

STATEMENT OF  
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BEFORE THE  
COMMISSION ON WARTIME CONTRACTING

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Chairman Thibault, Chairman Shays, and members of the Commission, thank you for the opportunity to appear before you today to discuss the federal acquisition workforce. The government depends on acquisition professionals to draft, award, and oversee contracts, and the quality of their work is especially important during times of contingency operations, when agencies are more vulnerable to the risk of fraud, waste, and abuse. As this Commission and the Gansler Commission have reported, the federal government has not invested in the acquisition workforce enough to allow it to adequately cope with the growth in contract spending or the increased complexity of agencies' missions. From 2001 to 2008, contract spending more than doubled to over 500 billion dollars, while the size of the acquisition workforce – both civilian and defense – remained relatively flat. This inattention to the workforce resulted in increased use of high-risk contracting practices and insufficient focus on contract management, as well as the especially troubling phenomenon of agency dependence on contractors to support the acquisition function.

Recognizing this situation, President Obama challenged agencies to improve their acquisition management practices, and agencies are now taking actions to strengthen their acquisition workforces, reduce the use of cost-reimbursement and sole-source contracts, rebalance their relationship with contractors and improve or terminate under-performing acquisitions. I believe these actions will address some of the concerns that the Commission has rightly been focused on.

The Office of Federal Procurement Policy (OFPP), in its government-wide acquisition policy setting role, is taking steps to: 1) improve contract management government-wide by reducing dependence on contractors and decreasing the use of high-risk contracting vehicles, 2) strengthen the acquisition workforce through increased investments for hiring and training, better human capital planning, and improved hiring practices, and 3) support contingency and emergency contracting through improved guidance and planning. Improving our performance in these areas will help ensure that taxpayers' interest are better protected throughout the federal contracting process, and I'd like to share with you the details of these efforts.

### **Improving Contract Management Government-wide**

#### *Reducing Dependence on Contractors*

As this Commission stated in its June 2009 report, chronic understaffing of the acquisition workforce has led to an overreliance on contractors to support the acquisition function, especially for contingency operations. The Government Accountability Office (GAO) has pointed to the same problem, such as in the April 2010 report finding that the Department of Defense (DoD), the Department of State, and the U.S. Agency for International Development (USAID) relied extensively on contractor personnel to monitor contracts and grants, and GAO expressed concern about the lack of enhanced government oversight of services provided by contractors closely supporting inherently governmental functions.<sup>1</sup>

One reason for this excessive reliance on contractors is the lack of clarity about which tasks can appropriately be performed by contractors. As this Commission has stated, unclear policies and standards for defining “inherently governmental” functions cause continued

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<sup>1</sup> *Contingency Contracting: Improvements Needed in Management of Contractors Supporting Contract and Grant Administration in Iraq and Afghanistan*, GAO-10-357, April 12, 2010.

confusion about the appropriate role of contractors in the acquisition function. OFPP is addressing our overreliance on contractors for acquisition and other functions, as required by section 321 of the National Defense Authorization Act for FY 2009 and directed by the President in his March 2009 Memorandum on Government Contracting. In March 2010, OFPP issued a draft Policy Letter to clarify when work should be reserved for federal employees. We are now reviewing comments in anticipation of issuing the final Policy Letter this fall and then initiating related changes to the Federal Acquisition Regulation (FAR). The Policy Letter is intended to do the following:

- Clarify what functions are inherently governmental and must always be performed by federal employees. A single definition of an inherently governmental function should help agencies understand when an activity is so intimately related to the public interest as to require performance by federal employees.
- Help agencies identify when other functions (or portions of functions) need to be performed by federal employees. Strengthening guidance on how best to staff “critical” functions should help agencies identify areas where they need to build sufficient internal capacity to maintain control over functions that are core to the agency’s mission and operations. Most agencies recognize the acquisition function as a critical one where they need to ensure adequate internal capacity.
- Outline a series of agency management responsibilities to strengthen accountability for the effective implementation of these policies. OMB’s guidance will also strengthen pre- and post-award management functions to prevent contractor performance of inherently governmental functions and overreliance on contractors.

Having clear policies and strengthened management controls for the appropriate use of contractors, including within the acquisition function, will help agencies strike a better balance between federal employees and contractor support and retain control of their missions and operations.

