



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 18, 2009

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Section 864(d) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417, requires the Office of Management and Budget (OMB) to report annually on the use of cost-reimbursement contracting by executive agencies. Section 864 calls for data on the dollar value and number of cost-reimbursement contracts (including task and delivery orders) awarded during the prior fiscal year. This letter addresses these reporting requirements and also describes steps the Administration is taking to provide for the successful use of cost-reimbursement contracts.

Under a cost-reimbursement contract, contractors are paid based on the incurrence of allowable costs, as opposed to the delivery of a completed product or service. Cost-reimbursement contracts play a role in circumstances where an agency is not able to define its requirements sufficiently to allow for a fixed-price contract, such as for research and development, or complex projects where the costs of performance cannot be reasonably estimated with a high degree of accuracy due to unknown variables.

Since cost-reimbursement contracts place substantial risk on the government, the Federal Acquisition Regulation (FAR) at FAR 16.3 places a number of restrictions on their use. Specifically, agencies are authorized to use cost-reimbursement contracts only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract. Agencies must apply appropriate surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used. This oversight requires more resources and the involvement of a broader range of disciplines than are typically required to administer a fixed-price contract. In addition, the contractor's accounting system must be adequate so that the government and contractor may accurately identify costs applicable to the contract.

According to agency data reported in the Federal Procurement Data System (FPDS), dollars obligated under federal cost-reimbursement contracts have increased substantially in

recent years. See Enclosure 1.* In FY 2000, agencies obligated approximately \$71 billion under cost-reimbursement contracts. By FY 2008, this figure had grown by more than 90 percent to \$135 billion. This near-doubling in cost-reimbursement contracts calls into question whether these vehicles are being used excessively or without adequate justification, and whether agencies have the necessary skills and capacity – within both acquisition and program offices – to successfully administer these contracts. These concerns exist, notwithstanding the fact that cost-reimbursement contracting has declined as a percentage of total contract dollar obligations (from approximately 35 percent in FY 2000 to approximately 25% in FY 2008).

On March 4, 2009, President Obama issued a Memorandum on Government Contracting to the heads of departments and agencies. See Enclosure 2; 74 Fed. Reg. 9755 (March 6, 2009). In his memorandum, the President noted that excessive reliance by the Federal Government on cost-reimbursement contracts (as well as on sole-source contracts and contracts with a limited number of sources) “creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer.” The President went on to state that it is the policy of the Federal Government that “there shall be a preference for fixed-price type contracts and that “[c]ost-reimbursement contracts shall be used only when circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract.” In addition, the President stated that “the Federal Government shall ensure that taxpayer dollars are not spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the Federal Government's needs and to manage the risk associated with the goods and services being procured,” and also that “[t]he Federal Government must have sufficient capacity to manage and oversee the contracting process from start to finish, so as to ensure that taxpayer funds are spent wisely and are not subject to excessive risk.”

To address weaknesses in the Federal acquisition system, the President directed OMB to take a series of steps to significantly improve the acquisition process. Specifically, by July 1, 2009, OMB must develop guidance to assist agencies in “reviewing, and creating process for ongoing review of, existing contracts in order to identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency’s needs, and to formulate appropriate corrective action in a timely manner.” In addition, by September 30, 2009, OMB must issue guidance to “(1) govern the appropriate use and oversight of sole-source and other types of noncompetitive contracts and to maximize the use of full and open competition and other competitive procurement processes; (2) govern the appropriate use and oversight of all contract types, in full consideration of the agency's needs, and to minimize risk and maximize the value of Government contracts generally, consistent with the regulations to be promulgated pursuant to section 864 of Public Law 110-417; [and] (3) assist agencies in assessing the capacity and ability of the Federal acquisition workforce to develop, manage, and oversee acquisitions appropriately.” Finally, the President directed OMB to issue government-wide guidance to “clarify when governmental

* The enclosure provides a series of snapshots on contract types. For example, Figure 1 provides a Government-wide breakdown of procurement obligations by contract type. Table 1 provides an agency-by-agency breakdown of cost-reimbursement contracting activity: (i) by dollars obligated, (ii) as a percentage of total agency contract obligations, (iii) by number of contract actions, and (iv) as a percentage of total agency contract actions.

outsourcing for services is and is not appropriate, consistent with section 321 of Public Law 110-417 (31 U.S.C. 501 note).”

