

PUBLIC MEETING ON THE MARCH 4, 2009
PRESIDENTIAL MEMORANDUM ON GOVERNMENT
CONTRACTING

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hosted by

THE UNITED STATES

GENERAL SERVICES ADMINISTRATION (GSA)

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THURSDAY,
JUNE 18, 2009

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The Public Meeting was held at 9:00 a.m.
in the GSA Auditorium, 1800 F Street, N.W.,
Washington, D.C.

PRESENT:

JEFF LIEBMAN, Executive Associate Director,

OMB

RICHARD GINMAN, Deputy Director for Program
Acquisition and Contingency Contracting,
Defense Procurement and Acquisition
Policy, DoD

WILLIAM McNALLY, Assistant Administrator for
Procurement, NASA

DAVID DRABKIN, Acting Chief Acquisition
Officer and Deputy Chief Acquisition
Officer and Senior Procurement
Executive, GSA

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

2 (9:09 a.m.)

3 MR. LIEBMAN: It's a pleasure to
4 welcome you to this public meeting on
5 government contracting. My name is Jeff
6 Liebman. I'm the executive associate director
7 of the Office of Management and Budget.

8 The March 4 presidential
9 memorandum on contracting directed the Office
10 of Management and Budget to work with other
11 agencies to develop guidance to improve
12 government contracting. The memorandum
13 requires guidance on five topics.

14 The first topic is guidance to
15 assist agencies in reviewing contracts in
16 order to identify contracts that are wasteful,
17 inefficient, or not otherwise likely to meet
18 the agency's needs. This first guidance is
19 scheduled to be issued in July.

20 Guidance on the other four topics
21 are scheduled for release at the end of
22 September. It is those four topics, the

1 September release topics, that we are hoping
2 to get your input on today in today's
3 discussion.

4 The first of those topics is
5 maximizing the use of competition. The second
6 is improving practice in selecting contract
7 types. The third is strengthening the
8 acquisition workforce. The fourth is
9 clarifying when functions should be performed
10 by federal employees and when contractors may
11 be appropriately considered.

12 We're at a critical junction in
13 federal acquisition policy. Since 2001, the
14 volume of federal contracting has more than
15 doubled to over \$500 billion, but the
16 government's management capacity and policy
17 making in the acquisition area has not kept up
18 with the increasing importance of sound
19 acquisition practice to the success of
20 government endeavors.

21 The President has instructed us to
22 improve and strengthen contracting procedures.

1 Congress has also clearly expressed its desire
2 for improved management and oversight of
3 contracts. OMB is looking forward to working
4 with all of you in the acquisition community
5 as we try to improve acquisition policy and as
6 we make the sustained effort that it's going
7 to take many months and years to strengthen
8 and implement the improved acquisition
9 practices.

10 Acquisition management, broadly
11 defined, includes the program managers who
12 specify requirements, the contracting officers
13 who implement contracts, to the technical
14 representatives who administer and manage
15 contracts -- is one of the most important and
16 most challenging functions in the federal
17 government.

18 It requires managers with a very
19 broad range of skills ranging from technical
20 expertise in both contracting practices in
21 substantive areas to negotiation skills,
22 market analysis skills, post-award management

1 skills, and performance measurement skills.

2 I'm very happy today to have three
3 of the government's top experts in acquisition
4 practices here to help guide the discussion
5 today. With me here to lead the discussion of
6 competition is Richard Ginman, the deputy
7 director for Program Acquisition and
8 Continuity Contracting at the Defense
9 Procurement and Acquisition Policy at the
10 Department of Defense.

11 The contracts type discussion will
12 be led by William McNally, the assistant
13 administrator for procurement at NASA.

14 The acquisition workforce
15 discussion will be led by David Drabkin, the
16 acting chief acquisition officer and deputy
17 chief acquisition officer and senior
18 procurement executive at GSA.

19 I will lead the discussion of the
20 multi-sector workforce.

21 I want to thank all three of our
22 experts for being here. I've personally

1 learned a ton from each of them and I thank
2 them not only for the work they do at their
3 own agencies, but for the extra work they do
4 to help all of us in the acquisition community
5 develop government-wide polices and work on
6 inter-agency efforts.

7 I also want to acknowledge the
8 experts we have here today from the Office of
9 Federal Procurement Policy, including Leslie
10 Field, the acting administrator, Matthew Blum,
11 the associate administrator, and Julia Wise,
12 who coordinated the planning for today's
13 event.

14 The format we're going to follow
15 is we're basically going to spend about an
16 hour on each of the four topics that we are
17 directed to issue guidance on in the
18 presidential memorandum. Each hour, the
19 facilitator for that hour will make some
20 opening remarks for a few minutes. Then we'll
21 have the people who have signed up to make
22 formal statements come to the microphone and

1 make those statements. Then the balance of the
2 hour will be for discussion and general
3 comments from the audience.

4 So I thank you all for coming here
5 and for being willing to contribute your
6 expertise to the effort we're going through to
7 improve federal acquisition practices and I
8 hope that not only will you participate today,
9 but send in any oral or written comments you
10 have to the www.regulations website, as stated
11 in the Federal Register notice so that any
12 comments you want to be part of the federal
13 record can become so. Thanks again for being
14 here.

15 MR. GINMAN: Good morning. My
16 purpose will be to facilitate the discussion
17 on competition. I'm going to read a quote. It
18 is the policy of the federal government that
19 executive agencies shall not engage in non-
20 competitive contracts, except in those
21 circumstances where their use can be fully
22 justified and where appropriate safe guards

1 have been put in place to protect the tax
2 payer. This was President Barrack Obama in his
3 4 March memorandum to the executive agencies.

4 In several speeches now, it is the
5 first time I can remember in 39 years of being
6 in and out of the acquisition business, that
7 the President has actually stood up and talked
8 about contracting. I think it's an exciting
9 time. It's an opportunity for us to look at
10 ways that we can change our business and to
11 improve what we do.

12 From a competitive perspective,
13 what we're interested in today is how can
14 we remove barriers to competition and then,
15 what are initiatives that we can take that we
16 can use to improve competition. I would note,
17 at least for the Department of Defense, that
18 in 1997, I think we were 58 percent competed
19 both by actions and dollars. Last year, we
20 were 64 percent competed, both in actions and
21 dollars with a steady growth over that period
22 of time.

1 So there has been a focus on
2 competition and how do we improve it, how do
3 we remove barriers. We're excited to have this
4 opportunity to get additional insights and
5 thoughts on how to proceed.

6 I have five people that will speak
7 today and I will introduce them in turn and
8 ask that they contain their remarks to three
9 to five minutes. The first is Larry Allen,
10 president of the Coalition for Government
11 Procurement. Mr. Allen?

12 MR. ALLEN: Thank you, Mr. Ginman.
13 Thank you all for the opportunity to address
14 the public meeting this morning.

15 Of course, one of the great things
16 about being first is while I do try to follow
17 the rules, I have one sum statement that
18 covers all the three topics I want to talk
19 about. I'll be out of here in three to five
20 minutes anyway, so I appreciate your
21 indulgence.

22 The Coalition is a non-profit

1 association of some 350 companies that sell
2 commercial solutions to the government. We're
3 currently in our 30th year of working with
4 people in government on common sense
5 procurement issues, so we have a long history
6 of working on common sense acquisition. In
7 fact, we were formerly incorporated as the
8 Coalition for Common Sense in Government
9 Procurement.

10 I've been with the Association in
11 one way or another for 19 years, so I've had
12 the opportunity to work on many of these
13 issues. I appreciate the opportunity this
14 morning to carry that forward.

15 The Coalition believes that there
16 are a number of issues that need addressing in
17 today's federal market. Strengthening and
18 improving the federal acquisition workforce,
19 balancing transparency versus protecting
20 legitimate proprietary information, and the
21 need to ensure proper oversight while ensuring
22 that the federal market continues to attract

1 good competition and the best solutions.

2 The Coalition recommends that OMB
3 and the FAR Council work with Congress and
4 others to improve the same focus and resources
5 on front end needs, such as acquisition
6 workforce training as has already been given
7 to back-end outputs such as increased
8 Inspector General resources.

9 There is room for both and proper
10 roles for each one. However, no one can expect
11 to have the type of federal acquisition
12 service we all want without giving equal
13 attention to all parts of the process.

14 The best place we feel to start
15 with this is the acquisition workforce. We are
16 recommending to GSA and others the creation of
17 an acquisition executive corps that acts as
18 true acquisition business relationship
19 managers using acquisition expertise as well
20 as industry knowledge.

21 Our 1102 Nex Gen paper calls for
22 the creation of a career path and incentives

1 for contracting professionals. All contracting
2 professionals will have a total 360 degree
3 view of the business process through this
4 proposal. An outline of our program is
5 included in our formal remarks.

6 Acquisition professionals must
7 also have the resources and time to conduct
8 acquisition planning. With planning, contracts
9 of many types can be properly managed without
10 proscribing the use of any one. There is no
11 such thing as a bad contract type among the
12 contracts commonly used on the federal level
13 today. Rather, inadequate training and
14 insufficient acquisition workforce resources
15 lead to less than ideal contract management
16 after award.

17 Too many acquisition professionals
18 must go onto the next set of needs after an
19 initial award to give proper time to
20 management of agreements already in place. Our
21 proposal will help remedy that situation
22 without tying the hands of government in terms

1 of the type of contracts they can use.

2 The Coalition also believes that
3 the additional resources that this
4 recommendation requires will actually cost the
5 government less in the long run than a
6 continued emphasis on catching mistakes that
7 have already occurred. Again, that has its
8 place.

9 We also understand that OMB and
10 the administration are concerned about
11 competition in acquisition. Generally, the
12 Coalition believes that a great deal more
13 federal opportunities for commercial solutions
14 are competed than general perceptions may hold
15 to be the case. Anecdotal information from our
16 members indicates that competition is common
17 place and that single bid opportunities in the
18 COTS space are an anomaly for all but the
19 smallest opportunities.

20 While we can't say whether this is
21 true for all federal market sectors --
22 although I thought Mr. Ginman's initial

1 comment was illustrative. It is important for
2 OMB and others to consider learning where
3 competition currently does exist before
4 formulating any new across the board policies.

5 We also believe that the current
6 definition of competition is improperly
7 limited to that which takes place after the
8 issuance of an RFP or RFQ. It is important to
9 note that many companies may have already
10 known of the pending requirement, analyzed it,
11 and for any other of a variety of business
12 reasons, decided not to bid.

13 This does not mean that any
14 resultant award was not competed. Even
15 companies that did submit bids know that
16 others were considering or are considering
17 bidding. This has to be factored into their
18 own pricing approach.

19 We note that there is also real
20 measurable competition after RFQ issuance for
21 many purchases made through GSA's multiple
22 award schedule program. Using the eBuy tool,

1 federal agencies saved over \$46 million in
2 acquisition costs in FY 2008 alone. Over
3 60,000 RFQs were posted on eBuy and the
4 average number of bids received was well over
5 the section 803 benchmark of three per task
6 order.

7 This electronic tool, which we
8 support enhanced use of, helps ensure both
9 competition and transparency. Generally, we
10 believe that eTools such as this should be
11 further examined and will continue to be a
12 significant factor in driving competition.

13 We're happy to be part of this
14 process. We appreciate the opportunity, again,
15 to address this meeting. We look forward to
16 working with the FAR Council and with OMB.
17 I'll happy to answer your questions when that
18 is the appropriate time. Thank you.

19 MR. GINMAN: Mr. Allen, thank you.
20 Chris Braddock, senior director of procurement
21 policy, US Chamber of Commerce.

22 MR. BRADDOCK: Thank you. I

1 appreciate the opportunity to be here today.

2 As Mr. Ginman mentioned, I'm Chris Braddock
3 with the US Chamber of Commerce.

4 I'm here representing also a multi-industry
5 association group and maybe I should preface
6 it by they agree with me to the extent that we
7 actually agree with the statements I make.

8 We're here to talk about
9 competition. We, industry, agree that
10 competition should be maximized. I think
11 that's a common theme throughout all sides of
12 this debate. But we need to realize that there
13 are circumstances where competition, other
14 than full and open competition and single
15 award contracting is appropriate, and that
16 those aspects should not be diminished and
17 should not be lost in the debate.

18 As Mr. Ginman mentioned, DOD, in
19 fiscal year 2008, there was a 64 percent --
20 they competed 64 percent of their overall
21 dollars. For government-wide, it was 67
22 percent. I think maybe it's instructive. DOD

1 obviously has the bulk of the dollars. They
2 have a lot of unique aspects -- all their
3 major systems acquisitions, etcetera. For the
4 non-DOD agencies, it was 75 percent.

5 So I think there's a level of
6 success in increasing the level of competition
7 in government contracting. It's far more than
8 the majority of the contracting dollars are
9 being competed.

10 When we look at the regulations
11 and statutes that are out there now -- CICA
12 through FAR part 6 instituted full and open
13 competition should be utilized in all
14 circumstances except for a specific set of
15 circumstances that are actually laid out in
16 the FAR as well as in the statute. Sole source
17 contracts other than full and open
18 competition, etcetera are only applied in
19 certain limited circumstances.

20 Generally, we believe that current
21 laws and regulations are adequate in this
22 realm -- not to diminish the fact that there

1 are ways to improve this, which we continue to
2 strive for increases in competition where
3 appropriate, but following and utilizing and
4 further publicizing the current requirements
5 that are in the regulations, FAR part 6
6 primarily.

7 So we highlight a few areas where
8 single award contracting can be beneficial--
9 increases, flexibility, and responsiveness for
10 government contractors, improve synergy between
11 various contracts. There are a number of
12 reasons why single award contracting can be
13 beneficial to the government and should be
14 utilized. So when we talk about the 67 percent
15 overall dollars competed, we're not going to
16 get to 100 percent. I don't think we should
17 strive to get to 100 percent as there are
18 multiple reasons why that's not the best
19 approach.

20 I would just end with the
21 competition should be maximized but we should
22 not have competition just for the sake of

1 competition.

2 I appreciate the time for being
3 here and we wanted to brief, so hopefully that
4 was successful.

5 MR. GINMAN: Thank you, Mr.
6 Braddock. Mr. John Palatiello. Hopefully, I
7 didn't butcher than name too badly. He's
8 president of John Palatiello and Associates.

9 MR. PALATIELLO: Good morning. My
10 name is John Palatiello. I'm president of John
11 M. Palatiello and Associates. We're an
12 association management firm that represents a
13 variety of clients in the federal contacting
14 arena.

15 One of the organizations that we
16 represent is the Council on Federal
17 Procurement of Architectural and Engineering
18 Services, COFPAES. COFPAES has been in
19 existence in Washington since the late 1960's
20 and early 1970's.

21 I want to thank OFPP and OMB for
22 holding this forum and giving the non-federal

1 sector an opportunity to share its
2 observations on the four important issues in
3 the Federal Register notice, including the
4 President's March 4 memo.

5 With regard to the issue of
6 competition, the point that I would like to
7 make today is that the Brooks Act, the Brooks
8 Architect Engineer Act, to be distinguished
9 from the old Brooks ADP Act -- the Brooks AE
10 Act is still law. It is still on the books. It
11 is a time tested and well utilized method of
12 procurement for architecture, engineering and
13 related services by the federal govt. It is
14 also recognized by the American Bar
15 Association in its model procurement code for
16 state and local government as the recommended
17 and preferred manner to procure A and E
18 services.

19 The point that I want to make
20 today is that the A and E community is very
21 much in favor of competition. We believe in
22 competition for AE contracts. But as was

1 recognized by Congress in 1972 when it
2 originally enacted the Brooks law, competition
3 can be on a variety of fronts. Price
4 competition is not the only metric or standard
5 or benchmark upon which to measure
6 competitiveness.

7 This was recognized by Congress in
8 1983, when the Competition and Contracting Act
9 was enacted.

10 It's still in law today. In 41 USC, 259 and 10
11 USC, 2302, the Brooks Act is included in the
12 definition of a competitive procedure.

13 We have seen instances,
14 particularly in recent weeks, where agencies
15 have felt that they are compelled to use price
16 competition for A and E services rather than
17 the qualifications based selection process in
18 the Brooks Act because they're under the
19 belief that under the American Recovery Act,
20 under ARA, that all procurements have to be
21 competitive and therefore, that means price
22 competition.

1 That is not the case. We want to
2 clarify and emphasize that. The Brooks Act is
3 a competitive process of which we're very
4 supportive and it does meet the standard in
5 the Competition and Contracting Act.

6 So as OMB and OFPP are looking for
7 ways to inject more competition into federal
8 procurement, we believe there is a best
9 practices model in the Brooks Act and we
10 command it to your attention. Thank you.

11 MR. GINMAN: Sir, thank you. Mr.
12 Mark Pearl, president and CEO of Homeland
13 Security and Defense Business Council.

14 MR. PEARL: Good morning. As was
15 said, I'm Mark Pearl, president and CEO of the
16 Homeland Security and Defense Business
17 Council, which is a non-partisan, non-profit
18 organization of the leading companies that
19 provide the products, services, and technology
20 solutions for every program that encompasses
21 our nation's homeland security mission.

22 Our members employ hundreds of

1 thousands of Americans in all 50 states and
2 they are honored -- and proud to work
3 alongside the leaders of civilian and defense
4 agencies in support of their strategic
5 missions and initiatives.

6 The Council's mission is to
7 facilitate a substantive dialogue between
8 senior leaders and the industry and government
9 who's collective goal is to ensure a safer and
10 more secure nation. I appreciate the
11 opportunity to appear before you this morning.

12 The private sector plays a
13 critical role in the special coordinated and
14 collaborative homeland security mission. Our
15 members will not win future contracts if they
16 do not deliver the products and services and
17 provide world-class experts and practitioners
18 as projects are needed.

19 It is imperative that the
20 foundation upon which a successful federal
21 procurement system is built be underpinned by
22 credibility, trust, and confidence. As the

1 government debates what gaps preclude our
2 nation from achieving an even more effective,
3 efficient, and successful contracting and
4 procurement process, it is incumbent upon
5 industry to be an active participant in that
6 discussion. Our concerns are that the focus
7 and possibly misdirected increased spotlight
8 may create an atmosphere of blame, rather than
9 one that facilitates achieving programmatic
10 goals and successful results.

11 The federal contracting market is
12 substantial and it's growing. It is also
13 subject to an intricate web of statutes,
14 regulations, and policies. The Council
15 prepared an executive brief on this subject,
16 on each of the points raised in the
17 President's memorandum of March 4. We did not
18 bring enough copies for every single person,
19 but it is available on our website and we
20 submitted it as part of the record of today's
21 program.

22 The paper extensively outlines the

1 statutory, regulatory, and other initiatives
2 that are already underway and in many
3 instances, we point out that existing law,
4 existing regulations, adequately address the
5 concerns that have been expressed in the
6 President's memorandum, which is why we
7 support it in all ways, shape, and form
8 concerning the issue of government contracting
9 because we support a process that mirrors this
10 new environment with quality contracting,
11 quality acquisition management, and quality
12 people.

13 My remarks in the remaining time
14 that I have, however, will focus only on the
15 one issue, that of competition, but I hope
16 that our entire paper will be strongly
17 considered and reviewed.

18 In part because of the cost-
19 savings and transparency it promises,
20 competition is a particular area of emphasis
21 in the President's memorandum. For 25 years,
22 the Competition and Contracting Act of 1984

1 has required agencies, when awarding
2 contracts, to engage in full, open competition
3 subject to specified exceptions. Agencies
4 generally must publicize their efforts to
5 award contracts, define their requirements in
6 a manner that is least restrictive to foster
7 competition, identify the potential
8 competitors, the factors that are being used
9 to evaluate the proposals, and apply those
10 factors in evaluating proposals in making an
11 award. That exists today.

