

S. HRG. 110-165

**ABUSIVE PRACTICES IN DEPARTMENT OF DEFENSE
CONTRACTING FOR SERVICES AND INTER-
AGENCY CONTRACTING**

HEARINGS

BEFORE THE

SUBCOMMITTEE ON READINESS AND MANAGEMENT
SUPPORT

OF THE

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JANUARY 17 AND 31, 2007

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ABUSIVE PRACTICES IN DEPARTMENT OF DEFENSE CONTRACTING FOR SERVICES AND INTERAGENCY CONTRACTING

WEDNESDAY, JANUARY 17, 2007

U.S. SENATE,
SUBCOMMITTEE ON READINESS
AND MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m. in room SR-232A, Russell Senate Office Building, Senator Daniel K. Akaka (chairman of the subcommittee) presiding.

Committee members present: Senators Akaka, McCaskill, Ensign, and Martinez.

Majority staff member present: Peter K. Levine, general counsel.

Minority staff members present: Gregory T. Kiley, professional staff member; Derek J. Maurer, minority counsel; David M. Morriss, minority counsel; Lucian L. Niemeyer, professional staff member; and Bryan D. Parker, minority investigative counsel.

Staff assistants present: David G. Collins and Benjamin L. Rubin.

Committee members' assistants present: Darcie Tokioka, assistant to Senator Akaka; Nichole M. Distefano, assistant to Senator McCaskill; D'Arcy Grisier, assistant to Senator Ensign; and Stuart C. Mallory, assistant to Senator Thune.

**OPENING STATEMENT OF SENATOR DANIEL K. AKAKA,
CHAIRMAN**

Senator AKAKA. The Readiness and Management Support Subcommittee meets today to hear testimony about abusive practices in Department of Defense (DOD) contracting for services and inter-agency contracting.

Before we begin, I would like to say how pleased I am to continue to work with Senator Ensign. For the last 4 years, Senator Ensign has served as chairman of this subcommittee, and I have served as ranking member. It has truly been a pleasure to work with him.

Under Senator Ensign's leadership, the Comptroller General of the United States, David Walker, noted at our last hearing that this subcommittee has been: "one of the shining stars in conducting oversight." That has been under Senator Ensign's leadership. I look forward to continuing in that oversight tradition as I take over the chairmanship of the subcommittee. I also hope that I can be as ac-

commodating of Senator Ensign's interests and concerns as he has always been to mine when he served as chairman.

This subcommittee has long been concerned about shortcomings in DOD's contracting for services and interagency contracting. Three years ago, the Inspector General (IG) for the General Services Administration (GSA) reported a pervasive problem with improper task order and contract awards by GSA's client support centers. Because orders from DOD customers provided 85 percent of the centers' \$5.8 billion of revenues, these problems put DOD dollars at risk.

Senator Ensign and I responded with a legislative provision in 2004 requiring a joint review of DOD purchases through the GSA centers by the DOD IG and the GSA IG. In 2005 and 2006, recognizing that other interagency contracts might suffer from similar problems, we required similar joint reviews of DOD purchases through other Federal agencies.

As we will hear today, the results of these reviews reflect a deeply troubled procurement system. In four separate reports, the DOD IG found case after case of waste and abuse in DOD purchases through the GSA, the National Aeronautics and Space Administration (NASA), the Department of the Treasury (DOTREAS), and the Department of Interior (DOI). Dozens of DOD orders were awarded without competition, without required reviews for price reasonableness, or for both. Many were improperly funded, in possible violation of the Antideficiency Act (ADA).

More importantly, it appears that required contract planning and oversight were lacking in almost every case. According to the IG, DOD officials failed to perform required acquisition planning for 55 of 56 task orders awarded through GSA, and 61 of 61 task orders awarded through the DOTREAS. Similarly, DOD officials failed to provide for required surveillance of contract performance for 54 of 56 task orders awarded through GSA, 23 of 24 task orders awarded through the DOI, and 58 of 61 task orders awarded through the DOTREAS.

These problems are not limited to interagency contracts. On December 27, 2006, the DOD IG reported on a review of \$7.6 billion in service contracts to support our major range and test facilities base. The IG found that 9 of 10 contracts did not include proper cost estimates, and 6 of 10 lacked adequate plans to monitor contractor performance. With these contracts, as with the interagency contracts previously reviewed by the IG, the DOD continued to use high-risk contracts without following regulations to control costs or monitor performance.

These deficiencies are symptomatic of a defense acquisition workforce that is simply stretched too thin to do this job. Over the last 5 years, DOD contracts for services have grown at an extraordinary rate. In fiscal year 2000, the DOD spent roughly \$83 billion on service contracts, in fiscal year 2005 dollars, and these were performed by an estimated 730,000 contractor employees. By fiscal year 2005, the DOD was spending more than \$140 billion—and this is also in fiscal year 2005 dollars—on an estimated 1,282,000 contractor employees. The 550,000 increase in our service contractor workforce over this 5-year period exceeds the size of the entire DOD Federal employee workforce.

At the same time, the number of Federal officials available to oversee the activities of these contractors has continued to decline. The number of DOD employees in acquisition-related organizations dropped from 230,000 in fiscal year 1999 to 206,000 in fiscal year 2004, a decline of more than 10 percent. These reductions were made to an acquisition workforce that had already been cut in half over the previous 10 years.

The problem is even worse with regard to the management of contracts for services. Because most of the acquisition workforce is focused on the development and purchase of major weapons systems, the number of DOD procurement personnel responsible for the negotiation and award of contracts, including services contracts, is much smaller and has declined much faster. In fiscal year 1999, DOD had 31,131 procurement personnel. By fiscal year 2004, that number had declined to 25,918, a decline of almost 27 percent in a 5-year period, when the dollars that we spend on service contracts almost doubled.

In short, we have fewer and fewer procurement officials responsible for managing more and more contract dollars. In the view of many, these trends long ago passed the point where our acquisition workforce lost the capacity needed to perform its essential functions. As the Acquisition Advisory Panel chartered, pursuant to section 1423 of the National Defense Authorization Act (NDAA) for Fiscal Year 2004, recently reported, our failure to fund an adequate number of acquisition professionals is "penny wise and pound foolish," as that seriously undermines the pursuit of good value for the expenditure of public resources.

I believe it is vital for Congress to address this structural problem. Senator Ensign and I have been seriously thinking and working on this, and we want to make a difference here.

Senator Ensign, do you have an opening statement?

STATEMENT OF SENATOR JOHN ENSIGN

Senator ENSIGN. Thank you, Mr. Chairman.

We have had an excellent working relationship in the past 4 years and I share in your enthusiasm in looking towards the future. This relationship also extends to our staffs, especially Peter Levine and Greg Kiley. I know that we share a lot of the same concerns. Mainly, that we provide a lot of the money for the military, and we need to hold them accountable for how they're using that money. That's what the witnesses are here for; to find out whether they are using that money properly.

So, I want to thank the DOD IG's office and the Government Accountability Office (GAO) for their tireless efforts in helping us with our oversight responsibilities. Yours is not an easy job, and it is sometimes a thankless job, but it is definitely a very important job. I look forward to discussing with you today the results of your most recent efforts in the areas of interagency contracting and service acquisition.

Over the years, I've been encouraged by the steady, though sometimes slow, pace of improvements made by the DOD in its acquisition policies and processes. Yet, according to the GAO's report, "Tailored Approach Needed to Improve Service Acquisition Outcomes," the DOD has still, until recently, either failed to establish

or implement best practices in management—in managing service acquisition. This failure is especially troubling since the DOD obligated over \$141 billion on service contracts alone in 2005. As the DOD increases its reliance on the private sector in such areas as information technology, services, weapons systems, and base operations support, it is imperative that we ensure we are buying the right service at the right price in the right manner.

I understand the DOD has already begun to address the problem with an October 2006 policy memorandum implementing section 812 of the 2006 NDAA. I further understand that DOD is attempting to develop a comprehensive plan for the acquisition of services. The DOD's efforts are encouraging, and I look forward today to discussing ideas on how the DOD can be proactive and not just reactive in this area.

In preparing for today's hearing, I was disturbed by the IG and GAO's findings on interagency contracting. It appears that good government initiatives, such as GovWorks and others, which were designed to increase efficiency and lower cost, have been turned on their head. Some have used the programs to circumvent fundamental contracting and financial rules, to bank funds that are set to expire, or to obtain leases without going through normal channels, to cite just a couple of examples.

The IG has suggested that in some instances these abuses may have been deliberate. These are abuses we can ill afford these days. As we continue to prosecute the war against Islamic jihadists, each defense dollar becomes even more precious.

It is incumbent upon all of us—contracting officers, program officers, Members of Congress—to maximize the buying power of each defense dollar. To do otherwise is to do grave disservice to our young men and women in military.

Mr. Chairman, I want to thank you for calling this hearing today.

Welcome, Senator McCaskill, attending the subcommittee hearing this morning. As you will see, Senator, the subcommittee is probably one of the least partisan committees that you will find in Congress, and we are all about doing the same thing, and that is, making sure our military works in the most efficient manner. We have very capable leadership at the helm, in our chairman, Senator Akaka.