## *Reducing Risk*

Between FY 2000 and FY 2008, spending on high-risk contracts increased significantly<sup>2</sup>, at least in part as a result of having an insufficient workforce to develop clear requirements, conduct rigorous market research, and structure contracts to promote competition. During that timeframe:

- Contracts awarded without competition increased from \$73 billion to \$173 billion, and procurements that were open to competition, but generated only one bid, also increased from \$14 billion to \$67 billion.
- Spending on cost-reimbursement contracts increased from \$71 billion to \$135 billion, while spending on time and material (T&M) and labor hour (LH) contracts increased from \$8 billion to \$29 billion.

The President challenged agencies to reduce their use of these vehicles, which often result in cost overruns and poor performance, and agencies are making progress. For example, according to the Federal Procurement Data System, in the first two quarters of FY 2010, the percentage of dollars awarded in new contracts without competition dropped by 10 percent when compared to the same time period in FY 2009. Agencies are also committed to increasing their use of fixed-price contracts, which provide greater incentives to contractors for cost control. In the first half of FY 2010, the percentage of dollars awarded in new cost-reimbursement contracts dropped by 6 percent, and the percentage of dollars awarded in new T&M/LH contracts dropped by 7 percent when compared to the same time period in FY 2009. As further evidence of the importance of reducing risk in contracting, DoD's recently-announced savings initiative focused on the same issues, in particular, on increasing competition and reducing the use of T&M contracting.

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<sup>2</sup> Office of Management and Budget, Cutting Waste and Saving Money Through Contracting Reform, Office of Management and Budget, July 2010, ([http://www.whitehouse.gov/sites/default/files/omb/assets/blog/Update\\_on\\_Contracting\\_Reforms.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/blog/Update_on_Contracting_Reforms.pdf))

## **Strengthening the Acquisition Workforce**

This Administration is working to strengthen all components of the federal acquisition workforce. This includes not only the contracting officers (COs), but also the program managers (PMs), who establish contract requirements, and the contracting officers' technical representatives (COTRs), who monitor contractor performance and payment.

The Administration is committed to investing in the growth and development of the entire acquisition workforce, and OFPP has led a number of efforts in support of this objective. OFPP is responsible for setting standards and policies for the civilian agencies' acquisition workforce, such as the Federal Acquisition Certification (FAC) programs for COs, PMs, and COTRs, that all civilian agencies follow, and for providing direction to the Federal Acquisition Institute (FAI). We partner closely with DoD to support the Department in carrying out its statutory responsibilities under the Defense Acquisition Workforce Improvement Act (DAWIA), and we have enjoyed a close and productive relationship with the Defense Acquisition University (DAU) to leverage its training and development expertise. The President's Budget for FY 2011 requested \$158 million to increase the capability and capacity of the civilian agency acquisition workforce, and these funds will improve the ability of agencies to hire, train, develop, and retain entry-level as well as mid-level acquisition professionals. These funds, which are to be used solely for acquisition workforce purposes, will allow agencies to address their most pressing hiring and development needs. Organizations with contingency responsibilities can target their use of the funds accordingly. For example, the State Department plans to update its current contracting officer's representative courses and improve access to them worldwide, focus training on contract management, and direct more resources to contract oversight. USAID

intends to develop training for all of its acquisition workforce members, specifically on post-award contract administration, and plans to hire new staff to support its acquisition career management programs and training efforts.

Further, OFPP established an annual acquisition workforce human capital reporting requirement for civilian agencies, which should help institutionalize planning for our workforce and tie it more closely to mission needs as well as to agencies' budget processes. This year, agencies submitted their first plans, and the plans reflect a firm commitment to increasing the size and improving the training of the workforce. For example, the Federal Emergency Management Agency (FEMA) has developed tiered certifications for COTRs along with a handbook, community website and improved performance assessments, and will further develop the Department of Homeland Security's COTR management program to include additional courses and will increase the number of certified COTRs throughout FEMA. In addition:

- OFPP established Functional Advisory Boards (FABs) to keep acquisition certification programs for civilian agencies current, and is considering expanding the COTR program to include tiered certifications depending on the complexity of the procurements.
- OFPP is working with the General Services Administration (GSA) and FAI to improve the systems that support workforce management, so that agencies have better access to information about the skills of their workforce.
- OFPP sponsors the Federal Acquisition Fellows Coalition to build the community of new hires and broaden their exposure to the many missions of government.

