated at the end of the day after

19   extension was awarded. We're talking about

20   the actual offer that was submitted by the

21   vendor and to be evaluated by the contracting

22   officer."

 1   MEMBER DRABKIN: Yes, but I think

 2   that's a big difference from him saying yes,

 3   the prices that were awarded were clear. He's

 4   just saying his discussion was about the

 5   offers that were submitted, which I think is

 6   what I said.

 7   MEMBER NELSON: Right. Right. By

 8   what I saying is this was specifically in

 9   regard to his statement in line that 70

10   percent were not adequate. And I was

11   questioning as to why 70 percent and the

12   contracting officers were given information,

13   was that getting to that they were not able to

14   get to the correct information and they were

15   doing their jobs. They were supplied

16   information. And the clarification was made to

17   me ultimately that this was the information

18   supplied by the contracting officer by the

19   vendor at the beginning of the process, not

20   necessarily the information that was used

21   finally to make determination.

22   MEMBER CHVOTKIN: Mr. Chairman, I

 1   don't want to minimize the critical question

 2   raised by the IG about the accuracy of

 3   information first proposed. I mean, I think

 4   that is a serious and significant issue that

 5   we need to address, or that has to be

 6   addressed in this overall program. We don't

 7   have to address it here, I don't think.

 8   So I think in that first sentence

 9   we have to comment on what it was the IGs

10   talked about maybe in terms of the data

11   provided in the original submissions. The key

12   question for the Panel, however, was whether

13   the data provided was adequate at the time of

14   contract award -- to reach a contract award.

15   CHAIRMAN BRANCH: No, no. And I

16   think that's the intent. And my assumption is

17   that David didn't construct that because we

18   wanted to refer to the transcript to get the

19   exact conclusion by the IG. So to read that

20   presupposing --

21   MEMBER CHVOTKIN: So you read in

22   that we would -- the statements made the IGs

1 on July 21st was --

2   CHAIRMAN BRANCH: Exactly. So I

3 was always looking at that, assuming that we'd

4 go back to the transcript and get exactly what

5 they said and then just say, okay. So

6 notwithstanding that, this is what we think

7 the key issue is and we believe the

8 recommendations will deal with the key issue.

9   MEMBER CHVOTKIN: Thank you.

10   MEMBER DRABKIN: See if this gets

11 it.

12   MEMBER CHVOTKIN: David, I think

13 you're dangerously close on this. I would in

14 that second sentence I would take out the lead

15 in phrase "The Panel believes that." Because

16 I think it is an accurate statement that

17 neither the FAR nor the GSAM require. So it's

18 not a question of belief. That is a statement

19 of fact.

20   MEMBER DRABKIN: Right.

21   MEMBER CHVOTKIN: And then I would

22 put a semicolon after "quote" and say "Rather,

1 the contracting may." And then "as necessary

2 to determine price reasonableness."

3   CHAIRMAN BRANCH: I think

4 recommendations is plural because there are a

5 couple of --

6   MEMBER DRABKIN: I'm sorry. I

7 missed Alan's last.

8   MEMBER CHVOTKIN: "Additional

9 information or assistance necessary" you don't

10 he or she needs, just say "necessary to."

11   And then I would say "The Panel's

12 recommendations provide --"

13   MEMBER DRABKIN: Do we need to say

14 "access"?

15   CHAIRMAN BRANCH: Well, actually

16 that's really got to be --

17   MEMBER SONDERMAN: Our

18 recommendations provide the Administrator.

19   CHAIRMAN BRANCH: Exactly. Or

20 "implementing the Panel's recommendations

21 would provide," or "implementation of the

22 Panel's recommendations would provide,"

 1 something like that. Because the

 2 recommendations themselves certainly don't, as

 3 Debra points out.

 4   MEMBER DRABKIN: And then I think

 5 it's important to add an additional sentence

 6 that talks about the more -- "in addition the

 7 Panel additional recommendations to enhance

 8 the --

 9   MEMBER SONDERMAN: "To enhance

10 competition," which we all agreed is the

11 basis -- that's the best way that a fair and

12 reasonable price for the Government. Better

13 competition is the foundation.

14   MEMBER DRABKIN: Does that get it?

15   MEMBER SONDERMAN: You could just

16 say "The Panel provided." Rather "Than in

17 addition the Panel provided," just say "The

18 Panel provided recommendations."

19   CHAIRMAN BRANCH: "The Panel made

20 additional recommendations.

21   MEMBER SONDERMAN: Right.

22   CHAIRMAN BRANCH: And I would kind

1   of go back to Debra's point. I would put a

2   comma after "transparency" and write "which is

3   the best basis of a fair and."

4   MEMBER CHVOTKIN: You've

5   "competition" and "transparency which are"?

6   MEMBER SONDERMAN: Yes.

7   CHAIRMAN BRANCH: Yes, "which

8   are."

9   MEMBER DRABKIN: And then take out

10 all the rest?

11   CHAIRMAN BRANCH: Yes. I think

12 that captures the spirit.

13   MEMBER JONES: Can I add something

14 to that? Unfortunately, that was the only

15 meeting I missed because I couldn't get out of

16 Seattle that day.

17   MEMBER SONDERMAN: That's fine.

18   MEMBER JONES: Yes. But just to

19 share some of my own experience. I mean, you

20 know I totally agree about making a

21 determination of a price reasonableness. But

22 this is where we miss each other, we cross

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1 paths is because when they're going in -- when

2 the IGs going in to do these preaward audits,

3 they're looking at these disclosures. You

4 know, the commercial sales practices

5 disclosures which the COs rely upon as being

6 current, accurate and complete unless, you

7 know, they have determined otherwise and feel

8 that they need to seek some preaward audit

9 assistance.

10   So we have two different goals.

11 The CO's goal is to make a price

12 reasonableness determination. The preaward

13 IG's goal is to go in there and make sure that

14 we're getting that best price. But we have to

15 begin that best price under the schedules

16 program. And if we don't get that, then

17 there's a total miscommunication in our

18 objectives.

19   CHAIRMAN BRANCH: Is that really

20 the audit's goal, to get the best price or is

21 to get the most accurate data? I'm asking.

22   MEMBER JONES: To disclose the

1   most accurate data --

2   CHAIRMAN BRANCH: Okay.

3   MEMBER JONES: -- that will result

4   in GSA getting the best price.

5   CHAIRMAN BRANCH: Okay. So there

6   are a couple of things here, and this is where

7   it always gets interesting I think between

8   auditors and contracting officers.

9   So their assumption is if they get

10   your data, that you will necessarily be able

11   to act on that data to your advantage without

12   respect to the other factors in the

13   environment that play into getting a deal. So

14   they assume that, hey, I showed you this

15   widget should have cost you $10 a unit less.

16   And you go how come you only got $5. And then

17   the disconnect is well let me explain to you

18   why the company wasn't willing to give me the

19   $10 price. It's because they're selling them

20   to Walmart and it's tied into their point of

21   sale inventory and it insures, you know,

22   continuous point of production.

 1   And they're going "But -- but --

 2   but it was $10 cheaper, why didn't you get

 3   that?"

 4   MEMBER JONES: Right.

 5   CHAIRMAN BRANCH: That was a

 6   paragraph that for some reason took a lot of

 7   labor. So why don't we just take five minutes

 8   and stand up and kind of stretch a little bit?

 9   (Whereupon, at 2:32 p.m. off the

10   record until 2:45 p.m.)

11   MEMBER DRABKIN: Mr. Chairman, we

12   are now in the next paragraph.

13   CHAIRMAN BRANCH: I think you're

14   at concerning the Price Reduction Clause

15   itself.

16   MEMBER SONDERMAN: Okay. Third

17   line down, third word which is "were" that

18   seems to be -- take it out. Either question

19   the value of the clause or unable to

20   articulate in a meaningful way.

21   CHAIRMAN BRANCH: Or "were unable

22   to articulate."

 1   MEMBER SONDERMAN: "Those

 2   responsible either question the value or --"

 3   MEMBER DRABKIN: No, I think

 4   "were" is correct.

 5   MEMBER SONDERMAN: Well, okay.

 6   That not the way E.B. White would have done

 7   it. That's okay.

 8   MEMBER DRABKIN: Well, you know,

 9   E.B. and I never got along real well.

10   MEMBER SONDERMAN: That's too bad.

11   MEMBER DRABKIN: Okay.

12   CHAIRMAN BRANCH: I think we can

13   lose the phrase, though, "in any meaningful

14   way." I think we could say "We're unable to

15   articulate the actual value." And I think we

16   can say "or use of the clause." Because I'm

17   not sure that that's a true statement.

18   I think everybody understood

19   theoretically how it was used, but nobody

20   could explain why that was helpful. So I

21   would take out the words "or use."

22   MEMBER DRABKIN: Okeydokey

1   MEMBER CHVOTKIN: We still got a

2 sentence, this construct up here. "The Panel

3 heard from," do we need the word "from those

4 at GSA responsible."

5   CHAIRMAN BRANCH: Yes.

6   MEMBER CHVOTKIN: Then the phrase

7 after that won't make sense then. "From those

8 responsible --"

9   CHAIRMAN BRANCH: "Who are

10 responsible for"

11   MEMBER CHVOTKIN: "Who are from

12 GSA who are responsible for."

13   MEMBER DRABKIN: Wait. Isn't this

14 in the past tense.

15   MEMBER SONDERMAN: Yes.

16   CHAIRMAN BRANCH: Well, our

17 hearing this in this past tense, but their

18 responsibility continues to the present.

19   MEMBER SONDERMAN: Perhaps.

20   CHAIRMAN BRANCH: Unless they ran

21 through me from the building.

22   MEMBER DRABKIN: Okay. Next

1   sentence or the next paragraph?

2   CHAIRMAN BRANCH: No, I don't

3   think we're done with that one yet.

4   MEMBER DRABKIN: Ah, too bad.

5   MEMBER SONDERMAN: At least not

6   quite.

7   MEMBER NELSON: And it wasn't all

8   of the COs, it was -- well, I should say all

9   except the CO from the IT Center.

10   MEMBER DRABKIN: But even the CO

11 from the IT Center had difficulty explaining

12 what value the Price Reduction Clause

13 provided. They said they need it, but then

14 couldn't tell us what they got by having it.

15   MEMBER CHVOTKIN: If the word

16 "question" were made in the past tense, either

17 "questioned the value" or "were unable," I

18 think that would --

19   CHAIRMAN BRANCH: Or "were unable

20 to articulate the." Yes, I think you can take

21 out the word "actual."

22   MEMBER SONDERMAN: Can we ask the

 1   editor? Can you have a note to ask the editor

 2   to check the transcript. I think that note

 3   says that comment.

 4   MEMBER DRABKIN: You can --

 5   MS. HUGHES: I'm ready.

 6   MEMBER DRABKIN: Because I need to

 7   go back to sleep.

 8   MEMBER SONDERMAN: Four lines from

 9   the bottom it says "ordering agencies." You

10   need to change that to "activities" if you

11   haven't already. There you are.

12   CHAIRMAN BRANCH: In the second

13   sentence we have "representatives from

14   schedule contractors and others representing

15   schedules contractors." I think we could

16   probably get by with one of those.

17   MEMBER SONDERMAN: "Schedule

18   contractors and --"

19   MEMBER DRABKIN: Or their

20   representatives.

21   CHAIRMAN BRANCH: "Representatives

22   for schedule contractors? Or "Representatives

1   of schedule contractors."

2   MEMBER SONDERMAN: Right. So take

3   out "and others representing schedule

4   contractors."

5   I want what -- never mind.

6   MEMBER CHVOTKIN: This is another

7   example of our premature redundancy.

8   MEMBER SONDERMAN: So take out

9   "schedule contractors." We've got schedule

10   contractors twice there. "Representatives of

11   schedule contractors." There you go. Fine.

12   "Repeatedly cited inconsistency."

13   CHAIRMAN BRANCH: Yes. I guess I

14   have a question about the conclusion after

15   this sentence. Because I'm not even sure most

16   ordering activities know there's such a thing

17   as a Price Reduction Clause in a GSA contract,

18   so how could they be worried whether its

19   applied consistently or not?

20   MEMBER DRABKIN: But doesn't this

21   apply internally to GSA as opposed to

22   externally to the ordering activities?

 1   MEMBER SONDERMAN: Yes, I think it

 2 does.

 3   CHAIRMAN BRANCH: It must.

 4 Because, you know frankly, David, until you

 5 called and ask me to serve on this Panel, I

 6 had no idea what the Price Reduction Clause

 7 was. And I've been ordering off the schedules

 8 or selling off of them for the last 30 years.

 9 So I'm not sure ordering activities --

10   MEMBER SONDERMAN: So delete the

11 next to last sentence, is that what you're

12 suggesting?

13   CHAIRMAN BRANCH: Yes. Because

14 this sentence doesn't --

15   MEMBER SONDERMAN: Do anything.

16 Doesn't mean anything.

17   CHAIRMAN BRANCH: I mean, I'm not

18 sure it logically flows from the facts we

19 found here, which is the fact that GSA

20 contracting officers and contractors doing

21 business with GSA at the schedule level really

22 didn't have either a handle on the benefit of

 1   the clause nor how it was applied. I'm not

 2   sure that that necessarily flows down to an

 3   ordering activity. Because, frankly, the

 4   terms and conditions of most GSA schedule

 5   contracts are opaque to us, which is one of

 6   the reasons our recommendations say disclose

 7   the terms and tell us more about what's in

 8   schedule contracts.

 9   MEMBER SONDERMAN: Right. So take

10   out that sentence, Pat. Just delete it.

11   MEMBER DRABKIN: And the footnote.

12   MEMBER SONDERMAN: And the

13   footnote.

14   Oh boy, fewer footnotes. Yay.

15   Next paragraph. You need a "the"

16   in front of "Price Reduction Clause." "Few

17   circumstances trigger use of the Price

18   Reduction Clause." Or move the "the."

19   MEMBER DRABKIN: She's got it.

20   MEMBER SONDERMAN: Okay. "Do not"

21   instead of "don't." Can we --

22   MEMBER DRABKIN: And expand the

1   word "don't" to "do not." Space.

2   CHAIRMAN BRANCH: Well, I'm not

3   sure we want to phrase that that way. I think

4   what we're really trying to say "The primary

5   reasons for this is that sales to Federal

6   customers are not subject to the Price

7   Reduction Clause, nor are one time discounts."

8   And I guess my question would be --

9   MEMBER SONDERMAN: I don't know.

10   CHAIRMAN BRANCH: -- what

11 circumstance is that? I mean, if the Price

12 Reduction Clause is mandatory in every

13 solicitation, how would you establish schedule

14 prices in such a way that the clause could

15 never be triggered? And if you always have a

16 basis of award customer, a tracking customer

17 of some kind and you've disclosed commercial

18 practices and then the contractor would always

19 have an affirmative obligation to disclose any

20 changes to those practices, exceptions from

21 them, with the exception of the first two and

22 to adjust the prices accordingly.

1   So when does that last condition

2 ever occur? Then I would recommend that we

3 take that out since none of us seem to be able

4 to construct a scenario in which it would be

5 applicable.

6   MEMBER SONDERMAN: So take out the

7 last phrase or "when schedule prices were

8 established in a way."

9   CHAIRMAN BRANCH: Right. I would

10 reword that to say "The primary reasons for

11 this is that sales to Federal customers are

12 exempt, or as one time discounts."

13   MEMBER JONES: Consistent with our

14 previous references should we say sales to

15 ordering activities?

16   MEMBER DRABKIN: Yes.

17   MEMBER SONDERMAN: So all ordering

18 activities, it's not just Federal customers?

19   MEMBER DRABKIN: Yes.

20   CHAIRMAN BRANCH: Okay. Then

21 let's make that change as well. So it's

22 "sales to ordering activities."