Thank you.

Senator AKAKA. Thank you very much, Senator Ensign.

Senator McCaskill, if you have an opening statement, this is your time.

Senator MCCASKILL. I do not have an opening statement, except to say that it's strange that GAO reports are fun for me. I've come from 8 years as the State Auditor of Missouri, so when I start reading recommendations and I start looking at responses from agencies, I assume they mean it, I'm old-fashioned about that. I look forward to a working relationship with the members of this committee and with the IG and with GAO to see if we can't figure out why this is so hard for DOD to get right.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much.

I want to welcome the witnesses: Inspector General Tom Gimble, and Managing Director, Acquisition and Sourcing Management, Katherine Schinasi, and ask you for your statements.

Mr. Inspector General?

**STATEMENT OF THOMAS F. GIMBLE, ACTING INSPECTOR
GENERAL, DEPARTMENT OF DEFENSE**

Mr. GIMBLE. Mr. Chairman, members of the Subcommittee on Readiness and Management Support, thank you for the opportunity to appear before the committee today to address our ongoing oversight work regarding interagency contracting.

We have issued six final reports on our audits at four agencies: GSA, DOI, DOTREAS, and NASA. Collectively, those activities awarded 54,022 contract actions, valued at about \$5.4 billion, for DOD during fiscal year 2005. We reviewed 352 contract actions valued at about \$1 billion.

Today, I will talk specifically about contracting and funding problems relating to DOD use of contracting services at GSA and the DOI, the two largest agencies audited.

We found that DOD continues to use other government agencies to make poorly planned purchases with annual appropriations about to expire. Also, a large number of the purchases were simply “pass-through” purchases made using either credit cards or from GSA Federal supply schedules, and they incurred an additional 2- to 5-percent fee charged by the non-DOD agency. For example, DOD used DOI to purchase \$592 million in goods and services that were ordered from Federal Supply Schedules, costing DOD \$23 million in surcharges for that service.

At this time, I’d like to direct your attention to my chart.

[The information referred to follows:]

[Copy of chart retained in committee files.]

The details are too small to read, but the colors are important. This chart displays 25 funding documents that were sent to DOI by DOD activities. I would like you to focus on the yellow and orange colors that are in the same column. These represent Federal Supply Schedules and credit card purchases made by DOI on DOD’s behalf.

These “pass-through” purchases were made for basic items, such as furniture, computers, printers, and administration services that could have easily been purchased by DOD contracting activities. We also found some severe contracting problems. For example, DOI awarded a contract valued at \$100 million without competition or the required DOD and congressional approvals to lease office space for the counterintelligence field activity. Another example was: a DOI contracting officer awarded a contract valued at \$205,000 to a computer software and construction firm to procure armor for seven Army Humvees. We also found purchases that didn’t make much sense. This one, DOD contracting officials used non-DOD agencies for purchases, and the non-DOD agencies acquired the items off existing DOD contracts.

GSA and DOI contracting officers did not always take the fundamental contracting steps to ensure that they made the best value purchases for DOD. We found that the purchases made through

interagency contracting often skipped the basic contracting fundamentals, such as performing market surveys, competing acquisitions, determining price reasonableness, conducting surveillance on the services received, and obtaining the required approvals for construction and leasing contracts.

Severe problems exist in the proper use of funds through interagency orders. We found that DOD used GSA and DOI revolving funds as places to park or bank funds that were expiring. About \$1.5 billion in expired funds remained at GSA at the end of our first audit. At DOI, we identified about \$400 million that we believe should have been returned to the Treasury as expired funds. We reported 72 potential ADA violations at GSA and DOI. We've already identified another 250 potential violations at the DOI during our ongoing follow-up audit.

Again referring to the chart of the DOI purchases, those purchases marked in blue and red are potential ADA violations. Those purchases marked in red are purchases made using expired funds after March of last year, when we had warned DOI that using those funds is in violation of DOD policy. However, to our knowledge, DOD organizations have not completed the formal investigations of any of the 72 potential ADA violations that we reported, and, consequently, no individuals have yet been held accountable for the violations.

We recognize that assigning responsibility is difficult, because DOD and the non-DOD agencies each claim the other is at fault. However, until DOD begins to enforce the policies in existence, the funding problems described in our audits will continue.

The DOI's practice of using "advance payments" for interagency orders with DOD poses another significant problem for the DOD. Using the advance-payments method, DOI collects the full amount of the order funding document within 48 hours after the acceptance of the document. Consequently, DOD fully pays for the goods and services before DOI has awarded the contract. This process makes it very difficult for DOD to oversee and reconcile its funds at DOI, because DOD considers the funds to be expended when DOI collects the full payment. Further confusion continues to exist regarding incremental funding. DOD activities routinely incrementally fund portions of severable services contracts that are performed in the fiscal year following the year the funds have expired.

The contracting and funding problems were primarily caused by the desire to secure a particular contractor, to obligate expiring funds, or the perceived inability of the DOD contracting workforce to timely respond to its customers.

DOD and non-DOD officials have taken corrective actions to address some of the problems. The Director of Defense Procurement and Acquisitions recently signed a memorandum of agreement with the Chief Acquisition Officer of GSA to work together on 22 basic contracting management controls. They include ensuring that sole-source justifications were adequate, statements of work are complete, and interagency agreements describe the work to be performed. Further, GSA has worked with DOD to identify unused and expired DOD funds in the GSA accounts and to date has turned back over \$600 million to DOD.

DOI has withdrawn all of the contracting officer warrants at its Southwest Acquisition Branch and has retrained those contracting officers. It continues to revise its interagency contracting procedures to include establishing a legal review procedure.

The Under Secretary of Defense Comptroller has issued guidance that will reduce the funding problems. On October 16, 2006, DOD issued financial policy stating that all non-Economy Act orders greater than \$500,000 are to be reviewed by a DOD contracting officer prior to the funds being certified. Also, the policy clarified funding for severable service contracts.

The problems that have been illustrated today are not new and have plagued DOD for years. DOD must continue to make it a priority to correct these problems by enforcement of policy, clarification of policy, and additional oversight requirements. Otherwise, the problems I've discussed today will continue.

That concludes my oral statement. I ask that my written statement be inserted in the record, and I'd be happy to answer any questions.

[The prepared statement of Mr. Gimble follows:]

PREPARED STATEMENT BY THOMAS F. GIMBLE

Mr. Chairman and members of the Subcommittee on Readiness and Management Support: Thank you for the opportunity to appear before the committee today to address our ongoing oversight work regarding interagency contracting.

Our recent efforts in interagency contracting began in fiscal year 2004 with a compliance audit of the Department of Defense (DOD) purchases made through the General Services Administration (GSA) in response to section 802 of the National Defense Authorization Act for Fiscal Year 2005. Section 811 of the National Defense Authorization Act for Fiscal Year 2006 expanded the scope of the compliance audits to include the DOD use of interagency contracting at the Department of the Interior, the Department of the Treasury, and the National Aeronautics and Space Administration. Section 817 of the National Defense Authorization Act for Fiscal Year 2007 further expanded our scope to include the National Institutes of Health and the Department of Veterans Affairs. Each of these audits has been an effort performed by the Inspectors General of DOD and the non-DOD agency being reviewed.

We have issued final reports of our joint audits at four agencies: GSA, the Department of the Interior, the Department of the Treasury, and the National Aeronautics and Space Administration. Collectively, these agencies awarded 54,022 contract actions valued at about \$5.4 billion for DOD during fiscal year 2005. To conduct the audits, we reviewed 352 contract actions valued at about \$1.0 billion.

AUDITS OF INTERAGENCY CONTRACTING AT GSA AND THE DEPARTMENT OF THE INTERIOR

Today, I will talk specifically about contracting and funding problems found during the audits of interagency contracting at GSA and the Department of the Interior, the two largest agencies audited. We have completed two audits at GSA as required by the National Defense Authorization Act for Fiscal Year 2005. We have also completed our first audit at the Department of the Interior and are working on the second year follow-up audit.

Overall, we found significant contracting and funding problems. We found a lack of market research by both DOD and non-DOD agencies. When a DOD organization initiated its requirement, it did not determine whether it was in DOD's best interest to make the purchase through a DOD contracting office or pay a 2- to 5-percent fee for assistance from a non-DOD agency. On the other hand, GSA and Interior did not always make sure the contracting vehicle or contractor used was the best for the purchase. Other contracting problems involved a lack of competition, determining fair and reasonable pricing, providing adequate contract surveillance, and establishing leases and construction projects without proper approvals. Regarding funding problems, we found that DOD activities used GSA and the Department of the Interior revolving funds as places to "park" or "bank" funds that were expiring. Subsequently, both GSA and Interior placed contracts for DOD customers using the expired funds, thereby circumventing DOD appropriations law. We determined that

at GSA, about \$1 billion to \$2 billion in expired funds remained in the “bank” at the end of our fiscal year 2005 audit. At the Department of the Interior, we identified about \$400 million that we believed should have been returned to the Treasury as expired funds. Most of the contracting and funding problems were driven by three factors: the desire to hire a particular contractor, the desire to obligate expiring funds, and the inability of the DOD contracting workforce to timely respond to its customers.