To complement these efforts, we are working closely with our colleagues at the Office of Personnel Management (OPM) to improve the hiring process for contracting professionals, and

we are conducting outreach to agencies to ensure that existing flexibilities for hiring and retaining employees are used, whenever possible. For example:

- OFPP and OPM have developed streamlined job announcements for entry-level and mid-level contracting professionals that can be used by both DoD and civilian agencies to attract new talent.
- OFPP, OPM, and FAI hold hiring seminars for defense and civilian agencies to ensure that when hiring for acquisition positions, hiring managers and human resources professionals understand how to use existing authorities, such as direct hire, and to promote the hiring of re-employed annuitants.

Our acquisition professionals support a wide range of missions, including in times of war, disaster, or other emergencies, and they are often deployed to unfamiliar locations and dangerous situations. We support OPM's proposed legislation to clarify and make uniform the benefits available to federal civilian employees in zones of armed conflict as it recognizes the important contributions these employees make to critical agency missions. In an environment where multi-agency response efforts are on the rise, we must take appropriate steps to support all of our employees in these extraordinary circumstances.

When OFPP's work with civilian agencies is considered together with the plans our DoD colleagues have to increase the size of their acquisition workforce and improve training through the use of their workforce development fund, it is clear that this Administration is aggressively addressing the understaffing and under-investment that for too long weakened the federal acquisition workforce.

### **Supporting Contingency and Emergency Contracting**

Using lessons learned from DoD's contingency experiences and the emergency operations that supported relief efforts in the aftermath of Hurricanes Katrina and Rita, the FAR Council established a separate chapter in the FAR dedicated to contingency and emergency

contracting. FAR Part 18 describes both flexibilities that are always available and those that can be used only when there has been a declaration of contingency or emergency. All of these authorities can be used to facilitate and expedite the acquisition of supplies and services in these environments. The flexibilities that do not require a declaration include the ability to use oral requests for proposals, as well as the ability to waive the usual rules for competition when a justification citing urgency has been approved. Special authorities, such as higher thresholds for micropurchases and simplified acquisitions, may be used only after a contingency declaration has been made by the appropriate official. Having information about all of these flexibilities in a single place in the FAR should facilitate contracting officers' access to the full range of authorities available to them in an emergency situation.

To further support emergency contracting, OFPP is updating its Emergency Acquisition Guide with input from DoD and civilian agencies. The guide is designed to assist the members of the contracting community as they support contingency operations. The guide highlights individual and organizational planning efforts, such as developing deployment checklists for contracting personnel, outlines the steps agencies must consider when awarding and administering contracts during emergencies, and describes the flexibilities of FAR Part 18. The guide also references best practices for disaster preparedness and response collected by GAO, the Special Inspector General for Iraq Reconstruction, and the Department of Homeland Security. Contracting officers are also provided additional tactical information from the DAU's Emergency Response and Recovery Contracting community of practice website, and OFPP recently instructed agencies to update their information and emergency-related documents on that site.



In accordance with section 870 of the NDAA FY2009, GSA established a Contingency Contracting Corps to support other agencies in the event of a contingency or emergency situation. GSA has posted on-line resources to inform interested acquisition officials, and I understand they have identified a small group of certified contracting officers from a variety of agencies who have volunteered to deploy. As we work with GSA to further develop this corps, we hope to include more program managers and COTRs in our contingency planning, which is consistent with the recommendations and interim findings of this Commission and the Gansler Commission.

### **Conclusion**

A well-trained workforce is the backbone of the federal acquisition system. As agencies work toward achieving their goals in warzones and in emergency situations, just as they pursue their on-going missions, we must prioritize the efforts and investments that support the health of the acquisition lifecycle – from acquisition planning, through contract award, to performance management – and include all members of the acquisition workforce in our planning. The steps that I have discussed today are a strong start to an important initiative, but we must continue our efforts. I look forward to working with our colleagues at DoD and in the civilian agencies to improve our acquisitions and strengthen the acquisition workforce.

I am happy to answer any questions you may have.