1   MEMBER CHVOTKIN: Mr. Chairman,

2 with those changes, which I concur in, I would

3 recommend that we now combine the two

4 sentences into one and to the effect -- first,

5 I have the question --

6   CHAIRMAN BRANCH: Right.

7   MEMBER CHVOTKIN: Who from GSA did

8 we hear from that made that statement? The

9 Panel heard from GSA. The -- to GSA

10 contracting officer?

11   CHAIRMAN BRANCH: Right.

12   MEMBER SONDERMAN: We could just

13 start and say -- we could just start the

14 sentence with "Few circumstances triggered the

15 use of the Price Reduction Clause." Or "GSA

16 contracting officers who testified before the

17 Panel." They're two different flavors. I

18 don't know.

19   MEMBER CHVOTKIN: We might, since

20 that is a factual statement that few

21 circumstances trigger, we might move that up

22 higher in the preceding paragraph. "The Panel

1 heard from those responsible for negotiating

2 schedule about the value. Few circumstances

3 trigger the use of a Price Reduction Clause

4 because sales to ordering activities are

5 exempt as are one time discounts."

6   CHAIRMAN BRANCH: So put it right

7 there before "representatives." And you could

8 take that whole -- well, actually you could

9 collapse that into one sentence and you could

10 start that "Moreover the Panel heard from."

11 No. "Moreover the Panel heard." You know

12 without any references to who they heard from

13 because that's implied from the previous

14 sentence. "That few circumstances trigger the

15 Price Reduction Clause because sales to

16 ordering activities are exempt as are one time

17 discounts."

18   MEMBER CHVOTKIN: I think that's a

19 good suggestion.

20   MEMBER SONDERMAN: So take out

21 "also."

22   CHAIRMAN BRANCH: Yes. You can

1 take out "also."

2   MEMBER SONDERMAN: And take out

3 "from GSA." Excellent. "Because sales to

4 ordering activities are exempt."

5   MEMBER DRABKIN: Yes.

6   MEMBER SONDERMAN: Yes. Maybe a

7 comma after "exempt."

8   CHAIRMAN BRANCH: Yes, that makes

9 sense.

10   CHAIRMAN BRANCH: Yes, you don't

11 the comma.

12   MEMBER SONDERMAN: Right.

13   MEMBER DRABKIN: Okay. Next

14 paragraph.

15   MEMBER SONDERMAN: It looks good

16 to me.

17   CHAIRMAN BRANCH: Well, except I

18 think you could take out "aside from." I

19 think you could start that "As whether or

20 not."

21   MEMBER SONDERMAN: No, I think you

22 do need "or not."

 1   CHAIRMAN BRANCH: I think you need

 2   it, yes.

 3   MEMBER SONDERMAN: "Whether or not

 4   the Price Reduction Clause is an appropriate

 5   tool." There's not going to be enough people.

 6   MEMBER DRABKIN: I think whether

 7   it presupposes or not It's a stylistic thing.

 8   MEMBER SONDERMAN: It is a

 9   stylistic thing.

10   MEMBER DRABKIN: If you control or

11   not, I'm putting it in.

12   CHAIRMAN BRANCH: It's good to be

13   the queen.

14   MEMBER SONDERMAN: So we have to

15   decide whether price reduction is capitalized

16   or not, because we have it both ways in this

17   paragraph. I don't care. I just want us to

18   be consistent.

19   CHAIRMAN BRANCH: I think we've

20   been capitalizing it.

21   MEMBER DRABKIN: Consistence is

22   the hobgoblin of what?

 1   MEMBER SONDERMAN: Of little

 2   minds. A foolish consistency is actually what

 3   Mr. Emerson said.

 4   MEMBER CHVOTKIN: Then you'd

 5   better go back to the paragraph before and

 6   maintain your foolish consistency.

 7   MEMBER DRABKIN: What I'll do is

 8   I'll use search and replace and we'll

 9   capitalize it everywhere.

10   MEMBER DRABKIN: Okeydokey.

11   CHAIRMAN BRANCH: Do we need to

12   repeat this thought again in the next

13   paragraph? I would recommend we kill it. I

14   mean, we've already said that. That we don't

15   have the data, and we went through a fairly

16   detailed explanation about why we didn't have

17   it.

18   MEMBER CHVOTKIN: Before you

19   jettison it, Mr. Chairman, I think there is

20   some value to saying that here this was data

21   that the Panel asked for about the program.

22   This is a little different than some of the

 1 data. So I think the purpose of citing this

 2 was not for the data that ordering activities

 3 would have, but data that the Panel might be

 4 able to rely on for its recommendations. And

 5 So think that we're trying to get at a

 6 different point. We may not have captured it

 7 properly, and it's worth editing. But I'd

 8 hesitate to lose the whole paragraph.

 9   CHAIRMAN BRANCH: Okay. And I

10 think that's a fair comment, Alan.

11   MEMBER DRABKIN: Any other

12 comments about this paragraph?

13   MEMBER SONDERMAN: I think

14 "thereunder," if we going to use "thereunder"

15 is one word, although I would find something

16 simpler.

17   CHAIRMAN BRANCH: Where is it?

18   MEMBER SONDERMAN: It's right

19 there in the middle. There. See,

20 "thereunder," fifth line down.

21   MEMBER DRABKIN: I was going to

22 say "or items included therein," but --

 1   CHAIRMAN BRANCH: You know, I

 2   would reduce that --

 3   MEMBER SONDERMAN: Or it's SINs,

 4   or at least particular contractors it's SINs.

 5   CHAIRMAN BRANCH: I guess I would

 6   reshape that paragraph to say "The Panel

 7   repeated requested information about the

 8   operation of the MAS program." And I would

 9   get rid of most of the rest of that stuff.

10   Because we don't ever say we didn't get the

11   data, which I think is probably the point that

12   it wasn't available.

13   MEMBER SONDERMAN: I actually had

14   a note here. The information was not readily

15   available.

16   CHAIRMAN BRANCH: Right. And I

17   think that may be the next sentence. "The

18   information was not readily available.

19   MEMBER CHVOTKIN: But the

20   information was.

21   MEMBER SONDERMAN: And rather than

22   "et cetera," you ready, David? "And other

1 relevant information that would assist its

2 work."

3   MEMBER CHVOTKIN: Rather than

4 having those two sentences, why don't we just

5 take out the last sentence, David, and move

6 the second sentence. Or leave that one in,

7 and take out the second sentence. Because we

8 asked for information the operations. We

9 asked for information on individual contract

10 terms, base award, yadda, yadda, yadda. This

11 information was not available -- or readily --

12 it was not readily available. I forget how

13 much we got. We got lots of data.

14   CHAIRMAN BRANCH: We got some.

15   MEMBER CHVOTKIN: We got some.

16   CHAIRMAN BRANCH: I mean, it was

17 clearly stuff we wanted to know that what we

18 couldn't find easily.

19   MEMBER DRABKIN: Well, using the

20 term "readily," suggests that it was

21 available, we just couldn't get our hands on

22 it in a timely fashion.

 1   I think we're saying that some of

 2 this information wasn't available at all.

 3   MEMBER SONDERMAN: At all. Okay.

 4   MEMBER CHVOTKIN: "Some of the

 5 information is not collected and some of it

 6 that was collected was not available."

 7   MEMBER SONDERMAN: Was not

 8 available. There we go.

 9   MEMBER DRABKIN: Is that what you

10 just said? Did I get it?

11   CHAIRMAN BRANCH: I mean, yes, I

12 think that's fine.

13   MEMBER CHVOTKIN: But just put the

14 word "readily available."

15   MEMBER DRABKIN: Okay.

16   MEMBER CHVOTKIN: Yes. Thank you.

17   MEMBER JONES: So why do we need

18 the first sentence in that paragraph?

19   MEMBER SONDERMAN: WE're trying to

20 reflect on the deliberations of the Panel.

21 The Panel's eagerness to get data on which to

22 base our conclusions.

 1   MEMBER JONES: But we say about

 2   the operation of the MAS program. We have

 3   some information about the operation. Is

 4   there something specifically that we're trying

 5   to address there?

 6   MEMBER DRABKIN: Well, I think you

 7   pointed out what we just finished observing.

 8   There was some information that was available.

 9   There was some information that wasn't

10   available at all. And there was still other

11   information which took them a while to get us.

12   And I think that's the point that they're

13   making in the last sentence.

14   CHAIRMAN BRANCH: I mean the

15   thought, I think, from my perspective, you

16   know I would have liked to have reached these

17   findings based predominately on data and

18   evidence. And I have to say after being at

19   this almost a year I believe that this report

20   probably reflects more the best professional

21   judgment of 14 folks who have been doing this

22   a long time than it does the data. And if you

 1   look at the recommendations and the degree to

 2   which they address the need to gather

 3   additional data to make this an effective

 4   program, I think this is really what this

 5   paragraph is trying to speak to.

 6   MEMBER JONES: So shouldn't we say

 7   "data" then instead of "information" in the

 8   first sentence?

 9   CHAIRMAN BRANCH: You know,

10   without getting into the information, I guess

11   the realm of information theory, I was kind of

12   using the words interchangeable. So I'm find

13   with data or information. But my point was

14   this was probably a less fact-based inquiry

15   than many of us would like it to have been

16   when we started.

17   MEMBER DRABKIN: And I think in

18   your executive summary that you've indicated

19   you're drafting on top, I think that's an

20   important observation. I don't know if you

21   begin with it or you end with it because we

22   certainly wouldn't want anybody to think that

 1   we've arrived at all these conclusions based

 2   on a hard data analysis. In many cases we were

 3   denied the opportunity to do that because it

 4   wasn't available to us.

 5   CHAIRMAN BRANCH: Yes, exactly.

 6   MEMBER CHVOTKIN: On the other

 7   hand, I don't want to leave the impression

 8   either here today or the posterity of this

 9   session or in our report that this was simply

10   14 peoples contemplating the best for the

11   universe in the schedules program.

12   We certainly had data. And I was

13   going to suggest that we add a phrase that

14   while we welcomed the significant material

15   provided by GSA and the ordering activities

16   about the operations of the program, some of

17   the information sought by the Panel was not

18   being collected and some of the information

19   was not readily available. Because I think --

20   I was just trying to put it in the context.

21   And we certainly do -- I remember

22   the comment by friend at the time, I hope

1   she's still my friend, April Stevenson from

2   DCAA while she was still on the Panel said she

3   hoped that our review would be fact-based.

4   And we all agreed with that. We wanted to

5   proceed from as much information as we could.

6   And we found despite our best interest and the

7   full cooperation of GSA and others that

8   there's information we wanted that was simply

9   not available.

10   CHAIRMAN BRANCH: And agreed. And

11 I would not -- and I would certainly not argue

12 that what we did isn't fact-based. I guess

13 what I'm really trying to say perhaps

14 unartfully is that we had to use our

15 professional judgment to fill in more of the

16 gaps than we would have liked to at the

17 beginning.

18   So we did use the facts. No

19 question about that. It was our hope at the

20 beginning that more facts would be available.

21   MEMBER JONES: I guess what I mean

22 is --

 1   MEMBER CHVOTKIN: Jackie, excuse

 2   me one second.

 3   MEMBER JONES: Sure.

 4   MEMBER CHVOTKIN: And that because

 5   of the absence of data, the Panel recommends

 6   that we fill in those voids through a

 7   comprehensive approach by the Administrator to

 8   fill in that data gap. It leads us to another

 9   one of the comprehensive recommendations we've

10   made to improve the program.

11   MEMBER JONES: Okay. I think it's

12   important to say that we repeatedly requested

13   data. Because then we go on to say we also

14   inquired about the availability of these other

15   things in conjunction with requesting data.

16   CHAIRMAN BRANCH: Well, you know

17   actually, you could probably kill the first

18   sentence. Because the first sentence really

19   is kind of redundant to the second one.

20   Especially with the -- well, no, I think it is

21   in this sense. And I think it was your add,

22   Debra. You know there were specific things we

1   asked for, and then we wanted some other

2   relevant information that would assist our

3   work. So that could include the things in the

4   first sentence.

5   MEMBER DRABKIN: Does this now

6   reflect the combination of thoughts we've just

7   expressed?

8   MEMBER SONDERMAN: Yes.

9   CHAIRMAN BRANCH: I believe it

10 dose. Except for the toe part.

11   MEMBER DRABKIN: In the last

12 sentence.

13   CHAIRMAN BRANCH: In the last

14 sentence.

15   MEMBER CHVOTKIN: What's that?

16   MEMBER SONDERMAN: "The Panel's

17 toe."

18   CHAIRMAN BRANCH: The Panel Toe.

19   MEMBER DRABKIN: Got stubbed.

20   MEMBER CHVOTKIN: In the last

21 sentence I would suggest "This led to the

22 Panel's recommendation for expanded data

 1   collection," or "The recommendation of the

 2   Panel to the Administrator for expanded data

 3   collection."

 4   MEMBER DRABKIN: That looks good.

 5   MEMBER SONDERMAN: So what are we

 6   going to do about this comment? I don't know

 7   whose comment it is.

 8   CHAIRMAN BRANCH: Is that Lisa's,

 9   maybe? I'm just looking at the initials LBS.

10   MEMBER DRABKIN: In some sense

11   this sounds like the same kind of criticism

12   that we moved to Appendix 7. Was this written

13   by the same person?

14   MEMBER SONDERMAN: Elliott thinks

15   it came from Lisa.

16   CHAIRMAN BRANCH: I mean, I'm just

17   looking how Word does that.

18   MEMBER DRABKIN: Well, according

19   to Pat this is Lisa's comment. But, I mean

20   this in the first sentence it's repetitive of

21   what we said about not having good pricing

22   data to make pricing decisions with. But then

 1   it combines, again it's a criticism of

 2   Evergreen, the concept of a 20 year contract.

 3   I'm not sure --

 4   MEMBER SONDERMAN: No, it isn't.

 5   MEMBER DRABKIN: Sure it is.

 6   "Fair and reasonable for any schedule contract

 7   item for five years and potentially longer is

 8   unrealistic in today's economy."

 9   I don't mind criticizing

10   Evergreen, by the way. That's not my point.

11   But have we taken that issue on as to whether

12   the length of the contract is an issue?

13   MEMBER SONDERMAN: I thought we

14   did. So you're challenging what's in the

15   paragraph, not what's in the comment? I'm

16   sorry. I was reading the comment.

17   MEMBER DRABKIN: No. I'm looking

18   at the paragraph and thinking: (1) It

19   doesn't read very well. I'm not sure what the

20   point that we're trying to get across is in

21   this paragraph. But I defer to you.

22   MEMBER SONDERMAN: I recall

 1 considerable discussions about the lengths of

 2 contracts being unreasonable in today's

 3 marketplace.

 4   MEMBER DRABKIN: Okay. Again, I

 5 defer. But we need to make this read better.

 6   MEMBER CHVOTKIN: I think the

 7 point of the commentary was that the Panel

 8 heard concerns about the capability of

 9 establishing prices, fair and reasonable

10 prices, for any schedules item that will

11 extend over a five to 20 year period.

12   MEMBER DRABKIN: Does that capture

13 your though, other than the fact I misspelled

14 "reasonable"?

15   MEMBER CHVOTKIN: Yes. Thank you.

16   MEMBER DRABKIN: And once this is

17 said, are we done with the paragraph or is

18 there more here to --

19   MEMBER CHVOTKIN: No, I think

20 there's other changes because as you said

21 earlier, there are some -- the next sentence

22 about the 1423 Panel is correct. And I would

 1   leave that in there. But then the sentence --

 2   there is still the redundancy in the sentence

 3   about the adequate buying data. I think that

 4   sentence can come out because we've talked

 5   about that in the preceding paragraphs. So

 6   just a sentence "GSA does not have adequate

 7   buying data," we've talked about before and

 8   it's also addressed in Appendix 7.

 9   And then one, the last sentence,

10   again is a new thought, but I don't know what

11   it is.