CONTRACTING PROBLEMS

The contracting problems stem from hurried buys with little or no planning, mostly due to DOD program managers attempting to quickly obligate funds about to expire. We found that DOD and non-DOD officials skipped basic planning and contracting fundamentals such as performing market surveys, competing acquisitions, determining price reasonableness, conducting surveillance on services received, and obtaining required approvals for construction and leasing contracts. We found some severe contracting problems. For example, the Department of the Interior awarded a contract worth \$100 million without proper approvals or competition to lease office space for the Counterintelligence Field Activity. Interior officials also awarded a contract to a computer software and construction firm to procure armor for Army vehicles going to Kuwait. We also found illogical purchases such as DOD program officials using non-DOD agencies who in turn made purchases using credit cards, Federal Supply Schedules, and even existing DOD contracts.

Of the 131 GSA purchases and 49 Department of the Interior purchases reviewed, we found only one instance where a DOD organization documented that using a non-DOD agency to award the contract was in the best interest of the Government. Program and contract officials conducted almost no market research on the other interagency purchases we reviewed. DOD used the Department of the Interior to purchase approximately \$592 million of goods and services from the Federal Supply Schedules. For that service, DOD paid the Department of the Interior more than \$23 million in surcharges for purchases that could have been routinely handled by junior DOD contracting personnel. DOD often paid surcharges for GSA and the Department of the Interior to purchase low-cost military equipment or commercial items that could have been obtained from existing DOD contracts. The Federal Acquisition Regulation specifies that it is the responsibility of the requiring activity to perform market research. We asked DOD personnel why they used a non-DOD agency instead of a DOD contracting office. DOD personnel stated that the non-DOD agency processed the purchases faster than DOD and they could generally get the contractor they wanted.

During our review of GSA fiscal year 2005 purchases, we examined 14 contract actions to evaluate the adequacy of contracts awarded on a sole-source basis. We determined that 6 of the 14 actions did not comply with the Federal Acquisition Regulation because GSA did not adequately justify the use of sole-source contracts. Similarly, at the Department of the Interior, there was no competition for 27 of the 49 purchases reviewed. However, most of the Department of the Interior purchases were exempt from Federal Acquisition Regulation competition requirements. The contracts were given to either small business 8(a) contractors that were owned by Native Americans or to contractors where only one bid was received. When competition was obtained, it was generally satisfied by obtaining a minimum of three bids by posting the solicitation on e-Buy.

During our joint effort, GSA auditors identified that 64 percent of the GSA orders and modifications reviewed lacked required documentation showing that the Government received fair and reasonable prices. At the Department of the Interior, we determined that contracts for services tended to have more problems with price reasonableness than contracts for products. Of the 49 purchases reviewed, 24 were for services and 25 were for products. For 20 of the 24 services purchases reviewed, contracting officers did not adequately document and support that prices paid were fair and reasonable. Of the 25 product purchases reviewed, contracting officers did not adequately document price reasonableness for 5 purchases.

Of the 131 GSA purchases reviewed, 117 did not have adequate surveillance plans that met Federal Acquisition Regulation requirements. Government surveillance was also not adequate for 23 of the 24 Department of the Interior services contracts reviewed. On almost all interagency purchases, it was unclear who had responsibility for surveillance. Furthermore, when DOD was responsible for surveillance, DOD officials were unable to demonstrate how they effectively monitored contractor performance. In some cases, we found non-DOD contracting officers without security clearances awarding contracts with classified statements of work. We found a lack

of quality assurance surveillance plans, designation letters establishing contracting officer representatives, and a general lack of contract oversight.

One of the potentially most serious problems was when DOD and Department of the Interior officials leased office space for the Counterintelligence Field Activity by using a service contract instead of following required procedures through GSA. When leasing costs surpass a cost threshold, DOD officials must contact GSA before leasing space to accommodate computer and telecommunications operations and secure or sensitive activities related to the national defense or security. The Administrator of General Services must determine whether leasing the space is necessary to meet requirements that cannot be met in public buildings. GSA then submits that determination to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure. Public Law also requires the Secretary of the applicable Military Department to notify the Senate Committee on Armed Services and the House Committee on Armed Services when certain cost thresholds are met on leases of real property. The 10-year, \$100 million lease for the Counterintelligence Field Activity was disguised as a service contract and exceeded all thresholds that require congressional notification and approval. If DOD and Interior managers are allowed to purchase lease space via service contracts, congressional and senior DOD oversight will be lost, and other DOD activities will be making "end runs" around GSA and congressional approvals. We are currently aware of two other major leases that similarly circumvented the process.

FUNDING PROBLEMS

Funding problems revolved around year end spending and attempts by DOD managers to obligate funds that are about to expire. We found numerous instances of DOD officials using interagency revolving funds to "park" or "bank" funds. We also found instances of officials using the wrong appropriation to fund contracts. Overall, we identified 107 potential Antideficiency Act violations at the four agencies reviewed. Of the 107 potential violations, 72 were identified in GSA and the Department of the Interior. The follow-on audit at the Department of the Interior has already identified at least an additional 250 potential violations, 189 of which occurred after officials were notified that continued use of expired funds was contrary to DOD business practices. Exacerbating these funding problems are accounting processes at non-DOD agencies. For example, non-DOD agencies sometimes accept expired funds for incremental portions of services contracts, or bill for advance payments. These processes make it difficult or impossible to maintain oversight and make corrective accounting entries.

Of the 72 potential Antideficiency Act violations at GSA and the Department of the Interior, 63 involved the bona fide needs rule, and 17 involved using the wrong appropriation. There were instances where both problems occurred on the same purchase.

On 41 purchases reviewed at GSA and 22 purchases at the Department of the Interior, DOD funding authorities potentially violated the bona fide needs rule. That is, they used an annual appropriation to purchase goods or services that they needed in the following year rather than in the year of the appropriation. In many cases, the DOD funding authorities used annual operations and maintenance appropriations to fund the purchase of severable services to be received in the year following the year of the appropriation. For example, the U.S. Central Command Air Force sent \$18.5 million of funds that expired on September 30, 2005, to fund the support of a Network Operations Security Center from October 1, 2005, through September 30, 2006.

At the Department of the Interior, we found goods described as "commercial" in contract documentation that were ordered or delivered many months past the expiration date of the appropriation. For example, Department of the Interior contracting officials used fiscal year 2002 operations and maintenance funds to pay for fiscal year 2006 purchase orders. Those funds had been expired for 3 years.

On 16 GSA purchases and 1 Department of the Interior purchase, we found that the wrong appropriation was used; in some cases, fiscal policy was severely abused. For example, the first GSA audit found that the Program Manager, Defense Communications and Army Transmissions Systems sent \$44 million of operations and maintenance funds to GSA for the Army Materiel Command Headquarters Relocation purchase. GSA used the funds to contract for the construction of two modular two-story office buildings totaling about 230,000 square feet at Fort Belvoir. The buildings serve as the headquarters of the Army Materiel Command and provide office space for about 1,400 civilian and military personnel. Although the Army contended that construction did not occur, no buildings existed at the site prior to the contract. Army officials stated that using operations and maintenance funds was

correct because the contractor was providing a service: the use of the buildings. However, the procurement of these buildings was clearly a construction project. The Army should have used Army Military Construction funds, even though the approval of construction projects is a far lengthier process in DOD than in GSA.

Adding to the DOD funding control problems is the Department of the Interior use of "advance payments" for DOD purchases. Advance payments result in a series of internal control problems at DOD because this process generally removes the ability of DOD to account for funds transferred to the Department of the Interior. When DOD sends a funding document to another agency for a purchase of goods or services, DOD expects that agency to bill DOD as costs are invoiced and paid. However, using the "advance payments" method, the Department of the Interior collects the full amount of the funding document within 48 hours after receipt and acceptance of the document. Accordingly, DOD has paid for goods and services before they are even contracted for. This process makes it extremely hard for DOD to oversee and reconcile its funds at the Department of the Interior. DOD generally relies on the Department of the Interior to furnish the amounts of unused balances of DOD funds.

Also adding to the funding problems, non-DOD agencies incrementally fund portions of severable services contracts. Public Law allows the funding of severable services contracts to cross fiscal years as long as the funds are obligated and work is started in the year of the appropriation and is for a period not to exceed 12 months. However, the law is not clear about the 12-month rule when incremental funds are used. For instance it is unclear whether it is proper to obligate fiscal year 2006 funds in September 2006 for work to be performed in June 2007 on a severable services contract that began in April 2006.