12 An exception can obviously be made
13 when only one source can perform the work and
14 when an agency relies on that exception, it
15 must prepare a justification and approval to
16 document the basis for its determination of a
17 single source. Those rules, those regulations
18 exists.

19 But even when the rules have been
20 clear, particularly in the homeland security
21 area over recent years, achieving competition
22 has often proved challenging in practice to

1 ensure that interested parties have an open
2 and fair chance to compete to provide the best
3 value to government. It remains to be seen if
4 the new competition regulations will produce
5 that desired result.

6 Although multiple contractual
7 awards offer the prospect of an initial
8 competition followed by further competitions
9 for discrete orders, the President's
10 memorandum recognizes that the government has
11 not yet achieved the full competitive promise
12 and benefits of these contract vehicles.

13 This may be due in part because,
14 and it goes to another issue that's going to
15 be discussed this morning, acquisition
16 officials occasionally have placed a greater
17 emphasis on efficiency or expediency rather
18 than on desired competition.

19 A key component of our concern
20 that I will not be detailing now is
21 recognizing that the managing the contracting
22 process requires expertise, skill, and sound

1 business judgement. Yet as the acquisition
2 spending has increased substantially over the
3 decade, the government has experienced decline
4 in the size and quality of its acquisition
5 workforce.

6 Thus, the demands on a limited
7 acquisition workforce may be a contributing
8 factor to the competition issue.

9 We look forward to working with
10 everyone involved in this process so that the
11 industry and government can develop an open
12 and frank dialogue. The Council stands ready
13 to assist you in your efforts going forward.
14 Thank you.

15 MR. GINMAN: Thank you.

16 MS. TICHON: Thank you. Thank you
17 so much for allowing the USPIRG to participate
18 in what I think is a critical intervention
19 into federal contracting.

20 My name is Nicole Tichon and I am
21 the tax and budget reform advocate for the US
22 Public Interest Research Group.

1 As our name indicates, we
2 represent the public interest, consumers and
3 taxpayers, a constituency that now, perhaps
4 more than ever, will be watching very closely
5 what the government does with its money.

6 We also represent state level
7 organizations and campaigners all over the
8 country. We have the ability to keep our
9 citizens engaged in their government and our
10 comments today will reflect this
11 responsibility. We'll focus not just on the
12 need for competition, but also on who the
13 government sort of lets into the game.

14 We are excited to be a part of
15 this and we think that when you're going
16 through the process in a way that is sloppy or
17 is artificially expedited, that something is
18 going to get missed.

19 On the basic level, awarding
20 lucrative contracts to companies and
21 individuals who break the law or simply fail
22 to get the job done, again and again, fails

1 the American taxpayers.

2 The American people understand
3 this about their own lives. If an individual
4 was hired to deliver packages and the packages
5 never arrived at their destination or when
6 they did, they were damaged, the worker would
7 not expect to get another job with that firm.

8 If an individual applies for a job
9 with a large private consulting firm and
10 hadn't paid her taxes, her file would be
11 flagged. The American taxpayer doesn't expect
12 the government to continue to reward failure,
13 fraud, abuse, and tax evasion.

14 It would really be great to change
15 the headlines that we've been reading over the
16 last several years that have chronicled the
17 outrageous waste and mis-management from
18 Afghanistan to New Orleans.

19 What we've seen suggests that past
20 performance and compliance with the law may
21 not have been a high priority when determining
22 awards. USPIRG has actually issued a report

1 called Forgiving Fraud and Failure, which is
2 available at our website at pirg.org. It also
3 lists our full recommendation, so we hope
4 you'll check that out.

5 But from the report, I'd like to
6 cite some of the examples. In February of
7 2005, a back up tape that contained over 1.2
8 million records of federal employees,
9 including US senators, went missing from Bank
10 of America headquarters. The tapes were not
11 encrypted.

12 Three months later, in May of
13 2005, a laptop was stolen from Bank of
14 America, which contained 18,000 records of
15 California consumers that again, was not
16 properly encrypted. In September of that same
17 year, there was yet another security breach.

18 The result? Despite this record,
19 the government rewarded them with millions of
20 dollars in additional contracts, including
21 data processing for several different
22 government agencies.

1 General Electric sold the US
2 military defective helicopter and airplane
3 engine planes. The government launched a
4 criminal investigation and GE settled the case
5 in July of 2006.

6 At the same time that GE was
7 defending this defective product that could
8 have endangered the lives of military
9 personnel, the government awarded GE the
10 majority of a \$2.4 billion contract to develop
11 its engine for joint strike fighter aircraft.
12 In fact, 46 percent of GE's contracts that
13 year were not competitively bid.

14 Since 2000, Kellogg, Brown, and
15 Root, which was a subsidiary of Haliburton,
16 has been repeatedly accused of defrauding the
17 federal government. The Defense Contract Audit
18 Agency identified approximately
19 \$279 million in un-supported and questionable
20 expenses.

21 Shortly after negotiating the
22 outcome for those charges, the Army contracted

1 with Haliburton and KBR for yet another \$5
2 billion to provide logistics support.

3 Just last year, it was discovered
4 that KBR failed to pay nearly \$100 million in
5 payroll taxes by simply alleging that many of
6 the Americans contracted to work in Iraq were
7 based in a tax haven in the Caribbean.

8 The examples are endless and
9 they're detailed in hundreds of reports and
10 yet, at this point, they've been largely
11 ignored and these actions unchecked.

12 We're hopeful that the
13 administration, as demonstrated by the
14 President's remarks and his enthusiasm on this
15 topic, we're hoping that they'll take serious
16 actions to change this disturbing pattern.

17 There needs to be a renewed focus
18 on vigorously enforcing the mechanisms, some
19 of which already exists and some of which have
20 been defined by far, to promote competition,
21 question the exceptions, and enforce best
22 practices. But all of the guidance in the

1 world will be meaningless unless those who
2 have been charged with implementing them, such
3 as the competition advocates in each agency,
4 we would expect them to diligently do their
5 job with strong support from executive
6 leadership.

7 This has to be a priority for
8 leadership in every agency. We applaud the
9 administration's interest in correcting these
10 egregious practices and look forward to
11 continuing the dialogue.

12 The bottom line is that
13 contractors who fail to meet basic
14 responsibilities should not be considered for
15 more work. A lack of competition and a
16 shortage of consideration of competence
17 needlessly puts taxpayers and their money at
18 risk.

19 The administration needs to
20 demonstrate clear leadership, provide metrics
21 on honest actions, and use acquisition
22 oversight staff to conduct actual oversight.

1 Thank you and we look forward to
2 working with you in the future. Thanks so
3 much.

4 MR. GINMAN: Ms. Tichon, thank you.
5 We have 15 minutes left before the allotted
6 hour is up. The exciting part starts now,
7 which is my eliciting questions from the
8 audience. Is there anyone who would like to
9 make a comment? Silence.

10 Grant, I'm going to do what I said
11 I was going to do. So let's start with
12 barriers to competition. Do people have any
13 comments on significant barriers to
14 competition and things that think they could
15 be addressed or worked on, things that we
16 could improve the way the federal government
17 goes about this? Someone must have an opinion.

18 How about the use of competition
19 advocates, competition ombudsmen, the ability
20 to bring things to the attention to the
21 contracting officer? Thoughts? Ideas?

22 Come on, Grant. You must have a

1 question or comment. I'm sorry. Yes, sir?

2 AUDIENCE MEMBER: So far the
3 presenters have talked about mostly the fact
4 that the private sector that has --
5 competition, would anybody like to comment
6 regarding the impact of all these problems or
7 hurdles?

8 AUDIENCE MEMBER: I think you want
9 to repeat that.

10 AUDIENCE MEMBER: I'm sorry. So far
11 our presenters have talked about this
12 important part of -- for participating in the
13 competition as it relates to these contracts.
14 But there's been no comment so far relating to
15 how the federal influence is going to impact
16 on this policy -- would anybody like to
17 comment on that?

18 MR. GINMAN: Yes, ma'am. Can we
19 wait to get the microphone? Thank you.

20 AUDIENCE MEMBER: I don't have a
21 comment about the question. I don't know the
22 question. I apologize.

1 I believe there were efforts in
2 the process already to try to get two year
3 appropriations for various agencies. Just a
4 general comment -- that might be something
5 that would be helpful for all of the
6 departments in the agencies because as you can
7 tell, obviously with resolutions and other
8 situations where you don't know your local
9 funding, it's quite difficult to complete an
10 acquisition within that time frame if you
11 don't know you have funding.

12 So my suggestion would be perhaps
13 a community effort to get appropriations
14 issued timely and if that is still not
15 possible, then perhaps pursuing these two year
16 appropriations for all departments and
17 agencies.

18 It's quite difficult for
19 contracting people to meet time-lines and such
20 that require expiring times that might be
21 issued before -- and a contract is written as
22 of September -- that would have to know

1 minimally you have money until April.

2 That's my comment. Thank you.

3 MR. GINMAN: So thank you. We've
4 broken the ice. There must be more.

5 AUDIENCE MEMBER: I'd like to maybe
6 answer the individual's question about the
7 workforce.

8 Just so everybody knows, the group
9 here, when we meet, we do talk about the
10 workforce as we talk about implementation of
11 the President's memo.

12 We talk about tools. We talk about
13 that we want more training because if you want
14 to try to compete more, you've got to do it
15 effectively. Otherwise you'll wind up doing
16 protest and spending a lot of time on that,
17 would send people as far as trying to figure
18 out how do I not compete so that I don't have
19 to be in this protest arena.

20 So we are looking at the workforce
21 and what increased knowledge it needs in the
22 area of running source selections or doing

1 price-cost analysis so that when we do
2 compete, we do it in a way that industry is
3 satisfied and don't feel the need to protest
4 the decision.

5 So I thought I'd go ahead and
6 answer that gentleman's first question.

7 MR. GINMAN: Additional comments?
8 Yes, sir, if you could wait for the
9 microphone.

10 MR. CAMPBELL: Yes. I came in with
11 OPEC and I'd like to make a comment on
12 competition.

13 As a government contracting
14 officer, I would like to say that my biggest
15 problem in getting competition is getting
16 project managers to agree to compete their
17 requirements and getting managers to support
18 me in my demands that we get competition.

19 MR. GINMAN: I guess I would ask
20 the question of are there others here who have
21 a similar issue with encouraging the requiring
22 activity to, in fact, compete the requirement?

1 I'm seeing multiple hands. Other comments?

2 MS. LA BRON: Hi. I'm Rhonda Le
3 Bron, the Department of Transportation.

4 I have to agree with this fellow
5 here. More has to be done in terms of
6 acquisition planning. A lot more emphasis
7 needs to be on a collaborative effort between
8 technical and acquisition workforce so we can
9 make better requirements for the government.

10 MR. GINMAN: I guess I'll make a
11 DOD comment, at least in response to those
12 two. I mean, we've instituted a process for
13 all our service contracts.

14 I think our hardware contracts
15 have always required significant levels of
16 review for large jobs. But we implemented a
17 process where our service contracts now over
18 \$1 billion, if the program is over \$1 billion,
19 comes up for approval at the OSD level and is
20 treated much like an MDAP program. We look
21 very, very hard at the competition.

22 So at least from the stand point

1 of helping encourage the requiring activity to
2 compete, it is certainly what we're looking
3 for.

4 Are there other comments? Several
5 of the presenters talked about sole source
6 contracting. We'd be interested in comments on
7 ways that we could better avoid sole source
8 contracting. I think the phrase that was used
9 was actually single bid contracting. Yes,
10 ma'am?

11 AUDIENCE MEMBER: I think that for
12 avoiding sole source is when they have to
13 report back to how that happens. Again since
14 I had a microphone. I definitely agree with
15 you when you talked about the continuing
16 resolutions crippling the ability to perform
17 effective competition.

18 The other thing I would say with
19 advocating competition is how do we build in
20 the existing relationship, which is what a lot
21 of the program mangers come back and say to me
22 is well, these people, they know us, they know

1 our requirements, they know our processes. If
2 I go somewhere else, I have to start over in
3 building up that knowledge base and that
4 information.

5 MR. GINMAN: Thank you. I'm not
6 seeing a wide variety of hands in the air
7 here. Any additional comments?

8 Then I will close this section out
9 five minutes early and turn it over to Mr.
10 McNally to open the section on contract type.
11 Thank you.

12 MR. MCNALLY: Good morning. What I
13 want to do before I turn it over to the other
14 speakers is just kind of frame a few things
15 for people to think about. As you look at the
16 memo, look at it as a sense of moving forward
17 in a certain direction.

18 I don't think we should ignore the
19 past, look at the past. We should learn from
20 the past, but really, you need to look at this
21 as a set of principles or tenets -- and I'll
22 tell you why I use the term tenets a little

1 bit later -- on the President's memo.

2 In the area of contract type,
3 those of you who work at it from industry-
4 perspective but government-perspective, it's
5 really a critical strategy decision. You can
6 really damage a program by not having the
7 right contract type because it does influence
8 behavior by both the government and industry
9 as it moves forward to try to get the service
10 or product delivered.

11 But I do want to emphasize that
12 the word in the memo is preference towards
13 fixed price, which has always been really, I
14 think, a part of the federal acquisition
15 process -- a preference for fixed price.

16 But it does allow -- it addresses
17 circumstances where the agency, in performing
18 its mission -- I'll talk a little bit about a
19 couple of mission areas at NASA -- where
20 circumstances allow to use other than fixed
21 price contracts.

22 But the other thing it talks about

1 is that the agencies must have the ability to
2 manage when it places itself in the high risk
3 situation, which cost type contracts do. That,
4 in terms of the workforce, is having the right
5 number of workforce with the capability to
6 manage those contracts.

7 But that doesn't just mean the
8 government. It means industry. So when you
9 take on a cost type contract, you need to have
10 the ability to manage costs as well because
11 that's what the government expects from you.
12 So making sure you have the tools of earned
13 value management, risk management is critical
14 both for the government and industry.

15 I used the word tenets before
16 because back in August of 2008, NASA put out,
17 the chief acquisition officer, a set of nine
18 procurement tenets. Many of you have read
19 them. Many of you have commented on them. Many
20 of you have been in my office talking about
21 them.

22 It's critical to understand that

1 agencies, that they need to look at the
2 President's memo and start saying what's the
3 culture within my agency to move forward
4 regarding to implement the President's memo
5 or, quote, principles of contracting.

6 It is not easy, as I've been
7 living it for the last year and a half at
8 NASA. We love award fee contracts for
9 everything. Sometimes it's appropriate.
10 However, you can't stand there and just look
11 at your current program and say I'm sticking
12 with this cost type contract.

13 You need to be thinking forward in
14 when my development is over and my hardware is
15 being delivered and it's in operational use,
16 I need to be moving towards the fixed price
17 environment and putting the risk more back on
18 industry, who will look, if they're a good
19 company, to lower the cost so they can
20 increase their return on investment by
21 delivering a product in a fixed price that
22 satisfied the need. Their profit margin is

1 based on how well they were and how efficient
2 they were.

3 Two scenarios, I'll give you. We
4 are currently having a Mars laboratory plan in
5 the near future, 2012, 2013. We've got eight
6 instruments that are going to be launched,
7 travel for six months, land on Mars, and
8 hopefully, all six instruments operate.
9 Obviously, I don't do that every day. I think
10 we've had about three missions to Mars.

11 Each one of them separately, so we
12 set that up in a cost plus environment because
13 industry cannot really understand everything
14 in the future it takes to set up a fixed price
15 contract.

16 But you could do high tech areas
17 like launching satellites in a firm fixed
18 price environment. NASA and DOD, both, buy
19 launch services that way. Industry has been
20 operating that way for years. It didn't start
21 off firm fixed price, but it moved towards
22 that.

1 Just the other area of services --
2 we all probably buy continual services. What
3 we need to do is start analyzing the work load
4 of that service so we can set forth on fixed
5 price and then that way, let industry come up
6 with an effective way to meet the service.
7 That way I'm not setting forth having the
8 management of it and also changing the cost in
9 a cost plus environment.

10 So that's kind of my opening
11 remarks. The first speaker in this area is
12 Eleanor Spector, who is representing the
13 Aerospace Industries Association.

14 MS. SPECTOR: Thank you, Bill. I
15 appreciate the opportunity to speak on this
16 subject that I feel strongly about, as do AIA
17 members.

18 It's not the President's memo --
19 which indeed does say the right things that
20 basically there is a preference in the FAR for
21 fixed price contracts. But it's the
22 inappropriate use of those contracts that

1 we're most concerned about.

2 There has never been a successful
3 development program, full scale development
4 program, using a fixed price contract in all
5 the years that I can remember.

6 In the 1960's, there was tried
7 total package procurement, which included a
8 fixed price full scale development. That was
9 tried on the F-14 and the C-5 development and
10 that resulted in both companies needing bail-
11 outs in one form or another.

12 Oddly enough, Grumman was bailed
13 out by ERON, who bought 80 F-14s and helped
14 Grumman get through the fixed price
15 development.

16 In the 70's, fixed price contracts
17 for lead ships led to extensive claims and
18 bail-outs and a vow by the Navy never to use
19 a fixed price contract for a lead ship again.

20 In the 80's, substantial amounts
21 of money were lost by Hughes, on AMRAMM, on
22 the C-17 development, the T-45 development,

1 and the A-12.

2 The A-12 litigation over the fixed
3 price contract went on for 18 years and may
4 not be over yet.

5 Based on the 80's experience, in
6 1988, there was a law passed that required the
7 Under Secretary of Defense to approve fixed
8 price development contracts for large, complex
9 systems.

10 This is CSIS, Center for Strategic
11 and International Studies. But what it shows
12 is that this is the history up until 2004 of
13 profits on defense contracts. I didn't extend
14 their slide out, but it's in the same range
15 now as toward the end.

16 But the last period of fixed price
17 development in the late 80's, profits went to
18 about 2 percent for defense contractors. When
19 defense contractors earn that little money,
20 they can't vest in R&D. They can't invest in
21 getting good people, and they can't make
22 capital investments. In fact, the largest

1 defense contractor was taken over almost on
2 the brink of bankruptcy at that time.

3 This is a DAU slide, Defense
4 Acquisition University slide, which is why
5 it's not all labeled. I don't know the
6 programs, but what it shows is this is EMD or
7 full scale development Engineering and
8 Manufacturing Development, making cost and
9 schedule.

10 The bulk of the program overran up
11 to 200 percent, as you see at the bottom. Some
12 of the outliers overran up to 400 percent.
13 This is not withstanding the type of contract.

14 You'll see AMRAMM on there, which
15 overran a lot and was a fixed price
16 development. ASPJ -- and these are older
17 programs admittedly -- was also a fixed price
18 contract at the end. Only one came in within
19 cost and schedule, and I believe, by the way,
20 that it was a sole source at the time.

21 History has shown and DAU has
22 shown -- it's been shown over and over again

1 that cost growth on fixed price development
2 contracts is equivalent to that on cost
3 reimbursement contracts, but the government
4 struggles with claims and terminations and
5 administrative nightmares when they
6 inappropriately use these contracts.

7 Companies were driven close to
8 bankruptcy and the government lacks the
9 flexibility to do the necessary design and re-
10 testing and companies can't afford to do it
11 when they're overrunning a lot. So you get
12 cutting corners and not a good program in the
13 end.

14 I'm a believer in competition, but
15 one of the things driving cost growth on big
16 programs is the optimism at the outset of the
17 program that competition drives. Competition
18 is a good thing, but it does drive optimism
19 and a tendency not to put a big contingency in
20 for cost growth.

21 Then what happens is the
22 contractor proposal becomes a basis for the

1 budget with no contingency on either side, on
2 the government's side or the contractor's
3 side.

4 I think the appropriate use of a
5 fixed price contract, and this essentially
6 comes right out of the FAR and it's still
7 appropriate, is minimal risk that can be
8 predicted with some degree of certainty,
9 verified specifications, testing is complete,
10 stable design, minimal changes required, cost
11 estimates based on historical costs for the
12 same or a similar product.