12   CHAIRMAN BRANCH: Well, I think we

13   had a discussion around how well did the

14   schedules reflect both supply and demand in

15   the marketplace. And I think the reason we

16   have it in that paragraph is we're basically

17   saying, you know, we got a vehicle on every

18   corner now. We don't have time or resources

19   to go manage that stuff, so we don't really

20   have the time or resources to go do the

21   housekeeping to keep the schedules relevant

22   and responsive.

1   MEMBER SONDERMAN: And it relates

2   to the length of the contracts. And I recall

3   us having conversations about particular

4   devices which were the hot thing 20 years ago,

5   but no one would even think of using or

6   purchasing --

7   CHAIRMAN BRANCH: Mention them to

8   your kids and they say "What's that?"

9   MEMBER SONDERMAN: Yes.

10   COMMISSIONER WILLIAMS: You don't

11   like carbon paper?

12   CHAIRMAN BRANCH: Carbon paper?

13   I'm not sure my 23 year old knows what a sheet

14   of it looks like.

15   MEMBER SONDERMAN: I think it

16   somewhat addressed the recommendation 11.

17   MEMBER DRABKIN: Well, I don't

18   deny that it's not addressed. How do we tie

19   it in to this paragraph and how do we make the

20   sentence make sense?

21   I read the sentence and I'm

22   thinking this is the librarian's reading kind

1 of term; that you go through your collection

2 periodically and you take out books that

3 aren't being used and you order new books that

4 are in demand. And I thought that's what this

5 last sentence was kind of referring to.

6   CHAIRMAN BRANCH: Yes.

7   MEMBER DRABKIN: GSA's

8 responsibility to read its collection of

9 schedule contracts. But it doesn't read that

10 way. I mean, maybe that's what we want to

11 say.

12   MEMBER SONDERMAN: Maybe our point

13 tying back to earlier paragraphs -- well, GSA

14 doesn't have the resources to regularly -- I

15 don't know.

16   MEMBER DRABKIN: I don't think we

17 looked at the resources.

18   MEMBER SONDERMAN: We really

19 didn't.

20   MEMBER DRABKIN: To make a make a

21 statement they don't have them, although I

22 think nobody has enough.

1   MEMBER SONDERMAN: Right.

2   MEMBER DRABKIN: I think what we

3   found was is that GSA does not appear to --

4   MEMBER SONDERMAN: Have a routine

5   process to determine which items should be

6   left on the schedule or removed.

7   MEMBER JONES: That's a part of

8   recommendation 17.

9   MEMBER DRABKIN: Right.

10   MEMBER SONDERMAN: Well, good. So

11 we have a recommendation to address this

12 problem.

13   MEMBER DRABKIN: Does this get it?

14   CHAIRMAN BRANCH: You have too

15 many "processes" in there and too many "to

16 determines."

17   MEMBER DRABKIN: You're right.

18   CHAIRMAN BRANCH: Yes, you can

19 take it out.

20   I think that should be "should

21 remain" be added or deleted from the MAS

22 program. Or "removed from."

 1   Okay. And I think that "too"

 2 should lose an O.

 3   MEMBER DRABKIN: Right. Okay.

 4   MEMBER SONDERMAN: I like it.

 5   MEMBER DRABKIN: Does this now

 6 kind of work

 7   CHAIRMAN BRANCH: I think that

 8 will --

 9   MEMBER DRABKIN: Imagine what our

10 colleagues 200 and some odd years ago felt

11 like in Philadelphia without --

12   CHAIRMAN BRANCH: But with Fool's

13 cap and quill pens.

14   COMMISSIONER WILLIAMS: Yes. I

15 just came from the Hill and I actually stopped

16 by at the Lincoln Exhibit -- I'll only take a

17 few minutes. But not only created the

18 Declaration, the Emancipation Proclamation and

19 the Gettysburg Address and part of it you can

20 some of the original language that didn't get

21 carried on. And it's fascinating. And you

22 can imagine the battles between Thomas Paine

 1   and John Adams. Thomas Paine who believed we

 2   should have one branch of Government. And

 3   John Adams said no, it needs to be executive

 4   and by -- and you can imagine they had some

 5   tough battles. And it all came out perfectly,

 6   like your work.

 7   CHAIRMAN BRANCH: Well, try that

 8   judgment in another 220 years.

 9   COMMISSIONER WILLIAMS: Hey, can I

10   just take a minute? I just ran into Jackie

11   and she said you were here. And I know my

12   presence is already not put up to here, so I

13   want to get out of your hair so you can

14   actually finish without any more sarcastic

15   comments from me. But I'd just like to say

16   thank you again. And thanks for what you're

17   doing to help us for the interest in

18   schedules. Thanks for your leadership.

19   Everybody is a leader here.

20   And I don't know whether I've

21   already done this, but I had something for

22   each of you if you don't have one. And this

 1   and $5 will buy a cup of coffee, but if you

 2   don't have one, just to say thanks. I can

 3   give one to you, you work here, right?

 4   MEMBER SONDERMAN: Thank you.

 5   MEMBER CHVOTKIN: Thank you, sir.

 6   COMMISSIONER WILLIAMS: You have

 7   had one before, haven't you?

 8   MEMBER CHVOTKIN: I have. Thank

 9   you.

10   COMMISSIONER WILLIAMS: You have

11   one.

12   CHAIRMAN BRANCH: Thank you, sir.

13   Appreciate it.

14   COMMISSIONER WILLIAMS: When did

15   you start>

16   CHAIRMAN BRANCH: About a year

17   ago.

18   MEMBER CHVOTKIN: 1980 --

19   CHAIRMAN BRANCH: No, I believe

20   our first meeting was May 5th of 2008. So

21   we've been at this about a year. Almost

22   exactly.

 1   COMMISSIONER WILLIAMS: Well

 2 again, thanks for your year of service. Your

 3 help with GSA and our customers. I mean, I

 4 actually met the IG today and talked about you

 5 all were doing. And they obviously have of

 6 their own thoughts. But I said, you know

 7 somewhere there's some broad goals that this

 8 is, you know, something that's very helpful to

 9 our customers. Let's find what our goals are

10 and find a way to preserve them.

11   CHAIRMAN BRANCH: Well, we

12 certainly appreciate for pulling this together

13 and then your leadership and helping us

14 sustain this Panel as well. And we hope to

15 produce a report today that we can sign out to

16 you and begin a constructive phase of dialogue

17 as to how make schedule programs better.

18   COMMISSIONER WILLIAMS: Thank you.

19   MEMBER DRABKIN: Okay. Mr.

20 Chairman, moving on to recommendations.

21   CHAIRMAN BRANCH: All right.

22 Well, before we move on to recommendations, I

 1   would like to establish some ground rules. We

 2   spent a fair amount of time on

 3   recommendations. We cast recommendations in

 4   the form of motions.

 5   I believe that to modify them

 6   significantly would impair the integrity of

 7   this process. So as we go through this report

 8   I will caution folks that any changes that we

 9   make to the recommendations sections will be

10   technical corrections only. If we are

11   cleaning for grammar or usage, remove awkward

12   phrasing and sentences; that is fine. But

13   nothing that we do here must in anyway impair

14   the consensus reached by the Committee during

15   its deliberations.

16   Okay. So I just want to say that

17   because this is the heart of our work and we

18   had much discission, and I think a pretty good

19   process for establishing this.

20   And I've asked if we could take a

21   brief break before we hit this. So just a

22   quick stretch break, comfort break and five

 1 minutes, no more.

 2   (Whereupon, at 3:29 p.m. a recess

 3 until 3:36 p.m.)

 4   CHAIRMAN BRANCH: Okay. I think

 5 we're at the recommendations paragraph.

 6   And I guess, as I read through

 7 that, it's a little bit confusing to me so let

 8 me make a recommendation.

 9   And that would be to say "The

10 Panel considered recommendations for services,

11 products and solutions." Eliminate everything

12 after the colon and to leave "In developing

13 the report the Panel found that the

14 recommendations grouped into five areas." I

15 think that just kind of makes more sense.

16   MEMBER SONDERMAN: Yes.

17   MEMBER CHVOTKIN: Mr. Chairman,

18 your changes are fine. But I think we also

19 posed a very discreet, in fact we had a one

20 day Panel meeting around products, a second

21 day around services and a third day around

22 solutions. So I think while I agree with how

1 the recommendations are grouped, at some point

2 we also need a statement that said "The Panel

3 recognized that there may be different issues

4 and recommendations associated with products,

5 services and solutions."

6   CHAIRMAN BRANCH: Well, I think

7 that's an important thought not to get lost.

8 And I think probably right after that first

9 sentence or as a piece of that first sentence

10 we could explain the rationale for having gone

11 down that path.

12   MEMBER DRABKIN: And I'm sorry, I

13 did not capture Alan.

14   CHAIRMAN BRANCH: No, I think

15 you're fine. So you can either say "The Panel

16 considered recommendations for products,

17 services and solutions because it believes

18 that there were unique features in each one of

19 these market areas," or something to that

20 effect. I think that captures your thought.

21   MEMBER DRABKIN: I think I'm

22 missing a part of your thought into this

 1   sentence.

 2   CHAIRMAN BRANCH: No. I really

 3   think that -- well, I'm not sure "features" is

 4   the right word. I think "we recognized there

 5   were some unique contracting considerations

 6   for each market." That's probably a better

 7   way to phrase it.

 8   MEMBER CHVOTKIN: Or attributes.

 9   CHAIRMAN BRANCH: Or attributes.

10   MEMBER CHVOTKIN: "Unique

11   attributes in each sector under the MAS

12   program."

13   MEMBER SONDERMAN: But solutions

14   isn't a sector, is it?

15   MEMBER CHVOTKIN: Well, so change

16   "sector" to "each offering," or "each type of

17   offering under the MAS program." Because we

18   do offer products, we do offer services, we do

19   offer solutions.

20   MEMBER DRABKIN: Any further

21   thoughts? Hearing none, shall we move to the

22   next paragraph, sir?

 1   CHAIRMAN BRANCH: Okay.

 2   MEMBER SONDERMAN: I have a

 3   question. I want to respect the

 4   recommendations as they were formed at the

 5   time, but we do have an inconsistency. In

 6   some cases we say, you know ditch the Price

 7   Reduction Clause and another case we say we

 8   recommend that the Administrator ditch the

 9   Price Reduction Clause, in another we say that

10   GSA ditch the Price Reduction Clause. Is

11   there a particular terminology that we want to

12   come up with as a standard?

13   CHAIRMAN BRANCH: I think that's a

14   fair technical correction for consistency, if

15   I can get a consensus from folks. And if we

16   are okay with that, I would ask, I guess,

17   David how best to phrase that, whether we

18   address GSA as an agency or we want to address

19   the Administrator. How best do you think to

20   frame those recommendations?

21   MEMBER DRABKIN: We were chartered

22   by the Administrator. We owe the

 1   Administrator a report. The Administrator

 2   represents the agency.

 3   I think you can do it either way.

 4   You can either make a recommendation to the

 5   Administrator or a recommendation to GSA; I

 6   think they're one in the same. I do agree we

 7   should be consistent in how we do it.

 8   CHAIRMAN BRANCH: And I guess

 9   given that, I would prefer to make it

10   recommendations to the Administrator did he

11   charter the Panel.

12   MEMBER DRABKIN: She.

13   CHAIRMAN BRANCH: She did charter

14   the Panel. Pardon me. I guess by the time we

15   got on board --

16   MEMBER SONDERMAN: Well, anyway,

17   moving on.

18   MEMBER CHVOTKIN: But by the time

19   this report is delivered it'll be a she again.

20   MEMBER SONDERMAN: GSA

21   Administrator.

22   Well we're going to capitalize

 1   Price Reduction Clause?

 2   Does 803 like have to be

 3   hyphenated?

 4   CHAIRMAN BRANCH: It should be.

 5   MEMBER CHVOTKIN: In Part A Price

 6   Reduction Clause.

 7   I think we have "heard" and

 8   "received." We don't need both. "The Panel

 9   received conflicting information."

10   CHAIRMAN BRANCH: Agreed.

11   MEMBER DRABKIN: For whatever it's

12   worth, "received" would have covered the oral

13   presentations and the -- got it. Okay.

14   That's the reason why it was written that way

15   initially.

16   CHAIRMAN BRANCH: And it's the

17   consistent with the convention I think we

18   applied earlier in the report.

19   MEMBER DRABKIN: Okay. Any other

20   comments with regard to paragraph A.

21   Apparently not. Moving on to paragraph B, Mr.

22   Chairman.

 1   CHAIRMAN BRANCH: Okay. Comments

 2   on paragraph B. And it's primarily factual.

 3   So I have no comments.

 4   MEMBER DRABKIN: Moving on to

 5   recommendation 2.

 6   CHAIRMAN BRANCH: Okay. I guess

 7   the underlying paragraph is pretty much the

 8   same paragraph as it was under the first

 9   recommendation, at least the first paragraph

10   of that is.

11   MEMBER DRABKIN: From a format,

12   although we had a B. Okay. Never mind.

13   There's no B here.

14   CHAIRMAN BRANCH: And the only

15   question I have under that recommendation is

16   in the second paragraph. I'm not comfortable

17   that we have explained what we mean by

18   "vertical and horizontal" in the report. So

19   I think we want to, perhaps, change that to

20   "within the company and across the industry."

21   MEMBER SONDERMAN: Right.

22   MEMBER DRABKIN: Could I propose

 1   instead of "across the industry," "across the

 2   market"?

 3   CHAIRMAN BRANCH: Yes, that's

 4   acceptable.

 5   MEMBER DRABKIN: "Marketplace."

 6   MEMBER SONDERMAN: Sure.

 7   CHAIRMAN BRANCH: Yes.

 8   MEMBER CHVOTKIN: Mr. Chairman --

 9   MEMBER DRABKIN: With regard to

10   that last sentence, I don't -- we don't renew

11   contracts. We all know that. It would occur

12   as a contract options or exercised or

13   recompeted?

14   CHAIRMAN BRANCH: Yes, I'm fine

15   with that.

16   Alan, I think you had the

17   microphone next.

18   MEMBER CHVOTKIN: Just that at the

19   second full paragraph, again, "the heard and

20   received" phrase.

21   CHAIRMAN BRANCH: Yes.

22   MEMBER DRABKIN: I took it out.

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 1              MEMBER CHVOTKIN:  Thank you very

 2  much.

 3              MEMBER DRABKIN:  Way ahead of you.

 4              MEMBER CHVOTKIN:  I apologize.

 5  I'll go back to sleep.

 6              MEMBER DRABKIN:  No problem.  Stay

 7  awake, please.  We'll get finished.

 8              CHAIRMAN BRANCH:  Are we on

 9  recommendation 3 now I think?

10              MEMBER SONDERMAN:  Yes.

11              CHAIRMAN BRANCH:  Okay.  I think

12  we just need to make a technical direction.

13  I think "implements" should be "implement."

14              MEMBER SONDERMAN:  Right.

15              CHAIRMAN BRANCH:  And I believe

16  Section 803 should have a period after section

17  since we use it as an abbreviation.

18              MEMBER DRABKIN:  Spell it out.

19              MEMBER SONDERMAN:  Right.

20              MEMBER CHVOTKIN:  Also in

21  recommendation 3, David, what convention have

22  you adopted that the Administrator of GSA is
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 1   that the phrase we'll use throughout?

 2   MEMBER SONDERMAN: Yes.

 3   MEMBER DRABKIN: That's so far

 4   what we've used.

 5   MEMBER CHVOTKIN: As the lead in?

 6   MEMBER DRABKIN: Correct.

 7   MEMBER CHVOTKIN: It is different

 8   recommendations, though?

 9   MEMBER DRABKIN: Right.

10   MEMBER CHVOTKIN: Perfect. Okay.

11   MEMBER DRABKIN: And it was not in

12   the first two recommendations. I added it.

13   MEMBER SONDERMAN: In

14   recommendation 1 which came out of our

15   services discussions, we said "orders above

16   the SAT, Simplified Acquisition Threshold."