As mentioned earlier, we have reported 72 potential Antideficiency Act violations at GSA and the Department of the Interior. We expect to report at least another 250 potential violations at the Department of the Interior due to the use of expired funds. In July 2005, we also reported 38 potential Antideficiency Act violations. DOD conducted preliminary reviews in a timely manner in accordance with DOD regulations for only 8 of those 38 potential violations. However, the preliminary reviews are now complete on the 38 GSA potential Antideficiency Act violations reported in July 2005. The reviews determined that 11 still require a formal investigation to determine whether an Antideficiency Act violation occurred. Ten have had corrective actions taken that removes the Antideficiency Act violation that had occurred (for example, replacing the initial appropriation used with another year's appropriation or another type of appropriation). In 17 cases, the preliminary review concluded that an Antideficiency Act violation did not occur. However, in our January 2, 2007, compendium report on potential Antideficiency Act violations, we recommended that the Under Secretary of Defense (Comptroller)/Chief Financial Officer reassess 12 of those 17 cases because the potential Antideficiency Act violations appeared egregious. Further, to our knowledge, none of the investigations held individuals responsible for the violations. Unless responsible individuals are held accountable, the problems will remain.

CAUSES

In fiscal year 2004, when our interagency contracting audits began, DOD guidance on the use and funding of interagency contracting vehicles was unclear. We had previously cited the simultaneous growth of contracting for services by DOD and the reduction of acquisition personnel as a cause of contracting problems within DOD. That factor combined with DOD lack of market research and non-DOD agencies emphasizing that their funds could be used to legally extend an appropriation's period of availability ("banking of funds") created serious financial problems. Additionally, the marketing of procurement services by non-DOD agencies put pressure on their own contracting offices to offer streamlined acquisition methods that do not include such time-consuming requirements as competing acquisitions or certifying price reasonableness. This generally resulted in the contractor desired by the requiring DOD activity receiving the contract award. In short, we believe most of the problems will be resolved if the option to "bank" funds and the ability to award to a preferred vendor are eliminated. Furthermore, if DOD organizations perform adequate market research, many of the purchase requests sent to non-DOD agencies will remain within DOD.

CORRECTIVE ACTIONS

DOD officials have taken many corrective actions as a result of our interagency contracting audits.

- On December 4, 2006, the Director of Defense Procurement and Acquisition signed a memorandum of agreement with the Chief Acquisition Officer of GSA. The memorandum states DOD and GSA share a single objective of providing the best value goods and services, in a timely manner, to support the warfighter. DOD and GSA agreed to work together on 22 basic contracting management controls. These include such controls as ensuring that sole-source justifications are adequate, that statements of work are complete, and that interagency agreements describe the work to be performed.
- GSA has worked with DOD to identify unused and expired DOD funds in GSA accounts. So far, GSA has returned over \$600 million to DOD, and it continues to review its accounts.
- The Department of the Interior has withdrawn numerous contracting officer warrants due to findings of the joint DOD and Department of the Interior audits. It continues to revise interagency contracting procedures to include establishing a legal review procedure.
- On October 16, 2006, the DOD Acting Deputy Chief Financial Officer revised financial policy by issuing a memorandum, "Non-Economy Act Orders." The memorandum implements many internal controls. For example, for Non-Economy Act orders in excess of the simplified acquisition threshold, the requesting official must provide evidence of market research and acquisition planning, and a statement of work that is specific, definite, and certain. The memorandum states that all Non-Economy Act orders greater than \$500,000 must be reviewed by a DOD-warranted contracting officer prior to sending the order to the funds certifier or issuing a funding document to a non-DOD organization. The memorandum also includes much-needed funding guidance. Specifically, it clarifies the DOD position on obligating funds for goods and severable services. However, it does not address incremental funds and how to provide adequate oversight over funds processed by Advance Payment.

ACTIONS NEEDED

The problems reported are not new to the Government. We have reported on similar problems for many years, and material internal control weaknesses over DOD contracting and funding processes continue to exist. We believe DOD must continue to make it a priority to correct these problems. Clarification of funding guidance is required. DOD should not provide "advance payments" when transacting interagency financial agreements. Incremental funding of services contracts with funds that are expiring needs to be clearly addressed. Further, formal investigations of all the potential Antideficiency Act violations we have reported need to be completed, accountable individuals need to be identified, and appropriate administrative actions need to be taken. The deliberate circumvention of Appropriation Law cannot be condoned.

Senator AKAKA. Thank you very much, Mr. Gimble.
Ms. Schinasi, your statement, please?

STATEMENT OF KATHERINE V. SCHINASI, MANAGING DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. SCHINASI. Thank you, Senator Akaka and Senator Ensign. I am very pleased to be here today to have the opportunity to discuss GAO's evaluations of how well DOD is acquiring services.

This subcommittee has been in the forefront of tracking DOD's increasing reliance on contractors to perform mission-related functions, and, through many years of authorizing legislation, has put in place requirements, guidance, and other incentives to improve DOD's management of service contractors and contracts. Notwithstanding congressional actions, GAO recommendations, and subsequent plans and policies, we continue to find problems.

With your permission, I would like to insert my full statement for the record and summarize that statement now.

Senator AKAKA. Without objection, it will be.

Ms. SCHINASI. My statement today will include many examples of poor contracting practices that we and others have reported on over the years. You've just heard Mr. Gimble; you will hear a lot of similar things from me, as well.

DOD's contract management has been on GAO's high-risk list since 1992, and in 2005 we also put interagency contracting on as a separate area. We have identified problems in the DOD's ability to establish valid needs and requirements, get adequate competition, effectively manage and assess contractor performance, and appropriately use other agencies' contracts, and the vulnerabilities that these create for fraud, waste, and abuse that amount to hundreds of millions of dollars a year. I will just give you a few examples of reports that we've issued recently.

With respect to poorly defined requirements, in July 2005 we reported that the files at the DOI's GovWorks and DOTREAS's FedSource franchise funds lacked clear descriptions of work the contractor was supposed to perform, and sometimes specified that the work would be defined after an order was placed.

In September 2006, we reported on a number of Iraqi-related contracts in which contractors were authorized to begin work before key terms and conditions and projected costs were established.

In instances where agreements were not reached until the work was complete or almost complete, DOD contracting officers were less likely to remove millions of dollars of contractors costs that had been questioned by auditors as unreasonable, and the DOD IG has reported on similar problems.

With respect to inadequate competition, we have long reported on the lack of competition in DOD's acquisition of services and continue to find numerous sole-source procurements that are not adequately justified. The professed need for speed too often wins out over holding competitions with outcomes that are not in the best interest of the Government.

Recently, we reported on the Army's award of a sole-source contract for security guard services at domestic bases, despite knowing that it was paying 25 percent more than the price it had gotten when it had competed that contract earlier.

In terms of inadequate monitoring of contractor performance, in our most recent report on this specific issue we reported that approximately one-third of the 90 contracts we reviewed did not have appropriate surveillance. If surveillance is not conducted, not sufficient, or not well-documented, DOD is at risk of being unable to identify and correct deficiencies in a timely manner and potentially pays more for the services that it receives.

The ability to conduct appropriate surveillance also ties back to well-defined requirements and well-written statements of work. If you cannot describe what you want, it is hard to assess whether what you are getting is sufficient.

With respect to the inappropriate use of interagency contracts, many of the shortfalls in good contracting practices that we have seen in DOD's own contracting processes are also found in DOD's use of interagency contract vehicles. GAO's recent reports on DOD's acquisition of interrogator services and use of interagency franchise funds point to numerous problems. In the interagency context, assigning responsibility for managing and overseeing the

process has been harder. As the number of parties in the acquisition process increases, so, too, does the need to ensure responsibility and accountability for the outcomes.

It is commonly recognized, as you pointed out in your opening statement, Mr. Chairman, that DOD's workforce does not have the business acumen needed in today's environment, but it is not widely accepted just who makes up the responsible workforce. Managing contractors is not just a task for contracting officers. Program officers and military officers play a large role and also need to be held accountable for the results of service acquisition spending.

As the reliance on contractors expands, historical weaknesses in contract management can have a greater impact. The reliance also exposes a more basic issue. What services should the Government be contracting for, and what expertise needs to be maintained in-house? Contractors now provide services for which DOD has historically had in-house capacity. For example, we have recently reported on the declining status of cost estimators in the space acquisition community and have heard concerns about losing capability in other key functions, such as pricing and systems and software engineering.

DOD has also turned to service contractors when new missions are established, such as the need for security guards at U.S. military installations, or when the competition for procurement funds closes off the option of buying equipment, such as simulators for pilot training, which is now being delivered through a service contract using operations and maintenance funding.

The debate on which parts of DOD's mission can best be met through buying contractor services has not yet taken place and will need to balance the short- and longer-term values and objectives.

In closing, let me be clear that not all service acquisitions are problematic and not all need the same level of management and oversight attention, but we are in the midst of a strategic expansion in service contracting, without strategic directions or decisions. In our July 2006 report on vulnerabilities, we made the point that DOD's senior leaders are a critical factor in translating well-meaning plans into results. But the DOD's leadership is rarely in place long enough to carry through on plans, and has not yet figured out a way to ensure change in front-line practices which is where most of the service acquisitions occur, that are in line with the Office of the Secretary of Defense-set or congressionally-directed objectives. Without attention, it appears that a set of relationships is developing which inherently work against the Government's best interests.