In developing guidance on contract type, OMB will work closely with agency Chief Acquisition Officers and Senior Procurement Executives, including those in the Departments of Defense (DOD), Energy (DOE), Health and Human Services (HHS), and Homeland Security (DHS), as well as the National Aeronautics and Space Administration (NASA) to review current practices and identify areas for strengthening. These five agencies accounted for about 95 percent of the dollars obligated through cost-type contracts in FY 2008. See Figure 2 in Enclosure 1.

In addition, OMB will consult with the Office of Personnel Management (OPM) and agency Chief Human Capital Officers to discuss skills gaps and other human capital considerations. Development, negotiation, and management of cost-reimbursement contracts generally demand more in-depth programmatic knowledge and experience, and a higher level and broader range of skills (*e.g.*, including, but not limited to, finance, accounting, cost and price analysis, industrial engineering, and program management) than are required for competitively awarded fixed-price contracts. OMB will also confer with agency program management officials to consider how collaboration between agency program and acquisition offices can be strengthened during the requirements development process. Sufficient detail of an agency’s requirements must be provided in the solicitation for potential bidders to properly assess the risks and give the government accurate cost estimates. Collaboration between the agency acquisition and program office is also important for successful contract administration. The officials who manage contracts on a day-to-day basis and serve as the contracting officer’s technical representative are typically individuals with programmatic knowledge and experience.

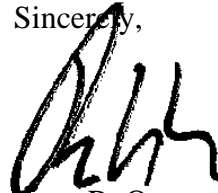
Additional actions to address cost-reimbursement contracting include the following:

1. ***Managing and monitoring cost-reimbursement contracts awarded with Recovery Act funds.*** OMB’s initial implementing guidance on the American Recovery and Reinvestment Act of 2009, Public Law 111-5, highlights the critical connection between selecting an appropriate contract type and achieving demonstrable results. See OMB Memorandum 09-10, available at http://www.whitehouse.gov/omb/recovery_default/. Chapter 6 of the guidance, which is devoted to federal contracting issues, reminds agencies that fixed-price contracts provide maximum incentive for the contractor to control costs and can accommodate market fluctuations or other contingencies through economic price adjustments. Agencies are further reminded that they must make qualified staff available to monitor contract performance and mitigate risks if cost-type contracts are to be used. Agencies will be required to post summary information on cost-type contracts awarded with Recovery Act funds at <http://www.recovery.gov>, so that citizens can see where their tax dollars are going and how they are being spent.
2. ***Strengthening regulations on cost-type contracting.*** The Councils responsible for developing amendments to the FAR (*i.e.*, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council) are developing regulatory revisions to strengthen policies and practices associated with the use of cost-reimbursement contracting. Consistent

with Section 864 of Public Law 110-417, the Councils are evaluating: (1) when and under what circumstances cost-reimbursement contracts are appropriate, (2) the acquisition plan findings necessary to support a decision to use cost-reimbursement contracts, and (3) the acquisition workforce resources necessary to award and manage cost-reimbursement contracts. (Section 864 requires OMB to address the effectiveness of the revised regulations. An initial assessment will be provided in OMB's next annual report, after the rule has been published.)

The Administration is committed to ensuring that federal contracts are structured to maximize incentives for successful contract performance. We look forward to working with Congress on the initiatives outlined above and other efforts to strengthen our acquisition system and the outcomes we achieve from our contracts.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Orszag', written in a cursive style.

Peter R. Orszag
Director

Enclosures

Identical Letter Sent to:

The Honorable Joseph I. Lieberman

The Honorable Susan M. Collins

The Honorable Edolphus Towns

The Honorable Darrell Issa

The Honorable Daniel K. Inouye

The Honorable Thad Cochran

The Honorable David Obey

The Honorable Jerry Lewis

The Honorable Carl Levin

The Honorable John McCain

The Honorable Ike Skelton

The Honorable John M. McHugh

Data on Federal Agency Use of Cost-Reimbursement Contracting in FY 2008

Section 864(d) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417, requires the Office of Management and Budget (OMB) to report annually on the use of cost-reimbursement contracting by executive agencies. Specifically, the report is to include the following information for actions taken in the prior fiscal year:

- (1) The total number and value of contracts awarded and orders issued during the covered fiscal year; and
- (2) The total number and value of cost-reimbursement contracts awarded and orders issued during the covered fiscal year.