17   We did not have that in this recommendation.

18   I don't know whether that a sin of omission or

19   commission.

20   CHAIRMAN BRANCH: I think that was

21   just -- I mean, because essentially I think we

22   all agree the Section 803 approach was the

1 correct approach and the inference there is

2 then you're going to do that with anything

3 over the SAT level. So I think we put it in

4 one place gratuitously and omitted it from

5 another because it was assumed. And since

6 we've referenced 803, I just as soon take out

7 the reference to SAT.

8   MEMBER CHVOTKIN: And it is in the

9 explanation in the explanatory paragraph

10 immediately below. We define what 803 is in

11 the next paragraph.

12   CHAIRMAN BRANCH: Right.

13   MEMBER CHVOTKIN: And I might say

14 even in that paragraph recommendation 3, first

15 full paragraph, instead of the word "required"

16 it is a continuing so that should be "requires

17 the Department of Defense."

18   CHAIRMAN BRANCH: And there I

19 guess probably about eight lines down I think

20 "civilian agencies," do we want to make that

21 "civilian ordering activities" or "ordering

22 activities other than DoD"?

 1   MEMBER SONDERMAN: This is

 2   specific to --

 3   MEMBER DRABKIN: Well, we used

 4   ordering activities generically.

 5   CHAIRMAN BRANCH: Right.

 6   MEMBER DRABKIN: We were talking

 7   about state and locals and other authorized

 8   users. But 803 and the provisions of Section--

 9   MEMBER SONDERMAN: 63.

10   MEMBER DRABKIN: -- 63 apply to

11   Federal agencies.

12   CHAIRMAN BRANCH: Okay. All

13   right.

14   MEMBER SONDERMAN: Right.

15   MEMBER DRABKIN: By the way, I

16   mean since you raised it, there's nothing that

17   would prevent the GSA Administrator from

18   saying that as a matter of GSA policy that

19   anybody who uses the GSA schedules would

20   comply with the requirements being imposed

21   just on the Federal folks. But I don't think

22   -- we didn't address that in our

 1   recommendations.

 2   MEMBER SONDERMAN: Yes, I agree.

 3   CHAIRMAN BRANCH: No, I'm good

 4   with the way it's drafted.

 5   MEMBER DRABKIN: Good.

 6   MEMBER JONES: Is it a proper term

 7   to use "civilian agencies" or "federal

 8   agencies"?

 9   MEMBER DRABKIN: Well, since we

10   talked about extending it --

11   MEMBER SONDERMAN: We call

12   ourselves civilian agencies.

13   MEMBER DRABKIN: -- extending it

14   to, civilian agencies -- Federal agencies

15   despite the fact that DoD doesn't consider

16   themselves, they are a Federal agencies. A

17   civilian agency is non-DoD and NASA, which is

18   excluded.

19   MEMBER CHVOTKIN: Mr. Chairman, in

20   the phrase after "GSA eBuy tool," again it's

21   in the past tense but it's still how GSA --

22   DoD is meeting -- I would change that to

1   "allows."

2   CHAIRMAN BRANCH: Okay.

3   MEMBER DRABKIN: Done.

4   CHAIRMAN BRANCH: Done.

5   MEMBER DRABKIN: Moving on to

6   recommendation 4.

7   MEMBER SONDERMAN: This doesn't

8   quite work adding that the GSA Administrator.

9   We need to work on the technical language a

10 little bit.

11   CHAIRMAN BRANCH: I would simply

12 rephrase that. Well, I will move the

13 following technical correction.

14   MEMBER SONDERMAN: Okay.

15   CHAIRMAN BRANCH: "That the GSA

16 Administrator not apply the Price Reduction

17 Clause to the Acquisition of Solutions."

18   MEMBER SONDERMAN: Second.

19   CHAIRMAN BRANCH: Discussion. All

20 those in favor?

21   ALL: Aye.

22   CHAIRMAN BRANCH: Opposed? Ayes

 1   have it. Motion carries. We've conformed the

 2   recommendation.

 3   MEMBER DRABKIN: Does that

 4   correctly conform?

 5   MEMBER SONDERMAN: Yes.

 6   CHAIRMAN BRANCH: Yes.

 7   MEMBER JONES: And based on a

 8   discussion that we just had about civilian

 9   agencies, because that kind of tied these two

10   together, and I don't mean to go back. But

11   under recommendation 3 where we say that the

12   "Administrator implements the requirements of

13   803 as mandatory for use other program for all

14   users Government-wide." Should we specify

15   "Federal Government-wide"?

16   MEMBER DRABKIN: My recollection

17   is we did not have a discussion about what we

18   meant, but with the exception of the GSA

19   Administration, this is the exact language we

20   voted on.

21   Mr. Chairman, I don't know what

22   your recollection is. I do not recall that we

 1 had a discussion about its application beyond

 2 the Federal Government. But the way its

 3 written it could apply to non-Federal

 4 Government users, but I don't think we

 5 discussed it.

 6   CHAIRMAN BRANCH: Well, you know,

 7 a couple of things and I thought about that as

 8 we talked about the question of whether we

 9 want to put civilian agencies or not. I think

10 while one could read it that way, one could

11 not read it that way in context. So I'm

12 comfortable with the resolution as framed and

13 passed. Because when you look at the

14 underlying narrative, and I'll digress for a

15 minute. So what I will propose is when we're

16 all comfortable with the final product, I will

17 move its adoption by the Panel so that we not

18 only have agreement on the recommendations,

19 the motions as we passed them, but its

20 context. I think there's enough context in

21 there to indicate to a reader that we really

22 aren't talking about ordering activities

1 outside of the Federal Government.

2   MEMBER DRABKIN: Since we didn't

3 vote on the explanation below the

4 recommendation, would it be appropriate to add

5 a sentence that the Panel did not consider the

6 application of this rule to non--Federal

7 Government activities?

8   CHAIRMAN BRANCH: I think that

9 would be appropriate. And that's just

10 clearer.

11   MEMBER SONDERMAN: "Non-Federal

12 ordering activities."

13   CHAIRMAN BRANCH: Right. Okay.

14 Good. Done.

15   MEMBER DRABKIN: Now onto

16 recommendation 4.

17   MEMBER CHVOTKIN: Before we get to

18 there, but I do have it linked to 4, we say in

19 recommendation 3 that the requirements of 803

20 should be combined with the elimination of the

21 Price Reduction Clause for services.

22 Recommendation 4 talks about not applying the

1 Price Reduction Clause to the Acquisition of

2 Solutions. And embedded there is says "The

3 Panel deleted the Price Reduction Clause for

4 products and deletion for services."

5   Recommendation 2 clearly addresses

6 removing the Price Reduction Clause for

7 products in a phased in period. I could not

8 find in this document where we've made the

9 explicit recommendation or eliminated the

10 Price Reduction Clause for services, although

11 I know we had a whole day discussion of it.

12 And so if I've missed something in the later

13 recommendations, that would be great. But I

14 think in the integration --

15   MEMBER DRABKIN: No.

16 Recommendation 1.

17   CHAIRMAN BRANCH: Recommendation

18 1.

19   MEMBER DRABKIN: "That the GSA

20 Administrator --

21   CHAIRMAN BRANCH: It says kill it

22 for services.

 1   MEMBER DRABKIN: -- eliminates the

 2 Price Reduction Clause for MAS program

 3 services contracts."

 4   MEMBER CHVOTKIN: Thank you.

 5   MEMBER DRABKIN: I think the

 6 correct response there is "Never mind."

 7   CHAIRMAN BRANCH: Moving onto the

 8 accompanying narrative for recommendation 4.

 9   MEMBER SONDERMAN: We have --

10   MEMBER DRABKIN: It is so rare

11 that I ever get to catch Alan in anything.

12   MEMBER SONDERMAN: And you're

13 going to remember forever.

14   MEMBER DRABKIN: I'll forget it as

15 soon as I leave. But we need to get going so

16 we can all go home.

17   MEMBER SONDERMAN: Yes, it's May

18 Day.

19   The third line down "solutions are

20 the combined purchase of products." I think

21 we meant to say "the combined purchase of

22 products and services to meet a need." This

1   is under recommendation 4.

2   MEMBER CHVOTKIN: And that is

3   consistent with the change we made at the

4   front end of the description.

5   MEMBER SONDERMAN: Right.

6   MEMBER CHVOTKIN: And also I think

7   we said "not presently available in the

8   commercial marketplace."

9   MEMBER DRABKIN: Right. Any other

10 comments with regard to this paragraph?

11 Apparently not. Moving on to recommendation

12 5, Mr. Chairman.

13   MEMBER SONDERMAN: So how do we

14 get in that the GSA Administrator -- "ensure."

15 Okay.

16   CHAIRMAN BRANCH: Any discussion

17 on the underlying narrative? Hearing none,

18 recommendation 6.

19   MEMBER CHVOTKIN: I think we would

20 be more clear in our recommendations if we

21 eliminated the word "clarify" and the

22 parenthetical so that the recommendation might

1   read: "GSA Administrator update the MAS Panel

2   guidance to make explicit that prices for

3   solutions must be determined by fair and

4   mutual at the order level." If that calls for

5   a motion, I'll so move.

6   CHAIRMAN BRANCH: Okay.

7   MEMBER SONDERMAN: Second.

8   CHAIRMAN BRANCH: Okay. Second.

9   Any discussion on the motion conforming the

10 technical amendment?

11   All those in favor?

12   ALL: Aye.

13   CHAIRMAN BRANCH: Opposed? Ayes

14 have it. The recommendation is conformed.

15   MEMBER DRABKIN: Is that

16 consistent with your motion, Alan?

17   MEMBER CHVOTKIN: It is, sir.

18 Thank you.

19   CHAIRMAN BRANCH: Any discussion

20 on the accompanying narrative? Hearing none,

21 let's move on to the price reasonableness

22 section and recommendation 7.

 1   MEMBER SONDERMAN: So, David, the

 2   recommendation is actually the second

 3   sentence. And it says, see what I'm talking

 4   about, "The Panel recommends that the GSA

 5   Administrator."

 6   MEMBER DRABKIN: Right.

 7   MEMBER SONDERMAN: So maybe we

 8   should move that sentence first.

 9   MEMBER DRABKIN: Does that require

10   a motion?

11   CHAIRMAN BRANCH: I don't believe

12   so.

13   You know, I think that may have

14   been one of those whereas/therefore

15   discussions we had. That's not the form we're

16   writing in, so I'm comfortable with doing that

17   without a motion.

18   Although, I guess the underlying

19   narrative troubles me a little bit. I'm not

20   sure that's why we got to that recommendation.

21   As memory serves me --

22   MEMBER SONDERMAN: Yes, I agree.

 1   CHAIRMAN BRANCH: -- we got there

 2   in a discussion about most favored customer

 3   pricing and what the GSAM said about favored

 4   customer pricing. And when we looked at the

 5   GSAM it started out with most favored customer

 6   pricing but then it went through a very long

 7   and involved rubric as to what you would do if

 8   you did not obtain most favored customer

 9   pricing and why that was okay.

10   So I think this recommendation was

11   really to get the Administrator to focus the

12   workforce on the fact that the objective was

13   fair and reasonable pricing and to revise the

14   GSAM to make it clear that the objective was

15   fair and reasonable pricing.

16   MEMBER SONDERMAN: So should we

17   just delete that elaboration under

18   recommendation 7 since it further obfuscates?

19   MEMBER DRABKIN: There are people

20   who aren't here today who would like to revise

21   some of our recommendations. And so the

22   Chairman wisely began this section by saying

 1   that we're really only going to do technical

 2   amendments.

 3   I'm concerned that if we delete

 4   that sentence, even though I think we all

 5   agree that it --

 6   MEMBER SONDERMAN: I'm talking

 7   about the elaboration.

 8   CHAIRMAN BRANCH: The underlying,

 9   yes.

10   MEMBER SONDERMAN: I'm not talking

11   about changing the recommendation.

12   MEMBER DRABKIN: Oh, okay.

13   MEMBER SONDERMAN: I'm talking

14   about the paragraph underneath that doesn't

15   seem to address what --

16   CHAIRMAN BRANCH: Yes. My

17   recollection of that was that we kind of got

18   to that recommendation because the GSAM was

19   really convoluted and didn't provide good

20   guidance to contracting officers about what

21   the real objective was, not the rationale

22   that's stated there in the underlying

 1 paragraph.

 2   MEMBER DRABKIN: Okay. I have no

 3 problems regarding this. What would you like

 4 to say?

 5   CHAIRMAN BRANCH: Okay. I think--

 6   MEMBER DRABKIN: I think all we

 7 need to rewrite the first sentence of the

 8 explanation. I'll come back on a suggestion

 9 on how to tighten up the recommendation. But

10 I think the last sentence a majority of the

11 Panel believes that GSA should have a clear

12 policy statement is the -- ties to

13 recommendation --

14   CHAIRMAN BRANCH: I guess --

15   MEMBER DRABKIN: -- and you just

16 need that sentence of the rationale --

17   CHAIRMAN BRANCH: "Upon reviewing

18 the GSAM policy on price objectives, the Panel

19 found that guidance provided to contracting

20 officers was unclear as to what the pricing

21 objective should be." I think that's really

22 what we found in a nutshell and that's why we

1   came to this conclusion.

2   MEMBER DRABKIN: Have I got it?

3   CHAIRMAN BRANCH: Yes, I think

4   that's pretty much it.

5   MEMBER JONES: In the first

6   sentence after price objectives, "that the

7   Panel found," or "the Panel found"? "That

8   the," yes.

9   MEMBER CHVOTKIN: Mr. Chairman, as

10   to the recommendation itself let me describe

11   what I'd like to do.

12   So where it says "to implement the

13   price objective for the GSA schedules for

14   services," "The GSA Administrator should give

15   clear consistent guidance to implement the

16   price objective for GSA schedules for

17   services" comma or semicolon, "the price

18   objective is." Semicolon and then "the price

19   objection is to obtain."

20   MEMBER SONDERMAN: So just delete.

21   There you go. Delete that phrase.

22   CHAIRMAN BRANCH: Okay. So I'll

 1   take that as a motion for technical amendment,

 2   and I have a second. Discussion? Hearing

 3   none, call the question: All those in favor?

 4   ALL: Aye.

 5   CHAIRMAN BRANCH: Opposed? Ayes

 6   have it.

 7   Okay. Recommendation 8.

 8   MEMBER SONDERMAN: David, again,

 9   the actual recommendation is the last sentence

10   of that first section. "We recommend that the

11   GSA --"

12   MEMBER DRABKIN: I see it.

13   MEMBER SONDERMAN: So consistent

14   with or in parallel with the prior

15   recommendation I think we need to move "for

16   GSA schedules for products" after "price

17   objective." Just do the same --

18   MEMBER CHVOTKIN: After the word

19   "experience," just take out the period and

20   make the word "For" lower case.

21   And we need a comma after

22   "objective" and a comma then after

1   "experience." "Implement the price

2   objective." Oh, that's right. That's what we

3   should do. "Implement the price objective for

4   GSA schedules for products" comma.

5   MEMBER SONDERMAN: Right.

6   MEMBER CHVOTKIN: "Including

7   information related to thresholds of

8   purchasing experience" comma or semicolon,

9   "the price objective is."

10   MEMBER DRABKIN: Okay.

11   MEMBER CHVOTKIN: So the word

12   "experience" semicolon.

13   CHAIRMAN BRANCH: Semicolon and

14   then take the rest of that out until you get

15   to "the."

16   MEMBER CHVOTKIN: Correct.

17   CHAIRMAN BRANCH: All right. So

18   I'll entertain as a technical correction to

19   the motion previously passed. Do I have a

20   second?

21   MEMBER DRABKIN: Second.

22   CHAIRMAN BRANCH: Discussion? Any

 1   discussion? Hearing none, all those in favor?

 2   ALL: Aye.

 3   CHAIRMAN BRANCH: Opposed? Motion

 4   stands as corrected.