13 When you have that, you can go
14 with a fixed price contract. Before you have
15 that, there's great risk in doing so. The
16 risk, if you go with a fixed price contract
17 and companies more and more have said they
18 won't, is you bet your company in some cases.

19 I think the appropriate thing to
20 do on large development programs is to
21 emphasize appropriate risk apportionment
22 between the contractor and the government. A

1 cost reimbursable contract is the most
2 appropriate when you want an excellent product
3 in production when it hasn't ever been
4 produced before and when you're spending
5 billions of dollars and you really need to
6 test this and understand what you're doing and
7 it's more important -- getting it done right
8 is more important than cost or schedule.

9 Improved collaboration and
10 requirements, I think somebody before
11 mentioned that. Price and fund to a high
12 confidence cost level.

13 Conclusions -- cost growth results
14 from optimism in competition, lack of
15 technology maturity, requirements growth,
16 unrealistic cost estimates, and no contingency
17 funding. Those are the causes and they're
18 repeated over and over and over and over. You
19 saw all those programs.

20 The forced use of fixed price
21 development has not controlled cost growth and
22 transfers risk to contractors. The current FAR

1 policy is essentially appropriate. When it's
2 not followed is when the government and
3 contractors get into trouble.

4 This is from the June decision in
5 the A-12, the litigation that went on for 18
6 years. This is the court saying this, the
7 appeals court -- we also observe that the
8 CEO's of both McDonald Douglas and General
9 Dynamics -- who incidentally were the largest
10 contractors at the time they won the A-12,
11 largest DOD contractors -- in a letter dated
12 June 27, 1990, stated that it was a mistake
13 for the US Navy to stipulate this type of
14 contract and it was a mistake for the
15 contractors to accept it. Both are at fault.

16 The court goes on to say that,
17 maybe saying we agree with that, but alas, the
18 law of contracts does not allow us to deviate
19 from established principles of law inequity.
20 Nevertheless, I think the court is supplying
21 a caution there in the use of these contracts.

22 Thank you very much. I appreciate

1 all of your time and patience.

2 MR. MCNALLY: Thank you, Eleanor.

3 We have a speaker from the competition group,
4 John Palatiello.

5 MR. PALATIELLO: Good morning
6 again. I'm John Palatiello on behalf of the
7 Council on Federal Procurement of Architect
8 Engineer Services.

9 In the discussion of contract
10 type, we have a very serious problem in the
11 federal government and I will address that in
12 the fourth item later today with regard to
13 acquisition workforce.

14 But the AEA, Architect Engineer
15 Acquisition, workforce in the federal
16 government has been decimated over the last 15
17 or so years. It is a very serious problem that
18 needs to be addressed on a cooperative basis
19 between the private AE community and the
20 federal government. Again, I will address that
21 later this morning.

22 The manifestation of this problem

1 does have some relevancy to contract types. We
2 have seen a diminution and a threat to the use
3 of the Brooks Act qualifications-based
4 selection process, which Congress in its
5 wisdom enacted to protect public health,
6 welfare, and safety.

7 Let me give you a couple of
8 examples. First of all, we believe very
9 strongly that the FAR still inaccurately
10 reflects the intent of Congress with regard to
11 mapping services in part 36 of the FAR. The
12 FAR Council has on numerous occasions been
13 asked by OFPP to come up with a legislative
14 and legal analysis, which it has yet to do so.

15 The President issued a memorandum
16 a few weeks ago with regard to the issue of
17 preemption of state law and very strongly
18 discouraged federal agencies from preempting
19 state law.

20 We commend the President for
21 issuing that memorandum. Architects,
22 engineers, surveyors, and mapping

1 professionals are licensed by the states. The
2 Brooks Act requires federal agencies to comply
3 with and follow state licensing law. We're
4 seeing numerous instances where that is not
5 being carried out by agencies in their
6 procurement activities.

7 This includes abuse of the GSA
8 schedules, the professional engineering
9 services schedule, the environmental services
10 schedule, the temporary services schedule,
11 MOBIS, and most recently, the GIS and CAD
12 software SmartBUY.

13 All provide opportunities for
14 agencies to use the schedule in violation of
15 the Brooks Act. To say that we're frustrated
16 about the lack of correction or enforcement in
17 that area is an understatement.

18 Secondly, we've seen an increase
19 in FedBizOpps notices where there are attempts
20 to buy, particularly mapping services, as a
21 commercial item.

22 These are professional services.

1 There are very serious tax, liability, and
2 licensing implications. This is not the
3 government going out as if it were going to a
4 gas station and buying a commercial off-the-
5 shelf map. These are professional services
6 that are being treated as if a commercial
7 item, which we think is not the proper
8 process.

9 Additionally, it has been over ten
10 years now since Congress enacted legislation
11 permitting the use of design build procedures.
12 We believe, now that we have a decade of
13 experience, that there ought to be a review of
14 the design build process.

15 We believe it's over-used. It was
16 supposed to be used for unique and projects of
17 special significance. It is unfortunately
18 becoming an every day occurrence in agencies.

19 It's time to evaluate whether
20 indeed there are savings being realized both
21 in terms of time and money, whether the
22 quality of the final constructed product is up

1 to standards, and most importantly, the effect
2 of small business, which we believe has been
3 an adverse impact.

4 So what's the solution? First of
5 all, again, we're very concerned about the AE
6 acquisition workforce and we want to work with
7 our friends in OMB and OFPP, as well as OPM
8 for that matter, to fix that.

9 We believe that doing project
10 specific qualifications-based selection Brooks
11 Act procurements is still the true and tested
12 and proven method of procurement. We have no
13 problem at all with fixed price contracts.
14 Those have been the norm and seem to work very
15 well.

16 Finally, there are a number of
17 agencies that have stood up. QBS compliant,
18 IDIQ contracts that provide flexibility to the
19 agencies, and we believe works well.

20 The problem is that because of the
21 lack of a trained acquisition workforce in the
22 A and E field, agencies seem to be looking for

1 short cuts. While there may be some short term
2 benefit to that, we believe that in the long
3 term, the public health, welfare, and safety
4 is not well-served. Therefore, there ought to
5 be a return to reliance on the Brooks Act
6 process. Thank you.

7 MR. MCNALLY: Thank you, John. I
8 know in the program it's listed that we have
9 Mark Pearl, but he has yielded his time in
10 this subject area. Is Alan Chvotkin here? Not
11 yet.

12 So I'm kind of out of speakers,
13 but I'm sure there's folks out there who have
14 a passion or question regarding this area of
15 contract type. So I'll open it up to the floor
16 in this area.

17 I'll try to facilitate some
18 discussion. Here's an area, the Federal
19 Acquisition Regulation, and you've heard one
20 speaker say that FAR is okay, provides
21 sufficient information on the appropriate use
22 and enactment of various contract types to

1 minimize risk and maximize value.

2 Does anybody have any comment in
3 that area? Okay.

4 How about the area of -- what
5 practices might enable the government to make
6 better use of fixed price contracts? Yes, sir?
7 Thank you.

8 MR. LOVE: I just came back from
9 vacation, so I'll leap into it.

10 The contract types are going to be
11 really dependant, it seems to me, on
12 requirements drafting and training and
13 definition. One of the things that the SARA
14 panel did was focus on that requirement. It
15 seems to me if you really want to increase the
16 use of fixed price contracting, you're going
17 to have to bring the people who are drafting
18 requirements into the acquisition process,
19 train them, and get them involved in
20 understanding that they're not there just to
21 put in what they desire, but put into words
22 something that the market can best respond to.

1 I'm Mike Love with CSC.

2 MR. MCNALLY: Thank you. As
3 addressed earlier and you'll probably see this
4 in a recurring theme, the workforce is a
5 critical piece of this.

6 But I'll throw this out for
7 industry. That's also your workforce that
8 we're talking about. If you take on a big cost
9 type contract, your company is going to have
10 to have the capability to manage that cost.
11 Even though the government is taking the cost
12 risk, you're going to have to manage it and
13 ensure you're performing but staying within
14 the cost schedule performance and identify to
15 the customer when things are not going the way
16 it is planned as early as you can and not
17 later.

18 So I say the workforce is a
19 challenge for both the government and for
20 industry. Yes, ma'am?

21 AUDIENCE MEMBER: Both the FAR and
22 the President's memo on government contracting

1 emphasize fixed price. However, I don't think
2 that all fixed price contracts are created
3 equal.

4 There is a great range, from firm
5 fixed price to fixed price level of effort,
6 which may not be better than a cost
7 reimbursement type contract. So I was just
8 curious if anyone else shares that view.

9 MR. MCNALLY: Does anybody from the
10 service arena want to comment on that because
11 I'm sure many of you get contracts that might
12 say firm fixed price, but maybe the real
13 intent when you talk to the customer is that
14 they just want five or six people. Any comment
15 related to that?

16 AUDIENCE MEMBER: And also
17 sometimes there's fixed price contracts that
18 look more like time and materials.

19 MR. MCNALLY: Okay. Does the choice
20 of contract type affect contractor pricing or
21 the government's pricing as far as price
22 analysis, cost analysis? Yes, ma'am?

1 MS. MARSHALL: Rosella Marshall,
2 USAID. One of the issues or things that I
3 think can be done better when it comes to cost
4 reimbursement type contracts is up front when
5 it comes to government's cost estimate. I
6 think there is great room for improvement
7 there, at least speaking from a procurement
8 side. When you're getting your government
9 estimates from people who may not have the
10 expertise or the experience in really coming
11 up with that kind of costing, I think more
12 emphasis should be done on training the
13 program people or the COTRs of record
14 developing the independent government estimate
15 on how to actually do that job.

16 I think many of the people who are
17 hired when they come on board, they really
18 don't get the adequate training to come up
19 with these independent government estimates.
20 I think that really is a major impediment for
21 the procurement folks when you get those
22 estimates that appear not realistic or

1 inadequate or really just based on what the
2 budget is today.

3 MR. MCNALLY: That's a very good
4 comment. I'll throw out, because it does
5 become public, our acting administrator has
6 been over the Hill like many ADC personnel
7 talking about the `10 budget and such and
8 that's an area that he has said that NASA is
9 going to make improvements upon more projects
10 like Mars laboratory and things where you
11 have, first of all, investigators who get a
12 job of this great idea.

13 But we want to ensure that they
14 also have the capability to properly estimate
15 that idea. It's two different things. Most
16 personnel who have these brilliant ideas of
17 how to create an x-ray machine that's going to
18 be on Mars to examine rocks -- what's inside -
19 - are not brought up on how estimate costs of
20 that.

21 So what we're trying to do is
22 ensure that when proposals come in from NASA

1 engineering scientists who do an odd job or
2 industry -- universities and such -- that they
3 bring forth the capability of properly cost
4 estimating projects.

5 That is a critical thing for
6 agencies, especially if you're doing complex
7 stuff, items. Good comment.

8 I'm sure there's other things out
9 there that you have on contract type. What are
10 the obstacles for the government's ability to
11 define their outcome so that contractors can
12 propose firm fixed price or some type of fixed
13 price project?

14 I'll throw one out to help maybe.
15 It was brought up that the funding and I'll
16 mostly get some interest here is, is stability
17 of funding something that's needed to help
18 programs and contractors -- because you're all
19 part of the team once you get a program --
20 able to do the work in the time you planned to
21 do it, but you might find yourself always
22 having to change the contract and your plan

1 because the government didn't get the funds it
2 thought it was going to get when it started
3 out on a five or six year project.

4 Anybody care to throw that out as
5 a potential barrier of performing under either
6 cost type or fixed price?

7 AUDIENCE MEMBER: I'd just like to
8 echo that. I think the stability of funding
9 can be a major problem, particularly with the
10 program officers trying to know how to really
11 definitize and to come up with their programs.

12 But in addition to that, what was
13 already brought up is about the budget, the
14 timing in which agencies receive the funding.

15 I've been around procurement for
16 years and when I think back about what are
17 some of the major impediments, many times
18 procurement becomes the caboose on the train.
19 By the time the contracting office gets the
20 money, the train has been moving and here
21 you're in the last quarter of the year.

22 I think that until and unless

1 something is done so that agencies here
2 physically get that money in the first quarter
3 of the year or instead of the last quarter --
4 unless that happens, you're going to really
5 always have this kind of problem of us being
6 a caboose and trying to get things done.

7 That discourages competition
8 because you can only do so much in a length of
9 time. It impedes the quality of your work, so
10 I really see the timing of the budgeting; not
11 just getting the budget to the agency, but
12 within the agencies themselves, who many times
13 do what we call reclamation to their program
14 office or to the CIO office.

15 They're issued a certain amount of
16 money or told you're going to get this moment,
17 but then they allow them to reclamation and ask
18 for more and this can sometimes take months
19 within the agency -- so not just getting the
20 money to the agencies, but within the agencies
21 getting it to the offices.

22 MR. MCNALLY: Thank you. That's an

1 excellent comment in a really, really key
2 area.

3 I think that for many of us who
4 have been in this business a long time, that
5 is something that continually is mentioned.
6 Some things have been changed.

7 There has been acquisition reform,
8 as my colleague over here worked in and I
9 worked in, but one of the things that I don't
10 think we truly have gotten yet is financial
11 reform within the government. I'll throw that
12 out as a senior procurement executive for one
13 of the agencies, which I would like to see.

14 Any other comments in this area?

15 Yes, sir?

16 MR. CAMPBELL: Bill Campbell, OPEC.

17 I believe one of the most important things
18 we're going to need to do to be able to
19 control the costs on cost reimbursement type
20 contracts is to get the project officers and
21 the senior management to quit thinking of cost
22 reimbursement contracts as ongoing vehicles

1 they can continually add work to.

2 It's amazing the contortions they
3 go trying to get a new project to fit under
4 the scope of work of existing contracts to
5 increase the cost and increase the scope of
6 that contract.

7 If we can get them to stop that
8 and start going out and competing these
9 things, we could probably save a lot of money.

10 MR. MCNALLY: Okay, so that filters
11 in with the area of competition and, quote,
12 scope of work and does it fit within the scope
13 or out of the scope. Good comment.

14 Anything else? Yes, ma'am?

15 AUDIENCE MEMBER: This ties
16 together, I think, two points that have been
17 coming up. One is the stability and one is
18 also the complexity.

19 The longer a period of performance
20 you have, the more that you can work with your
21 whole supply chain and make investments that
22 are going to improve efficiencies and benefit

1 the government.

2 The more instability from constant
3 changes, whether it's funding changes or new
4 regulations or is your work going to be in-
5 sourced and taken away or taken over to a depo
6 or whatever it is, all of that instability
7 makes it very, very difficult to plan
8 throughout the supply chain to know what are
9 you going to be able to do and how are you
10 going to improve.

11 So the more stability and the less
12 change from the external factors, I think that
13 would also help on all these areas.

14 MR. MCNALLY: Good comment. Yes, we
15 always have to keep the thought that when you
16 say supply chain, the sub contracts and
17 various tiers because we assign a contract
18 with a prime contractor and then they go off
19 and have to do the work and set up contracts
20 with their vendors.

21 And the more you have changes, the
22 more you have to turn around and do the same

1 thing the government is doing with the prime.
2 So that's a good point of trying to focus in
3 on stability and try to reduce change.

4 Any other? I'm a big believer of
5 earned value when I'm ahead of schedule. I'm
6 not sure about performance. I'll leave that up
7 to you and cost, so I think I'll turn it over
8 to --

9 MR. LIEBMAN: Why don't we take a
10 15 minute break and let people stretch their
11 legs and then it's halftime. Then we'll come
12 back for the second half.

13 MR. MCNALLY: Great, very good. 15
14 minute break. I used to be an instructor. Be
15 back here at 10:45.

16 (Whereupon, the hearing went off
17 the record at 10:31 a.m. and resumed at 10:45
18 a.m.)

19 MR. DRABKIN: Well, in keeping with
20 the mantra of our profession, cost, schedule,
21 and performance, we'll get started again.

22 My section of this morning's

1 meeting deals with the acquisition workforce.
2 Before we hear from the three speakers who are
3 going to address that, I wanted to kind of
4 frame the issue for you.

5 There are a couple of matters
6 which need to be addressed and I hope that the
7 speakers will talk to them. If not, after
8 they've spoken, I hope that some members of
9 the audience will talk to it.

10 First of all, there is a
11 perception in government and to some extent in
12 some companies, that acquisition is free, that
13 to do a acquisition -- and when I say
14 acquisition, I don't mean just a contract --
15 doesn't cost money. But of course, the
16 companies who do it that way usually don't
17 wind up staying in business very long. But in
18 the government, we do it that way all the
19 time. It may account for part of the issues
20 that will be talked about today.

21 When I say that people don't value
22 or they believe that acquisition is free, I

1 mean to say that they don't understand what it
2 costs to conduct an acquisition. They don't
3 budget for the total cost of doing an
4 acquisition, although some of my colleagues
5 and I even have disagreements on occasion
6 about that.

7 For example, if you go to a lead
8 company and you go to their purchasing
9 department, they can tell you exactly what it
10 costs to do an acquisition. In fact, they
11 measure their performance against that cost.
12 There's an industry standard about somewhere
13 between .73 and .94 cents on a dollar as being
14 in the right range for the cost of doing an
15 acquisition.

16 In the government, we don't treat
17 it that way. As a result, we don't get the
18 resources we need often in the acquisition
19 process to get the work done.

20 The second part, I think, that
21 needs to be discussed is the complete
22 misunderstanding of what acquisition is by

1 many people. A lot of people believe when they
2 talk about acquisition that it is synonymous
3 with contracting.

4 There are many contracts that
5 occur during the course of an acquisition, but
6 acquisition is a much larger discipline. My
7 colleagues from DOD have defined 13, I
8 believe, functional areas that are in the
9 acquisition function. Most civilian agencies
10 barely define three.

11 But when you talk about
12 acquisition, you cannot talk about it and
13 understand it to mean contracting only because
14 when you do, you set yourself up for the
15 problems that come in when you deal with major
16 programs.

17 Clearly, one of our challenges is
18 to understand the importance of contracting in
19 the acquisition process, but also program
20 management. A couple of people have already
21 talked today about cost and pricing. In fact,
22 one of our tremendous challenges -- and I hope

1 someone will talk to this today -- is the fact
2 that we've lost across the government the
3 skills and, in fact, many of our industry
4 colleagues have also lost the skills in the
5 area of cost and pricing.

6 I know that John will talk to us
7 because he's already set the stage about the
8 loss he believes that has occurred in the area
9 of architect and engineering and our ability
10 to buy it.

11 Clearly, the engineering and
12 architects that are important to the
13 acquisition process have been reduced over the
14 many last, I guess, 19 years. I mean, some of
15 us remember back in the 90's that not only did
16 we reduce the size of government generally,
17 but our colleagues in DOD took a cut of 5
18 percent a year every year thanks to
19 Congressman Duncan Hunter for, I think, eight
20 years, nine years.

21 So the issue of acquisition
22 workforce is really, I think, key to getting

1 it done. In the end, if you look at every
2 single study that's been done of the system
3 since World War II, if you look at every major
4 -- I hate using the word scandal, but
5 certainly that's what the press of some of the
6 oversight bodies called it -- scandals that
7 involved acquisition in the last 50 years. At
8 the bottom of the story in every single case,
9 it was, we didn't have enough people with the
10 right competencies and skills to get the job
11 done.

12 It's not because people didn't
13 want to do a good job. It's not because they
14 didn't want to do the job in a timely fashion.
15 It's because we have created huge demands on
16 our acquisition workforce. We haven't sized it
17 and skilled it to do that work.

18 As an example, and then we'll hear
19 from the others -- just one small example is
20 one small part of the workforce. In 1991,
21 according to our statistics, there were 33,700
22 or 800 1102's in the federal government.