The relationships that concern us are the ones in which we have a set of buyers who don't know what they want or how to express it, but have seemingly limitless funds, and a group of sellers who want to maximize profits by maximizing revenue and minimizing costs. The set of rules in place to manage and even mitigate the inherent risks in these relationships is not working well enough. Whether that is because the rules are not being followed or because they are not sufficient themselves is cause for further discussion, but one thing that is clear is that the consequences from the seller's actions are significant. Businesses cease to exist if they cannot achieve a return on their investments, while there are seemingly

no consequences for the buyer who wastes taxpayers' funds by making bad decisions or by just not paying attention. We must find ways to allow or force the customer to use his money to insist on a good deal or else walk away. That's what I think you and I would do.

Mr. Chairman, that concludes my statement, and I'd be happy to take your questions.

[The prepared statement of Ms. Schinasi follows:]

PREPARED STATEMENT BY KATHERINE V. SCHINASI

Mr. Chairman and members of the subcommittee: I am pleased to be here today to discuss challenges the Department of Defense (DOD) faces in acquiring services to support its operations. Although many of these challenges are longstanding, they have become more apparent in recent years as the Department's reliance on contractors has grown in size and scope. In fiscal year 2005, DOD obligated more than \$141 billion on service contracts, a 72-percent increase since fiscal year 1996. However, DOD does not always use sound contracting practices when acquiring these services and the Department is operating with a deficit of people with the right skills to support its acquisitions. Consequently, DOD may not have always obtained good value when buying billions of dollars of services at a time when serious budget pressures face the Nation.

This subcommittee has explored new approaches and supported legislation to improve DOD's acquisition of services. It has emphasized the use of sound business practices and competition to obtain services at reasonable prices for DOD and ultimately the taxpayer. In addition, it has encouraged DOD to establish a structure to better manage its acquisition of services. Despite these efforts, many improvements are still needed. The recurring nature of DOD's problems is evidenced by the fact that DOD contract management has been on the Government Accountability Office's (GAO) list of high-risk areas since 1992.¹ In January 2005, we added the management of interagency contracting to the list. In July 2006, we reported on DOD's vulnerabilities to contracting fraud, waste, and abuse.²

Today, I would like to discuss DOD's: (1) increasing reliance on contractors, (2) failure to consistently follow sound business practices when acquiring services, and (3) opportunities for DOD to improve its management of services. My statement is based on work that GAO has completed over the past decade, which was conducted in accordance with generally accepted government auditing standards. Additionally, my statement draws on recent reports issued by the DOD Inspector General and General Services Administration Inspector General.

SUMMARY

Negative outcomes should be no surprise given the convergence of DOD's growing reliance on contractors to provide services and longstanding problems with contract management. These problems—ill-defined requirements, inadequate competition, ineffective management and surveillance of contractor performance, and inappropriate uses of other agencies' contracts—have resulted in outcomes that have cost the Department valuable resources. These problems are not new and, if they remain unresolved, will only continue to waste DOD's resources. However, DOD is not in a good position to address these longstanding problems. DOD does not know where it wants service acquisitions to be in the next few years or how to get there. DOD is taking some steps to address these problems but much remains to be done.

DOD Increasingly Relies on Contractor-Provided Services

Over the past decade, DOD has increasingly relied on contractors to provide a range of mission-critical services from operating information technology systems to providing logistical support on the battlefield. The growth in spending on services clearly illustrates this point. DOD's obligations on service contracts rose from \$82.3 billion in fiscal year 1996 to \$141.2 billion in fiscal year 2005 (see table 1). DOD committed 20 percent of its obligations on services in fiscal year 2005 for professional, administrative, and management support contracts. Overall, according to DOD, the amount obligated on service contracts exceeded the amount the Depart-

¹GAO, High-Risk Series: An Update, GAO-05-207 (Washington, DC: January 2005).

²GAO, Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse, GAO-06-838R (Washington, DC: July 7, 2006).

ment spent on supplies and equipment, including major weapon systems. To a large degree, this growth simply happened and was not a managed outcome.

TABLE 1: CHANGES IN DOD'S USE OF SERVICE CONTRACTS, FISCAL YEARS 1996 TO 2005
[Fiscal Year 2005 Dollars in Billions]

Service category	Service obligations Fiscal year		Percentage of service obligations, fiscal year 2005	Percentage change, fiscal years 1996 to 2005
	1996	2005		
Professional, administrative, and management support	\$10.8	\$28.3	20.0	161
Construction of facilities	7.3	11.7	8.3	62
Maintenance and repair of equipment	6.6	11.4	8.1	74
Information technology	4.9	10.3	7.3	110
Medical services	1.6	8.0	5.6	412
Transportation, travel, and relocation	2.4	6.2	4.4	154
Housekeeping services	2.4	4.8	3.4	98
All other services, excluding research and development ^a ..	22.7	23.6	16.7	4
Research and development	23.7	37.0	26.2	56
Total, all service contracts	\$82.3	\$141.2	100.0	72

Source: DOD's DD350 database for all actions exceeding \$25,000 (data); GAO (analysis).

^a Other services include photographic, mapping, and printing; education and training; and social services, among others.

As service acquisition spending has grown, the size of the civilian workforce has decreased. More significantly, DOD carried out this downsizing without ensuring that it had the specific skills and competencies needed to accomplish DOD's mission. For example, the amount, nature, and complexity of contracting for services have increased, which has challenged DOD's ability to maintain a workforce with the requisite knowledge of market conditions and industry trends, the ability to prepare clear statements of work, the technical details about the services they procure, and the capacity to manage and oversee contractors. In addition, new skills have been required to use alternative contracting approaches introduced by acquisition reform initiatives.

Participants in an October 2005 GAO forum on Managing the Supplier Base for the 21st Century commented that the current Federal acquisition workforce significantly lacks the new business skills needed to act as contract managers. In June 2006, DOD issued a human capital strategy that acknowledged that DOD's civilian workforce is not balanced by age or experience. DOD's strategy identified a number of steps planned over the next 2 years to more fully develop a long-term approach to managing its acquisition workforce. Many personnel, however, are involved in acquiring services. In the broadest sense, these personnel include not only the contracting officers who award contracts, but also those personnel who define the requirements, receive or benefit from the services obtained, monitor contractor performance, and pay for the services.

A report we issued in November 2006 on DOD space acquisition provides an example of downsizing in a critical area—cost estimating.³ In this case, there was a belief within the government that cost savings could be achieved under acquisition reform initiatives by reducing technical staff, including cost estimators, since the government would be relying more on commercial-based solutions to achieve desired capabilities. According to one Air Force cost-estimating official we spoke with, this led to a decline in the number of Air Force cost estimators from 680 to 280. According to this official, many military and civilian cost-estimating personnel left the cost-estimating field, and the Air Force lost some of its best and brightest cost estimators. In turn, because of the decline in in-house resources, space program offices and Air Force cost-estimating organizations are now more dependent on support from contractors. For example, at 11 space program offices, contractors accounted for 64 percent of cost-estimating personnel. The contractor personnel now generally prepare cost estimates while government personnel provide oversight, guidance, and review of the cost-estimating work. Reliance on support contractors raises questions from the cost-estimating community about whether numbers and qualifications of government personnel are sufficient to provide oversight of and insight into contractor cost estimates.

³ GAO, Space Acquisitions: DOD Needs to Take More Action to Address Unrealistic Initial Cost Estimates of Space Systems, GAO-07-96 (Washington, DC: Nov. 17, 2006).

DOD also relies extensively on contractors to undertake major reconstruction projects and provide logistical support to troops in Iraq. DOD is responsible for a significant portion of the more than \$30 billion in appropriated reconstruction funds and has awarded and managed many of the large reconstruction contracts, such as the contracts to rebuild Iraq's oil, water, and electrical infrastructure, and to train and equip Iraqi security forces. Further, U.S. military operations in Iraq have used contractors to a far greater extent than in prior operations to provide interpreters and intelligence analysts, as well as more traditional services such as weapons systems maintenance and base operations support. These services are often provided under cost-reimbursement type contracts, which allow the contractor to be reimbursed for reasonable, allowable, and allocable costs to the extent prescribed in the contract. Additionally, after the September 2001 terrorist attacks, increased security requirements and the deployment of Active-Duty and Reserve personnel resulted in DOD having fewer military personnel to protect domestic installations. For example, the U.S. Army awarded contracts worth nearly \$733 million to acquire contract guards at 57 installations.