 5   MEMBER CHVOTKIN: And then just

 6   the way he has made --

 7   MEMBER SONDERMAN: Wait a second.

 8   Yes, I want to read it.

 9   MEMBER DRABKIN: I lost a

10   paragraph.

11   MEMBER CHVOTKIN: He lost a

12   paragraph and the paragraph starts "The Panel

13   heard testimony to the effect that"

14   CHAIRMAN BRANCH: Oh, there it is.

15   Yes.

16   MEMBER SONDERMAN: And is

17   marketprice one word? I can't quite tell on

18   the spacing at the end of that line.

19   CHAIRMAN BRANCH: No, it's not.

20   MEMBER DRABKIN: It is now.

21   MEMBER SONDERMAN: Beautiful.

22   MEMBER JONES: I have a comment

1 about the paragraph for consistency. In one

2 area we spoke of commercial items consisting

3 of products and services in terms of the

4 definition. But here we say repeatedly same

5 or similar items.   Shouldn't we say products

6 since we are specifically referring to

7 products here?

8   MEMBER SONDERMAN: Yes.

9   MEMBER DRABKIN: Maybe we should

10 just say "items." Is that what we meant?

11   MEMBER SONDERMAN: The schedules

12 usually get talked about in terms of products

13 and services. So I would say "products" to be

14 consistent with the way we described them or

15 discussed them elsewhere in the report.

16   MEMBER DRABKIN: That get it,

17 Jackie?

18   MEMBER JONES: Yes. And you have

19 to go down and find the rest of them.

20   MEMBER DRABKIN: Where else? Oh,

21 right here.

22   MEMBER SONDERMAN: Right there.

 1   MEMBER JONES: There are two at

 2 the bottom.

 3   CHAIRMAN BRANCH: To the right or

 4 to the left. There you go.

 5   MEMBER CHVOTKIN: Mr. Chairman, I

 6 think when Jackie suggested we first remove

 7 the phrase "same or similar items," I didn't

 8 disagree with changing "items" to "products."

 9 But I think it now doesn't -- the first

10 sentence doesn't read as accurately as it

11 should. I would recommend we put in against

12 "marketprices for the same or similar

13 products."

14   CHAIRMAN BRANCH: Oh, yes. Okay.

15   MEMBER SONDERMAN: Right.

16   CHAIRMAN BRANCH: Your point's

17 well taken, I think.

18   MEMBER DRABKIN: Okay. Any other

19 comments? Hearing none, Mr. Chairman,

20 recommendation 9.

21   CHAIRMAN BRANCH: Number 9.

22   MEMBER DRABKIN: As a technical

1   change is it "agencies' activities" here.

2   CHAIRMAN BRANCH: Yes, I think

3   that for consistency's sake that makes sense.

4   MEMBER SONDERMAN: Do we intend to

5   include non-Federal?

6   MEMBER DRABKIN: That, in my mind,

7   would be more than a technical change. But I

8   think we can add, get another sentence here.

9   The same sentence we added above that --

10   MEMBER SONDERMAN: Right. That we

11 didn't -- okay.

12   MEMBER DRABKIN: Let me go steal

13 that and bring it down.

14   MEMBER SONDERMAN: Great.

15   MEMBER CHVOTKIN: No, don't delete

16 it.

17   MEMBER DRABKIN: Yes, I got it.

18   Again, in the explanation we have

19 GSA and user. "Agencies," I think for

20 consistency, we should change that to

21 "ordering activities."

22   CHAIRMAN BRANCH: Yes, I agree.

1   MEMBER SONDERMAN: Yes.

2   MEMBER DRABKIN: And where the

3 cursor is now, we have "ordering contracting

4 officers," want to change that --

5   MEMBER SONDERMAN: Activity.

6   MEMBER DRABKIN: -- to

7 "activities" or leave it as "contracting

8 officers."

9   CHAIRMAN BRANCH: Just take it to

10 "ordering officers."

11   MEMBER SONDERMAN: "Ordering," I

12 wouldn't do that.

13   CHAIRMAN BRANCH: Okay.

14   MEMBER DRABKIN: I'm just asking

15 here.

16   CHAIRMAN BRANCH: Well, all

17 contracting officers are ordering officers,

18 not all ordering officers are contracting

19 officers.

20   MEMBER DRABKIN: That's correct.

21   MEMBER SONDERMAN: Right.

22   CHAIRMAN BRANCH: So "ordering

1   officers" is the broader term, I guess.

2   MEMBER DRABKIN: But you cannot be

3   an ordering officer placing an order against

4   the schedules. You must be a contracting

5   officer against the schedules.

6   CHAIRMAN BRANCH: Well, true.

7   Then say "contracting officers."

8   MEMBER SONDERMAN: So to

9   "contracting officers." Well, I think we were

10 trying to differentiate from the contracting

11 officers who establish the schedules and those

12 who place orders against this.

13   CHAIRMAN BRANCH: So contracting

14 officers -- well, let's see.

15   MEMBER DRABKIN: Well, the reason

16 I asked and brought your attention here

17 because what I think we should say is

18 "ordering activities."

19   MEMBER SONDERMAN: "Ordering

20 activities," yes I agree.

21   MEMBER DRABKIN: Because what

22 we're getting at is not the GSA schedule

 1   contracting officer, but the folks who use it.

 2   CHAIRMAN BRANCH: Right. Okay.

 3   MEMBER SONDERMAN: Right.

 4   CHAIRMAN BRANCH: And I think

 5   that's fine.

 6   Well, I would change that "in" to

 7   "during." I think that just makes it flow a

 8   little better.

 9   Okay. Any other comments on the--

10   MEMBER DRABKIN: I'm change

11   "ordering contracting officers" again to

12   "ordering activities."

13   CHAIRMAN BRANCH: Okay.

14   MEMBER CHVOTKIN: I've not

15   understood the phrase, it says "A majority of

16   the Panel believes that the gathering of this

17   information --" I'm sorry. The phrase above

18   that. "Because it is principally in paper and

19   distributed amongst the various Government

20   contracting offices" --"is not available to

21   the ordering activities because it is

22   principally in paper form"

 1   CHAIRMAN BRANCH: Yes, "paper

 2 form."

 3   MEMBER CHVOTKIN: "paper form and

 4 not easily distributed to."

 5   MEMBER SONDERMAN: Well, I think

 6 in this context distributed meant spreadout.

 7 In other words, you have some, and you have

 8 some, and you have some. It didn't mean that

 9 it starts at one point.

10   MEMBER DRABKIN: Right. When I

11 wrote it I'm referring to the 2,640 mod

12 contracting offices we have throughout the

13 Government. That's the distribution I mean.

14   MEMBER SONDERMAN: Right.

15   MEMBER DRABKIN: This is in paper

16 in one of those various offices in one of

17 their thousands or millions of files.

18   MEMBER CHVOTKIN: Would it be more

19 clear to say "and exists only in the various

20 Government contracting offices," instead of

21 "distributed amongst" now that I understand

22 the explanation.

1   MEMBER SONDERMAN: Sure.

2   MEMBER DRABKIN: Yes. That works.

3   Maybe just for consistency's sake,

4 we take out "Government contracting offices,"

5 and put "ordering activities." Since some of

6 that information is going to be in state and

7 local government or international --

8   MEMBER SONDERMAN: Right.

9 Absolutely.

10   MEMBER CHVOTKIN: And then in the

11 next sentence, "A majority of the Panel

12 believes that by gathering information

13 centrally and making it available to all

14 ordering activities" comma --

15   MEMBER SONDERMAN: Yes.

16   MEMBER CHVOTKIN: --"the

17 competitive process would further."

18   I apologize, but go back up.

19 We're still missing a phrase. "The

20 competitive processes would further drive both

21 improvement performance by the contractor"

22 comma "more competitive pricing" comma "and

 1   result in." Thank you.

 2   MEMBER DRABKIN: My pleasure, sir.

 3   CHAIRMAN BRANCH: Other changes to

 4   the underlying narrative for recommendation 9?

 5   MEMBER JONES: Yes. Back up to

 6   the top. After the recommendation number.

 7   Okay. Where we say on the second line there

 8   "active participation of the ordering

 9   activities establish a process that will

10   enable ordering agencies." Okay. We just say

11   "enable them"?

12   CHAIRMAN BRANCH: That's a

13   recommendation. We've already conformed it.

14   I guess I'm loathed to go back to that since

15   it is a recommendation and underlying --

16   MEMBER DRABKIN: But to change

17   "agencies" to "activities."

18   CHAIRMAN BRANCH: Okay.

19   MEMBER SONDERMAN: To change

20   "agencies" to "activities."

21   CHAIRMAN BRANCH: Oh, okay.

22   MEMBER JONES: And then we say "of

 1   the buying activities." That's where we want

 2   it?

 3   MEMBER SONDERMAN: That's fine.

 4   CHAIRMAN BRANCH: I think --

 5   MEMBER DRABKIN: "Ordering

 6   activities."

 7   CHAIRMAN BRANCH: Well, if I were

 8   going to change it, I mean since we're -- I

 9   would say "collect and report on their

10   purchasing experiences."

11   MEMBER DRABKIN: You're call to do

12   that.

13   CHAIRMAN BRANCH: I mean, well

14   because then you've got two ordering

15   activities, you know, in a row. So I would

16   say that "that will enable ordering activities

17   to collect and report on their purchasing

18   experiences" and get rid of the "buying

19   activities" in the second line.

20   So I will move that as a technical

21   correction to the original motion.

22   MEMBER SONDERMAN: Second.

 1   CHAIRMAN BRANCH: Discussion?

 2   Hearing none, all those in favor?

 3   ALL: Aye.

 4   CHAIRMAN BRANCH: Opposed? Motion

 5   on the technical correction carries.

 6   MEMBER DRABKIN: Okay.

 7   Recommendation number 10.

 8   MEMBER SONDERMAN: You know,

 9   David, when you all are actually discussing

10   this with the Administrator, not that I

11   consider them necessarily the paragon the

12   virtue, but the District of Columbia

13   Government solved this problem by -- or

14   started to address this issue by requiring the

15   vendors to provide their pricing. They

16   standardized the naming conventions for labor

17   categories. You can go to the GSA purchasing

18   if you haven't seen Vivek's thing.

19   MEMBER DRABKIN: Yes. I lost that

20   battle here in our discussions.

21   MEMBER SONDERMAN: I know. But

22   they didn't standardize what it means. They

1   just standardized the name and make the

2   vendors provide it in a format that's

3   uploadable to the website. It's tied to a

4   Goggle map. So you can go out and see if

5   company A is paying $37 and a penny for help

6   desk support level 1, and company B is $35, or

7   whatever.

8   MEMBER DRABKIN: Right. And as you

9   may recall, I tried to convince my colleagues

10 that--

11   MEMBER SONDERMAN: Yes.

12   MEMBER DRABKIN: -- their course

13 of action for the Government was to

14 standardize the definitions and everybody bid

15 against it. And I lost that. But I lost that

16 here. It doesn't mean that I won't be raising

17 it again as we have that discussion

18 internally.

19   MEMBER SONDERMAN: But, David, I'm

20 just offering that they didn't standardize the

21 definitions. They standardized the --

22   MEMBER DRABKIN: I hear you, but

1   then I question -- we're having a discussion.

2   MEMBER SONDERMAN: Yes. Sorry.

3   MEMBER DRABKIN: And so I would

4   say to you I have a question then: If they

5   don't standardize the definition about what

6   level 1 help desk support is, how can you

7   compare one price to the other? Because that

8   puts us right back to where we are where

9   everybody tells us we got a senior systems

10   engineer 3 but we have no clue what that

11   means.

12   CHAIRMAN BRANCH: But I guess if

13   you have enough transparency, it kind of

14   drives price convergence.

15   MEMBER SONDERMAN: Exactly.

16   Because the vendors can all see each other's

17   prices.

18   CHAIRMAN BRANCH: Yes. Right.

19   MEMBER SONDERMAN: So it's like --

20   and so can the employees. It's like, wait, I

21   can go work for you and make $5 more an hour.

22   MEMBER DRABKIN: Or what they

 1 didn't do is instead of bringing me a senior

 2 systems engineer 3, they bring me a junior

 3 drafter 2 because that's their price

 4 competitive solution.

 5   MEMBER SONDERMAN: Right.

 6   MEMBER DRABKIN: And I still don't

 7 know what I'm getting.

 8   MEMBER SONDERMAN: Okay. I'm

 9 sorry.

10   MEMBER DRABKIN: But I hear what

11 you have to say, and I really wish I had been

12 persuasive.

13   CHAIRMAN BRANCH: There's always

14 another ballgame.

15   MEMBER DRABKIN: Okay.

16   CHAIRMAN BRANCH: Recommendation

17 10, the underlying and narrative there, any

18 comments?

19   MEMBER CHVOTKIN: After the line

20 that starts "best value determination," two

21 down, David going the other way, down the

22 other direction.

 1   MEMBER DRABKIN: There?

 2   MEMBER CHVOTKIN: And there should

 3 be a comma after "while price is not the only

 4 matter of crucial....determination" comma, "it

 5 is always a component." Go down further.

 6   MEMBER DRABKIN: Right here?

 7   MEMBER CHVOTKIN: Yes, right

 8 there.

 9   MEMBER DRABKIN: And right here.

10   MEMBER SONDERMAN: To your left,

11 David.

12   MEMBER DRABKIN: Where do you want

13 the comma?

14   MEMBER CHVOTKIN: Comma. Yes,

15 sir.

16   MEMBER DRABKIN: That sentence

17 kind of runs on and I'm wondering if we lose

18 the impact. Does it need to be two sentences?

19   CHAIRMAN BRANCH: Yes, I would

20 probably put a period there.

21   MEMBER SONDERMAN: After "value"?

22 After the second "best value."

 1   CHAIRMAN BRANCH: Yes.

 2   MEMBER SONDERMAN: Yes.

 3   MEMBER DRABKIN: And now how do we

 4   construct the next sentence?

 5   MEMBER SONDERMAN: Just capitalize

 6   "For." "It may be a significant component."

 7   I mean if you wanted to be more explicit, you

 8   could say "price may be a significant."

 9   CHAIRMAN BRANCH: Right.

10   MEMBER DRABKIN: When I initially

11   drafted this, though, I think I was thinking

12   that I want to make sure we don't want to get

13   into lowest price as being the peg.

14   MEMBER SONDERMAN: Yes.

15   MEMBER DRABKIN: And I don't think

16   we've changed that here.

17   MEMBER SONDERMAN: Yes.

18   MEMBER DRABKIN: I'm thinking out

19   loud. Because this lowest price thing is going

20   to kill us, I'm afraid.

21   MEMBER SONDERMAN: Yes. Moving on

22   to 11.

1   CHAIRMAN BRANCH: Okay.

2   MEMBER CHVOTKIN: And I think it's

3   just the same in that same paragraph before we

4   move to 11.

5   MEMBER SONDERMAN: Okay. Sorry.

6   MEMBER CHVOTKIN: In that sentence

7   "In order to inform the pricing element of

8   best value," you need a comma there. Yes, sir.

9   MEMBER SONDERMAN: Right.

10   MEMBER CHVOTKIN: Right there a

11   comma.

12   CHAIRMAN BRANCH: Yes.

13   MEMBER CHVOTKIN: "Access to

14   information already should be provided to

15   contracting officers." Yes.

16   MEMBER JONES: Just to be

17   consistent with what we've done earlier to

18   further define what we're referring to, in

19   that same sentence at the beginning where it

20   says "for commercial products sold under the

21   MAS program, price may be a significant

22   component of a best value determination." It

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 1   isn't only for products. So should we --

 2   MEMBER DRABKIN: That's true.

 3   MEMBER SONDERMAN: Yes, you're

 4   right.

 5   MEMBER JONES: -- say "items."

 6   Because we called both products and services

 7   items earlier.

