PREPARED WRITTEN STATEMENT OF

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Interagency Contracts (Part I): Overview and Recommendations for Reform

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Thank you, Chairman McCaskill and Ranking Member Bennett, for this opportunity to share my thoughts about the challenges and opportunities associated with interagency contracting by the United States government.

Interagency contracting is simply a tool; it is neither inherently abusive as critics have sometimes suggested, nor is it a panacea for ills of government procurement as its strongest proponents have sometimes claimed. So the challenge for Congress and the Executive Branch is to shape and guide the use of this procurement device to reduce abuse, increase competition, and enhance accountability in the use and management of interagency contracts.

The Acquisition Advisory Panel, on which I had the honor to serve during its existence from 2005-2007, responded to explosive growth in interagency contracting in the preceding decade. For instance, sales under the GSA Schedules in Fiscal Year 2006 were nine times what they had been in Fiscal Year 1995. By Fiscal Year 2004, 40% of total United States obligations, $142 billion, was spent through interagency contract vehicles.

The Panel recognized that we had created an "environment biased toward the uncoordinated proliferation of interagency contracts" (AAP Report, at 246). Although the increased use of interagency contract vehicles is in large measure a result of inadequate acquisition workforce staffing at the procuring agencies, the AAP found, reliance on interagency contracts too often simply postpones, rather than solves, the problems created by inadequate acquisition workforce throughout the United States government. Moreover, reliance on interagency contracts has actually exacerbated one part of the workforce shortfall problem by allowing agencies to go forward with

procurement with inadequate acquisition workforce resources, only to find that they lack the resources to use interagency contracts well, and that they are particularly short of resources for contract management. I do not think it will not surprise this Committee that a long series of reports by GAO and by the various Special Inspectors General has documented that the most serious failings in the procurement program of the United States regularly occur in the area of contract management.

In the last decade, my research has focused on patterns that characterize the long-term evolution of United States public procurement law. In particular, I have documented a pendulum-like progression from eras dominated by deregulation, such as the 1990s, and the first half of the last decade, and periods dominated by a movement to increased regulation. Too often, I believe, this movement – in either direction -- is driven by a hasty response to procurement scandal, or by over-reaction to egregious cases of bad performance in the procurement system that are not be representative of the performance of the system as a whole. Damping down this swinging of the procurement policy pendulum would itself tend to improve the performance of the procurement system.

I want to emphasize that there are costs associated with too much regulation of public procurement and costs associated with too little regulation. In the early 1980s Congress enacted the Competition in Contracting Act, responding to the recognition that there was a need for a structured transparent process for competitive procurement of goods on the basis of best value, rather than lowest price. The inaptness of sealed bidding type procurement thus was no longer allowed to become a basis for non-competitive procurement.

On the other hand, a decade or so later, the deregulatory procurement reformers of the 1990s correctly emphasized that excessively tight regulation had hamstrung capable and devoted procurement and program managers in their efforts to secure good value for the government and federal taxpayers. Thus a series of reforms were instituted, including the opening up of interagency contracting, as well as of intra-agency task order contracting, that were designed to afford increased flexibility and quicker procedures for federal agency acquisition of goods and services.

My view is that both of these initiatives, in the 1980s and in the 1990s, though seemingly moving our procurement system in opposite directions, were fundamentally desirable. Getting the details of implementation right, however, is critical to achieving the best performance in procurement that is realistically achievable.

Thus, while the new contracting vehicles simplified some aspects of federal acquisition, three related points received insufficient attention:

First, although some of the new contracting mechanisms offered simplified procedures, the procurement system as a whole was becoming more complex, as new contracting vehicles were added to the options available to contracting officers. Second, the new mechanisms tended to facilitate the ordering of goods and services, but did nothing to assure that adequate personnel were available for contract management. Third, the federal acquisition workforce continued to shrink, or at best stabilized in size, while the dollar volume and complexity of the goods and services purchased sharply increased. A particular shortage developed of mid-level, experienced, acquisition personnel who would become the key acquisition leaders of the future.

Thus, by the middle of the last decade, the single greatest problem facing the federal government acquisition system was the mismatch between the human resources needed to effectively use the acquisition tools that had been made available, and the actual size, experience level, and expertise of the existing acquisition workforce. This mismatch is an ironic fact, given that the deregulatory reformers of the 1990s had emphasized the need for empowerment of this very workforce.

In the middle of the last decade, the Acquisition Advisory Panel reflected a commitment to what I have called an "agnostic" approach with respect to the virtues and the vices of the deregulatory reforms of the 1990s, including the dramatic growth of, and reliance on, interagency contracting. The Panel members, individually quite diverse in their dispositions toward these changes in the procurement system, were able to find common ground on some key propositions:

- Because of the inadequacy of the federal acquisition workforce, it was genuinely impossible to make a fair assessment as to how these new procedures would work, were they to be properly implemented.
- Because of serious shortcomings in the system for the collection of federal procurement data, and demonstrable inaccuracy of much of the collected data, it was impossible to render reliable judgments on the efficacy of the new procedures.
- The shortcomings of the federal acquisition workforce were most acute in the area of contract management. Insufficient contract management resources in the hands of the government meant that deficiencies in contract performance too

often went unredressed and undermined incentives for appropriate contractor performance.