This enclosure provides the requested information on FY 2008 activities through the following government-wide and agency-by-agency snapshots:

Figure 1. Obligations by Contract Type in FY 2008

Figure 2. Largest Federal Agency Users of Cost-Reimbursement Contracting in FY 2008

Table 1. Use of Cost Reimbursement Contracting in FY 2008 by Agency

Table 2. Obligations by Contract Type in FY 2008 by Agency

1. General caveat regarding data. To meet this reporting requirement, OMB's Office of Federal Procurement Policy (OFPP) compiled information from ad hoc reports generated in February 2009 through the Federal Procurement Data System (FPDS), the government's central repository for information on federal contract obligations. FPDS tracks dollars based on annual obligations made under a contract or order. Accordingly:

- The *values* reported in this enclosure are the dollar obligations made under a contract or order in FY 2008 (*i.e.*, not the face value of the contract or order when awarded).
- The *number of contracts and orders* reported in the figures and tables are the number of actions made against a cost-reimbursement contract or order (*i.e.*, not the number of cost-reimbursement contracts or orders awarded) and may include multiple modifications against the same contract as well as no cost administrative actions.

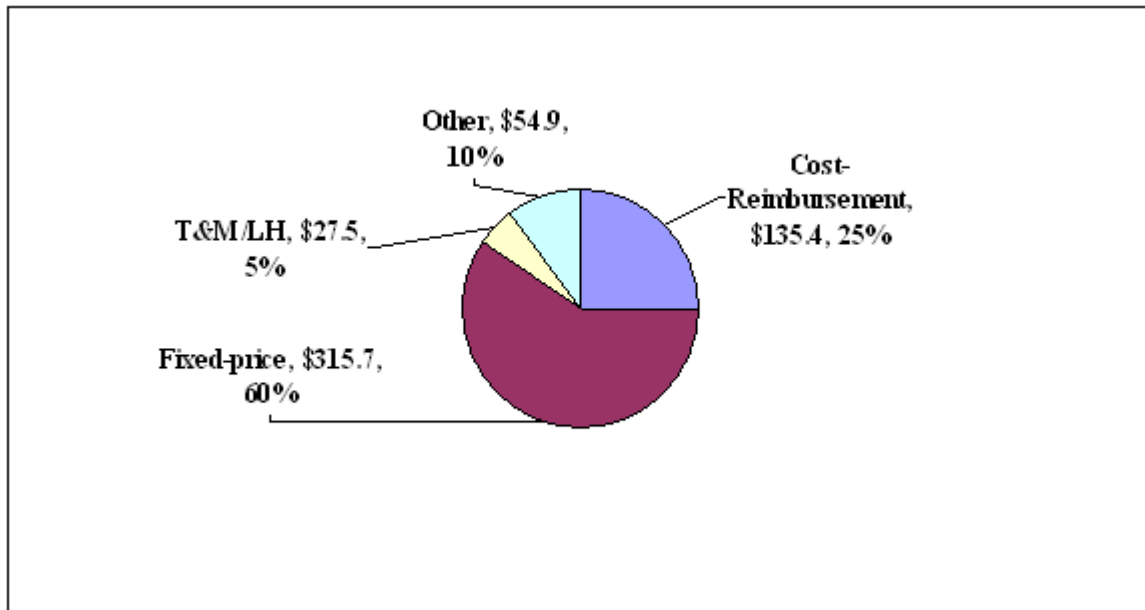
2. Definitions of contract types. Data on contract types is generally grouped into one of the following four categories: (i) cost-reimbursement contracts, (ii) time-and-materials and labor-hour contracts, (iii) fixed-price contracts, and (iv) other contracts. The following definitions are provided to clarify what figures reported in each of these categories represent.