 8   MEMBER DRABKIN: That's right.

 9   Good catch.

10   MEMBER DRABKIN: Any further

11   discussion of that paragraph?

12   CHAIRMAN BRANCH: No.

13   MEMBER DRABKIN: Apparently not.

14   CHAIRMAN BRANCH: Let's move on to

15   11.

16   MEMBER DRABKIN: As a technical

17   question, Mr. Chairman, can I move "uses" to

18   "use"?

19   CHAIRMAN BRANCH: Yes.

20   In the underlying paragraph I

21   would turn that "informing contracting

22   officers on" to "informing contracting

 1   officers of."

 2   And are there any other comments

 3   on the underlying paragraph?

 4   MEMBER CHVOTKIN: Mr. Chairman,

 5   just to be clear, what we have in the

 6   recommendation, and I don't propose to change

 7   it, it says "consistent with each market

 8   segment." And as Debra pointed out earlier,

 9   solutions may not be a market segment. I

10   thought we had a word or a phrase previously

11   for what that is. And I would propose to add

12   that somewhere in the writing --

13   MEMBER DRABKIN: Offerings is I

14   think what we substituted previously, once

15   before.

16   MEMBER CHVOTKIN: So maybe --

17   MEMBER DRABKIN: Within the last

18   hour.

19   MEMBER CHVOTKIN: So maybe in the

20   last -- in the write-up itself, not the

21   recommendation, where we say "in some markets"

22   maybe we say "or offerings."

 1   MEMBER SONDERMAN: Yes.

 2   MEMBER CHVOTKIN: "Some markets"

 3 or "in some offerings pricing in fairly stable

 4 while in other markets or offerings prices are

 5 more dynamic."

 6   CHAIRMAN BRANCH: Yes. That

 7 solves that problem I think.

 8   MEMBER DRABKIN: I need a comma,

 9 don't I?

10   CHAIRMAN BRANCH: And actually you

11 could change that "and while in others." You

12 could just take out "markets" and -- no, leave

13 that.

14   MEMBER SONDERMAN: Yes. Say

15 "while in others."

16   CHAIRMAN BRANCH: So just say

17 "while in others" and get rid of "markets."

18   MEMBER SONDERMAN: Beautiful.

19   MEMBER DRABKIN: There.

20   MEMBER SONDERMAN: That's good.

21   CHAIRMAN BRANCH: Okay. Any other

22 comments?

1   Moving on to recommendation 12.

2   MEMBER DRABKIN: I will change the

3 plural "discloses" to "disclose."

4   MEMBER SONDERMAN: Yes.

5   MEMBER DRABKIN: Yes. I will

6 change "discloses" to "disclose." Whatever

7 tense of the word it may or may not be.

8   And should contracting officers be

9 just singular "officer."

10   MEMBER SONDERMAN: Yes. Because

11 we refer to singular "contract prices."

12   MEMBER DRABKIN: Yes.

13   MEMBER CHVOTKIN: And "determines"

14 in the "disclose the basis once the

15 contracting officer determines."

16   MEMBER SONDERMAN: Right.

17   MEMBER JONES: Can you go back?

18 Do we need "program" after "MAS" in that

19 second line? "Determines that the MAS

20 contract prices are fair and reasonable."

21   CHAIRMAN BRANCH: Yes. We're not

22 going to fool with that. I mean, that's again

 1   a motion.

 2   MEMBER JONES: Okay.

 3   MEMBER DRABKIN: It's not a

 4   technical correct.

 5   MEMBER JONES: That's fine.

 6   CHAIRMAN BRANCH: Yes.

 7   MEMBER CHVOTKIN: But we can take

 8   it out in the explanation.

 9   CHAIRMAN BRANCH: Absolutely.

10   MEMBER CHVOTKIN: So in the first

11   sentence "Award MAS contracts."

12   MEMBER SONDERMAN: Yes. So we can

13   "say ordering activity contracting officer."

14   CHAIRMAN BRANCH: Yes, sure.

15   MEMBER SONDERMAN: I looked on

16   page 119 of the September 19th transcript to

17   try to find this clarifying information. It's

18   not on page 119. Our concern was not -- the

19   concern that was expressed was not to disclose

20   proprietary information.

21   MEMBER DRABKIN: You know, we had

22   that discussion and it was Larry who brought

 1 it up? I'm not sure who brought it up. But

 2 proprietary information is not to be released

 3 to the public, but it may be released --

 4   MEMBER SONDERMAN: Within the

 5 Government.

 6   MEMBER DRABKIN: -- within the

 7 Government for official use.

 8   MEMBER SONDERMAN: Right.

 9   MEMBER DRABKIN: And releasing

10 information to the ordering activities

11 contracting officer for use in a source

12 selection doesn't seem to me to be an improper

13 release of data if it is proprietary.

14   MEMBER SONDERMAN: Right.

15   MEMBER DRABKIN: And in the

16 possession of the Government otherwise. Am I

17 off on that one?

18   CHAIRMAN BRANCH: No. I think

19 Larry's concern is that we're a sieve.

20   MEMBER DRABKIN: I'm sorry?

21   CHAIRMAN BRANCH: I think Larry's

22 concern was that we're a sieve. That once we

1   start trading that information back and forth

2   amongst contracting officers it will -- you

3   know, it will find its way outside of the

4   contracting community.

5   MEMBER DRABKIN: You know, and

6   I've heard that before, for instance, when we

7   created Peepers for collecting and

8   distributing past performance information.

9   But it doesn't seem to have been a problem so

10 far. I'm not exactly sure what to do,

11 particularly without Larry here.

12   CHAIRMAN BRANCH: No. And I would

13 let that go. Well, I'll speak for myself. I

14 would not address it. Clearly, you know, as

15 you pointed out I think on one of the breaks,

16 whatever the Administrator decides to do with

17 these, we're going to go through a rulemaking.

18 And to the extent that we would construct a

19 methodology that would put proprietary data at

20 risk, I would imagine that those issues would

21 be addressed by the stakeholders in the

22 rulemaking. So I don't know that that's as

1   a large concern of the Committee's as a whole

2   to be addressed here when we know that there

3   are safeguards to address that down the road.

4   MEMBER DRABKIN: Still, since

5   Larry isn't here and did participate, should

6   we capture in a sentence here that there was

7   some concern expressed about the protection of

8   proprietary data --

9   MEMBER SONDERMAN: Yes.

10   MEMBER DRABKIN: -- and that the

11 Administrator should consider this in whatever

12 -- let me see if I can draft something.

13   MEMBER SONDERMAN: Well we already

14 have "concern is the release of proprietary"--

15 yes.

16   MEMBER DRABKIN: Is that okay?

17   MEMBER SONDERMAN: Yes.

18   CHAIRMAN BRANCH: Yes, I think

19 that covers it.

20   MEMBER CHVOTKIN: Mr. Chairman, I

21 have suggestions here.

22   I think that one of the ways we've

 1 addressed this in the second sentence, would

 2 not used the phrase "in discussions among the

 3 Panel." We've started that "A majority of the

 4 Panel believes."

 5   CHAIRMAN BRANCH: Yes.

 6   MEMBER CHVOTKIN: And I would

 7 continue that "that GSA made information it

 8 available within the Government." Delete the

 9 phrase "to order and contracting officers."

10 So it would say "Made available within the

11 Government the basis upon which award

12 determination was made, the ordering activity

13 would be better able to evaluate." And I

14 think that reenforces that this information is

15 within the Government only.

16   MEMBER SONDERMAN: Yes.

17   MEMBER CHVOTKIN: We can now

18 address Larry's concern, and I would have

19 addressed it as well on the release, and we

20 eliminate some duplication on ordering stuff.

21   You can leave that out, David.

22 Just the Government -- "the basis upon which

1 the award determination was made available

2 within the Government." No.

3   MEMBER DRABKIN: I'm sorry.

4   MEMBER SONDERMAN: Just hit the

5 delete button.

6   MEMBER CHVOTKIN: That's right.

7 "A majority of the Panel believed that if GSA

8 made available within the Government."

9   MEMBER DRABKIN: Right.

10   MEMBER CHVOTKIN: Delete the

11 phrase "the contracting officers."

12   CHAIRMAN BRANCH: You know Alan,

13 I'll observe that I think -- Debra, could you

14 turn --

15   MEMBER SONDERMAN: I'm sorry.

16   MEMBER DRABKIN: I would observe

17 that leaving the phrase "contracting officers"

18 may actually be stronger than "within the

19 Government" simply because, you know we have

20 a clear and I think defined responsibility to

21 safeguard that kind of information that I

22 would not attribute to kind of the generic

1 Government. So I think it may not have been

2 quite as clear to the layman, but in a sense

3 it may have been stronger to leave the words

4 "contracting officers." It's your call. I

5 don't have a strongly held belief with respect

6 with that, but I actually think your words may

7 weaken that thought a little bit.

8   MEMBER CHVOTKIN: Then I'd have

9 issues about it. But information is more

10 people than just contracting officers. It is

11 all the program managers, a lot of people

12 would have regular need for analytical

13 purposes. And so I don't want to convey the

14 idea that we're trying to exclude or limit out

15 people who need routine access to information,

16 ought to have it. You ought to have it in

17 your capacity even though you're not a

18 contracting officer for the schedules program.

19   So I'm comfortable that we're

20 protect that interest by talking about within

21 the Government and not conveying any idea or

22 let anybody misread that others who might,

 1   Inspectors General or others shouldn't have

 2   access to that information.

 3   CHAIRMAN BRANCH: I think we're

 4   good on that paragraph.

 5   So recommendation 13.

 6   MEMBER DRABKIN: Something's wrong

 7   with this.

 8   MEMBER SONDERMAN: What's wrong?

 9   CHAIRMAN BRANCH: It looks like a

10   duplicate of 12.

11   MEMBER DRABKIN: No, no. I meant

12   it didn't read right, but I guess it was just

13   late in the afternoon.

14   MEMBER SONDERMAN: So are you

15   changing that to "determines."

16   MEMBER DRABKIN: I was wondering.

17   MEMBER SONDERMAN: To be

18   consistent?

19   MEMBER DRABKIN: But how does it

20   read when I do that?

21   MEMBER JONES: In recommendation

22   12 it infers that its for everything. Then in

1   13 we make the distinction that its for

2   products.

3   MEMBER SONDERMAN: So that must

4   mean that these -- for recommendations that

5   came after -- that we made at separate

6   meetings and staying true to the

7   recommendations.

8   MEMBER DRABKIN: Well, I guess

9   we'll just have a duplicate recommendation.

10   Unless we want to consider deleting one?

11   MEMBER SONDERMAN: Oooh. We could

12   move it to the -- we could move the one for

13   products to the appears to be a duplicate.

14   MEMBER CHVOTKIN: I would

15   recommend that we move recommendation 13 to

16   come directly under 12 and that the

17   explanation -- we have a single explanation

18   for both recommendations.

19   MEMBER DRABKIN: So take this

20   recommendation under 12 --

21   MEMBER SONDERMAN: Make that stop.

22   CHAIRMAN BRANCH: Accompanying

 1 narrative.

 2   MEMBER DRABKIN: Except the

 3 narrative now is -- although the words are

 4 different, I mean it clearly duplicates each

 5 other. I'm not sure -- we said the same thing

 6 two different ways.

 7   CHAIRMAN BRANCH: Integrate what's

 8 reasonable.

 9   MEMBER DRABKIN: Well --

10   CHAIRMAN BRANCH: You know, before

11 we go do this, how did we get two

12 recommendations that look like that.

13   MEMBER DRABKIN: It's because we

14 did them originally by product, services and

15 solutions.

16   CHAIRMAN BRANCH: Okay.

17   MEMBER DRABKIN: And when we

18 combined them back and how you choose to

19 organize them --

20   CHAIRMAN BRANCH: Okay.

21   MEMBER DRABKIN: And we didn't put

22 the word "services" in number 12.

 1   CHAIRMAN BRANCH: Yes. Well then

 2 I guess to resolve the confusion, then I'll

 3 propose a technical correction to add

 4 "services" to number 12.   I think that's a

 5 more faithful rendition of our deliberations.

 6   MEMBER CHVOTKIN: Mr. Chairman, I

 7 think you should add the words "for services."

 8   CHAIRMAN BRANCH: "For services."

 9 So I would move that we correct number 12 to

10 reflect what we deliberated and pass.

11   MEMBER CHVOTKIN: I second the

12 motion.

13   MEMBER CHVOTKIN: There's some

14 discussion before, and I do not disagree that

15 that was the intent. We also had a third day

16 where we talked about solutions. And I don't

17 want to conspicuously leave solutions.

18   MEMBER SONDERMAN: But they don't

19 do basis of award determinations for

20 solutions.

21   MEMBER CHVOTKIN: Good answer.

22   MEMBER DRABKIN: Mr. Chairman, any

 1   further discussions?

 2   CHAIRMAN BRANCH: Hearing none,

 3   all those in favor?

 4   ALL: Aye.

 5   CHAIRMAN BRANCH: Opposed? Motion

 6   carries.

 7   MEMBER DRABKIN: I will move the

 8   discussion from 12 back to 12.

 9   CHAIRMAN BRANCH: Okay.

10   MEMBER CHVOTKIN: But in that case

11   then I would add in the first sentence on how

12   contracting officers awarded MAS program

13   contracts "for services."

14   CHAIRMAN BRANCH: Yes.

15   MEMBER JONES: Can we go back up

16   just a moment?

17   MEMBER DRABKIN: Where?

18   MEMBER JONES: In recommendation

19   13 we state there that the last sentence that

20   "the procedures/process must ensure GSA does

21   not disclose" da, da, da. Should we also

22   include that in 12 since we're talking about

 1   the same thing?

 2   CHAIRMAN BRANCH: All right.

 3   MEMBER JONES: I mean technically

 4   we put in the narrative at the end of 12.

 5   Here it's in the recommendation. But --

 6   MEMBER DRABKIN: Right. But I

 7   guess you got to make a motion to do that.

 8   CHAIRMAN BRANCH: I guess my view

 9   is we should try to stay as close to what we

10   voted on as possible. So I would be reluctant

11   to do that. I think we've got it covered in

12   the narrative. All this would indicate is

13   that we got smarter as we went from services

14   to products.

15   MEMBER CHVOTKIN: Mr. Chairman, I

16   do think, but I completely agree and Jackie

17   makes a good point. What I would propose is

18   that we take from recommendation 13 the second

19   sentence and add it into the explanatory

20   material under recommendation 12.

21   MEMBER DRABKIN: Except that -- I

22   mean, I don't know if you'll just take a look

 1   at the last sentence which we added to 12, I

 2   mean if you want to substitute that sentence

 3   for the exact language from 13 or -- is that

 4   what you're proposing, Alan?

 5   MEMBER CHVOTKIN: Yes, sir.

 6   MEMBER DRABKIN: Okay. So that

 7   would just be a substitute for the last

 8   sentence?

 9   MEMBER CHVOTKIN: Right.

10   CHAIRMAN BRANCH: Yes, that makes

11   sense.

12   MEMBER DRABKIN: Okay.

13   CHAIRMAN BRANCH: Yes, that's

14   good. All right.

15   Number 14.

16   MEMBER DRABKIN: As a technical

17   amendment I would propose changing "agencies"

18   to "activities."

19   CHAIRMAN BRANCH: Okay.

20   MEMBER DRABKIN: And the

21   explanation I would propose that we add the

22   word "activity" after "ordering" here.

 1   CHAIRMAN BRANCH: All right.

 2   MEMBER DRABKIN: And then again

 3   here.

 4   MEMBER CHVOTKIN: And I would make

 5   that last word plural, David, "contracting

 6   officers by the ordering activity." Yes, sir.

 7   MEMBER DRABKIN: Shall we move on,

 8   Mr. Chairman?

 9   CHAIRMAN BRANCH: No other

10   comments on 14, we're on 15?

11   MEMBER DRABKIN: If I'm scrolling

12   too fast, let me know.