1 Remember in 1991 that the principle way we
2 bought things was by using sealed bid and
3 paying low price.

4 Last year, many of you know, our
5 statistics indicate we bought \$556 billion
6 worth of stuff and we did it with 28,700
7 folks. By the way, in 1990, we only spent \$150
8 billion.

9 So if you just look at that one
10 small picture of the acquisition workforce, we
11 have about 1/6 less people doing almost 300
12 percent more work in terms of dollars. And of
13 course, we've changed the degree of difficulty
14 from going low price sealed bid to best value
15 negotiated procurement. You can't do that kind
16 of work with fewer people and not have
17 problems.

18 So having said that as kind of the
19 introduction and we're interested to hear what
20 you have think about the acquisition
21 workforce. Our first speaker on this issue is
22 John. John?

1 MR. PALATIELLO: The first thing
2 I'd like to say is ditto, Dave. I could not
3 disagree with a single thing you've said.

4 MR. DRABKIN: That would be a first
5 time, John.

6 MR. PALATIELLO: Let the record
7 show. Let me try to not repeat the things that
8 Dave so eloquently said, but rather, try to
9 focus it, particularly on the A and E
10 community.

11 We saw this train coming down the
12 tracks a number of years ago. When the Service
13 Acquisitions Reform Act SARA was enacted in
14 2004, the Congress, at our recommendation,
15 including a provision in section 1414 dealing
16 with architectural engineering acquisition
17 workforce.

18 In that provision, the Congress
19 asked the administrator of OFPP, in
20 consultation with the Secretary of Defense,
21 the Director of OPM, to develop and implement
22 a plan to ensure that the federal government

1 has the necessary capability within it's A and
2 E acquisition workforce to do the following
3 five things.

4 One, ensure that the federal
5 government has employees with the expertise to
6 determine agency requirements for A and E
7 services.

8 Two, establish priorities in
9 programs including acquisition plans.

10 Three, establish professional
11 standards for developed scopes of work and for
12 award administer contracts for such services.

13 We were very disappointed in the
14 way this provision was implemented. As Dave
15 indicated, the in-house A and E capability
16 within the government has been reduced over
17 the years through retirements, attrition,
18 recruitment challenges, and shifting
19 priorities. There simply is not the workforce
20 that is available to evaluate, award, and
21 manage 80 contracts.

22 This, again, as David said, is at

1 a time when the demand and the expenditure for
2 such services is increasing the supply of an
3 acquisition workforce to manage that work has
4 declined.

5 As I indicated in my earlier
6 comments, we've seen a number of very
7 undesirable trends as a result of that we are
8 going for lower cost -- at least, the
9 perception is, quicker solutions have tried to
10 be implemented, which we believe is not in the
11 taxpayer's best interest.

12 We're also seeing the emergence of
13 a growing oligopoly within the government
14 because you now have fewer A and E contracts
15 of larger dollar value going to the largest
16 firms. So it's having a tremendously adverse
17 impact on small business.

18 I mentioned before how this is
19 manifesting itself with things like design
20 build and the GSA federal supply schedules.

21 So what do we do about it? Well,
22 these are the recommendations that we made to

1 OFPP with regard to section 1414.

2 One -- and this deals with the
3 issue that we will discuss in the final item
4 today with regard to a multi-sector workforce
5 -- but there has to be a systematic process by
6 which the federal government properly defines
7 what are in-house activities in the A and E
8 field. What are inherently governmental
9 activities within the A and E field, I should
10 say. And what are commercial?

11 The federal workforce should be
12 focused on those inherently governmental
13 functions in architecture and engineering and
14 relying to the maximum extent possible on the
15 private sector for the commercially available
16 A and E services.

17 For the past eight years, I think
18 the previous administration emphasized too
19 much the idea of competition between
20 government and the private sector and not
21 enough on cooperation between government and
22 the private sector.

1 I think too much of an us versus
2 them situation has developed on the whole in-
3 house versus out-sourcing debate, particularly
4 with regard to A and E. So we would like to
5 see a paradigm shift in that whole discussion.

6 Second is the issue of training.
7 We highly commend the Corps of Engineers
8 program, which they call Prospect, Proponent
9 Sponsored Engineer Corps Training, which has
10 an excellent training module in A and E
11 contracting.

12 Congress fixed a problem that the
13 Corps of Engineers had for many years in that
14 when the Corps was offering its training to
15 anyone outside of its workforce, it could not
16 keep any reimbursement for that training. The
17 money had to go to the Treasury and could not
18 be held within the Corps to actually off set
19 their expenses.

20 We're pleased that the Water
21 Resources Development Act fixed that. The
22 Corps can now keep that reimbursement money

1 and we'd like to see a program where there is
2 a much wider use of that training capability
3 throughout the government.

4 We believe that the government's
5 architects, engineers, surveyors, and mapping
6 professionals need to be fully engaged in a
7 project as technical specialists throughout
8 the acquisition process.

9 Fourth, as I mentioned earlier,
10 there is professional licensure in this field
11 and federal workers in this area should be
12 required to be licensed and it ought to be
13 encouraged.

14 In the 2002 Defense Authorization
15 bill, codified in 5 USC 5757, there is a
16 provision and now permits agencies to use
17 appropriated funds to pay the expenses of
18 their employees to obtain professional
19 credentials, including the expenses of
20 professional licensure and accreditation. And
21 so, we would encourage an emphasis on that as
22 part of the workforce training program for

1 federal employees.

2 Five is to share A and E
3 contracting best practices across the
4 government. SARA also established the
5 Acquisition Center of Excellence in Service
6 Contracting. We did have some meetings with
7 OFPP early on with the establishment of that
8 Center. We think there's still a lot of work
9 to be done to create best practices models in
10 qualifications-based selection.

11 But the idea of creating centers of expertise
12 or centers of excellence to share best
13 practices is an option that ought to be
14 explored.

15 Finally, as an adjunct to that,
16 recognizing that this is a long-term
17 investment to re-build this workforce, at
18 least in the short-term, perhaps the creation
19 of centers of expertise for A and E
20 acquisition ought to be explored for
21 establishment.

22 We began a discussion some years

1 ago with GSA about creating a Brooks Act QBS
2 compliant federal supply service schedule so
3 that agencies that did not have the in-house
4 expertise to do a full Brooks Act procurement
5 could actually go to GSA and get that
6 assistance.

7 Unfortunately, that idea seemed to
8 have lost some favor or importance within GSA
9 and we would be more than happy to re-engage
10 in those discussions to make that kind of
11 service available to the government.

12 Thank you.

13 MR. DRABKIN: Thank you, John. Our
14 next speaker is going to be Larry Allen. He's
15 gone? Larry left me. Next time he wants a
16 meeting, I may not be available.

17 Okay, then following Larry Allen
18 will be Trey Hodgkins from ITAA. I'm sorry.
19 It's now Tech America. You guys need to stop
20 changing.

21 MR. HODGKINS: I'll agree with
22 that. Thank you and good morning, everyone. I

1 appreciate the opportunity to come and speak
2 on behalf, again, following Chris Braddock on
3 the same multi-association group that focuses
4 on a number of these contracting issues to
5 talk about workforce.

6 I'll start by saying that we're in
7 concurrence. I think everyone who has
8 discussed this issue appears to all be in
9 concurrence that the workforce needs
10 to be a primary focus to address many of the
11 issues related to reform in the acquisition
12 and contracting area.

13 Industry agrees that previous
14 assessments have identified that we lack
15 numbers. We lack skill sets. We lack
16 experience across the spectrum of acquisition
17 workforce and addressing that is key to
18 solving many of these issues.

19 In fact, I think most of us would
20 point to many of the legislative proposals
21 that we hear about and we address each year or
22 for the last several years as trying to deal

1 with symptoms of those shortcomings. I think
2 that long-term, if we can correct these short-
3 comings in the workforce, many of those
4 symptoms would diminish and hopefully become
5 more manageable.

6 We'd also agree, as David noted,
7 that we cannot focus on a narrow set of
8 functions within the acquisition workforce,
9 but must address the full spectrum of
10 functions found in the workforce and all of
11 the shortcomings that are found across the
12 board. It's just as important that we have
13 adequate people to develop requirements as it
14 is for us to have adequate numbers to manage
15 those contracts once they've been led.

16 Several challenges that we think
17 will face us as we try to move forward and
18 address this issue -- the first is that the
19 problem will only get worse as baby boomers
20 move toward retirement. We've probably pushed
21 that out a few years with our current economic
22 situation as people who were anticipating

1 trying to retire now realize they may have to
2 work a few more years.

3 But we don't want to see the
4 extension of that window lower our efforts to
5 try and address this issue. It is a critical
6 issue. It is an urgent situation and it needs
7 to be addressed as soon as possible.

8 One thing that we hope the Obama
9 administration would look to try and improve
10 is the way that we can attract and bring in
11 annuitants to try and fill some of these gaps
12 and bring back or at least retain the
13 experience levels that we face losing as baby
14 boomers retire. That's an issue that hopefully
15 the administration can work with Congress to
16 find ways to do that that are acceptable.

17 The second point about recruiting,
18 hiring, educating, training, and retaining
19 personnel, I think that we've heard from both
20 government and independent groups that there
21 are a number of shortcomings in all of those
22 areas.

1 We also would note -- I heard
2 David eloquently talk, and Shea on Tuesday,
3 about internship programs at both of their
4 departments are running, but I don't know that
5 -- I think from the perspective of observing
6 this, the numbers that we're dealing with in
7 internships are insufficient to manage the
8 shortcomings we've got. So we need to be
9 creative about finding new ways to get people
10 into the government and in finding ways to get
11 them to stay there.

12 Another piece that we're missing
13 in this part is to make sure they have the
14 tools they need once they get here. Again,
15 David talked about some online tools that
16 they're trying to roll out at GSA to help
17 people be able to do their job more
18 efficiently and also give them more
19 information to do it more effectively.

20 Those kinds of things, we need to
21 look at across the board and make sure that
22 people have the things they need to do the job

1 once they're here.

2 Finally, of course, bringing some
3 equity to the government pay scales and the
4 career paths that the government offers for
5 these people to those that we offer in
6 industry. Quite honestly, as government people
7 have frequently noted, people come to the
8 government. They get hired. They work there
9 for five years, seven years, ten years. They
10 get trained. They become proficient and then
11 industry offers them a better job.

12 We need to find a way to bring
13 some equity to that. I would also suggest that
14 DOD has an internship program where government
15 can go work in industry and learn and see
16 things firsthand. Conversely, industry people
17 can come and work in government. I would
18 suggest expanding those types of programs as
19 a way to better understand each other's issues
20 on both sides of the coin is a way to try and
21 resolve some of these workforce issues.

22 Moving to the next bullet --

1 hiring practices in the government have
2 absolutely got to be addressed. We hope that
3 the Obama administration will make that a
4 priority.

5 It is grossly -- I want to use the
6 term negligent -- that people who apply --
7 even in these times when you're getting
8 hundreds and thousands of applications for
9 openings -- that it can take six months, nine
10 months, or a year for people to be processed
11 in and actually start working.

12 In these economic conditions,
13 certainly, most people can't wait a year to
14 get into a position. That's probably true even
15 in the best of times, if certainly not in
16 these times.

17 So the administration, we would
18 encourage them to look at ways to bring these
19 people in, get them in faster, and get them
20 into the jobs where they're sorely needed.

21 The next bullet talks about
22 personnel policies. They need to be updated.

1 Government needs to recognize that we have a
2 new generation of people coming on board. They
3 use a whole set of tools, quite honestly, that
4 I'm not familiar with and am only learning now
5 even though I work for a tech association. I'm
6 talking about web tools. I'm talking about
7 collaborative web spaces, online technologies.

8 OPM needs to look at how these
9 technologies are rolling out and treat it much
10 as we did when e-mail became something that we
11 all began to use widely. They had to determine
12 when it is appropriate, when is it not
13 appropriate, how can you use it, how do we use
14 it to more efficiently do our jobs? I would
15 suggest that that is an issue that part and
16 parcel to trying to resolve the workforce
17 problems.

18 Lastly and probably most
19 importantly, we have to find a way to fund
20 these things. Industry supported the language
21 that was inserted in the Defense Authorization
22 bill a few years ago that created a fund at

1 DOD. We were disappointed when that language
2 was taken out last year. It was going to try
3 and create an equivalent on the civilian side.

4 We would strongly encourage the
5 Obama administration to look at ways to
6 satisfy the Congressional concerns, but also
7 bring funding to bear to address these issues.
8 Without that funding, we're going to be back
9 here over and over again, talking about the
10 shortcomings we have in workforce. They need
11 to have the money to train these people, hire
12 them, and then continue to train them and
13 refresh their education so they can be
14 retained.

15 With that, I'd be happy to discuss
16 or answer any questions someone may have.
17 Thank you again for the opportunity.

18 MR. DRABKIN: Thanks, Trey. Okay,
19 so we've had two statements and we've had some
20 interesting questions posed and now it's time
21 for you, the guest audience, to contribute to
22 our discussion on acquisition workforce.

1 Is there anybody else who would
2 like to start off with an observation or
3 comment about what has been said so far? You
4 know we're not letting you go until you talk,
5 right?

6 Well, in that case, I do have a
7 couple questions to ask you, the audience,
8 you, the public about our acquisition
9 workforce.

10 Did somebody ask a question?

11 AUDIENCE MEMBER: This question is
12 for the
13 folks that are in industry associations or
14 private sector companies.

15 We've been hearing a lot about
16 making sure that requirements is associated
17 with the whole acquisition process and it's
18 clear and it works with the contracting
19 process.

20 So for those that are in industry
21 or private sector, how either organizationally
22 are your organizations structured or how do

1 you facilitate that program working with the
2 purchasing or contracting side to have those
3 requirements more firm or better when you put
4 them out for bid?

5 MR. DRABKIN: Well, I see they're
6 every bit as responsive to you as they were to
7 us. Wait, look. We have someone right over
8 here.

9 AUDIENCE MEMBER: In response to
10 your question about perhaps how industry
11 organizes their organizations for better
12 requirements definition, I think it's really
13 important in how we look at the model of how
14 the acquisition organizations are structured.

15 There's a tendency to put everyone
16 in procurement in one shop and really not
17 associate them with necessarily their program
18 counterparts. I think it would be beneficial
19 if those people who work closely on programs
20 are put into those shops and perhaps are given
21 the same types of performance requirements and
22 metrics for their performance as individuals

1 that are tied to those programs. That way,
2 even though the person still remains
3 warranted, they become a part of that team and
4 they really become -- they both have similar
5 incentives to get things in done.

6 In government, there tends not to
7 be that sort of association. There's a sort of
8 a program versus procurement block, so you
9 have different incentives. You're not
10 motivated to actually do things other than to
11 get things out the door.

12 But if you're tied to the success
13 of a particular program or particular buys,
14 then you're both incentivized the same way.

15 So those are my thoughts on that.

16 MR. DRABKIN: Over here?

17 AUDIENCE MEMBER: Building on the
18 comment there, I think industry has evolved
19 and learned a lot over the last couple of
20 years too about this cross functional
21 criticality. Whereas contracts used to work as
22 contracts, there's a lot closer connection

1 between contracts and sub-contracts because
2 you have to flow down the right things all the
3 way through.

4 Program management is working more
5 with the pricing people and the estimating
6 people and the EVM people and there's more
7 database collection and integration so that
8 you have a better idea of how you're going to
9 bid something.

10 So I see that cross functionality
11 happening across industry. It seems like it is
12 within government too. And we're doing a lot
13 more with DAU and other organizations to
14 train.

15 I think that one thing that would
16 be helpful is, say, our business development
17 people need to know some things but not
18 everything about a detail on a contract. But
19 what kind of training is needed for each one
20 of those functions so that nobody feels
21 overwhelmed by this huge area.

22 That's something that I don't

1 think is real clear or exists. I think that
2 would be a great next step for everybody to
3 work together on.

4 MR. DRABKIN: Any other comments on
5 that question? Apparently not. Well, I have a
6 question since we have all of you here and
7 many of you are from the private sector.

8 That is, what are your best
9 practices for recruiting, retaining,
10 developing, and promoting high quality folks
11 in industry? If you share those with us, maybe
12 we can adopt some of them. Since I know there
13 are a lot of industry people here and I know
14 your names, someone better raise their hand or
15 I'll call on you.

16 Somebody? Anybody? Thank you,
17 Mike. See, we push hard enough and we get an
18 answer. Okay, go ahead.

19 MR. SIPPLE: I'll be honest. We've
20 actually borrowed from the government,
21 particularly -- I went through the NAVSEA
22 training program, which is better than

1 anything I've seen in industry. With the two
2 to three year assignments and then rotating
3 through different buying divisions, in the
4 case of NAVSEA.

5 So we've done the same thing. I
6 work for Lockheed Martin. We have a leadership
7 development program where we take the best and
8 brightest out of colleges and we have special
9 relationships with certain colleges where we
10 know they meet, have high standards. They're
11 typically large public schools with a ton of
12 research and good business schools.

13 So we go to those targeted schools
14 and attempt to entice them to come work for
15 us. Then we put them in, similar to the intern
16 program I went through at NAVSEA, they go
17 through a three year rotational assignment of
18 different locations and different functions.

19 I heard Karen Wilson mentioning
20 more integration with different functions. So
21 that's one of the things we're trying to do.
22 Maybe you won't spend your entire career in

1 the contracts function. Maybe you'll spend
2 some of that time in procurement or financial
3 planning or the earned value area.

4 And then you can't forget those
5 people, right? So when they're at their 10
6 year, 12 year point, you have to keep them
7 energized and excited about the work and so
8 there's some mid-career challenges there too.

9 So I guess it's both ways. I mean,
10 we've learned from industry. We still -- we
11 just completed a new training center at our
12 headquarters to bring people in to give them
13 that constant training. That requires money.
14 You got to make sure all our units have
15 training money so that people can get the
16 training and have somewhere to charge their
17 time when they're at the new training center.

18 And that continues throughout
19 their career. So we have an entry level
20 training, the mid career, and then sort of a
21 senior capstone.

22 Again, I'm not telling you all

1 from government anything new. I mean, you do
2 this. I went down to Charlottesville with the
3 government for training. But those are some
4 ideas.

5 MR. DRABKIN: Well, we heard from
6 Lockheed and Karen, I guess, you must do it
7 differently or better?

8 So let's hear -- Mike, come back here and give
9 Karen the microphone because we want to hear how
10 Boeing does it.

11 And Bruce, get ready. You're next. Different
12 industry.

13 MS. WILSON: We do very similar
14 things to what Lockheed is doing, as you're
15 probably not surprised to hear.

16 I think that one of the things
17 that we are doing more of now which has been
18 helpful is the DAU program management class.
19 We're sending a lot more people to that class
20 than just program management, especially in
21 the business development front end side so
22 that there's more understanding of the

1 importance of requirements and the importance
2 of terms and the impact of decisions that are
3 made in the heat of winning new business on
4 the long term success for both the government
5 and industry.

6 We do have a lot of
7 interest in acquisition. I do have to applaud
8 the administration and President Obama's memo
9 because that is making acquisition a more
10 attractive field. It's not sort of the dog of the
11 company anymore.

12 So that in and of itself makes
13 people want to know what's going on. So
14 understanding the risk and identifying the
15 risk and mitigating the risk and all the
16 inputs and outputs to that are major areas of
17 focus in that training.

18 MR. DRABKIN: Thank you. As I
19 promised, Mike, just go that way to that
20 fellow raising his hand.

21 So Bruce, we heard from two
22 principle military providers, although Boeing

1 would argue, correctly, it's also a commercial
2 provider. But you're an IT company and in the
3 IT market a long time. How do you guys deal
4 with recruitment and retention and training?