Other factors have contributed to the growth in service contracts. For example, DOD historically bought space launch vehicles, such as the Delta and Titan rockets as products. Now, under the Evolved Expendable Launch Vehicle program, the Air Force purchases launch services using contractor-owned launch vehicles. Similarly, the Air Force and Army turned to service contracts for simulator training primarily because efforts to modernize existing simulator hardware and software had lost out in the competition for procurement funds. Buying training as a service meant that operation and maintenance funds could be used instead of procurement funds.⁴

DOD Does Not Consistently Use Sound Business Practices

Our work, along with that of the Inspectors General, has repeatedly found problems with the practices DOD uses to acquire services. Too often, the Department obtains services based on poorly defined requirements and inadequate competition. Similarly, it does not always oversee and manage contractor performance once a contract is in place. All of these problems show up in the Department's use of other agencies' contracts. Collectively, these problems expose DOD to unnecessary risk and poor outcomes.

Poorly Defined Requirements

Poorly defined or broadly described requirements have contributed to undesired service acquisition outcomes. To produce desired outcomes within available funding and required time frames, DOD and its contractors need to clearly understand acquisition objectives and how they translate into the contract's terms and conditions. The absence of well-defined requirements and clearly understood objectives complicates efforts to hold DOD and contractors accountable for poor acquisition outcomes. For example,

- In June 2004, we found that during Iraqi reconstruction efforts, when requirements were not clear, DOD often entered into contract arrangements that introduced risks.⁵ We reported that DOD often authorized contractors to begin work before key terms and conditions and the work to be performed and its projected costs were fully defined. In September 2006, we reported that, under this approach, DOD contracting officials were less likely to remove costs questioned by auditors if the contractor had incurred these costs before reaching agreement on the work's scope and price.⁶ In one case, the Defense Contract Audit Agency questioned \$84 million in an audit of a task order for an oil mission. In that case, the contractor did not submit a proposal until a year after the work was authorized, and DOD and the contractor did not negotiate the final terms of the contract until more than a year after the contractor had completed the work.
- The DOD Inspector General found similar problems with DOD's use of letter contracts. While this type of contract may be necessary to initiate work quickly to meet urgent operational needs, costs on letter contracts are more difficult to control because the requirements and costs are undefined. In August 2004, the Inspector General reported that contracting officials

⁴ Various funds can be used to acquire services, depending on the nature of service.

⁵ GAO, *Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges*, GAO-04-605 (Washington, DC: June 1, 2004).

⁶ GAO, *Rebuilding Iraq: Continued Progress Requires Overcoming Contract Management Challenges*, GAO-06-1130T (Washington, DC: Sept. 28, 2006); see also *Iraq Contract Costs: DOD Consideration of Defense Contract Audit Agency's Findings*, GAO-06-1132 (Washington, DC: Sept. 25, 2006).

did not adequately definitize the acquisition requirements within the required time frames. Further, the Inspector General noted officials did not document the reasonableness of the profit rates charged by the contractors.⁷ We are continuing to do work in this area.

- In July 2004, we noted that personnel using the Army's Logistics Civil Augmentation Program (LOGCAP) contract in Iraq, including those that may be called upon to write statements of work and prepare independent government cost estimates, had not always received the training needed to accomplish their missions.⁸ We noted, for example, the statement of work required the contractor to provide water for units within 100 kilometers of designated points but did not indicate how much water needed to be delivered to each unit or how many units needed water. Without such information, the contractor may not be able to determine how to meet the needs of the Army and may take unnecessary steps to meet the customer's needs.
- In July 2005, we reported that other agencies that DOD relied on to provide contracting services did not define desired outcomes or requirements.⁹ We found that required outcomes were not well-defined in the cases we reviewed at franchise funds at the Departments of the Interior and the Treasury—GovWorks and FedSource—that acquired a range of services for DOD. The GovWorks and FedSource files we reviewed lacked clear descriptions of requirements the contractor was supposed to meet. Orders generally described work in broad terms and documentation sometimes specifically indicated that work would be defined more fully after an order was placed.

Inadequate Competition

Competition is a fundamental principle underlying the Federal acquisition process. Nevertheless, we have reported on the lack of competition in DOD's acquisition of services since 1998. We have reported that DOD has, at times, sacrificed the benefits of competition for expediency. For example, we noted in April 2006 that DOD awarded contracts for security guard services supporting 57 domestic bases, 46 of which were done on an authorized, sole-source basis.¹⁰ The sole-source contracts were awarded by DOD despite recognizing it was paying about 25 percent more than previously paid for contracts awarded competitively.

DOD has also misused the contracts available on the General Services Administration's multiple-award schedules. Although DOD is required to foster competition and provide all contractors a fair opportunity to be considered for each order placed on the schedules, unless certain exceptions apply,¹¹ DOD officials have on numerous occasions avoided the time and effort necessary to compete individual orders and instead awarded all the work to be performed to a single contractor. GAO work shows that this practice resulted in the noncompetitive award of many orders that have not always been adequately justified.

Inadequate Management and Assessment of Contractor Performance

GAO has reported on numerous occasions that DOD did not adequately manage and assess contractor performance to ensure that the business arrangement was properly executed. Managing and assessing post-award performance entails various activities to ensure that the delivery of services meets the terms of contract and requires adequate surveillance resources, proper incentives, and a capable workforce for overseeing contracting activities. If surveillance is not conducted, not sufficient, or not well-documented, DOD is at risk of being unable to identify and correct poor contractor performance in a timely manner and potentially paying too much for the services it receives.

Our work has found, however, that DOD is often at risk. In March 2005, for example, we reported instances of inadequate surveillance on 26 of 90 DOD service contracts we reviewed.¹² In each instance, at least one of the key factors to ensure adequate surveillance did not take place. These factors are: (1) training personnel in how to conduct surveillance, (2) assigning personnel at or prior to contract award,

⁷ Department of Defense, Office of the Inspector General, Audit Report: Undefined Contractual Actions. Report Number D-2004-112 (Arlington, VA.: Aug. 30, 2004).

⁸ GAO, Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight, GAO-04-854 (Washington, DC: July 19, 2004).

⁹ GAO, Interagency Contracting: Franchise Funds Provide Convenience, but Value to DOD Is Not Demonstrated, GAO-05-456 (Washington, DC: July 29, 2005).

¹⁰ GAO, Contract Security Guards: Army's Guard Program Requires Greater Oversight and Reassessment of Acquisition Approach, GAO-06-284 (Washington, DC: Apr. 3, 2006).

¹¹ 10 U.S.C. 2304c.

¹² GAO, Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts, GAO-05-274 (Washington, DC: Mar. 17, 2005).

(3) holding personnel accountable for their surveillance duties, and (4) performing and documenting surveillance throughout the period of the contract. Officials we met with during our review expressed concerns about support for surveillance. The comments included those of Navy officials who told us that surveillance remains a part-time duty they did not have enough time to undertake and, consequently, was a low-priority task.

More recently, in December 2006 we reported that DOD does not have sufficient numbers of contractor oversight personnel at deployed locations, which limits its ability to obtain reasonable assurance that contractors are meeting contract requirements efficiently and effectively.¹³ For example, an Army official acknowledged that the Army is struggling to find the capacity and expertise to provide the contracting support needed in Iraq. A LOGCAP program official noted that, if adequate staffing had been in place, the Army could have realized substantial savings on the LOGCAP contract through more effective reviews of new requirements. A Defense Contract Management Agency official responsible for overseeing the LOGCAP contractor's performance at 27 locations noted that he was unable to visit all of those locations during his 6-month tour to determine the extent to which the contractor was meeting the contract's requirements.

Our review of GovWorks and FedSource also found that both DOD and franchise fund officials were not monitoring contracts. Further, these organizations lacked criteria against which contractor performance could be measured to ensure that contractors provided quality services in a timely manner.¹⁴ Similarly, in 2004, the General Services Administration Inspector General reported on problems with surveillance when DOD used the General Services Administration's Federal Technology Service (FTS). For example, in reviewing task orders DOD placed through FTS, the Inspector General found that payments were made for substandard work or for work that was incomplete or never delivered, for bills that contained incorrect labor rates or did not adhere to contract pricing terms, and for bills that included unsubstantiated costs.

Inappropriate Use of Interagency Contracts

In January 2005, we identified management of interagency contracts as a high-risk area because of their rapid growth, limited expertise of users and administrators, and unclear lines of accountability. Since DOD is the largest user of interagency contracts in the government, it can ill-afford to expose itself to such risks. Relying on other agencies for contracting support requires sound practices. The problems in clearly defining requirements, inadequate competition, and monitoring contractor performance to ensure that the government is getting good value are also evident in interagency contracting, as I have previously discussed. However, under an interagency arrangement, the number of parties in the contracting process increases and so too does the need to ensure accountability. Ensuring the proper use of these contracting arrangements must be viewed as a shared responsibility that requires agencies to define clearly who does what in the contracting process. Additionally, DOD pays a fee to other agencies when using their contracts or contracting services, which could potentially increase DOD costs.

In April 2005, we reported that a lack of effective management controls—in particular insufficient management oversight and a lack of adequate training—led to breakdowns in the issuance and administration of task orders for interrogation and other services in Iraq by the Department of the Interior on behalf of DOD.¹⁵ These breakdowns included:

- issuing 10 out of 11 task orders that were beyond the scope of underlying contracts, in violation of competition rules;
- not complying with additional DOD competition requirements when issuing task orders for services on existing contracts;
- not properly justifying the decision to use interagency contracting;
- not complying with ordering procedures meant to ensure best value for the government; and
- not adequately monitoring contractor performance.