13   MEMBER SONDERMAN: Too fast. Can

14   you go back up, David.

15   MEMBER DRABKIN: Can I go down

16   now?

17   MEMBER SONDERMAN: Yes.

18   CHAIRMAN BRANCH: Any discussion

19   on the accompanying narrative for

20   recommendation 15?

21   MEMBER SONDERMAN: Okay.

22   CHAIRMAN BRANCH: Okay. Moving

 1   on-- Oh sorry.

 2   MEMBER CHVOTKIN: In subparagraph

 3   D where we say in the second -- we have two

 4   semicolons. And so I would put a period after

 5   "voluntary." And then start "These firms may

 6   not have the financial resources to set up."

 7   And I would change the second semicolon to a

 8   comma and delete the word "therefore" and

 9   insert the words "and thus." No, take out

10   that second comma, David. "And thus would be

11   excluded from competition."

12   CHAIRMAN BRANCH: As long as

13   you've pointed that out, I think we probably

14   ought to call socioeconomic firms something

15   different. I don't think that's what we

16   meant. I think we just meant small business.

17   First of all, I don't know what an

18   socioeconomic firm is. But secondly, I think

19   the express was the smaller firms who didn't

20   have a level of sophistication to grow that

21   kind of an accounting systems. So I would

22   just change that to small business.

 1   MEMBER CHVOTKIN: And I might

 2 change the word "adequate cost accounting,"

 3 would argue that many small firms have

 4 adequate accounting, but to set up "Government

 5 unique cost of accounting system."

 6   CHAIRMAN BRANCH: Yes. Any other?

 7   MEMBER DRABKIN: And for the sake

 8 of clarity, I don't think there are state or

 9 local government approvals but --

10   CHAIRMAN BRANCH: Yes, good point.

11   MEMBER DRABKIN: But I don't know.

12 You tell me, sir.

13   MEMBER SONDERMAN: You've

14 capitalized it elsewhere.

15   CHAIRMAN BRANCH: Okay. Any other

16 discussion on the underlying narrative for 15?

17 Then let's move to 16.

18   MEMBER SONDERMAN: That the GSA

19 Administrator ensure or require.

20   CHAIRMAN BRANCH: Require I think.

21   MEMBER SONDERMAN: Require. "To

22 be" instead of "must be." Okay.

 1   CHAIRMAN BRANCH: Yes, I think

 2 you're right. And as a matter of fact, that's

 3 what we say in the narrative.

 4   CHAIRMAN BRANCH: Discussion on

 5 the underlying narrative for recommendation

 6 16? Okay. Hearing none, let's move to 17.

 7   MEMBER DRABKIN: Incredible.

 8   MEMBER CHVOTKIN: Mr. Chairman,

 9 just in recommendation 17, about a third of

10 the way down it says that "the MAS program to

11 ensure that the MAS program only offers

12 services." Right at the end of that line.

13 Yes, sir. You were right.

14   Are we talking here about items?

15   CHAIRMAN BRANCH: Yes. I think

16 when you said that, I immediately went to --

17 I think we're talking about items. Because we

18 had a discussion about not only services, but

19 goods on this.

20   MEMBER SONDERMAN: Right.

21   MEMBER CHVOTKIN: Because the

22 schedules are a combination. Many of them are

 1 just products. Some are services and some are,

 2 who knows.

 3   CHAIRMAN BRANCH: I agree with

 4 you. Yes.

 5   MEMBER DRABKIN: That covers --

 6   CHAIRMAN BRANCH: Yes, that should

 7 be commercial items."

 8   MEMBER DRABKIN: Sorry. I was too

 9 pleased with myself.

10   CHAIRMAN BRANCH: Okay. And we

11 said that at the end of the -- okay.

12   Any discussion on the accompanying

13 narrative? Any further discussion?

14   MEMBER JONES: Well, I have a

15 question because I'm not familiar with this

16 term "ought not to be." Does "should not be"

17 have the same meaning? Up top on the third

18 sentence.

19   MEMBER DRABKIN: I see that.

20   MEMBER JONES: On the third line.

21   CHAIRMAN BRANCH: Actually, I

22 think "shouldn't be" probably works a little

1 better.

2   MEMBER SONDERMAN: Should not be?

3   CHAIRMAN BRANCH: Yes, "should not

4 be." So take the -- okay.

5   Good catch, Jackie.

6   Okay. Any further discussion on

7 the accompanying narrative for 17? All right.

8   Let's move to 18. Any comments on

9 the underlying narrative for recommendation

10 18?

11   MEMBER CHVOTKIN: I think you can

12 take out all the parentheticals.

13   MEMBER SONDERMAN: Yes.

14   CHAIRMAN BRANCH: Actually, "five-

15 years" should be hyphenated in both here as

16 well as there. And get these twenties out as

17 well. Okay.

18   MEMBER DRABKIN: I think you could

19 take out the word "itself" in the next

20 sentence, where it says "the marketplace

21 itself." "The marketplace does not remain

22 stable," or "markets do not remain stable.

1   CHAIRMAN BRANCH: Yes. I think

2 either way, but "itself" could go.

3   MEMBER SONDERMAN: And we had no

4 idea what that would mean when we said that a

5 year ago. How quite dramatic that would be.

6   CHAIRMAN BRANCH: No.

7   MEMBER DRABKIN: Did I get it?

8   The difficulty I have here with

9 this sentence is, is it's missing something.

10   MEMBER CHVOTKIN: "Over the 20-

11 year period or over a long period of time."

12   CHAIRMAN BRANCH: "Over 20-years."

13 No. I mean, we're saying they don't remain

14 stable over that period. Yes.

15   MEMBER SONDERMAN: There we go.

16   CHAIRMAN BRANCH: Okay. All

17 right. Any further discussion on the

18 accompanying narrative for 18? Hearing none,

19 let's move to 19.

20   I think we can combine this so "to

21 be used for the purchase of goods and

22 services." I don't think we need to say "and

 1   for the purpose of" again.

 2   MEMBER CHVOTKIN: Before we go

 3   there, the original MAS program was

 4   contemplated to be used for purchase of goods

 5   only. Over time services have become the

 6   predominate purchasing. And I think if we

 7   were to look at the data more carefully we'd

 8   find if we could have, that solutions are

 9   actually driving as much as services these

10   days.

11   CHAIRMAN BRANCH: Okay.

12   MEMBER CHVOTKIN: So I think just

13   it wouldn't be right to say "it was

14   contemplated to be used for the purchase of

15   goods and services." We need another --

16   CHAIRMAN BRANCH: No. I agree with

17   you. I mean I see your point, Alan. Because

18   I think the point you're trying to make is:

19   (a) "We originally contemplated for the

20   purchase of goods." The program, you know,

21   during its tenure the program has extended to

22   include services.

 1   MEMBER DRABKIN: Mr. Chairman,

 2 before --

 3   MEMBER FRYE: I'm willing to stay

 4 about two minutes because I got a ride.

 5   MEMBER DRABKIN: I hear you.

 6   CHAIRMAN BRANCH: Okay.

 7   MEMBER DRABKIN: But we only have

 8 two recommendations. Can we pop right through

 9 them. Because the only one we have left is 20

10 after 19. Could I suggest to shorten it, the

11 MAS program never contemplated services, it

12 only contemplated products. And there was

13 never an evaluation if whether we should add

14 services, they were just added.

15   CHAIRMAN BRANCH: Okay.

16   MEMBER SONDERMAN: Right.

17   MEMBER DRABKIN: So if I shorten

18 that sentence, it's a true statement.

19   CHAIRMAN BRANCH: I'm good with

20 it. Because I think the key point is the last

21 sentence anyway.

22   MEMBER DRABKIN: Okay. Can we

 1 move on just to make sure that there's nothing

 2 significant than Jan --

 3   MEMBER SONDERMAN: In the

 4 recommendation?

 5   MEMBER DRABKIN: On the

 6 recommendations.

 7   MEMBER CHVOTKIN: Mr. Chairman,

 8 before Jan goes out the door, I'd like to

 9 move, I support recommendations 19 and 20 as

10 written. I'd like to move that you be

11 authorized to review the document, the

12 integrated document here and make such other

13 further style corrections as may be necessary

14 to product a final document. I'll continue to

15 stay, and we can continue to make other

16 adoptions if we're permitted to under the

17 rules.

18   CHAIRMAN BRANCH: Okay.

19   MEMBER CHVOTKIN: But I want to

20 make sure that the next document I look at--

21   MEMBER SONDERMAN: Is really the

22 last one.

1   MEMBER CHVOTKIN: -- is really the

2   last.

3   CHAIRMAN BRANCH: Okay. Do I have

4   a second?

5   MEMBER SONDERMAN: Second.

6   CHAIRMAN BRANCH: Any discussion?

7   All those in favor?

8   ALL: Aye.

9   CHAIRMAN BRANCH: Opposed? Motion

10 carries.

11   MEMBER CHVOTKIN: Okay. Thank

12 you, Jan.

13   CHAIRMAN BRANCH: All right. Thank

14 you. Jan, thank you very much. Appreciate

15 you sticking in here.

16   So we're now functioning

17 essentially as a Subcommittee at the behest of

18 the Chair.

19   MEMBER DRABKIN: We can't take

20 anymore votes, Mr. Chairman.

21   CHAIRMAN BRANCH: Exactly.

22   MEMBER SONDERMAN: Right.

1   CHAIRMAN BRANCH: I know.

2   MEMBER FRYE: Do you need any more

3 votes?

4   CHAIRMAN BRANCH: No.

5   MEMBER SONDERMAN: No.

6   CHAIRMAN BRANCH: But you've

7 empowered me to make editorial --

8   MEMBER SONDERMAN: So this is the

9 editing subject --

10   CHAIRMAN BRANCH: Yes. So you've

11 empowered me to make editorial corrections as

12 I see fit. So you guys can sit here and help

13 me do that if you'd like or --

14   MEMBER CHVOTKIN: So if you'd

15 solicit input, we'll give it to you.

16   CHAIRMAN BRANCH: Exactly.

17   MEMBER CHVOTKIN: On the record.

18   MEMBER DRABKIN: I guess really

19 there's not even an official record without a

20 quorum, so --

21   CHAIRMAN BRANCH: That's true.

22   MEMBER DRABKIN: But we can have a

 1   discussion and the fellow who is taking notes,

 2   I guess, is not going to stop until we stop

 3   paying him.

 4   CHAIRMAN BRANCH: I think that's

 5   fine.

 6   MEMBER DRABKIN: So back to number

 7   19. Is there any other comments anybody had

 8   about the discussion paragraph?

 9   MEMBER SONDERMAN: Would it be

10   more meaningful to say back up there, the

11   second sentence, the one you already changed.

12   "The majority of the Panel observed that the

13   MAS program was never contemplated to be used

14   for solutions," which is what that

15   recommendation asked? Okay.

16   CHAIRMAN BRANCH: I think we're

17   okay. Or we could say "The majority of the

18   Panel observed that the MAS program was

19   originally contemplated--"

20   MEMBER SONDERMAN: Okay. That

21   would be --

22   CHAIRMAN BRANCH: "-- to be used

1   for the purchase of services."

2   MEMBER DRABKIN: Before we go

3   further, let me turn the track changes tool on

4   now so that we can track any of these changes

5   we're going to make now that our quorum has

6   departed --

7   CHAIRMAN BRANCH: Got it.

8   MEMBER SONDERMAN: Okay.

9   MEMBER DRABKIN: So that you can

10   explain it later, Mr. Chairman.

11   CHAIRMAN BRANCH: Okay. I think

12   that's probably a good idea.

13   MEMBER DRABKIN: Okay. Now what

14   changes do you want to make.

15   CHAIRMAN BRANCH: So I would

16   simply put "originally contemplated." And

17   then you can skip the whole discussion with

18   respect to when services were added. Because

19   that's not really germane to the point.

20   MEMBER SONDERMAN: Yes.

21   CHAIRMAN BRANCH: What's germane

22   to the point is we've evolved and we are

 1 buying solutions and it was never created for

 2 that, which I thought was where you were going

 3 when you recommended the change.

 4   MEMBER DRABKIN: Right. I mean

 5 one of the difficulties I think we heard about

 6 is that GSA never stopped to think about the

 7 consequences of adding services, much less

 8 solutions. We just kind of did it.

 9   CHAIRMAN BRANCH: Yes, you did it.

10   MEMBER DRABKIN: Okay. Any other

11 suggestions for this paragraph?

12   MEMBER CHVOTKIN: I think the word

13 workaround is one word--

14   CHAIRMAN BRANCH: Yes, it's either

15 one word or we made it up.

16   MEMBER DRABKIN: Okay.

17   CHAIRMAN BRANCH: So I'd take the

18 space out and see if you can make the little

19 red squiggly line go away. How about that?

20 Cool. It is one word. It is a word.

21   MEMBER DRABKIN: Other thoughts?

22 Other comments? Okay.

 1   We covered 20, but we didn't talk

 2   about the narrative under 20.

 3   CHAIRMAN BRANCH: Right. I would

 4   recommend that we add "ordering activity" over

 5   here.

 6   CHAIRMAN BRANCH: Yes. That's

 7   good.

 8   MEMBER SONDERMAN: We have "work

 9   arounds" again.

10   CHAIRMAN BRANCH: Yes.

11   MEMBER CHVOTKIN: David, right

12   where you have the cursor, again at the end of

13   the line, "believes that GSA must review." I

14   would suggest the word "both." "Both the SINs

15   more frequently, and the services offered

16   under the SINs," make that plural comma, "to

17   ensure both the SINs and the labor category."

18   Right.

19   MEMBER DRABKIN: Okay. To show

20   you how true I am to the process, Alan, even

21   though I lost.

22   MEMBER CHVOTKIN: Well, actually,

1 to be true to the process you'd say that there

2 was only one vote for that recommendation.

3   CHAIRMAN BRANCH: Oh man.

4   MEMBER SONDERMAN: No. Tom voted

5 with him.

6   MEMBER DRABKIN: Oooh.

7   MEMBER SONDERMAN: Tom Clark was

8 with that.

9   MEMBER DRABKIN: Oh, that kind of

10 hurt, buddy. That really hurt.

11   CHAIRMAN BRANCH: Okay. So these

12 were simply motions.

13   MEMBER DRABKIN: Right, that were

14 disapproved.

15   CHAIRMAN BRANCH: Right.

16   MEMBER DRABKIN: And I think we

17 agreed that we were going to have the motions

18 disapproved by majority vote.

19   MEMBER SONDERMAN: Yes.

20   MEMBER DRABKIN: The motions that

21 were tabled by majority vote.

22   CHAIRMAN BRANCH: Right, motions

1 not seconded.

2   MEMBER DRABKIN: Motions that were

3 tabled. Motion was withdrawn.

4   The two definitions we --

5   MEMBER CHVOTKIN: David, excuse

6 me. Scroll back up a little bit. There was

7 one that was tabled. It said "Tabled for the

8 next meeting." Stop there. It's the last

9 line now on the screen. "The following motion

10 was tabled for discussion." I'm not sure that

11 we could leave that one hanging because we

12 forgot about it or --

13   MEMBER DRABKIN: We never took it

14 off the table.

15   CHAIRMAN BRANCH: Yes.

16   MEMBER DRABKIN: Because Elliott

17 came back with his proposed organization,

18 which addressed that.

19   MEMBER CHVOTKIN: Then we'll

20 recommend that we move that to the category of

21 motions tabled.

22   MEMBER DRABKIN: Right.

1   MEMBER CHVOTKIN: Because it was

2 tabled and we never reconvened that. So --

3   CHAIRMAN BRANCH: No, it was just

4 tabled.

5   MEMBER CHVOTKIN: Yes.

6   CHAIRMAN BRANCH: I mean you table

7 things for discussion at the next meeting.

8 You just lay them on the table and either they

9 come off or they don't.

10   MEMBER CHVOTKIN: But we already

11 have a category of motions that were tabled.