5 MR. LEINSTER: Well, let me begin
6 by saying that we used to be in the business
7 of defense as well.

8 MR. DRABKIN: I'm not trying to
9 insult your company if I forget a market
10 you're in.

11 MR. LEINSTER: No, no. But I wanted
12 to draw back on my experience as a manager in
13 our defense-related business.

14 So we had a nice cycle of programs
15 where we went everywhere from providing spares
16 and repairs to full scale development on
17 significant weapons systems. So as a training
18 mechanism, we would bring people in off the
19 college campus and/or out of government and we
20 would assign new people to spares and repairs
21 kinds of repairs to get a feel for our pricing
22 methodologies and so forth.

1 And then move them up and move
2 them up the chain as they got experience into
3 large development programs and ultimately, to
4 be on major acquisition programs in the
5 capture cycle. So it was a maturing process
6 that took five to ten years.

7 We also co-located them with the
8 actual business development and business
9 delivery team so we weren't in an isolated
10 area.

11 Now we've sort of transitioned
12 into principally a commercial IT provider even
13 in our government space. I think it's fair to
14 say that we recruit people from other parts of
15 our business, frankly, who have participated
16 in delivering those kinds of systems.

17 My colleague right next to me,
18 Steven Moss, is the director of contracts for
19 our public sector right now, but he's had
20 extensive experience on strategic outsourcing
21 business dealing with our major commercial
22 suppliers, our commercial clients, the Nikes

1 of the world.

2 So he now has the experience of
3 leading integrated project teams and brings
4 that experience into our commercial sector. I
5 don't know, Steven, if you want to expand on
6 that?

7 MR. MOSS: I think one other thing
8 is -- and again, it goes, David, back to your
9 definition of acquisition -- one of the
10 greatest things I learned working in the
11 commercial side of IBM -- I started on the
12 federal side and went to commercial and back
13 to federal again -- but one of the greatest
14 things I learned in the commercial side was
15 you need to be deal maker -- not a contracts
16 person, not a lawyer, but a deal maker to
17 understand the total breadth of the operation
18 and the service being required.

19 So from a services standpoint, to
20 be effective, you need to understand service
21 level. You need to understand asset
22 acquisition. You need to understand HR

1 implications. All those kinds of things, as
2 long as well as pricing methodologies.

3 If you didn't have that full
4 breadth, you couldn't be effective. IBM has
5 built a business around this and that's how
6 we've trained our people and build our people
7 up from, again, starting at the very basic
8 fundamentals and then moving them up that food
9 chain.

10 MR. DRABKIN: Thank you. Go ahead,
11 Bruce. Expand on that a little bit.

12 MR. LEINSTER: It's also, I think,
13 important from an industry perspective. We
14 look at our contracts people and our
15 acquisitions people to be a fully influential
16 part of the business delivery and development
17 process. We'd like to see, on the government's
18 side, more assertion and less risk avoidance.

19 I will say that we don't deal with
20 something like the IG every day in our
21 community. So we don't have people looking
22 over our backs.

1 That's not to say that our efforts
2 aren't reviewed and we don't stand to be
3 chastised if we take unreasonable risks or
4 make stupid decisions. But we don't have to
5 deal with some of the forces that your 1102
6 workforce has to deal with.

7 But nonetheless, I do think it
8 would be so much more beneficial to all of us
9 if the 1102 workforce could feel more
10 autonomous and risk taking so that they can
11 make deals in the way that Steven was
12 describing.

13 MR. DRABKIN: I want to make sure
14 we kind of close this circle. Since we heard
15 from the A and E community -- wait, Michael,
16 come back.

17 Mark, can you talk a little bit
18 about how A and E firms can associate -- I
19 mean, John has talked to us a couple times but
20 you also come from that community.

21 AUDIENCE MEMBER: Yes, I can
22 address. One of the things that happens in the

1 A and E world is that the principles of the A
2 and E firms are actually the people doing the
3 work in many cases, which makes it kind of
4 unique. They're the licensed professionals.
5 They're why the company is where they are.

6 One of the things that I would
7 like to address is when you get into A and E
8 procurement is the fact that you need
9 selection boards that understand the work,
10 that understand what's going to happen.

11 A lot of times in the government,
12 that's almost a punishment for an engineer
13 that's working on a program or something to be
14 assigned over to a selection board. Something
15 needs to change there that really focuses the
16 attention of that community that acquisition
17 is one of their principle reasons for being
18 there. That is going to be the success of the
19 program is who is performing the work.

20 On the other side of the coin, the
21 breadth of experience that is gained by serving
22 multitudes of clients from different

1 directions out in the private sector isn't
2 always there when you're serving one client if
3 you're a government employee. So the interface
4 back and forth of actually going out in the
5 private sector, coming back in to government -
6 - things along that line at different levels,
7 I think needs to be more and more encouraged.

8 What makes work fun in the AE
9 world is working for different clients. Each
10 project is important. That same energy needs
11 to be in the federal workforce also.
12 Everything that they're doing is important.

13 You do get a lot of very dedicated
14 employees who work on a lot of very important
15 things. They've got to recognize that and
16 realize how important it is.

17 MR. DRABKIN: Thank you. They wants
18 to add something here and then Rich Hoff, be
19 ready. You're on deck.

20 MR. HODGKINS: I just wanted to
21 elaborate on Mark's point about the
22 interchange between government and industry.

1 I really believe there's a lot of
2 benefit from the kinds of programs I reference
3 that are DOD, the ability for people to go and
4 work on the other side of the coin and
5 understand the decisions.

6 We have a program where we go to
7 NDU and DAU -- I think PSC has a similar
8 program -- where we're offering content and
9 industry perspective about how we bid, what we
10 bid, why we bid, what we bid, what are the
11 decision-making processes we go through.

12 It's very illustrative and eye-
13 opening for the participants in those classes.
14 There seems to be the perception that industry
15 has a set of stock RFP responses that sit on
16 a shelf and we fill in some blanks. There's no
17 expense involved in developing our RFP
18 responses.

19 When we have those dialogues and
20 discussions, I think that understanding of
21 what industry goes through and then
22 conversely, what government goes through and

1 how each other's actions impact decisions that
2 are being made.

3 A better way to try and get that
4 understanding ingrained into both sides would
5 be helpful to the process.

6 MR. DRABKIN: The fellow with the
7 yellow tie? Rich, you were on both sides. You
8 were here at GSA in the FAR signatory. You
9 were at another agency. You've been with
10 others and now you're in the civilian side of
11 the world, the private sector side. What are
12 your observations about the workforce issues?

13 AUDIENCE MEMBER: Well, I won't go
14 too far off from your original question,
15 which was recruitment and retention.

16 MR. DRABKIN: Right.

17 AUDIENCE MEMBER: Obviously, on the
18 recruitment side, the best thing going for the
19 government right now is the economy. So as
20 long as one can keep the economy poor, I think
21 recruitment shouldn't be an issue for you.
22 There's lots of opportunity out there.

1 For industry, of course, that
2 creates an issue because that's our retention
3 problem at the moment.

4 From the government's perspective
5 on retention, my memory was that retention was
6 never a huge issue within the government. A
7 slight bubble when the retirement system
8 changed, of course, and that brought in some
9 questions if you don't have those financial
10 hand cuffs associated with the government
11 workforce, what else must you do to keep them
12 engaged in government service beyond the
13 public service nature of the function.

14 I think the critical answer there,
15 long term for the government, is to maintain
16 a focus on creating a government work activity
17 that is dynamic and innovative -- one that
18 truly wants to bring folks into the government
19 who really want to make a difference, who are
20 part of a change process, who want to be able
21 to analyze what exists and take it to the next
22 level.

1 If you have a government that is
2 constantly reactionary and heading backwards,
3 that's not going to attract the kind of
4 workforce that the government deserves.

5 So if there was any one
6 observation I would make on the future of
7 government workforce development, that would
8 be it.

9 The second thing I would note
10 about the workforce issues for the government
11 is probably based on some history that we've
12 experienced over the years. That is that this
13 whole workforce issue we're experiencing right
14 now isn't new.

15 We've gone through this cycle how
16 many times in the last 30 or 40 years? Maybe
17 four times that I can remember. Same issues,
18 same problems, same solutions -- which leads
19 you to ask the question, how many times do you
20 want to keep doing this? How many times do you
21 want to keep using the same solutions to solve
22 the same old problems?

1 That's a question that nobody ever
2 really wants to explore and I'd suggest that
3 there might be an opportunity here. If we have
4 any acknowledged management capability in the
5 government to look back on some of the lessons
6 learned from those previous experiences and
7 ask ourselves why it hasn't worked in the
8 past? Why do we keep putting ourself into this
9 same position with the workforce?

10 That may lead to some new
11 solutions for the future, new solutions for
12 both acquiring the workforce in an intelligent
13 manner and developing that workforce in an
14 intelligent manner and not spending and
15 wasting a lot of money on solutions that
16 haven't worked in the past.

17 MR. DRABKIN: Thank you, Rich.
18 Karen raised her hand again. Terry, you're on
19 deck next.

20 MS. WILSON: Rich's comment sparked
21 another thought. We find that the most
22 challenging retention time frame is the five

1 to ten year period. It's almost a generational
2 issue as well as a time, experience level. You
3 do need to look at how to keep the innovation
4 and keep the challenges going.

5 What some people -- I'd say five
6 years ago, people wanted to be CEO in five
7 years. Now, there's a lot more of a focus on
8 work-life balance for the younger people.

9 So there's a change and you need
10 to do that constant focus group of what is it.
11 Is it going to be work from home? Is it going
12 to be -- what are those kinds of factors that
13 are going to attract and keep a workforce?

14 I don't want to necessarily put
15 Emily on the spot, but I am. She's an intern
16 with us and so I thought it might be helpful
17 to have comments from someone who is in
18 college and looking at the future of the work
19 place and what factors you might think would
20 be important.

21 MR. DRABKIN: Emily's stomach just
22 started turning. Emily, don't worry. We're a

1 very friendly crowd, although these words will
2 be kept for posterity. Please, share with us
3 your thoughts.

4 MS. PANTOJA: My thoughts in what
5 respect? In the workforce in general or the
6 acquisition?

7 MR. DRABKIN: On recruiting or
8 retaining a workforce that does acquisition.

9 MS. PANTOJA: I think a lot of
10 schools -- I know -- I go to Marymount
11 University -- and I think a lot of schools are
12 really becoming dedicated to the whole
13 internship process.

14 Also, career-focused activities
15 and career centers, as well as, I know that a
16 lot of companies -- I get e-mails daily from
17 organizations and companies on how they're
18 having career fairs.

19 So I know that it's very, very
20 popular and important for companies and also
21 government jobs to
22 recruit directly from schools, which is very

1 important to begin that training at such a low
2 level, right from the very beginning.

3 The experience is invaluable,
4 especially when you're in college and you're
5 trying to get out there and trying to just get
6 any kind of experience.

7 MR. DRABKIN: Thank you, Emily. It
8 took a lot of guts.

9 Terry Raney, you're right over
10 here. Terry, you were in the military. You
11 were part of our acquisition reform group back
12 in the 90's, and now one of your jobs is
13 hiring -- providing back to the government
14 acquisition professionals that we used to
15 supplement our workforce. How do you think we
16 can solve some of these -- put you out of
17 business?

18 MR. RANEY: Well, don't hire our
19 people would be what I suggest first. That's
20 not a solution I advocate, although it seems
21 to be one that's being used lately.

22 I think you have to break

1 retention and recruiting into a couple
2 different pieces. Let me first talk about
3 recruiting.

4 Successful recruiting really is
5 about being able to act quickly. You can't
6 wait six months. If there's somebody good on
7 the market that you need, whether it's a
8 direct or indirect position and you can even
9 break it down further there, you need to move
10 with speed.

11 You need to identify who they are,
12 have the interview process, whatever, and then
13 hire somebody. You have to have a competitive
14 wage or whatever to do that or whatever the
15 benefits or the factors are. So really speed
16 and reaction is the key thing in recruiting
17 and the government will never get there in my
18 opinion -- 40 years around this business -- so
19 you've probably got to work on other areas.

20 As far as retention, retention is
21 really about both adequate compensation and
22 career progression and providing some ability

1 to do that. Now, a lot of our workforce, as
2 many of our companies here, other service
3 providers are retired or are people that they
4 retired from the government, military or
5 civilian, or they are people that have left
6 for various reasons.

7 There, they have to some something
8 in their mind. Career progression for them may
9 be to work on a project and move to a
10 different company. It's a completely different
11 model in many cases.

12 I'm not so sure that the
13 government shouldn't think about that model
14 occasionally as well because not everybody has
15 the same mind-set that, Dave, you and I did
16 when we came in back in the early 70's or back
17 long ago about what our future should be and
18 where we progressed. I think that your
19 generations have a little different idea.

20 The other thing is that people
21 talk about mobility between the private sector
22 and the public sector. The government did

1 something 30 years with the retirement system
2 that said let's make everybody mobile.

3 The problem is that everybody is
4 mobile, but you really still have all these
5 rules and regulations about moving in and out
6 of government. It's very easy to go back in
7 once you finally get in. But moving on, now
8 there's all these restrictions and rules and
9 things like that.

10 If you really want mobility, have
11 a system that encourages and allows it. I
12 don't think that exists right now. So those
13 are what I would say.

14 MR. MCNALLY: I'll have to throw
15 something out because Terry actually hired
16 me. I'll tell you the time frame it took for
17 him to hire me. Three days. Actually -- two,
18 yes.

19 One of those days was to make sure
20 the customer -- because I was in a pretty high
21 level position and it was kind of a new
22 business area -- so they wanted to make sure

1 the customer thought it was okay. The other
2 day was to check that I have a top secret
3 clearance. And then I came to work in two
4 weeks because we wanted to be nice people to
5 my former employer and give the traditional
6 two weeks notice.

7 I left because I had other things.
8 NASA wanted me. I came to NASA a few years ago
9 as a term and that is a quicker way to hire
10 people, but it took the person who wanted me
11 over two months. Terry didn't know this. Well,
12 maybe he suspected. It was two months to bring
13 me in because of the HR process and that was
14 quick.

15 Well, that's the problem we have
16 in the government. Terry wanted me and he got
17 me. NASA wanted me. They finally got me. We
18 have to do a better job in the government in
19 getting who we want, bringing them on board,
20 and hopefully, keeping them for awhile.

21 So just want to throw that out.

22 MR. DRABKIN: Okay, great. Terry,

1 I'm glad to hear it only takes two days to get
2 hired in your company.

3 We have another comment in the
4 back and then we'll get to you. There's a lady
5 in the back.

6 MS. JONES: My name is Tina Jones.
7 I'm a federal contracting officer. I have 27
8 years. I'm cradle to grave.

9 I would like to comment on the
10 fact that as far as retention of the 1102
11 series employees, the salaries could be a lot
12 more lucrative for the 1102 employees.

13 In the federal government, the IT
14 series, they get extra money in their grade
15 level, same grade levels that we are and we
16 work with IT people, but they're making more
17 money than we are, but we're doing more of the
18 work.

19 Also, the law enforcement group
20 within the govt. They're also making 20, 30
21 percent more than what we make. But we have a
22 very highly stressful job that we sometimes

1 perform long hours without being compensated
2 because of course we don't have money for
3 overtime until the end of the fiscal. Thank
4 you.

5 MR. DRABKIN: Thank you. There's a
6 lady over here?

7 MS. MASON: Hi, I'm Katrina Mason.
8 I'm with IPOA.

9 I just wanted to take things from
10 my law school and graduate school loan
11 perspective. Obviously, the obvious tuition
12 reimbursement -- paying for all of that,
13 working for the government just can't take it.
14 You're looking, you're coming out of law
15 school you're coming out of graduate school
16 and you see these loans and you see what the
17 government will pay and you're going to pay
18 these off for 20 years.

19 Personally, it's not worth it. On
20 top of that, you're looking at possibly
21 working with the government and it's not
22 rewarding. There's nothing fulfilling with it

1 because it takes so long to get things
2 through. As this gentleman was saying before,
3 there's so much risk avertment that everything
4 that you do will take a very long time for you
5 to actually get something to go through. If
6 I'm going through three years of self-induced
7 torture, I don't want to have to wait 20 years.
8 Thank you.

9 MR. DRABKIN: Thank you for your
10 comment. We have one down here. Boy, I got it
11 going now.

12 AUDIENCE MEMBER: Once you start
13 asking the interns, you get opinions.

14 I'm working at OFPP this summer,
15 but I'm actually an MBA candidate at
16 University of Pittsburgh.

17 One thing that I would say is that
18 the government tends to focus programs and
19 partnerships with DC-based schools or schools
20 that are around the government headquarters.
21 The quality people might not be at those
22 schools because they can't afford it.

1 Also, I'm actually doing a dual
2 degree so I'm in the public policy school and
3 the business school and until I started to
4 work with OMB, I did not know that contracting
5 was a career path.

6 I have three undergrad degrees and
7 I'm doing two masters degrees and it took me
8 eight years of education to find out that it
9 is a career path. So that might be a little
10 problem.

11 And then, because of the business
12 school, I have to talk about risks and
13 rewards. There are a lot of people that feel
14 very passionately about government contracting
15 and when they see it in the media, they might
16 think, oh, I don't even want to think about
17 working in that area of the government because
18 it only ever gets bad press.

19 I know the press loves the bad
20 stuff, but I'm sure there are also best
21 practices that both industry and government
22 have with working with one another that could

1 also help increase the image of the industry
2 as a whole and also publicize that it is a
3 career field.

4 MR. DRABKIN: Go Steelers. And if
5 you want a job, see Alma Tier from my office.
6 We want to hire you. Yes, ma'am?

7 MS. FRIESON: I'm Gloria Frieson.
8 I'm with Acquisition Solutions. I just have
9 one sort of general comment about the model
10 that's used for acquisitions in government.

11 If you have the problem of
12 increased dollar amounts and more complex
13 contracts -- what's been presented here is
14 mostly -- the solution is to throw people at
15 the problem.

16 But if you have people that are
17 leaving the government and you don't have that
18 experience level, then it forces you to re-
19 engineer how you do things. We've talked about
20 technology in terms of attracting new people,
21 but using technology to make the job more
22 efficient is probably something that you can

1 solve your problem and also solve the problem
2 of not having as many people.

3 So it's the model that you have.

4 It's the same old model and get more people
5 and if you're having people leaving out the
6 door, there's no way to capture what they know
7 and to be able to take technology and put that
8 knowledge that they have into some form of
9 technology to where people who come in the
10 door can use it very easily and you don't have
11 to keep re-hiring annuitants.

12 I mean, I'm sure people want to
13 retire and really want to retire. It sort of
14 makes sense. So I don't think we're looking at
15 all the avenues. We're simply looking at
16 putting more people and throwing people at the
17 problem.

18 MR. DRABKIN: I appreciate your
19 comment and one of the observations I would
20 make about the topics that we've listed is we
21 certainly talked about acquisition tools and
22 the need for them and the way that they would

1 leverage the workforce. It's something that we
2 are all thinking about and working towards and
3 we recognize as an issue.

4 Jeff, I've gone exactly one hour,
5 which was my scheduled time. So I've given you
6 back the savings we made in the schedule,
7 which should accommodate you beginning now,
8 sir.

9 MR. LIEBMAN: Great. Thank you,
10 David, and thank you to GSA and your team for
11 hosting us here today.

12 Our last subject today is the
13 fourth topic from the Presidential memorandum,
14 which is clarifying when functions should be
15 performed by federal employees and when
16 contractors may be appropriately considered
17 and the broader set of issues having to do
18 with the decisions that need to be made about
19 what work gets done in-house by the government
20 and what work is best done by private sector
21 contractors and how we help our managers
22 recognize the proper division of tasks between

1 the different sectors.