- a. **Cost-reimbursement contracts.** These include contracts where contractors are reimbursed based on the incurrence of allowable costs. They include:

- i. *Cost contracts* that provide no fee to the contractor;
 - ii. *Cost-plus-fixed-fee contracts* that provide for payment of a negotiated fee fixed at the inception of the contract and does not vary with actual cost but may be adjusted as a result of changes in the work to be performed;
 - iii. *Cost-plus-award-fee contracts* that provide a fee consisting of a fixed base amount and an award amount based on evaluations by the government;
 - iv. *Cost-plus-incentive-fee contracts* that provide for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs; and
 - v. *Cost-sharing contracts* where the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs.
- b. **Time and materials (T&M) and labor-hours (LH) contracts.** T&M contracts provide for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and actual cost for materials (with certain exceptions). LH contracts are a variation of T&M contracts where materials are not supplied by the contractor.
- c. **Fixed-price contracts.** These include contracts that provide for a firm price or, in appropriate cases, an adjustable price and include:
- i. *Firm-fixed-price contracts* that provide for a set price not subject to adjustment based on the contractor's cost experience in performing the contract;
 - ii. *Fixed-price contracts with economic price adjustments* that provide for an upward and downward revision of the stated contract price upon the occurrence of specified contingencies;
 - iii. *Fixed-price award fee contracts* where the contractor is paid the set price and a subjectively determined award fee;
 - iv. *Fixed-price incentive contracts* which allow the government to adjust profit and establish the final contract price based on a formula based on the relationship of final negotiated total cost to total target cost;
 - v. *Firm-fixed-price level-of-effort term contracts* that require the contractor to provide a specified level of effort over a stated period of time and the government to pay the contractor a fixed dollar amount; and
 - vi. *Fixed-price redetermination contracts* which provide for either a firm-fixed price for an initial period of contract deliveries or performance, and prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance; or a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract.
- d. **Other.** These contracts and orders (i) involve a combination of contract types, (ii) are order dependent, or (iii) were not coded with a contract type by the agency.