12   CHAIRMAN BRANCH: Then I would

13 just put that in that category. Because it

14 just didn't -- you know, we tabled it and said

15 hey we'll take it up. And I guess the

16 resolution of it is it was never taken from

17 the table because we went down a different

18 path.

19   MEMBER SONDERMAN: So where did

20 these other things come from that are not in

21 the list of motions and need to be found in

22 the transcript?

 1   MEMBER DRABKIN: I'm sorry?

 2   MEMBER SONDERMAN: Look under --

 3 look right there where your cursor was.

 4   MEMBER DRABKIN: Right.

 5   CHAIRMAN BRANCH: This is not --

 6   MEMBER SONDERMAN: All right.

 7 Note. This was not in the final list of

 8 motion, needs to be found in the transcript.

 9   CHAIRMAN BRANCH: These are a

10 bunch of motions that we didn't pass, right?

11   MEMBER DRABKIN: Right.

12   MEMBER SONDERMAN: No. No.

13   CHAIRMAN BRANCH: Yes. We tabled

14 that, so we didn't pass it.

15   MEMBER SONDERMAN: I don't --

16   CHAIRMAN BRANCH: If we can't find

17 it, just kill it.

18   MEMBER SONDERMAN: All right.

19   CHAIRMAN BRANCH: Because I

20 remember this discussion well. This was the

21 one that Alan and Dee and everybody had over

22 what was in the statute and lowest overall

1 cost. And I think we probably had about four

2 different alternatives rolling around.

3   MEMBER DRABKIN: So we want to

4 kill it?

5   CHAIRMAN BRANCH: Not that one.

6   MEMBER DRABKIN: Well, it's the

7 same thing.

8   MEMBER SONDERMAN: It is the same

9 thing.

10   MEMBER DRABKIN: No, this was not

11 in the final list of motions need to be found

12 in the transcript.

13   CHAIRMAN BRANCH: Both of those?

14   MEMBER SONDERMAN: That's what it

15 says here.

16   CHAIRMAN BRANCH: Because they

17 have to do with that whole --

18   MEMBER SONDERMAN: And the next

19 one.

20   CHAIRMAN BRANCH: -- discussion we

21 had. I mean, that was part of that whole

22 discussion about --

1   MEMBER SONDERMAN: All three of

2   those.

3   MEMBER DRABKIN: Right.

4   CHAIRMAN BRANCH: -- trying to set

5   the price objective and Phoebe kept saying

6   hey, wait a minute, the statute contains that.

7   So I think that stuff may have been put on --

8   that's something that may have been introduced

9   with respect to that discussion. And maybe

10 the question or the issue was it never made it

11 to the stage of a formal motion.

12   MEMBER DRABKIN: No. But it made

13 it to Pat's notes.

14   CHAIRMAN BRANCH: Got it.

15   MEMBER DRABKIN: Which is where I

16 got all the motions because Pat kept separate

17 notes.

18   CHAIRMAN BRANCH: Right.

19   MEMBER DRABKIN: And I don't know

20 why we didn't find it in the transcript. But

21 even if I delete it right now because it's in

22 track changes, it will still be on the

 1 document. And if after you review it, you

 2 decide you want to put it back --

 3   MEMBER SONDERMAN: Put it back in.

 4   MEMBER DRABKIN: -- in, you've got

 5 it.

 6   CHAIRMAN BRANCH: Yes. I'd just

 7 kill it for now. Because at 5:15 on a Friday

 8 we ain't going to figure where that is in the

 9 transcript. And I've got them all. So I'll--

10 that'll be a tomorrow project.

11   MEMBER DRABKIN: Now here were two

12 other issues that were notes here from

13 somebody about the definitions for those two--

14 basis of award and most favored customer.

15   My research shows that we actually

16 don't have a definition for them. In the FAR

17 and the GSAM they are discussed in two places

18 in clauses. And then I also went and did a

19 Google search to see if I could find anyplace

20 else to find the definition. But there is no

21 regulatory definition either for basis of

22 award or for most favored customers.

1   What the clause says is XYZ forms

2   the basis of award, but there's no definition.

3   And then what it says is, talks about most

4   favored customers but never defines what that

5   means.

6   I would therefore recommend that

7   we don't need to add definitions that don't

8   exist regulatorially.

9   CHAIRMAN BRANCH: I agree.

10   MEMBER DRABKIN: But I do have

11 language I could offer if you want.

12   CHAIRMAN BRANCH: No. As a matter

13 of fact, if we were to do anything, and I'm

14 not suggesting that this is what we want to

15 do, but I suggest we not add them. But if we

16 were to do anything, we might want to note

17 that there are no definitions for these terms,

18 and that's probably part of the cause of the

19 confusion.

20   MEMBER DRABKIN: And I think if

21 we're going to do that --

22   MEMBER SONDERMAN: What a concept.

 1   MEMBER DRABKIN: -- it should be

 2 in the discussion under one of the

 3 recommendations.

 4   CHAIRMAN BRANCH: Right.

 5   MEMBER JONES: David, I think

 6 those are addressed in the -- not that it's

 7 regulatory, but it's the FSS Handbook of

 8 Supply Operations.

 9   MEMBER DRABKIN: Yes.

10   MEMBER JONES: Did you see

11 anything there?

12   MEMBER DRABKIN: And therein lies

13 the problem.

14   MEMBER JONES: Yes.

15   MEMBER DRABKIN: Because that's

16 not published, that's not available publicly.

17   MEMBER JONES: Right.

18   MEMBER DRABKIN: And it's not

19 published in accordance with the OFPP Act.

20 It's internal guidance only. And by the way,

21 I'm not allowed to release internal guidance

22 only.

 1   MEMBER SONDERMAN: So I think that

 2 would go under recommendation 6. I think

 3 that's where we ask the GSA Administrator to

 4 clarify guidance.

 5   MEMBER DRABKIN: Okay. Hold on a

 6 second.

 7   CHAIRMAN BRANCH: Yes. Okay.

 8   MS. HUGHES: That was in my notes,

 9 David, from one of the meetings where the

10 Panel suggested that maybe we would want to

11 add the definitions there. So that was not

12 Lisa.

13   MEMBER DRABKIN: So we want to say

14 here --

15   CHAIRMAN BRANCH: Wait a minute.

16 No. I don't think it is 6. Come back up. I

17 think it is the one -- no, keep -- it's the

18 one that deals with -- it's the one that

19 addresses guidance and how you get -- it's the

20 one that deals with what the price objectives

21 should be.

22   MEMBER SONDERMAN: Okay. So is

1 that 7?

2 CHAIRMAN BRANCH: I mean let me

3 pull out my paper copy.

4 MEMBER SONDERMAN: Seven and 7 are

5 the price objective.

6 CHAIRMAN BRANCH: Yes. I think you

7 would want to -- you know if you wanted to

8 make note of the fact --

9 MEMBER DRABKIN: Here it is. Here

10 is the discussion on the number 7.

11 CHAIRMAN BRANCH: Right.

12 MEMBER DRABKIN: So I think here--

13 MEMBER SONDERMAN: Right.

14 CHAIRMAN BRANCH: Well, I'm not

15 sure that I would say we'd suggest that we do

16 that. So let me offer an alternative.

17 You know, I think that you end

18 that with a period.

19 MEMBER DRABKIN: Okay.

20 CHAIRMAN BRANCH: And then if you

21 want to go on to say something, you would say

22 "Yet these terms figure significantly in any

 1   discussion of price reasonableness with

 2   respect to schedules."

 3   And now if you want to make a

 4   suggestion that he go do that, that kind of

 5   makes sense. But I think one of the things

 6   that was a recurring theme in our

 7   deliberations is everybody kept saying basis

 8   of award and most favored customer and we're

 9   all kind of looking and going well what does

10   that really mean. You know, so --

11   MEMBER DRABKIN: Well, I'm not

12   prepared to suggest anything unless somebody

13   else. But I think it's important that we

14   pointed it out.

15   CHAIRMAN BRANCH: No, I agree.

16   MEMBER DRABKIN: I don't think it

17   will be lost on the people who read this.

18   CHAIRMAN BRANCH: Okay. Agreed.

19   Then I think you probably want to stop right

20   there.

21   MEMBER CHVOTKIN: David, go back

22   up real fast. Instead of having two

 1 sentences, I would put a comma instead of the

 2 period at the end and just say after the quote

 3 "yet these terms are."

 4   MEMBER DRABKIN: Okay.

 5   MEMBER CHVOTKIN: "Basis of

 6 customer" comma. Yes, close quote.

 7   MEMBER DRABKIN: Small "yet."

 8   MEMBER SONDERMAN: Correct.

 9   CHAIRMAN BRANCH: And you can get

10 rid of the other comma. Yes.

11   MEMBER DRABKIN: Okay. Now back

12 down to the end.

13   MEMBER CHVOTKIN: When we looked

14 at the Panel membership-- oh, I'm sorry. So

15 you're going to take those two out.

16   MEMBER DRABKIN: I don't

17 understand the note for the transcript of--

18   CHAIRMAN BRANCH: I think that's

19 just an appendix.

20   MEMBER SONDERMAN: No.

21   MEMBER DRABKIN: That was the

22 discussion of the IG.

 1   MEMBER SONDERMAN: No. That was

 2   the discussion about -- oh shoot, that other

 3   thing. The IG was July. September 19th.

 4   MEMBER DRABKIN: Well, we just had

 5   that, that September --

 6   MEMBER SONDERMAN: Yes, we took

 7   that whole thing out.

 8   CHAIRMAN BRANCH: Right. We took

 9   that whole thing out.

10   MEMBER SONDERMAN: So we did.

11   MEMBER DRABKIN: Okay. Well, what

12   did you want to suggest on the Panel

13   membership now?

14   MEMBER CHVOTKIN: In the Panel

15   membership I think it would be useful to -- we

16   have notations where some people have resigned

17   and some people have retired. But they did

18   not all do so at the same time. And it would

19   be helpful to know --

20   MEMBER DRABKIN: Put the right

21   date.

22   MEMBER CHVOTKIN: -- the date at

 1 which they have been hired as of or resigned

 2 as of. Because Ms. Stevenson resigned very

 3 early in the process.

 4   CHAIRMAN BRANCH: Right.

 5   MEMBER CHVOTKIN: And mine didn't

 6 come until today.

 7   MEMBER DRABKIN: Huh?

 8   MEMBER SONDERMAN: Qua?

 9   MEMBER CHVOTKIN: Or tomorrow or

10 something.

11   CHAIRMAN BRANCH: Okay. All

12 right. Good deal.

13   MEMBER SONDERMAN: And

14 recommendation 12.

15   CHAIRMAN BRANCH: We're done.

16   MEMBER DRABKIN: Anything else?

17 Save.

18   CHAIRMAN BRANCH: Oh, okay, this

19 is the dissenting appendix. So I think that

20 was Tom's. All right. So I'll give him an

21 option not to turn that into bullets, or to

22 turn that into something other bullets.

 1 Because I'm not sure bullets kind of make

 2 sense as a dissent.

 3   MEMBER DRABKIN: No. And

 4 particularly given I think he feels strongly

 5 about. I wonder if he feels strongly enough

 6 to write on it?

 7   CHAIRMAN BRANCH: Well, if he

 8 doesn't, then why dissent.

 9   MEMBER CHVOTKIN: Maybe there ar

10 dissenting views, there may some additional

11 views. And so if there are, I hope he would

12 be clear whether he dissents from the whole

13 report or just a portion of it.

14   CHAIRMAN BRANCH: Right. Okay.

15   MEMBER CHVOTKIN: So clarity

16 around what it is.

17   CHAIRMAN BRANCH: What the issues

18 are.

19   MEMBER DRABKIN: Should we, Mr.

20 Chairman, allow or advise other Panel members

21 that they can dissent and that their dissent

22 would be included, but that they are --

 1 whatever your guidance is for Tom in this

 2 case, would be their guidance and a date by

 3 which their dissent would be filed.

 4   CHAIRMAN BRANCH: So this is what

 5 I would like to do. We've got a little bit of

 6 cleanup left to do. We have fewer data

 7 requirements than I thought we might, which is

 8 a good thing.

 9   MEMBER SONDERMAN: Is this still

10 what we have?

11   CHAIRMAN BRANCH: I think that's

12 about it. So what I'd like to do is get a

13 copy cleaned up. Get out guidelines -- get

14 out the draft as we think it's the final draft

15 now, and guidelines on submitting any

16 dissenting opinions. And give folks a

17 deadline. And then I'd like Pat to schedule

18 a meeting that we will have no more than two

19 hours. And the purpose of that meeting would

20 simply be to adopt the report. And we can

21 maybe get Jackie in on a VTC link so she

22 doesn't have to travel for that.

 1   MEMBER SONDERMAN: That would be

 2   good.

 3   MEMBER JONES: Yes.

 4   CHAIRMAN BRANCH: But I mean, you

 5   know, first of all it's been a long slug

 6   through a year with a bunch of absolutely

 7   thoroughly going professionals so I think

 8   everybody's effort and commitment to the

 9   topic.

10   That said, we just need to close

11   up shop. We all have pay jobs.

12   MEMBER SONDERMAN: Yes, we do.

13   CHAIRMAN BRANCH: So how much time

14   do you need, Pat?

15   MS. HUGHES: Well, how much time

16   do I need to?

17   CHAIRMAN BRANCH: To do an

18   announcement? I mean how quickly can we

19   schedule the meeting, is I guess is my real

20   question?

21   MS. HUGHES: It depends upon,

22   again, your availability.

1   CHAIRMAN BRANCH: Okay.

2   MS. HUGHES: Right now we couldn't

3   do another meeting before June, because I have

4   remember the --

5   CHAIRMAN BRANCH: Okay. Then

6   let's get everybody's availability, get a

7   quorum in June, and then we'll start up the

8   backup dates on that and say okay, here's the

9   final no kidding report. Here's the format if

10   you want to attach a dissent to it. We're

11   going to meet a couple of more hours for the

12   purpose of adopting this report next meeting.

13   And that's our last meeting. Okay.

14   MEMBER SONDERMAN: I don't think

15   we want a report with a lot of dissents. So

16   I recognize that Tom couldn't be here today

17   and he had strong feelings, so he may want to

18   offer another opinion. But I'd just invite

19   you to think about whether you really want to

20   ask for dissenting opinions. More dissenting

21   opinions.

22   CHAIRMAN BRANCH: I guess let me

1 put it this way: I don't want to solicit any.

2 Okay? However, you know to the extent that

3 people have a notion, I think we should give

4 them ground rules. Because I also don't want

5 anybody who has worked on this walking around

6 going "Well, you know, they just rolled over

7 me. And I wasn't heard."

8   MEMBER SONDERMAN: I agree with

9 you.

10   CHAIRMAN BRANCH: So I think we

11 have to strike that down.

12   Well, David put in his small

13 observations.

14   MEMBER DRABKIN: I have an

15 advantage that only one other member of the

16 Panel is going to have. And that is I get to

17 see this again. I'm not sure that's an

18 advantage, by the way. But I would point out--

19   MEMBER SONDERMAN: A future

20 opportunity for success.

21   MEMBER DRABKIN: I would point out

22 that our Administrator, our nominee, the

 1   person that the President has identified that

 2   he plans to nominate will probably have a

 3   confirmation hearing, barring problems, in

 4   June. And the earlier that we can get this

 5   report done, because I'm confident that this

 6   report will be part of the confirmation

 7   process.

 8   Obviously, we can't talk about--

 9   MEMBER SONDERMAN: Something that

10   isn't issued.

11   MEMBER DRABKIN: -- something that

12   hasn't been submitted to GSA yet for her to

13   review. So the sooner we can do it, the

14   better.

15   CHAIRMAN BRANCH: Okay. So let's

16   get a date, let's get six people in a room and

17   let's put this to bed.

18   Who wants dinner?

19   (Whereupon, at 5:29 p.m. the

20   meeting was adjourned.)

21

22

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