Because officials at Interior and the Army responsible for the orders did not fully carry out their responsibilities, the contractor was allowed to play a role in the procurement process normally performed by government officials. Further, the Army of-

¹³ GAO, Military Operations: High-Level DOD Action Needed to Address Longstanding Problems with Management and Oversight of Contractors Supporting Deployed Forces, GAO-07-145 (Washington, DC: Dec. 18, 2006).

¹⁴ GAO-05-456.

¹⁵ GAO, Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations, GAO-05-201 (Washington, DC: Apr. 29, 2005).

officials responsible for overseeing the contractor, for the most part, lacked knowledge of contracting issues and were not aware of their basic duties and responsibilities.

Similarly, our work on DOD's use of franchise funds managed by the Departments of the Treasury and the Interior found that sound management practices for ensuring competition, analyzing contracting alternatives, and defining outcomes were not in place. For example, GovWorks did not receive competing proposals for work. GovWorks also added substantial work to the orders without determining that prices were fair and reasonable. FedSource generally did not ensure competition for work, did not conduct price analyses, and sometimes paid contractors higher prices for services than established in contracts with no justification in the contract files. DOD also did not analyze contracting alternatives and lacked information about purchases made through these arrangements.

We identified several causes for the lack of sound practices. In some cases, there was a lack of clear guidance and contracting personnel were insufficiently trained on the use of interagency contracting arrangements. In many cases, DOD users chose the speed and convenience of an interagency contracting arrangement to respond and meet needs quickly. Contracting service providers, under a fee-for-service arrangement, sometimes inappropriately emphasized customer satisfaction and revenue generation over compliance with sound contracting policies and procedures requirements. These practices put DOD at risk of not getting required services at reasonable prices and unnecessarily wasting resources. Further, DOD does not have useful information about purchases made through other agencies' contracts, making it difficult to assess the costs and benefits and make informed choices about the alternatives methods available.

DOD Needs a Management Structure to Oversee Service Acquisition Processes and Outcomes

Congress and GAO have identified the need to improve DOD's overall approach to acquiring services for several years. In 2002, we noted that DOD's approach to buying services was largely fragmented and uncoordinated, with responsibility for acquiring services spread among individual military commands, weapon system program offices, or functional units on military bases, with little visibility or control at the DOD or military department level. Despite taking action to address the deficiencies and implement legislative requirements, DOD's actions to date have not equated to progress. DOD's current approach to acquiring services suffers from the absence of key elements at the strategic and transactional levels and does not position the Department to make service acquisitions a managed outcome.

Considerable congressional effort has been made to improve DOD's approach to acquiring services. For example, in 2001, Congress passed legislation to ensure that DOD acquires services by means that are in the best interest of the government and managed in compliance with applicable statutory requirements. In this regard, sections 801 and 802 of the National Defense Authorization Act for Fiscal Year 2002 required DOD to establish a service acquisition management approach, including developing a structure for reviewing individual service transactions based on dollar thresholds and other criteria.¹⁶ Last year, Congress amended requirements pertaining to DOD's service contracting management structure, workforce, and oversight processes, among others.¹⁷

We have issued several reports that identified shortcomings in DOD's approaches and its implementation of legislative requirements. For example, we issued a report in January 2002 that identified how leading commercial companies took a strategic approach to buying services and recommended that DOD evaluate how a strategic reengineering approach, such as that employed by leading companies, could be used as a framework to guide DOD's reengineering efforts.¹⁸ In September 2003, we reported that DOD's actions to implement the service acquisition management structure required under sections 801 and 802 did not provide a departmentwide assessment of how spending for services could be more effective and recommended that DOD give greater attention to promoting a strategic orientation by setting performance goals for improvements and ensuring accountability for achieving those results.¹⁹

¹⁶Pub. L. No. 107-107, §§ 801, 802 (2001) (section 801 added new sections 2330 and 2330a to title 10, U.S. Code).

¹⁷Pub. L. No. 109-163, § 812 (2006) (section 812 amended 10 U.S.C. § 2330).

¹⁸GAO, Best Practices: Taking A Strategic Approach Could Improve DOD's Acquisition of Services, GAO-02-230 (Washington, DC: Jan. 18, 2002).

¹⁹GAO, Contract Management: High-Level Attention Needed to Transform DOD Services Acquisition, GAO-03-935 (Washington, DC: Sept. 10, 2003).

Most recently, in November 2006, we issued a report that identified a number of actions that DOD could take to improve its acquisition of services.²⁰ We noted that DOD's overall approach to managing services acquisitions suffered from the absence of several key elements at both a strategic and transactional level. The strategic level is where the enterprise, DOD in this case, sets the direction or vision for what it needs, captures the knowledge to enable more informed management decisions, ensures departmentwide goals and objectives are achieved, determines how to go about meeting those needs, and assesses the resources it has to achieve desired outcomes. The strategic level also sets the context for the transactional level, where the focus is on making sound decisions on individual service acquisitions. Factors for good outcomes at the transactional level include valid and well-defined requirements, appropriate business arrangements, and adequate management of contractor performance.

DOD's current approach to managing services acquisition has tended to be reactive and has not fully addressed the key factors for success at either the strategic or the transactional level. At the strategic level, DOD has not developed a normative position for gauging whether ongoing and planned efforts can best achieve intended results. Further, good information on the volume and composition of services is still wanting, perpetuating the circumstance in which the acquisition of services tends to happen to DOD, rather than being proactively managed. For example, despite implementing a review structure aimed at increasing insight into service transactions, DOD is not able to determine which or how many transactions have been reviewed.²¹ The military departments have only slightly better visibility, having reviewed proposed acquisitions accounting for less than 3 percent of dollars obligated for services in fiscal year 2005. Additionally, most of the service acquisitions the military services review involved indefinite delivery/indefinite quantity contracts. DOD's policy for managing service acquisitions had no requirement, however, to review individual task orders that were subsequently issued even if the value of the task order exceeded the review threshold.

Further, the reviews tended to focus more on ensuring compliance with applicable statutes, regulations, and other requirements, rather than on imparting a vision or tailored method for strategically managing service acquisitions. Our discussions with officials at buying activities that had proposed service acquisitions reviewed under this process revealed that, for the most part, they did not believe the review significantly improved those acquisitions. These officials indicated that the timing of the review process—which generally occurred well into the planning cycle—was too late to provide opportunities to influence the acquisition strategy. These officials told us that the reviews would be more beneficial if they were conducted earlier in the process, in conjunction with the program office or customer, and in the context of a more strategic approach to meeting the requirement, rather than simply from a secondary or tertiary review of the contract.

At the transactional level, DOD tended to focus primarily on those elements associated with awarding contracts, with much less attention paid to formulation of service acquisition requirements and to assessment of the actual delivery of contracted services. Moreover, the results of individual acquisitions were generally not used to inform or adjust strategic direction. As a result, DOD is not in a position to determine whether investments in services are achieving their desired outcomes. Further, DOD and military department officials identified many of the same problems in defining requirements, establishing sound business arrangements, and providing effective oversight that I discussed previously. For example,

- DOD and military department officials consistently identified poor communication and the lack of timely interaction between the acquisition and contracting personnel as key challenges to developing good requirements.
- An Army contracting officer issued a task order for a product that the contracting officer knew was outside the scope of the service contract. The contracting officer noted in an e-mail to the requestor that this deviation was allowed only because the customer needed the product quickly and cautioned that no such allowances would be granted in the future.

²⁰ GAO, *Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes*, GAO-07-20 (Washington, DC: Nov. 9, 2006).

²¹ The management structure has three review levels: (1) review by the Under Secretary of Defense (Acquisition, Technology, and Logistics) for services acquisitions valued over \$2 billion; (2) review by the component or designated acquisition executive for service acquisitions valued between \$500 million and \$2 billion; and (3) review by a component-designated official for the acquisition of services valued at less than \$500 million. The Air Force, Army, and Navy each developed review processes and authorities to support the DOD review requirements.

- Few of the commands or activities could provide us reliable or current information on the number of service acquisitions they managed, and others had not developed a means to consistently monitor or assess, at a command level, whether such acquisitions were meeting the performance objectives established in the contracts.

To address these issues, we made several recommendations to the Secretary of Defense. DOD concurred with our recommendations and identified actions it has taken, or plans to take to address them. In particular, DOD noted that it is reassessing its strategic approach to acquiring services, including examining the types and kinds of services it acquires and developing an integrated assessment of how best to acquire such services. DOD expects this assessment will result in a comprehensive, departmentwide architecture for acquiring services that will, among other improvements, help refine the process to develop requirements, ensure that individual transactions are consistent with DOD's strategic goals and initiatives, and provide a capability to assess whether service acquisitions are meeting their cost, schedule, and performance objectives. DOD expects its assessment will be completed in early 2007.