Faced with these circumstances, the Panel was neither disposed to "roll back" the deregulatory initiatives of 1990s, as some of the proponents of these approaches feared, nor was it receptive to further radical innovation or deregulatory reform as some of these proponents had hoped. Rather, the Panel's approach was incrementalist, focusing recommendations for change narrowly to avoid perpetuating the dysfunctional cycle of overreaction that we have seen in the past.

Moreover, the Panel viewed the measures that it recommended as simply appropriate first steps down the path toward improved performance of the procurement system, to be followed by collection of more accurate data, and more rigorous analysis to delineate any additional steps that might be necessary. Moreover, to the extent that apparent shortcomings of the procurement system, including those involving use of interagency contracts, were attributable to acquisition workforce inadequacies, rather than inappropriate contracting mechanisms, per se, allowing time for the recommended strengthening of the acquisition workforce might allow a more accurate assessment of whether additional reforms were necessary.

Certainly, this incrementalist approach is evident in the Panel's recommendations regarding interagency contracts. First, the Panel recommended creation of a comprehensive database of existing interagency and intra-agency task order contract vehicles. Second, the Panel recommended that the Office of Management and Budget (and where appropriate the General Services Administration) undertake a general review of the procedures and criteria for the establishment of new interagency contract vehicles,

and for the continuation of, or periodic reauthorization of, existing vehicles. These measures are plainly just the beginning of what should be a sustained commitment to control proliferation of interagency contract vehicles. Other Panel recommendations, including the recommendation to extend bid protests to task orders over $5 million (implemented by Congress at the $10 million level), and the recommendation to require meaningful competition on all substantial task orders under the multiple awards schedule, were designed to begin to make sure that the benefits of competition were not lost because of the shift to less-regulated procedures, but were not specifically addressed to the issue of proliferation of interagency contract vehicles.

Thus, the Panel saw its recommendations as just the beginning of efforts to pay closer and more consistent attention to the actual results of procurement reforms. For that reason, I particularly welcome the attention that the Committee is paying to this important area of federal procurement.

Going forward, the primary issues that should, in my view, engage the Committee's attention are as follows:

1. Proliferation of overlapping interagency contract vehicles and the resulting competition between interagency contract vehicles should not be mistaken for competition in the marketplace to provide goods and services for the government. It is only the latter that tends to secure best value for government consumers, and, ultimately, for the taxpayers. Proliferation is not justified, moreover, by a hosting agency's desire to support its own acquisition workforce or to support other activities of the hosting agency. Conversely, however, agencies should not be

driven to create parallel and duplicative contract vehicles simply to avoid using, or incurring the expense of using, interagency vehicles.

2. Division of responsibility between the hosting agency and the procuring agency in interagency contracts blurs responsibility for securing meaningful competition, and obscures responsibility for proper contract management and for oversight of performance. Skeptics have suggested that this division is a fatal error. I am not so persuaded. But the responsibility of procurement officials *using* interagency vehicles to ensure that there is genuine competition for the government's business must be underscored, so that this responsibility is not avoided. As for contract management, Congress and the agencies must supply, train and retain the necessary acquisition workforce personnel so that this vital function does not become the unwanted stepchild of the federal acquisition process. I am neither a habitual basher of government contractors, nor blind to their limitations, and failings. But it seems to me unrealistic to expect consistently good performance by contractors, unless they know that the government has adequate resources to actively monitor the delivery of the goods and services for which it contracts.
3. Interagency contracts cannot substitute for the need to INVEST substantial resources in building up the capacity and numbers of the federal government's acquisition workforce. The goods and services that we buy today are generally more complex than those bought a generation ago; this only increases the demands on the acquisition workforce. It is important in this time of fiscal stress to emphasize that this is indeed an investment, and that the returns that

appropriate management of the government's contracts will pay are substantial and dramatic.

4. The resolution of the issues about interagency contracting that demand our attention should not turn on a partisan approach or ideological judgments as to the relative merits of the government and the private sector. Nor should they turn on whether one is inclined to be a "fan" of government contractors or a critic. Rather, to a degree that ought to be pleasing to the public, in the last two decades a consensus has emerged, across party lines, that the pressing needs of the public demand that government make use of goods and services that the private sector can supply to accomplish vital public ends, including providing for our national defense and homeland security. But in order to do so effectively and efficiently, the public must invest in professional contract management. In order to make effect use of the productive capacity of our private sector, a serious and sustained commitment to effective public management is necessary.