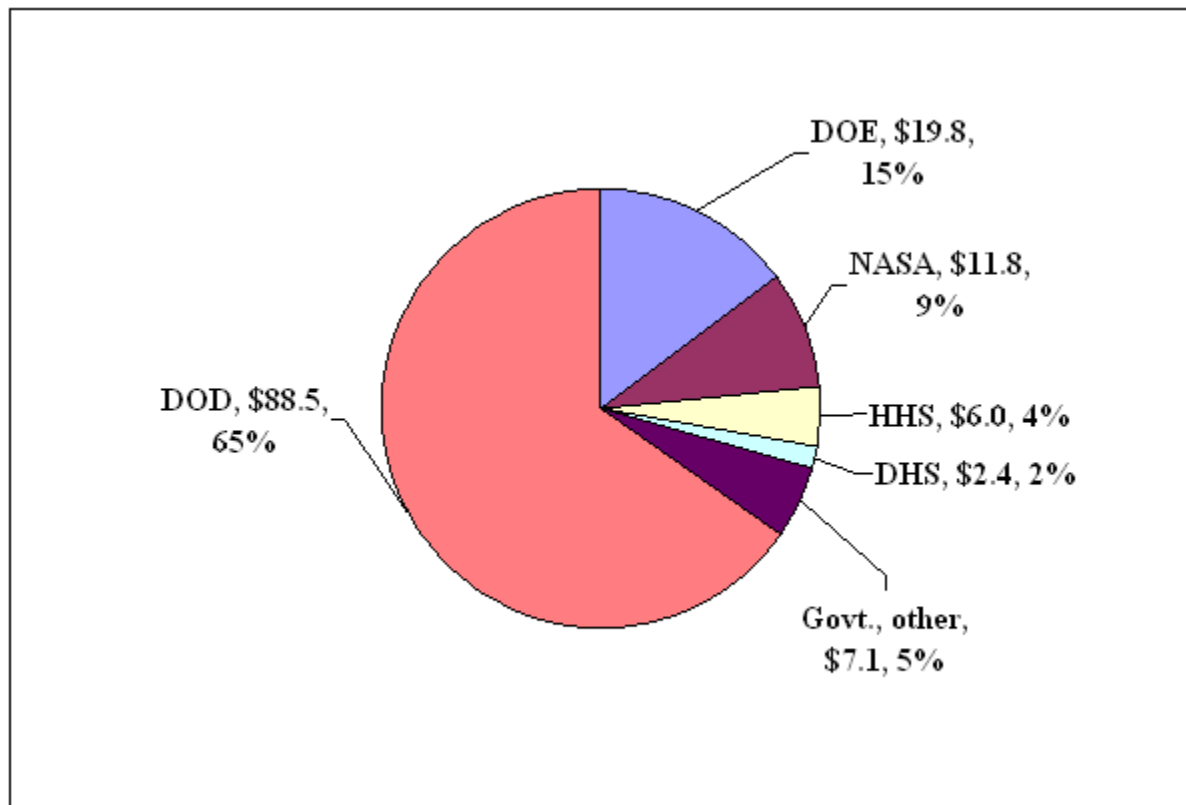
Government-Wide Snapshot

Figure 1: Obligations by Contract Type in FY 2008 (in \$ Billions)



Source: FPDS (February 2009)

Figure 2: Largest Federal Agency Users of Cost-Reimbursement Contracting in FY 2008 (in \$ Billions)



Source: FPDS (February 2009)

Snapshot by Agency

Table 1: Use of Cost-Reimbursement Contracting in FY 2008 (in \$ Billions)

Agency	Obligations			Actions		
	Cost Contracts	All Contracts	% of Cost Ks	Cost Contracts	All Contracts	% of Cost Ks
Government-Wide	\$135.4	\$533.5	25%	139,212	8,318,728	2%
Air Force	\$22.7	\$63.4	36%	27,297	204,269	13%
Army	\$26.8	\$164.9	16%	21,890	517,096	4%
Navy	\$27.9	\$95.7	29%	47,825	354,152	14%
Defense, Other	\$11.1	\$70.1	16%	6,251	2,561,669	0%
Defense, Total	\$88.5	\$394.1	23%	103,263	3,637,186	3%
Agriculture	\$0.0	\$5.1	0%	92	63,573	0%
Commerce	\$0.4	\$2.4	15%	888	24,893	4%
Education	\$0.4	\$1.4	28%	486	3,511	14%
Energy	\$19.8	\$24.6	81%	2,023	13,016	16%
HHS	\$6.0	\$13.6	44%	7,657	58,689	13%
DHS	\$2.4	\$14.0	17%	1,748	88,730	2%
HUD	\$0.0	\$1.0	1%	167	5,174	3%
Interior	\$0.2	\$3.7	6%	1,070	84,279	1%
Justice	\$0.2	\$5.9	3%	182	110,086	0%
Labor	\$1.1	\$1.8	61%	924	9,355	10%
State	\$0.3	\$5.9	4%	231	182,404	0%
Transportation	\$0.6	\$4.5	14%	1,625	17,469	9%
Treasury	\$0.7	\$4.5	15%	1,666	40,785	4%
VA	\$0.0	\$14.7	0%	103	2,981,415	0%
AID	\$1.4	\$3.0	46%	1,117	6,485	17%
EPA	\$0.5	\$1.4	38%	4,438	21,900	20%
GSA	\$0.7	\$12.2	5%	827	893,008	0%
NASA	\$11.8	\$15.0	78%	9,842	32,906	30%
NRC	\$0.0	\$0.2	27%	464	2,369	20%
NSF	\$0.3	\$0.4	77%	180	1,092	16%
OPM	\$0.0	\$1.6	0%	9	11,119	0%
SBA	\$0.0	\$0.1	0%	0	865	0%
SSA	\$0.1	\$1.0	6%	47	8,947	1%
Government, Other	\$0.1	\$1.5	7%	163	19,472	1%

Source: FPDS (February 2009)

Note 1: Ks = contracts.

Note 2: The \$ obligations as presented are rounded to the nearest \$ hundred million.

Note 3: The percentages were computed using the actual \$ obligations, and rounded to the nearest whole percentage. Thus, the percentages may not add to 100%.

Note 4: Additionally, if percentages are computed using the \$ obligations (rounded to the nearest \$ hundred million) as presented in the Table, they may not agree with the percentages (computed using the actual \$ obligations) as presented in the Table.

Snapshot by Agency (cont.)