2 There are a number of important
3 issues, I think, that are worth focusing on in
4 this area. One is figuring out when
5 outsourcing is and is not appropriate. In
6 addition to this coming up in the Presidential
7 memorandum, Congress has asked OMB to review
8 this issue.

9 Among the things we would love
10 your guidance on is how and whether the
11 current definition of inherently governmental
12 functions needs to be clarified to improve
13 management of the multi-sector workforce, what
14 kinds of criteria agencies should use in
15 identifying activities that are not inherently
16 governmental but that nonetheless need to be
17 done within the government to make sure that
18 the government retains its control of its
19 missions and its operations and its ability to
20 perform at a high level.

21 And also, how federal contracting
22 policies affect practices in the private

1 sector labor market.

2 So I'm very much looking forward
3 to our discussion of this fourth topic. To
4 start us off, Alan Chvotkin is our first
5 speaker. He's the senior vice president and
6 counsel of the Professional Services Council.

7 I'm supposed to let you know that
8 Alan is going to make two presentations
9 because we were working too fast earlier today
10 and he wasn't here for the contract type
11 discussion. So thank you for doing both.

12 MR. CHVOTKIN: My pleasure. Thank
13 you.

14 My name is Alan Chvotkin. I'm the
15 executive vice president and counsel for the
16 Professional Services Council. On behalf of
17 the Professional Services Council and the six
18 other trade associations that have joined
19 together in the presentation.

20 I want to thank you for the
21 opportunity and at least go back briefly to
22 the issue of the contract types, which is when

1 Eleanor spoke. I apologize that I wasn't able
2 to get here on time for the earlier
3 presentation. Following that, I'll go right
4 into the section 321 unless there's questions.

5 It's clear that President Obama's
6 statement for federal contracting has
7 constructive ideas, a strategic way to move
8 forward. With more than \$540 billion in
9 spending on government contracts, the process
10 and the personnel involved have to be treated
11 seriously and directly. It's no question that
12 a meeting like today contributes to that.

13 The government successfully
14 completes millions of transactions each year,
15 the vast majority of which are done well and
16 efficiently. The government gets what it wants
17 on time for the price it's willing to pay.

18 However, the increased complexity
19 and the scope clearly requires more attention
20 to the acquisition process, the workforce, and
21 the type of contracts involved. Any review of
22 the procurement process must be fact-based and

1 argued and not caught up in the methodologies
2 perpetuated about government contracting, many
3 of which we heard today -- from our interns,
4 in fact.

5 But if we look at the President's
6 March 4 memo, the memo makes a couple of key
7 statements about cost reimbursement contracts
8 that create risk. Reports have shown cost
9 reimbursement contracts have been misused. But
10 a key, executive agencies must have the
11 flexibility to tailor contracts to carry out
12 their missions and achieve the policy goals
13 and have the capacity to carry out management
14 and oversight of contracts.

15 Those last two bullets are really
16 essential and I'm thinking you might argue
17 capture the essence of the contracting
18 process.

19 In the memo, the President also
20 says that there shall be a preference for
21 fixed price contracts and we know that that's
22 no change. That's been the rule in the

1 acquisition regulations for decades. It says
2 that cost reimbursement contracts shall be
3 used only when circumstances do not allow the
4 agency to define its requirements sufficiently
5 to allow for fixed price type contract.

6 Here again, that's exactly what
7 the definition of a cost reimbursement
8 contract is in the Federal Acquisition
9 Regulation. We're pleased to see those
10 phrases, while not exactly in the memo, taken
11 from the FAR.

12 Finally, the President directs
13 OMB, as you know, to develop some government-
14 wide guidance on the appropriate use and
15 oversight of all contract types. I've added
16 the emphasis of all contract types taken from
17 the memo because I think the President's
18 exactly right that the agencies need a
19 complete tool kit -- all of the flexibilities,
20 all of the tools available to them to meet the
21 agency's needs, minimize risk, and maximize
22 value.

1 And then of course, referencing
2 section 864 from last year's National Defense
3 Authorization bill, which we'll cover next.

4 For those of you who may not have
5 memorized the law, it says that the guidance
6 that should be government-wide has to address
7 when cost reimbursement contracts are
8 appropriate. Notice it doesn't say never
9 appropriate. It says when are they
10 appropriate.

11 The acquisition plan process --
12 the guidance has to address the acquisition
13 plan and we know that the acquisition
14 strategy, the acquisition plan in FAR part 7
15 is critical. That's why FAR part 7 comes
16 before the other provisions in the FAR that
17 lay out the various contract types and
18 acquisition methodologies.

19 Finally, the workforce resources
20 in the last section talked about that. So OMB
21 is required under section 864 to submit a
22 report annually on cost reimbursement

1 contracts and that first report was issued on
2 March 18.

3 Well, let's take a look at that
4 March 18 report and see what we know based on
5 what we know about it.

6 The report cites the FAR 16.3 on
7 the restrictions and the use of cost
8 reimbursement contracts. Repeating many of the
9 same levels and issues that we've talked about
10 already, only when uncertainties in contract
11 performance do not permit cost to be estimated
12 with sufficient accuracy.

13 Sufficient details of agency
14 requirements -- we've talked a little bit
15 about requirements, but really, the key to any
16 contract type is an understanding of the
17 government's requirements by the government.
18 Once the government has an understanding of
19 its requirements and the extent to which it
20 feels confident that they can permit bidders
21 to properly assess risk and give appropriate
22 cost estimates that will drive the contract

1 type.

2 Agencies must do the surveillance
3 and of course, not part of the President's
4 memo but it is part of the acquisition
5 regulations that contractors do in cost type
6 contracts must have adequate systems.

7 I'll say again that FAR part 16
8 already expresses a public policy in favor of
9 fixed price contracts. There are other
10 provision besides FAR 16.3 that provide
11 additional critical guidance, so we have to
12 look holistically at the acquisition
13 regulations in order to be sure that you're
14 covering the totality of the guidance dealing
15 with contract types.

16 Finally, the caution that such
17 contract types are appropriate when an agency
18 is not able to define it's requirements
19 efficiently -- such as for R and D or complex
20 projects.

21 Here again, emphasis, I've added
22 because there's a recognition that cost type

1 contracts have a valuable role in the federal
2 marketplace. They are part of the tools that
3 should be available to contracting officers.
4 Under appropriate circumstances, there should
5 be no contract type that is, by definition,
6 unavailable if you can meet those thresholds
7 and the other needs.

8 The report says that there's going
9 to be some additional work. Many of you know
10 the Recovery Act has some additional
11 requirements and an OMB memo requires
12 justification and public posting for decisions
13 to use cost type contracts only -- some
14 special attention given because of the risk
15 some view associated with cost type contracts.
16 Also, strengthen the regulations based on
17 section 864 of the Act which we just talked
18 about.

19 In looking at that report, in
20 fiscal year `08, based on the data the Federal
21 Procurement Data System such as it is, only 25
22 percent of all the obligations of the federal

1 government and only 2 percent of all
2 transactions in the government were cost
3 reimbursement contracts. A quarter of all
4 contracts were cost reimbursement. Said
5 another way, only 20 -- by the way, only 23
6 percent of all obligations and only 3 percent
7 of all transactions in the Defense Department
8 were cost reimbursement contracts.

9 And if you drill down a little
10 bit, you can find out that most of those are
11 coming on the major defense weapons systems.

12 If you looked at the Department of
13 Energy, 81 percent of their contracts are cost
14 reimbursement contracts, but the largest
15 segment of DOE spending is on their M and O,
16 their lab contracts. So that's understandable.

17 And then NASA, Bill, as you well
18 know, 78 percent of NASA obligations because
19 of the lab and space launch contracts.

20 So it's not surprising that five
21 agencies -- three of which have very special
22 obligations -- DOD, DOE, and NASA, but also

1 HHS and the Department of Homeland Security
2 accounted for 95 percent of all of the
3 obligations -- all of the cost type contracts
4 in five agencies.

5 This is right out of the OMB
6 report. I thought it was very instructive to
7 help us bound the nature of the problem
8 dealing in contract types and why it's
9 important to focus on the totality of them.

10 We look at a different set of
11 numbers. 60 percent of government-wide
12 obligations were awarded as fixed price type
13 contracts -- of all contract types. 60
14 percent.

15 DOD awarded 63 percent of those
16 kinds of contracts. So here again, if there is
17 a preference for fixed price contracts and we
18 understand the nature of the government's
19 ability to define those requirements, more
20 than 60 percent of those government
21 transactions we're seeing those practices put
22 into place.

1 Coincidentally, only 5 percent of all
2 government-wide contract obligations were T
3 and M contracts and DOD awarded only 4 percent
4 of their contracts in T and M.

5 So the concern that several had
6 addressed about the inappropriate news or
7 eliminating T and M to those contracts as an
8 appropriate contract type -- first of all,
9 it's not extensively used anywhere in
10 government and it is an appropriate contract
11 type when certain thresholds that are laid out
12 in the Acquisition Regulations are met and the
13 government does the acquisition planning to
14 deal with that.

15 Let me address some of the
16 mythology because as I said in my initial
17 comment, any review of the procurement process
18 has to be fact-based and not caught up on the
19 myths. And there are a lot of myths about
20 these contract types and if we don't address
21 them, we leave those on the table and we're
22 doing a disservice in response to the

1 President's memo and to the workforce.

2 First of all, the mythology that
3 fixed price contracts are easier to solicit
4 and award -- I submit to you that the
5 understanding of the requirements side, that
6 is very difficult -- fixed price contracts by
7 themselves, the smaller dollar value -- maybe
8 commodities, but as a class, fixed price is
9 not always easier.

10 We hear a lot that fixed price
11 contracts are cheap. The government will
12 always get a cheaper price. I will tell you in
13 simple math. Although I am an attorney and not
14 a business major so you might learn this, but
15 in the government contracts math, contract
16 price is a combination of the cost of
17 performance and risk. If you don't establish
18 both elements of that and if you don't
19 understand both elements of that contract
20 price, it's very easy to mis understand that
21 fixed price contracts are cheaper.

22 Another mythology is that they

1 provide the maximum incentive to control cost
2 and that economic price adjustments are always
3 effective mechanisms to deal with
4 contingencies. Frequently, what happens in a
5 contingency area is we see the fixed price
6 contract where requirements change. Because of
7 any number of factors, we now find ourselves
8 in a cost type environment.

9 The mythology that cost
10 reimbursement contracts are not well designed
11 to serve the needs of the federal agencies is
12 just not a true statement.
13 We see them used all the time. We see them
14 used effectively. We see them used with the
15 results that the government hopes to, again,
16 mindful of the concerns.

17 And that all cost overruns are
18 equal, whether they're from a change in
19 technical requirement or agency program
20 actions to waste or over charging and
21 regrettably, that does occur in the market
22 place as well. But all cost overruns are not

1 equal. There needs to be an analysis of it. So
2 reports that simply sum up cost overruns
3 without trying to differentiate between the
4 two sends a very troubling message to the
5 workforce and actually could lead to improper
6 agency policy making without a
7 differentiation.

8 Finally, the mythology that
9 oversight will reduce cost overruns. There's
10 no question that oversight is important.
11 Government oversight is important. But most of
12 that comes after the fact. The value in
13 monitoring the surveillance and the partnering
14 that takes place will do a lot more with clear
15 requirements to reduce cost overruns than will
16 after the fact oversight and reporting.

17 So as you formulate the policies,
18 I encourage you to think about those ongoing
19 activities rather than the after fact
20 oversight.

21 Finally, that the mythology that
22 the T and M contractor has no incentive to

1 control cost forgets the very important
2 factors of competition of the marketplace
3 through past performance and the roles that
4 those played.

5 So for some actions -- three
6 simple ones. First of all, to come back to
7 that critical section in FAR part 7 on
8 acquisition plans. Here again, I think
9 agencies ought to be held accountable to
10 document the reasons for the selection of the
11 contract type. That is each contract type and
12 not simply selecting out cost reimbursement or
13 any other type.

14 Therefore, in my view, eliminating
15 a stigma of using any particular type. Also,
16 that acquisition plan ought to think about the
17 abilities and the opportunities to transition
18 -- either a contract or line items from cost
19 type or T and M to fixed price contracts as
20 the case may be.

21 Too often we get locked into a
22 single contract type with no flexibility on

1 the government's side and that makes a
2 transition both for government and industry
3 difficult.

4 Secondly, recommend that we
5 establish some mandatory agency management
6 reviews on cost reimbursement and T and M
7 contracts over some appropriate dollar
8 threshold. These are highly visible contracts.
9 Many of them need a greater level of
10 surveillance.

11 I think if you made that part of
12 routine management reviews, the very first
13 segment of the President's management agenda,
14 the first issue you have to address is
15 guidance to the federal agencies on how to
16 review and manage contracts. This one really
17 speaks to that. Take a look at appropriate
18 dollar thresholds for all contract types.

19 Finally, as we alluded to earlier,
20 it expands on the training on both
21 requirements generation contract types and the
22 characteristics of contractor risk

1 determinations. The concern is that too
2 infrequently government contracting officers,
3 government program officers don't appreciate
4 the risk determination and the risk decisions
5 that contractors make.

6 I appreciate the opportunity to
7 come back and I look forward to any questions
8 now or afterwards.

9 Thank you.

10 We can then go back to the other
11 presentation. I certainly do welcome the
12 opportunity to address this issue in the
13 President's memo on what you've talked about
14 on inherently governmental functions and what
15 constitutes inherently governmental functions
16 or other critical positions.,

17 What we've tried to do through the
18 seven associations that have joined in this
19 presentation -- well, they're not here. I'm
20 making the presentation. But they have joined
21 in the development of the recommendations here
22 is to develop what we believe is a better

1 framework for the sourcing decision.

2 The current document for structure
3 in the Defense Department -- really,
4 government-wide -- require contractors to
5 perform a lot of roles to support you,
6 government programs.

7 I mean, there's no question about
8 the contributions and the level or
9 participation of contractors. It's why we've
10 spent \$500 billion on the purchase of goods
11 and services and services now the dominant
12 part.

13 We have a patchwork of guidance
14 for determining what government employees must
15 do. We don't have a single uniform definition
16 of inherently governmental functions. If we
17 don't know what an inherently governmental
18 function is, I've always been amused by how
19 Congress could expect agencies to understand
20 what functions are closely associated with
21 inherently governmental functions.

22 And so it's absolutely right that

1 Congress last year, in section 321 of the
2 National Defense Authorization Act, which
3 seven association strongly supported, to
4 direct the executive branch to develop
5 guidance to the agencies to make these
6 decisions.

7 In addition to focusing on the
8 term inherently governmental, we've added an
9 additional phrase called critical functions.
10 I'll talk about that in a second as well.

11 This slide is really an effort to
12 depict what I call the total force concept. We
13 use it a lot in the Defense Department. We
14 know about it in NASA and DOE as well. It is
15 not only who serves in the uniform in the
16 Defense Department, for example, but also the
17 civilian agency employees, whether they be
18 NASA employees or Department of Energy
19 employees. Other agency's employees -- many of
20 the agencies are relying on other federal
21 agencies for support or activities through the
22 Economy Act and other tools and techniques and

1 they become part of that total force along
2 with contractors.

3 Before trying to figure out the
4 taxonomy and real hard definitions of
5 individual terms, we developed a set of
6 fundamental goals. We recognize that the
7 agency must control how it pursues its
8 mission. Those are functions that government
9 employees should be performing.

10 We acknowledge that agencies must
11 control how it operates on a day to day basis,
12 whether that be out of a contracts
13 organization or the finance organization that
14 controls function or controls the operations
15 of the department. That is critical.

16 Finally, the development of the
17 resources to do both -- drafting, retaining
18 workforce, the training of the workforce, the
19 determination of that. That is an element of
20 control that is fundamental to any decision
21 and probably falls into a category of
22 inherently governmental functions. I wish

1 there was another term that we could come up
2 with for that.

3 But all positions do not need to
4 be government employees. If we agree that
5 there is a control element, then on that top
6 side in a systems engineering environment, for
7 example, we would want that systems engineer
8 who has the approval authority and, in many
9 cases, needs the staff expertise to evaluate
10 options to be done by federal employees.
11 Absolutely consistent.

12 But that does not mean that every
13 system engineer needs to be a government
14 employee. In fact, as long as there are other
15 resources available to supervise the work the
16 President's memo laid out, we believe that
17 there is a highly appropriate system, a
18 process, where contractors can provide that
19 systems engineering function under the
20 supervision and control of a government
21 official.

22 We tried to put this simple -- and

1 it may be overly simplistic -- decision
2 diagram together. We start with the term of
3 inherently governmental. You can see that we
4 might be able to figure out what that
5 definition is.

6 We proposed one in our written
7 material that you have available. But if it is
8 an inherently governmental function, then the
9 answer is that it's to be performed by
10 government employees. There's no argument on
11 the industry side that government employees
12 only should be performing inherently
13 governmental functions.

14 If it is not an inherently
15 governmental function, then we ask the
16 question, is it a critical function? A
17 critical function, as we suggested earlier,
18 that I suggested earlier, are those that are
19 so important to the agency's mission or
20 operations that the function must be
21 controlled by government employees.

22 Now, inherently governmental

1 exists government-wide. It doesn't matter
2 whether that's in the Department of Energy or
3 the Small Business Administration or the
4 National Labor Relations Board. Any federal
5 entity that is performing an inherently
6 governmental function, it is inherently
7 governmental government-wide.

8 Critical functions, however, we
9 would accept and would hope that they would
10 vary by agency activities and agency missions.
11 So it should vary. We hope it would vary by
12 agency depending on each agency's mission.

13 Moreover, not every critical
14 function needs to be performed by government
15 employees as long as the agency maintains
16 sufficient workforce for control of the
17 functions by having government employees
18 perform those control positions. That's why we
19 added an additional block called critical
20 position. That's the control position. That's
21 the training side. If the answer is that it is
22 a critical position based on an agency

1 determination, then the answer is that that is
2 work that should be performed by government
3 employees.

4 So we've laid out in our material
5 a description, some definitions, some examples
6 taken from federal acquisition regulation that
7 might help re-establish this.

8 The two cautions are that just
9 because a function is not inherently
10 governmental doesn't mean that the private
11 sector has to perform the work. There are
12 clearly functions that it is not the federal
13 workforce doing those.

14 I'll caution, just as we heard the
15 earlier comment today and a lot of discussion
16 about in-sourcing and in-sourcing ought to be
17 as strategic a decision as the determination
18 to out-source to make sure that the kinds of
19 functions that the government needs to be
20 doing and is best suited to do.

21 Finally, the complexity involved
22 in the decision to hire a contractor -- it's

1 hard to over- state for positions that do not
2 perform inherently governmental functions or
3 are not in critical positions that can be the
4 choice of the agency and relied on to the
5 private sector to perform that work.

6 I think that's the end of the
7 presentation. I'd be happy to answer any
8 questions if there are any.

9 MR. LIEBMAN: Thank you for doing
10 double duty here.

11 MR. CHVOTKIN: Thank you, Jeff.

12 MR. LIEBMAN: Our next presenter is
13 John Podesta, the president and chief
14 executive officer of the Center for American
15 Progress.

16 MR. PODESTA: Thanks, Jeff. Good
17 afternoon. I'm John Podesta, the president of
18 the Center for American Progress. I want to
19 thank you, gentlemen, for giving me the
20 opportunity to testify.

21 I'm accompanied by David Madland
22 who is a senior fellow at the Center who has

1 done extensive research on the poor treatment
2 of workers by federal contractors and the
3 negative effects that that can have on
4 taxpayers.

5 As previous panelists have made
6 clear, the federal contracting process needs
7 to be reformed to eliminate waste and ensure
8 the government's interests are upheld.

9 The Center for American Process
10 has long advocated the kinds of reforms that
11 President Obama has indicated he wants to
12 pursue, including improved transparency and
13 oversight, increased competition, and
14 preventing the contracting out of essential
15 government functions, as Alan was just
16 discussing.