Table 2: Obligations by Contract Type in FY 2008 (in \$ Billions)

Agency	Cost Contracts		FP Contracts		T&M and LH Contracts		Other	
	Contract Obligations	% of Total K Obl.	Contract Obligations	% of Total K Obl.	Contract Obligations	% of Total K Obl.	Contract Obligations	% of Total K Obl.
Government-Wide	\$135.4	25%	\$315.7	59%	\$27.5	5%	\$54.9	10%
Air Force	\$22.7	36%	\$32.7	52%	\$4.5	7%	\$3.4	5%
Army	\$26.8	16%	\$117.4	71%	\$9.9	6%	\$10.8	7%
Navy	\$27.9	29%	\$47.3	50%	\$1.1	1%	\$19.3	20%
Defense, Other	\$11.1	16%	\$50.3	72%	\$1.3	2%	\$7.3	10%
Defense, Total	\$88.5	23%	\$247.7	63%	\$16.8	4%	\$40.8	10%
Agriculture	\$0.0	0%	\$4.6	90%	\$0.1	3%	\$0.4	7%
Commerce	\$0.4	15%	\$1.3	55%	\$0.4	15%	\$0.4	15%
Education	\$0.4	28%	\$0.8	62%	\$0.1	4%	\$0.1	6%
Energy	\$19.8	81%	\$2.0	8%	\$0.6	2%	\$2.2	9%
HHS	\$6.0	44%	\$5.1	37%	\$0.8	6%	\$1.8	13%
DHS	\$2.4	17%	\$6.1	43%	\$2.1	15%	\$3.4	25%
HUD	\$0.0	1%	\$0.7	68%	\$0.0	2%	\$0.3	29%
Interior	\$0.2	6%	\$2.6	70%	\$0.6	17%	\$0.3	7%
Justice	\$0.2	3%	\$4.4	74%	\$1.0	17%	\$0.4	6%
Labor	\$1.1	61%	\$0.3	17%	\$0.1	7%	\$0.3	15%
State	\$0.3	4%	\$3.3	57%	\$1.1	19%	\$1.2	20%
Transportation	\$0.6	14%	\$2.7	60%	\$0.5	11%	\$0.7	15%
Treasury	\$0.7	15%	\$2.9	64%	\$0.2	4%	\$0.8	17%
VA	\$0.0	0%	\$14.4	98%	\$0.1	1%	\$0.1	1%
AID	\$1.4	46%	\$0.9	31%	\$0.6	21%	\$0.0	2%
EPA	\$0.5	38%	\$0.4	26%	\$0.4	33%	\$0.0	3%
GSA	\$0.7	5%	\$9.7	79%	\$1.3	11%	\$0.6	5%
NASA	\$11.8	78%	\$2.9	19%	\$0.1	1%	\$0.3	2%
NRC	\$0.0	27%	\$0.1	46%	\$0.0	24%	\$0.0	3%
NSF	\$0.3	77%	\$0.0	5%	\$0.1	17%	\$0.0	1%
OPM	\$0.0	0%	\$1.4	92%	\$0.0	0%	\$0.1	8%
SBA	\$0.0	0%	\$0.1	95%	\$0.0	3%	\$0.0	2%
SSA	\$0.1	6%	\$0.4	37%	\$0.1	12%	\$0.4	45%
Government, Other	\$0.1	7%	\$0.9	63%	\$0.3	18%	\$0.2	12%

Source: FPDS (February 2009)

Note 1: K = contract.

Note 2: The \$ obligations as presented are rounded to the nearest \$ hundred million.

Note 3: The percentages were computed using the actual \$ obligations, and rounded to the nearest whole percentage. Thus, the percentages may not add to 100%.

Note 4: Additionally, if percentages are computed using the \$ obligations (rounded to the nearest \$ hundred million) as presented in the Table, they may not agree with the percentages (computed using the actual \$ obligations) as presented in the Table.

Presidential Documents

Memorandum of March 4, 2009

Government Contracting

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government has an overriding obligation to American taxpayers. It should perform its functions efficiently and effectively while ensuring that its actions result in the best value for the taxpayers.

Since 2001, spending on Government contracts has more than doubled, reaching over \$500 billion in 2008. During this same period, there has been a significant increase in the dollars awarded without full and open competition and an increase in the dollars obligated through cost-reimbursement contracts. Between fiscal years 2000 and 2008, for example, dollars obligated under cost-reimbursement contracts nearly doubled, from \$71 billion in 2000 to \$135 billion in 2008. Reversing these trends away from full and open competition and toward cost-reimbursement contracts could result in savings of billions of dollars each year for the American taxpayer.

Excessive reliance by executive agencies on sole-source contracts (or contracts with a limited number of sources) and cost-reimbursement contracts creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer. Reports by agency Inspectors General, the Government Accountability Office (GAO), and other independent reviewing bodies have shown that non-competitive and cost-reimbursement contracts have been misused, resulting in wasted taxpayer resources, poor contractor performance, and inadequate accountability for results.

When awarding Government contracts, the Federal Government must strive for an open and competitive process. However, executive agencies must have the flexibility to tailor contracts to carry out their missions and achieve the policy goals of the Government. In certain exigent circumstances, agencies may need to consider whether a competitive process will not accomplish the agency's mission. In such cases, the agency must ensure that the risks associated with noncompetitive contracts are minimized.

Moreover, it is essential that the Federal Government have the capacity to carry out robust and thorough management and oversight of its contracts in order to achieve programmatic goals, avoid significant overcharges, and curb wasteful spending. A GAO study last year of 95 major defense acquisitions projects found cost overruns of 26 percent, totaling \$295 billion over the life of the projects. Improved contract oversight could reduce such sums significantly.

Government outsourcing for services also raises special concerns. For decades, the Federal Government has relied on the private sector for necessary commercial services used by the Government, such as transportation, food, and maintenance. Office of Management and Budget Circular A-76, first issued in 1966, was based on the reasonable premise that while inherently governmental activities should be performed by Government employees, taxpayers may receive more value for their dollars if non-inherently governmental activities that can be provided commercially are subject to the forces of competition.

However, the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private

sector competition has been blurred and inadequately defined. As a result, contractors may be performing inherently governmental functions. Agencies and departments must operate under clear rules prescribing when outsourcing is and is not appropriate.

It is the policy of the Federal Government that executive agencies shall not engage in noncompetitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards have been put in place to protect the taxpayer. In addition, there shall be a preference for fixed-price type contracts. Cost-reimbursement contracts shall be used only when circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract. Moreover, the Federal Government shall ensure that taxpayer dollars are not spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the Federal Government's needs and to manage the risk associated with the goods and services being procured. The Federal Government must have sufficient capacity to manage and oversee the contracting process from start to finish, so as to ensure that taxpayer funds are spent wisely and are not subject to excessive risk. Finally, the Federal Government must ensure that those functions that are inherently governmental in nature are performed by executive agencies and are not outsourced.

I hereby direct the Director of the Office of Management and Budget (OMB), in collaboration with the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Administrator of General Services, the Director of the Office of Personnel Management, and the heads of such other agencies as the Director of OMB determines to be appropriate, and with the participation of appropriate management councils and program management officials, to develop and issue by July 1, 2009, Government-wide guidance to assist agencies in reviewing, and creating processes for ongoing review of, existing contracts in order to identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency's needs, and to formulate appropriate corrective action in a timely manner. Such corrective action may include modifying or canceling such contracts in a manner and to the extent consistent with applicable laws, regulations, and policy.

I further direct the Director of OMB, in collaboration with the aforementioned officials and councils, and with input from the public, to develop and issue by September 30, 2009, Government-wide guidance to:

- (1) govern the appropriate use and oversight of sole-source and other types of noncompetitive contracts and to maximize the use of full and open competition and other competitive procurement processes;

- (2) govern the appropriate use and oversight of all contract types, in full consideration of the agency's needs, and to minimize risk and maximize the value of Government contracts generally, consistent with the regulations to be promulgated pursuant to section 864 of Public Law 110-417;

- (3) assist agencies in assessing the capacity and ability of the Federal acquisition workforce to develop, manage, and oversee acquisitions appropriately; and

- (4) clarify when governmental outsourcing for services is and is not appropriate, consistent with section 321 of Public Law 110-417 (31 U.S.C. 501 note).

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of OMB is hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "George W. Bush", written in a cursive style.

THE WHITE HOUSE,
Washington, March 4, 2009

[FR Doc. E9-4938
Filed 3-5-09; 8:45 am]
Billing code 3110-01-P