17 I have considerable experience
18 with that topic during my days in the Clinton
19 Administration, particularly with respect to
20 employees making hard benefit decisions.

21 These changes are essential, no
22 doubt, but I want to focus on a less well

1 known but equally critical set of reforms.
2 These reforms will improve the quality of the
3 jobs that are created when the federal
4 government contract is out.

5 I'd like to make three quick
6 points. The federal government has a key role
7 in promoting high standards for the treatment
8 of contract workers and those efforts can have
9 significant effects on the broader labor
10 market.

11 Second, far too many contracted
12 workers work under poor conditions for low pay
13 and few benefits, which is bad for workers,
14 but also imposes costs on the government and
15 tax payers and makes it hard for high load
16 companies to compete.

17 Finally, improving accountability
18 for how contractors treat their workers and
19 encouraging companies to pay decent wages and
20 provide benefits can support key aspects of
21 the President's agenda, including to ensure
22 that tax payers receive value for contracted

1 work and to help rebuild the middle class.

2 So let me just briefly expand on
3 those three points. First, the federal
4 government's contracting policies can have
5 tremendous influence on the millions of
6 employees that directly perform contracted
7 work, but it's important to understand that
8 nearly a quarter of the country's workforce,
9 a quarter of the country's workforce, is
10 employed by companies that the federal
11 government contracts with, according to the
12 Department of Labor, which means that the
13 government is in the position to help
14 integrate higher standards amongst a much
15 broader group than just the contract employees
16 themselves.

17 Through numerous laws and
18 executive orders, the US has regularly
19 expressed its intent to influence practices in
20 this regard. Historical evidence bears out its
21 effectiveness. For example, Executive Order
22 11246 signed in 1965 requires that all

1 individuals working for federal contractors
2 have an equal opportunity for employment.

3 This procurement policy has been
4 key to creating equal opportunity and has
5 promoted a dramatic increase in the percentage
6 of women and minorities as managers and firms
7 that contract with the federal government.

8 For example, studies show that
9 both minority and female employment has
10 increased significantly faster in contractor
11 than in non-contractor establishments -- 12.3
12 percent faster for black females. 8 percent
13 faster for minority males.

14 Second, improving accountability
15 and promoting better pay and benefits in
16 contracting can help workers, businesses, and
17 the government. Estimates from the Economic
18 Policy Institute, which I have because quality
19 data is not kept and made publicly available,
20 but they've done rough calculations that
21 indicate that 20 percent of all federally
22 contracted workers earn poverty level wages

1 and often do not receive benefits.

2 That means that 1 in 5 workers on
3 a federal contract does not earn enough to
4 keep a family of four out of poverty. Low
5 wages are much more common in some contracted
6 industries.

7 Paul Light estimates that 80
8 percent of service contract workers earn low
9 wages. When contract workers are poorly
10 compensated on the front end, tax payers often
11 bear additional costs on the back end, such as
12 for payments for Medicaid and food stamps and
13 the SCHIP program.

14 In practice, this amounts to
15 something like a government subsidy for low
16 load companies while high load companies are
17 placed at a competitive disadvantage.

18 Furthermore, research done by the
19 Center for American Progress finds that
20 there's a correlation between a contractor's
21 failure to adhere to basic labors, standards,
22 and wasteful practices, and sometimes even

1 illegal activity.

2 Contractors that frequently
3 violate labor laws are amongst the most
4 wasteful of taxpayer funds with histories of
5 tax evasion and fraud. To add insult to
6 injury, many companies charge tax payers
7 higher rates under the terms of the contract
8 and then turn around and pay low wages to
9 contracted workers.

10 Third, and my final point is that
11 high standards are good
12 value for tax payers. They reduce the
13 government's unintentional subsidies for low
14 load companies and the likelihood that
15 companies will operate in a wasteful fashion
16 while also promoting increased competition.

17 Let me give you with one or two
18 examples.

19 Maryland implemented a living wage standard.
20 The average number of bids for contracts in
21 the state increased nearly 30 percent from 3.7
22 to 4.7.

1 Nearly half of contracting
2 companies interviewed by the state of Maryland
3 said that the new labor standards encouraged
4 them to build on contracts because it leveled
5 the playing field.

6 One current contractor noted that
7 her contract was the first state procurement
8 for which her firm had submitted a bid. She
9 explained that without strong labor standards,
10 the bids are a race to the bottom.

11 That's not the relationship that
12 we want to have with our employees. The living
13 wage puts all bidders on the same footing so
14 it's actually encouraging and brought new
15 contractors and new competition into the
16 process.

17 I think subsequent witnesses will
18 make clear that state and local governments
19 are leading the way to promote higher
20 standards for the treatment of contract
21 workers and I think can serve as a model as
22 you develop your new standards.

1 New York City, for example, has
2 become a model of transparency with its public
3 Vendex database containing important
4 information about contracting companies.

5 California has a rigorous
6 evaluation process. El Paso has an effort to
7 promote health care coverage amongst its
8 contracted workers.

9 These and other governments have
10 implemented the kinds of reforms that the
11 federal government can and should replicate.

12 So in closing, let me just say
13 that reforming federal contracting to promote
14 higher labor standards and improve
15 accountability would not only be the right
16 thing to do for workers and tax payers, but
17 it's doable under existing contracting
18 framework. Perhaps most importantly, these
19 reforms support many of the other goals of the
20 administration, such as increased
21 transparency, limiting wasteful contracting,
22 and perhaps most importantly, rebuilding the

1 middle class.

2 Thank you and thank you for the
3 opportunity to be here.

4 MR. LIEBMAN: Thank you, John. Our
5 next speaker is John Etherton, the president
6 of Etherton and Associates.

7 Then I think we now have Mike
8 Love, the assistant general counsel of the
9 Computer Science Corporation. He's in there
10 too? All right, sorry.

11 Is John Palatiello ready to
12 perform again?

13 Yes? We welcome John Palatiello, the president
14 of John Palatiello and Associates.

15 MR. PALATIELLO: I always do as I'm
16 told and if I was told I can just speak once
17 and cover everything, I would have.

18 But there is a consistent thread
19 to the comments I've made on each of the four
20 points and I'd like to conclude by making the
21 following observation somewhat similar to Mr.
22 Chvotkin.

1 One of the difficulties with the
2 way that the approach to a multi-sector
3 workforce has been taken for quite some period
4 of time is that it seems to try to impose a
5 one-size-fits-all solution to some very
6 different and complex challenges in different
7 parts of the federal establishment.

8 I will come back again on behalf
9 of KAFPAC and talk about architect engineer
10 services.

11 As I indicated earlier in my
12 comments about the A and E acquisition
13 workforce, we believe there's a very well
14 defined scope of work that is inherently
15 governmental in the A and E process. That is
16 that government employees should be ensuring
17 that they have the expertise to determine
18 agency requirements, that the set priorities
19 and programs, including acquisition plans,
20 that they establish professional standards,
21 develop the scopes of work, and then award and
22 administer the contracts.

1 This kind of program management is
2 indeed inherently governmental. The actual
3 conduct of architectural engineering services,
4 whether it's mapping the land, surveying a
5 piece of property, designing a bridge,
6 evaluating a hazardous waste site to determine
7 what the most efficient remediation strategy
8 may be or what options for remediation may be.

9 Those are commercially available A
10 and E services and those ought to be what is
11 contracted to the private sector.

12 But to have a broad based
13 government-wide A-76 or a broad based
14 government-wide definition of inherently
15 governmental and try to apply it to
16 professional area like A and E is the
17 quintessential trying to force that square peg
18 into a round hole.

19 So we would recommend a more focused attention
20 to specific areas.

21 Secondly, I think, as I said
22 before, we need to move away from the idea

1 that I think has been too evident over a
2 number of years. That is, on relying on A-76
3 and promoting divisiveness and competition
4 between government and the private sector. I
5 think we need to move towards a more
6 collaborative approach where there's
7 cooperation between the government and the
8 private sector.

9 There is a role and a
10 responsibility in a job for both. It's not an
11 either-or us-versus-them situation. It should
12 become more of a we are all in this together.

13 It's disappointing that perhaps
14 the pendulum swings too far in either
15 direction. There is the perception that the
16 pendulum had swung too far under the previous
17 administration and there is concern that the
18 pendulum swung too far in the other direction
19 thus far, in this administration, as
20 articulated in the President's March 4
21 memorandum.

22 The memorandum is not even-handed

1 with regard to its treatment of commercial
2 activities versus inherently governmental
3 activities. I think everyone in this room
4 understands the fact that the FAIR Act
5 identified over 850,000 federal positions that
6 are commercial in nature. The memo does not
7 recognize that fact.

8 It is also a fact that fewer than
9 10 percent of those 850,000 positions have
10 ever been studied and particularly, have not
11 been studied over the last eight years.
12 Although the perception is that there was
13 bounty hunting on federal employees and that
14 there was this tremendous push to out-source
15 when in fact, A-76 was not well applied and an
16 attempt to logically draw the distinction
17 between commercial and inherently governmental
18 activities and functions and positions was not
19 well executed.

20 There is not a requirement in the
21 President's memo reminding the heads of
22 agencies of their responsibilities under the

1 FAIR Act or even under A-76. So there is not
2 a balance in there with regard to commercial
3 activities and inherently governmental
4 activities.

5 The memo unfortunately, I think,
6 is too heavily reliant on trying to address an
7 issue with regard to instances where perhaps
8 contractors are performing inherently
9 governmental functions or this new era of
10 related to inherently governmental functions.

11 The FAIR Act requires agencies to
12 review the positions on their inventories.
13 Unfortunately, Congress did not go into great
14 detail in defining that review, but
15 unfortunately, the memorandum does not do that
16 either.

17 The memo only discusses in-
18 sourcing and a re-evaluation of contracted
19 activities for potential in-sourcing. It does
20 not reinforce a review of activities that are
21 commercial in nature, that are currently
22 performed in house and reviewing them for

1 potential out-sourcing, particularly in areas
2 where there's a logical reason to do it in the
3 private sector where the capabilities of the
4 technology in the private sector is ahead of
5 the government or where there can be cost
6 saving.

7 Most troubling is the fact that
8 the memorandum does not require any type of A-
9 76 as part of an in-sourcing decision. In
10 fact, the memorandum does not establish any
11 standard by which an in-sourcing decision will
12 be made.

13 I think there needs to be some
14 embellishment and some added thought to that.
15 It should not be an arbitrary or capricious
16 decision. I think the private sector -- if
17 work is being taken away from them and brought
18 into the government and there's a legitimate
19 public policy reason why that should occur,
20 there should be some standards upon which
21 those decisions are measured so that everyone
22 understands what the decision is and why it's

1 being made. Again, this is part of the entire
2 movement of transparency.

3 As a result of the perception in
4 the private sector of this imbalance, a
5 coalition that has been dormant for the past
6 ten years has been revitalized and called the
7 Business Coalition for Fair Competition.

8 In fact, legislation was
9 introduced the week before last called the
10 Freedom from Government Competition Act that
11 attempts to try to establish this balance by
12 looking at what is commercial in nature and
13 making sure there is a process in place for
14 evaluating the potential for moving that work
15 to the private sector.

16 The legislation does also call for
17 a requirement that there be some type of
18 evaluation, public private competition and
19 justification for in-sourcing work that is
20 currently performed in the private sector.

21 So we look forward to working with
22 all of our hosts and the sponsors of this

1 forum in trying to reach that balance and
2 provide honesty and transparency and a sense
3 of proportionality to a debate where it has
4 been lacking for far too long.

5 Thank you.

6 MR. LIEBMAN: Thank you very much.
7 Our next speaker -- and I'm at great risk of
8 mis-pronouncing this, but I'll do my best --
9 is Tsedeye Gebreselassiev, the staff attorney
10 for the National Employment Law Project.

11 MS. GEBRESELASSIEV: Good
12 afternoon. My name is Tsedeye Gebreselassiev.
13 I'm a staff attorney with the National
14 Employment Law Project. Thanks for the
15 opportunity to participate today.

16 My organization, NELP, is a
17 national non-profit policy and advocacy
18 center. We work with national and grass roots
19 partners around the country on new policies
20 for creating good jobs.

21 This directive to modernize the
22 federal contracting system is an opportunity

1 to address a key national priority, which is
2 rebuilding America's middle class by creating
3 more good jobs.

4 NELP has just completed a
5 comprehensive report on the experiences of
6 state and local governments with contracting
7 reforms designed to create good jobs and
8 deliver better quality services for the tax
9 payers.

10 My brief remarks today will
11 highlight some of the key findings from the
12 report, some of which Mr. Podesta talked about
13 already.

14 Generally, states and cities have
15 found that promoting purchasing from employers
16 that invest in their workforces with living
17 wages and quality benefits and that comply
18 with work place, tax, and other laws deliver
19 higher quality more reliable services and
20 minimize the hidden cost of tax payers that
21 result when employers pay very low wages.

22 The state and local contracting

1 reforms that we surveyed in our report take a
2 variety of forms. They generally involve
3 systems that factor in better workplace
4 practices, such as wages, benefits, and law
5 compliance into the contractor selection
6 process.

7 Different states and cities have
8 used different forms ranging from preliminary
9 pre-qualification screenings to item points in
10 the bid evaluation process based upon certain
11 workplace practices. The state and local
12 experiences has been overwhelmingly positive
13 and provide a road map for reforming the
14 federal contracting process.

15 Transitioning such a form to the
16 federal level would require no new legislative
17 authority, as the federal procurement laws
18 already instruct the government to purchase
19 from responsible vendors that offer the best
20 value.

21 So I'm just going to quickly go
22 through key insights that we've learned from

1 looking at these state and local reforms.

2 First, these reforms factor in the hidden
3 public cost of low wages and benefits.

4 Second, they can enhance
5 competition by leading more vendors to submit
6 bids.

7 Third, they can provide the tax
8 payers with higher quality, more reliable
9 services.

10 So to the first point, there's a
11 growing body of research actually quantifying
12 the indirect cost of low wage work. The costs
13 are chiefly generated by earned income tax
14 credit payments, health benefits under
15 Medicaid, and other benefits and income
16 supports that result when employers pay their
17 workers low wages and provide them few
18 benefits.

19 In California, for example, the
20 University of California found that \$10.1
21 billion of federal and state tax payer money
22 in 2002 on public assistance programs went to

1 families of low wage workers, many of them
2 full time low wage workers.

3 The study found that the cost
4 would have been reduced to just \$3.1 billion
5 if the employers had paid a living wage and
6 provided quality affordable health benefits.
7 Other states have corresponding figures for
8 the costs generated by those states.

9 So to ensure a more accurate
10 assessment process that factors in these
11 costs, states and cities have adopted reforms
12 that factor in the wages and benefits that
13 contractors provide. More than 140 cities and
14 the state of Maryland have adopted living wage
15 policies that do this. Other states and cities
16 have adopted policies that factor in the type,
17 quality, and affordability of contractors
18 health benefits in the bid evaluation process.

19 While the specific approaches
20 vary, the key innovation here is making wages
21 and benefits a consideration in the process.

22 The second thing I mentioned is

1 that these contracting reforms can enhance
2 competition by leading more vendors to submit
3 bids.

4 In addition to the Maryland
5 example, such a theme has been echoed by a lot
6 of state and local procurement officials that
7 NELP has spoken to in recent months,
8 especially with regards to ensuring that
9 vendors know that they are competing with
10 firms with good compliance records.

11 For example, a procurement
12 official that I spoke to from the San
13 Francisco Public Utilities Commission
14 explained to me that, quote, in order to
15 ensure bidders possessing the requisite
16 experience spend the resources necessary to
17 prepare bids for a large public works
18 construction project, you have to eliminate
19 the prospect of low bids from contractors
20 whose qualifications to perform the work have
21 not been examined.

22 My third point is that vendors

1 that provide good wages and benefits and that
2 respect workplace laws deliver better results
3 to the government and the taxpayers by
4 providing higher quality services.

5 For example, studies of living
6 wage policies have found that when government
7 shifts from low wage contractors to those that
8 provide living wages and quality benefits, the
9 results include reduced turnover and
10 improvements in service quality.

11 In a leading case study, the San
12 Francisco airport saw annual turnover for
13 their security scanners plummet from 94.7
14 percent to 18.7 percent when it implemented a
15 living wage policy that raised wages from
16 \$6.45 an hour to \$10 an hour in 2000. The
17 study estimated that this reduced turnover
18 saved employers about \$4275 per employees in
19 turnover costs.

20 So in sum, I just want to
21 reiterate the three key points that have
22 emerged -- that the government can improve

1 competition, reduce standard cost of low wage
2 work, and deliver higher quality services for
3 federal agencies.

4 NELP would be delighted to work
5 with OMB and with the federal government going
6 forward on specific approaches for
7 incorporating these reforms in the federal
8 contracting process. Thank you.

9 MR. LIEBMAN: Thank you very much.
10 Our last scheduled speaker is Leslie Moody
11 from the Partnership for Working Families.

12 MS. MOODY: I'm standing between
13 you and lunch, thank you. I guess I'll be the
14 last one. Thank you.

15 Good morning or afternoon. I'm
16 Leslie Moody. I'm the executive director of
17 the Partnership for Working Families. We're a
18 national network of organizations that work at
19 the municipal level creating good government
20 practices and working to lift working families
21 out of poverty and create a new middle class.

22 Our experience over the last

1 decade in working cities on procurement reform
2 is that cities, as a lot of folks have been
3 talking about recently, are the incubators of
4 innovation. We've seen some really amazing
5 practices around responsible contractor and
6 bidder policies, best value contracting, in-
7 sourcing, and ways for cities to maximize the
8 return on the investment that they're making
9 in what are either private sector or publicly
10 privatized jobs.

11 So we really believe that
12 government can be an innovator and we want to
13 carry some of the lessons that we've learned
14 in cities to the federal level to ensure that
15 our federal government's investments and jobs
16 are creating the highest road opportunities,
17 especially as disparity in the country has
18 increased.

19 Our national economy is now
20 characterized by incredible levels of
21 inequality, more so than at any time since the
22 Great Depression. Much of this stems from the

1 rapid growth of low wage, no benefit jobs and
2 the emergence of industries who's business
3 models rely on sub standard employment.

4 Partnerships with local government
5 have shown that government can help reverse
6 this trend, ensuring that private profit
7 generated from public contracts provides clear
8 public benefit in the form of high quality,
9 family-sustaining jobs and shared prosperity
10 for workers, neighborhoods, and communities.

11 We can balance the public interest
12 in healthy competition with the goal of
13 creating middle class jobs by encouraging
14 competition that includes rewarding companies
15 whose public contracts maximize benefit to the
16 workers and communities.

17 We've learned that too often,
18 competition contracting processes lower
19 standards and reward the worst actors in the
20 market place. When competition for public
21 contracts rests solely on the lowest bidders,
22 workers and tax payers suffer. Workforces lose

1 healthcare, hard fought wage gains and
2 retirement benefits. Tax payers lose quality
3 of service and are burdened with the hidden
4 costs of privatization that I've mentioned
5 before -- healthcare, child care needs, and
6 the cost of ameliorating bad service
7 provision.

8 On behalf of our network, I want
9 to offer a few guidelines that should shape
10 all public contracting to ensure that federal
11 government leverages its purchasing power and
12 public resources to create maximum benefit for
13 communities and tax payers. When the
14 government as an employer manages, trains, and
15 inspires public employees to perform well,
16 they remain the best stewards of public assets
17 and services.

18 Federal contracting must preserve
19 the highest ideals of public service, which
20 are embodied in the existing public workforce.

21 Cities and counties -- many of
22 which have been mentioned before in

1 California, Massachusetts, Maryland,
2 Wisconsin, Vermont, DC -- have all implemented
3 standards to ensure that when contracted work
4 happens, it's performed with high standards
5 and a real sense of both transparency and
6 accountability.

7 We have three principles that we
8 look at when we deal with government
9 contracting. First is protecting the middle
10 class or uplifting the middle class -- pulling
11 low wage workers out of poverty. The second is
12 benefit to tax payers, and the third is the
13 quality of public services.

14 So in terms of protecting the
15 middle class, we must establish the basic
16 principle that federal contracting should not
17 create poverty wage jobs. I think our speakers
18 from both NELP and CAP spoke clearly about
19 that, but we just need to make sure that the
20 federal government is setting a standard and
21 creating the incentive for the private sector
22 to rise to that standard as well.

1 All federal service contractors
2 should be required to demonstrate that they
3 pay living wages and healthcare and offer paid
4 sick leave. Contracting processes should
5 reward bidders who provide high quality
6 training, create high quality jobs, provide
7 workers with career ladders and portable
8 credentials, and have access to those jobs
9 from low wage communities around the country.

10 This is an opportunity for
11 government to leverage its investment, to
12 raise standards in the private sector, and
13 should be taken full advantage of.

14 In terms of protecting tax payers,
15 we found that contracting initiatives often
16 fail to save money or appear to save money
17 based on just a cursory or a flawed analysis.
18 Contracting really should only be permitted if
19 it meets standards of saving real dollars, 20
20 percent cost savings, because when you
21 transition a workforce, you lose an incredible
22 amount in terms of service to communities and

1 the tax payers.

2 Both the District of Columbia,
3 states of Massachusetts and Wisconsin have
4 strong state provisions that define cost
5 benefit calculation required to anchor
6 contracting decisions.

7 Second, we should include
8 responsible contracting standards. In an
9 effort to strengthen standards for the
10 provision of city services, the San Jose city
11 council voted last year to revise the city's
12 competition policy requiring all contractors
13 that perform city services to adhere to the
14 same standards that are expected of city
15 employees.

16 Specifically, the competition
17 requires contractors to provide information on
18 job standards, including turnover, retention,
19 worker training, and screening for new workers
20 -- performance measures that will be used to
21 evaluate the delivery of services and third
22 tier review, which mandates employers to

1 disclose previous contract breaches,
2 violations in labor or environmental laws, and
3 unethical business practices.

4 The policy creates a fair and
5 level playing field for all contractors,
6 thereby allowing high quality employers to
7 compete for service contracts and establish
8 significant barriers for contractors that seek
9 to out-source city services and replace middle
10 income jobs with low wage positions that fail
11 to provide high quality services for
12 residents.

13 And third, maintaining the ability
14 to actually do the work in-house. We believe
15 it's incredibly important that government
16 retain the skills and the knowledge to
17 actually do this work should a contract fail
18 or a contractor go out of business.

19 Having the capacity to maintain
20 oversight and the option to take back the work
21 in incredibly important. In San Diego,
22 community leaders and residents insisted that

1 the city be able to maintain that incredibly
2 skilled workforce and knowledge base in-house
3 while contracting out hourly work. And so,
4 they've figured out over time, how to make
5 this happen and work in various portions of
6 what has been highly contracted out city
7 service facilities.

8 By maintaining public control over
9 portions of the work, the city established it
10 will be able to cancel contracts and reclaim
11 work if private entities fail to meet service
12 standards, which is a key element in ensuring
13 that tax payers have the capacity to reverse
14 decisions when deals go bad.

15 In terms of protecting quality
16 public services, it's all too common and
17 sadly, too common to diminish the integrity
18 importance of public work. But the fact is
19 that many of the core functions of government
20 should not be contracted out because doing so
21 jeopardizes public safety, health, and
22 welfare. Only government oversight can provide

1 the accountability necessary to safeguard our
2 communities.

3 Returning to San Diego, they had a
4 recent decision in the city to actually really
5 super evaluate their contracting out process.
6 They started with a workforce that they
7 thought would easily be contracted out -- the
8 folks who go out in the city to remove dead
9 animals, both wild and sort of lost pets, from
10 city streets.

11 After doing a study of what that
12 workforce went through and their dedication to
13 their job and to their community, they made a
14 decision that even that which seemed like one
15 of the simplest jobs in the city really
16 shouldn't be contracted out because there was
17 a real belief and faith in public service
18 among that workforce, but they didn't think
19 they could transfer to a contracted out
20 workforce.

21 I think that's a really incredibly
22 important thing to think about in terms of the

1 pride that public servants take in their jobs
2 and the belief that public service is -- we
3 have a great, I think, new faith and hope in
4 government and to instill that faith in the
5 public sector is incredibly important.

6 So after reviewing that, they
7 actually had to go back to the drawing board
8 and make a decision to create a higher
9 screening standard for contracted out
10 services.

11 So finally, just to recap -- the
12 biggest lesson of our work at the local level
13 has been that implementation and monitoring
14 are key. I think NELP's forthcoming report
15 shows that where existing federal bid
16 processes require nominal documentation of
17 responsible contracting, it has not been
18 implemented. We really need the government to
19 set a standard to implement and enforce to
20 protect the tax payers' interest.

21 We have a moral responsibility not
22 to subsidize and perpetuate employment

1 practices that leave people in poverty. Our
2 government should be a model employer and set
3 the standard for the private sector,
4 overseeing job quality created by out-
5 sourcing, as well as the quality of jobs and
6 work performed by public employees.

7 I urge you to learn from the
8 lessons of cities and states that have found
9 ways to ensure that public contracts can
10 create a strong middle class and help build
11 the communities that we all want to live in.
12 Thank you.

13 MR. LIEBMAN: Thank you very much.
14 I think we're now at the open discussion part
15 of this session.

16 I realize that I'm in an
17 obstructed view seat and I'm going to move
18 over to the other side so I can see the whole
19 audience.

20 MS. MARSHALL: Hi. I just wanted to
21 make some comments and some reality
22 observations about the overall issues that

1 we're facing here.

2 One of the first comments I'd like
3 to make is the fact that I think we need to
4 have a recognition and an appreciation for
5 some of the increased challenges that
6 acquisition has undergone over the recent
7 years. I don't think anyone has mentioned the
8 recent years, some of those challenges.

9 By those, I particularly mean
10 unusual disasters such as Hurricane Katrina
11 and the impact that that had on acquisition,
12 which in turn impacted competition, impacted
13 the contract types that were able to be
14 selected for those challenges and endeavors.

15 Then you have the Iraq and
16 Afghanistan wars, which have had their
17 challenges and their effect on procurement.
18 With Iraq and Afghanistan, you have the
19 challenges of getting contracts in place
20 quickly. That, in turn, affects capability to
21 do competition in many cases. That, in turn,
22 sometimes justifies the sole source type of

1 arrangements, but it also affects the
2 oversight that you can provide in that kind of
3 war zone situation.

4 I think we need to just have an
5 acknowledgment and a recognition that when
6 you're in those unusual types of situations,
7 which our procurement folks and our
8 contractors have faced over the years, they
9 bring with them their unusual challenges which
10 impact the government's ability to provide
11 adequate oversight that contractors -- they're
12 challenging.

13 I think those challenges are
14 unusual. They're not the norm, but we're
15 starting to see that procurement, acquisition
16 people, contractors working along with the
17 military in war zone type situations.

18 That impacts the government's
19 ability to provide oversight because in many
20 cases, in a war zone situation, you will have
21 a lot of transition because you're not going
22 to be able to attract, in many cases, senior

1 experienced acquisition people to work in war
2 zones. That's a reality if you're a civilian
3 because they didn't really sign on as
4 civilians to really work in war zones.

5 When contractors go into war
6 zones, they face a myriad of challenges --
7 providing security for themselves, the
8 unknowns, trying to get contracts in place.
9 Those are challenging situations to have fixed
10 price contracts in some situations to really
11 justify cost type situation, but then you also
12 need the oversight and then the kinds of
13 people that you're going to get to provide
14 that oversight.

15 We need to recognize that in some
16 cases, you will wind up with new junior people
17 or people transitioning out in six month
18 periods because that's the only way agencies,
19 in many cases, can attract those people to go
20 overseas.

21 So I just mention that as a
22 reality check. Those are some of the unusual

1 things that we've experienced over the years.
2 They affect inherently governmental functions.
3 The implications there, you can see just in
4 Iraq itself with the implications with
5 inherently governmental contracting out. When
6 you didn't have direct ties there.

7 But the realities there, those are
8 unusual working conditions that happened just
9 over the last few years. They've impacted
10 some, I think, of what we see in the
11 President's memo as far as the emphasis on
12 cost reimbursement type contracts because, as
13 we all know, there were several bad GAO audits
14 of the contracts in Iraq, which were a lot
15 cost reimbursement. But they faced, in many
16 cases, the lack of adequate oversight which is
17 because of the very nature of where they were
18 working. So I just bring these up as the
19 reality of some of the things that we're
20 facing now.

21 And then when we went into Iraq
22 and Afghanistan, the agencies in acquisition

1 fields were already facing a shortage of
2 acquisition people before because of A-76,
3 because of downsizing over the years, but then
4 they were cast into some unusual working
5 circumstances. So that's just a reality check
6 for those particular circumstances.

7 MR. HUCKER: Good afternoon. My
8 name is Tom Hucker. I'm a delegate in the
9 Maryland General Assembly and I was the author
10 and sponsor of the state living wage bill that
11 Mr. Podesta, today, spoke about earlier.

12 I was very pleased to sponsor that
13 bill and it was the result of an eight year
14 campaign to pass a state living wage bill in
15 Maryland.

16 I don't want to repeat the points
17 that they made, but I want to add a couple of
18 points that are included in the impact of this
19 Maryland Living Wage Report that our state
20 legislative services did because I believe
21 it's the first state-wide legislative analysis
22 of a state living wage bill.

1 Leslie Moody mentioned the goal of
2 a lot of these laws is first and foremost, for
3 many of us to raise the wages of low paid
4 workers. The report, first of all, concluded
5 that that part was very successful -- that the
6 workers in our tier 1 contracts, which are the
7 contracts in our biggest six jurisdictions
8 where most of our state procurement work is
9 done -- those workers experienced a wage
10 increase of 13 to 26 percent. So that was real
11 money in the pockets of folks who are
12 otherwise very dependent on state and federal
13 social services. We expect to see some real
14 savings from the wage gains to those workers.

15 Number two, the report made really
16 clear that there was no negative effect on the
17 universe of the contractors. Our opponents of
18 the bill were very concerned that people
19 wouldn't -- that contractors wouldn't want to
20 bid in Maryland because they have this
21 supposedly onerous new requirement.

22 In fact, as John Podesta said,

1 more contractors bid and they actually
2 quantified it. The average contract before the
3 law passed had 3.7 bidders. The average
4 contract since the law passed has had 4.7
5 bidders. So we've seen a real substantive --
6 not a marginal -- but a real substantive
7 increase in the number of contractors that are
8 bidding.

9 Anecdotal evidence seems to be
10 because some of the higher wage contractors --
11 and Maryland is a relatively high wage state -
12 - I think, feel like they have a level playing
13 field in which to compete now and they're not
14 having to compete with no wage floor against
15 low paying contractors from outside Maryland.

16 Fourth, I was disappointed that
17 the report didn't look into any of the cost
18 savings that will probably come out of the
19 passage of the bill in terms of social
20 services and also cost savings to the
21 contractors in terms of reduced employee
22 turnover and training.

1 We had to rush to meet a deadline
2 we wrote into the legislation to get this
3 report done, but I'm hopeful the legislative
4 services will look into those savings in the
5 future because obviously that's something that
6 we're all very interested in.

7 Fifth, the concerns that were
8 identified by the contractors were all very
9 easily overcome, which is a relief. The only
10 ones that were expressed were really concerns
11 that are very typical of any new law. Some
12 contractors were aware of the requirement;
13 some weren't. Some bidders put in bids that
14 weren't compliant with the new living wage
15 law. Sometimes they were the lowest bid and
16 they didn't get the award obviously because
17 they weren't bidding in a way that was
18 complaint with the living wage requirement.

19 But once we just do a better job
20 of educating our contractors about the
21 requirements of the law, obviously that will
22 go away. That was the most serious concern

1 that the state analysts ran into.

2 Finally, the law has been
3 successful enough that we've now expanded it.
4 The Maryland Stadium Authority, which is not
5 covered by state procurement law but is an
6 engine of state government that manages the
7 contracts for the food service workers and the
8 janitors all right both Raven Stadium outside
9 Baltimore and Oriole Park at Camden Yards.
10 Both of those facilities and the entire
11 Maryland Stadium Authority now agreed to
12 comply with the living wage law. So that meant
13 a real wage increase for about another 500
14 workers in addition to, I think, around 35 to
15 36,000 workers that are covered by the state
16 living wage law.

17 So I would encourage folks from other
18 states obviously to look into this, to look
19 into the report and try to pass legislation --
20 other states -- and I hope there's some real
21 valuable lessons for federal contracting.
22 Thank you very much.

1 MR. COKORINOS: Hi. I'm Lee

2 Cokorinos from Democracy Strategies.

3 I'd like to ask what specifically
4 we need by way of legislation or regulations
5 to actually move some of this living wage
6 objectives ahead?

7 Federal contracting is over \$500
8 billion now. That speaks to a lot of -- not
9 only reform of bidding, but also contracting
10 and enforcement. It goes to transparency. Do
11 we really know what wages are paid? Do we
12 really know at the hire end what the
13 competitive levels of wages are and salaries
14 between the public and private sector and how
15 do we move those up? Do we need a commission?
16 Do we need new legislation? Is it there now?
17 What's the way to move to enforceable
18 standards? Thanks.

19 MR. HOULIHAN: Hi. I'm Dennis

20 Houlihan with the American Federation of State
21 and County Municipal Employees.

22 I just wanted to make kind of a

1 broad observation about the work that you're
2 doing. It's been focused on direct federal
3 contracting. I think a broad reading of the
4 memorandum -- at least the thrust of it
5 suggests to me that the lessons learned or
6 your analysis could go a little bit, could go
7 further either in this round or another to
8 look at the procurement by, for example, in
9 states -- I'll give an example of the state
10 transportation agencies where in the
11 infrastructure program there's obviously
12 billions of dollars moving down through the
13 states.

14 So they're in kind of a
15 partnership arrangement and carrying out --
16 you can argue whether it's the federal mandate
17 or it's a joint mandate, but in fact, they're
18 carrying out a procurement program for both
19 construction, design, maintenance under
20 certain federal guidelines.

21 My sense is, from being around
22 that arena more, that the same issues that you

1 discussed here about acquisition workforce
2 problems, you'll find in a lot of the states
3 as well.

4 I think, also, there's issues that
5 the General Accounting Office recently, about
6 a year ago, two years ago, took a look at the
7 use of contractors by state DOTs. The
8 decimation in a number of DOTs of in-house
9 staff with engineering and technical
10 backgrounds somewhat similar to what we heard
11 about from the AE community here about in the
12 federal workforce.

13 I hear the same kinds of themes
14 there, so it's in turn -- you have contractors
15 that seem to be more increasingly involved in
16 doing what we would consider inherently
17 governmental functions in that area.

18 So I think that's a -- maybe it's
19 a little bit of an extension but it seems to
20 be -- it may not be a formalized direct
21 service contract but they're really carrying
22 out almost like, in my mind, a contract

1 service for the federal government.

2 MR. STEINER: Thank you. Mark
3 Steiner with the American Council of
4 Engineering Companies.

5 A lot has been said here and I'd
6 like to underline and go back to a little bit
7 of what Alan said in the multi-association
8 comments and point out that decisions on in-
9 sourcing or using the private sector should be
10 made on an individual procurement basis or an
11 individual function basis.

12 In our long comments, we provided
13 factors that need to be considered in these
14 types of make and buy decisions. These factors
15 include managerial flexibility, the need for
16 innovation, duration of efforts. Obviously,
17 project efforts would be done differently than
18 efforts that go on for indefinite periods of
19 time. All of these factors need to come in and
20 one-size-fits-all does not work.

21 Addressing a little bit of the
22 draw down in A and E capability within DOTs,

1 let me hit the nail on the head that the true
2 function of government, I think, is in the
3 management administration of the work and not
4 so much in the actual performance where the
5 work is commercially available on the outside
6 with very high quality performers.

7 I think I may be being a little
8 bit simplistic in saying that but I think it
9 has to go into your decision making.

10 On the other side of the coin,
11 we've heard a lot about limited wage and all
12 that, but for most professional services, our
13 workforces are our brain power and are why we
14 are selected for quality procurements and they
15 are very well cared for and retained for that
16 reason. I don't think you'll find any problems
17 in that regard.

18 In summation, I'd like to go back
19 again to what I originally said and that is
20 that so many factors go into what should be
21 done, what is inherently governmental? What is
22 a critical function? What is a commercially

1 available function where innovation and depth
2 of experience weighs well and performs well
3 for the government? Where that experience
4 comes from? Is it from serving a variety of
5 clients or serving one client only when you
6 get a government employment?

7 Things like that all have to weigh
8 in and need to be balanced.

9 MR. VEITH: Hi. This is Chris Veith
10 from Boeing. I applaud OMB for having this
11 public meeting. I think it's critically
12 important to -- government acquisition and
13 going forward to get some of these issues
14 under control.

15 The one thing I do know is that
16 there's been a lot of information trading
17 hands over the course of the past year,
18 including at this public meeting. This meeting
19 is only going to kick off another stage in
20 where do we go next.

21 What I'd like to ask is whether
22 you guys have contemplated incrementally

1 having other meetings of this type or having
2 other kinds of conversations and dialogue with
3 us throughout the period of time up through
4 the end of the summer when the regulatory
5 process is supposed to kind of kick in?

6 MR. LIEBMAN: I think a perfect
7 concluding question. I do think we'll have a
8 lot of opportunities for continued dialogue
9 and I'm open to suggestions about the best
10 format.

11 I actually think this format may
12 have worked better than I even expected in
13 terms of having discussion in the audience,
14 but it's not ideal for certain types of
15 conversation. So I'd be happy to get your
16 thoughts on the best ways forward in terms of
17 further dialogue.

18 As you said, we have a process
19 that will be going on all summer aiming for
20 this late September roll out of our guidance
21 on these four topics and so we definitely are
22 going to need to get a lot more input.

1 There are a number, I think, of technical
2 and more detailed aspects of some of the
3 issues we discussed today that a big forum
4 like this is not the right place to work
5 through but we look forward to working
6 with all of you on these kinds of issues. I
7 thank you very much for your participation
8 today.

9 I'm sorry. John, do you have a
10 thought?

11 MR. PODESTA: I think I can just
12 talk loud enough, but the question was asked
13 about why change. That would be a productive
14 working group. The last panel testified about --
15 really focusing and creating greater
16 transparency in the -- of the contract and of
17 the evaluation process -- and did not
18 need to change it in federal statute -- thank
19 you, and we'd be happy -- I think all of us
20 would be happy to provide further testimony
21 for the record with respect to that. But we
22 believe that you have the authority to carry

1 out the kinds of proposals that we were
2 discussing today and hopefully that some of
3 the testimony supports the idea that we'll end
4 up with a process that actually adds value to
5 the government is a fairer deal for tax payers
6 and clearly raises the standards for work.

7 Just in closing, I would say that
8 by butchering Ms. Gebreselassiev's last name,
9 you've proven that you're not a marathoner.

10 MR. LIEBMAN: Thank you very much.
11 So for those of you who want to turn in formal
12 written comments, the Federal Register notice
13 describes how to do that.

14 But more generally, if you want to
15 get in touch with us or give further comments,
16 just get in touch with the Office Federal
17 Procurement Policy and we'd be happy to
18 continue this dialogue.

19 Thank you all for enduring this
20 marathon session.

21 (Whereupon, the meeting concluded
22 at 1:04 p.m.)

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