That assessment, however, will have little meaning unless DOD's leadership can translate its vision into changes in front line practices. In our July 2006 report on vulnerabilities to fraud, waste, and abuse, we noted that leadership positions are sometimes vacant, that the culture to streamline acquisitions for purposes of speed may have not been in balance with good business practices, and that even in newly formed government-industry partnerships, the government needs to maintain its oversight responsibility. Understanding the myriad causes of the challenges confronting DOD in acquiring services is essential to developing effective solutions and translating policies into practices. While DOD has generally agreed with our recommendations intended to improve contract management, much remains to be done. At this point, DOD does not know how well its services acquisition processes are working, which part of its mission can best be met through buying services, and whether it is obtaining the services it needs while protecting DOD's and the taxpayer's interests.

Mr. Chairman and members of the subcommittee, this concludes my testimony. I would be happy to answer any questions you might have.

SCOPE AND METHODOLOGY

In preparing this testimony, we relied principally on previously issued GAO and Inspectors General reports. We conducted our work in January 2007 in accordance with generally accepted government auditing standards.

CONTACT AND STAFF ACKNOWLEDGMENTS

For further information regarding this testimony, please contact Katherine V. Schinasi at (202) 512-4841 or schinasik@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs can be found on the last page of this testimony. Key contributors to this testimony were Lily Chin, David E. Cooper, Timothy DiNapoli, James E. Fuquay, Matthew Lea, Sara Margraf, Kenneth Patton, Sylvia Schatz, and Amelia Shachoy.

Senator AKAKA. Thank you very much, Mr. Gimble and Ms. Schinasi, for your statements. Your full statements will be included in the record.

Ms. Schinasi, section 802 of the NDAA for Fiscal Year 2002 required the DOD to improve the management of its services contracts through program reviews and spending analysis. Section 801 of the same act required the DOD to collect and analyze contract data for the same purpose. Unfortunately, it is my understanding that DOD still cannot even determine how much it is spending on contract services until several months after the money has been spent. GAO's November 2006 report on DOD service acquisition states that if DOD is going to obtain the right services at the right prices in the right manner, it must understand the volumes, sources, and trends related to what it's buying.

Ms. Schinasi, has the DOD developed the data, about the types of and quantities of services it purchases, that it needs to successfully manage its purchases of services at the strategic level?

Ms. SCHINASI. Mr. Chairman, they have not been able to do that yet. They have made some attempts, and there is some bottom-up reporting going on, but even the services themselves do not know what they're spending, and so, it's a massive effort to try and bring all of that information together, and they haven't been able to do it yet.

Senator AKAKA. They have not been able to do that. Is there any sight as to when this can be done?

Ms. SCHINASI. I guess my position on that would be that I hope we don't wait for all of the data to get in before we start making improvements, because it could be a while.

Senator AKAKA. Okay.

Mr. Gimble and Ms. Schinasi, the GAO report also states that sound contract management requires defining a clear scope of expected contractor performance, developing an objective means to assess the contractor's performance, ensuring effective contractor selection based on competition and sound pricing, and selecting an appropriate contracting vehicle. However, GAO reports that DOD service acquisition management activities focus primarily on awarding the contract rather than defining requirements. The DOD IG reports that DOD officials failed to perform adequate acquisition planning for 55 of 56 task orders awarded through GSA, and 61 of 61 task orders awarded through the DOTREAS.

Mr. Gimble and Ms. Schinasi, has the DOD taken the steps that it needs to take to ensure appropriate planning for the acquisition of contract services?

Mr. GIMBLE. The DOD is still working that issue. There's a series of policy letters that started back in 2004 and continue into 2006—clarifying policy, reinforcing policy. I think the answer, though, is that we're not there yet. As late as the last round of audits that we produced, we found those problems still exist. Hopefully, in the next round of audits that we'll do as a part of the section 800 series, it'll show some marked improvement, but we still have serious problems in that area.

Ms. SCHINASI. Mr. Chairman, I think your question also goes to the importance of who is it that we're targeting with training? When you talk about establishing requirements, those requirements come from outside of the contracting world. Those requirements are set by program managers. So, we need to make sure, in getting to a place where we have sound requirements that are valid and have been justified, that we make sure that the program community, as well as the contracting community who has responsibility for translating those requirements into a statement of work, is captured in our targeting.

Senator AKAKA. As I said in my opening statement, I believe that these shortcomings are the result of an acquisition workforce that is stretched too thin to do the job.

Mr. Gimble and Ms. Schinasi, is there any simple and cheap way for DOD to improve the performance of its services contracts, or is DOD going to have to invest the resources needed to provide adequate acquisition planning and oversight?

Mr. GIMBLE. In terms of the workforce, Mr. Chairman, I believe that the answer is that we went on record as early as 2000. In February 2000, we issued a report talking about the 50 percent reduction in the contracting workforce—or the acquisition workforce. There has not been significant increase in that workforce. As you pointed out in your opening statement, there's been significant increase in the volume of business that these folks are required to oversee. I think there's a huge investment there, because not only do you have to attract the people—if we determine that this is inherently governmental, meaning this has to be an investment in a contract workforce, there's a huge training tail that goes with that. So, it'll be a very significant investment, but I think that you see the risks that we've continually reported on, and maybe it's time that there's a business case made to see what the proper level of the acquisition workforce should be.

Senator AKAKA. Ms. Schinasi?

Ms. SCHINASI. I would add to that it's important that we start thinking about acquisition differently, that agencies realize that being able to accomplish their mission is very much hindered or helped by how well they acquire the goods and services they need for that mission. Until we can get the acquisition function up to a level where we see it as something worth investing in, we're not going to make the investments that we believe are needed. When you go out and ask private successful companies—and we do this quite a bit—“how do you approach your sourcing function?”—that is a huge strategic area for them, and they invest in the best and brightest people, because that's the basis upon which they make profit. The Government doesn't see it like that. The Government has never seen the acquisition function as requiring and deserving commensurate investments as other parts of agency missions.

Senator AKAKA. Senator Ensign.

Senator ENSIGN. Thank you.

Mr. Gimble, is the red area the area where they banked? Am I recalling correctly?

Mr. GIMBLE. Yes, sir. Actually, the red area is that the money was there, it was expired, and they went ahead and put it on contract. The banking could be a little bigger than that, though.

Senator ENSIGN. First of all, is this a question of “use it or lose it”? In other words, “Well, I have to spend it. It's there, I have to make sure I spend it.” Or is there something else involved here? If so, what type of administrative action should be taken? Is it criminal? What needs to proceed from here to stop this type of situation from going on?

Mr. GIMBLE. Senator, that's a really good question, and it's a very hard question to answer. I think there's a multitude of answers that go to that. I think the first thing is, the banking—when they push that money across, if you get 1 year on your money, that's going to expire, you send it over into a revolving fund, where it loses its identity. I'm not sure that that's criminal; it could be. It would have to be examined on a case-by-case basis. But it's a very poor practice.

There's some degree of uncertainty as to where the lines are, and we think there needs to be some more clear definition, particularly in what you can do. For example, if you buy goods and services,

those have to be delivered within the year. If we buy products, they have to be delivered within this year. What that does is, at the end of the year on September 15, which is still within the year, the assumption is if you put an order in, it'll be delivered before October 1. Maybe that's a little unrealistic, maybe there will be things that happen there. On the other hand, for severable services contracts, the rule is that if you get them on a contract, you have a year to execute. In other words, if you issue a contract in September of last year, you have until September of this year to execute the contract. There is a problem that goes on with that, in our view. Once you have the contract there, we wouldn't argue that you could carry that on for 12 months; it's when you start doing the incremental funding, where you add on to that or take from it; then, we think that's outside the scope. So, we think there's some definitional clarity that needs to be applied to this.

The other thing, though, is, how do you stop it? Once you get the rules down, there has to be some way of stopping it. I think that what's happening is, through the legislation, where you've had us declare buying activities as red, and you start the threat of DOD being their primary customer, not doing business with them, that that gets people's attention. We've gotten a lot of attention over the past 3 or 4 months. So, some of us that have been watching this evolve down over the number of years—and it goes back to more than just the Non-Economy Act orders that we have today. I'm not saying it should have to happen that way, I'm just saying that that is a real deterrent, and it makes people look and say, "If we want your business, we're going to spend the money the way you have to have it spent."

Senator ENSIGN. I want to get to some of the other contract issues and have both of you feel free to take a shot at this.

DOD has testified many times that the way budgeting is done right now is very difficult for DOD annual budgets. By the time they actually get their money, it was proposed maybe 4 years before that by the time the actual money gets around, and it's a very difficult situation for them. In the middle of a war, especially, it can be a frustrating situation. You have supplementals coming up here, you have all the various things going on.

How much of this is as a result of the situation we find ourselves in? Have you put numbers to how much of the money is actually being wasted? In other words, they're paying too much because of the bad systems that are in place, or is this a question, in some cases, of an entrepreneurial bureaucrat saying, "Hey, the system isn't working over there, I have to do it a different way, because these people really need these services or these materials that I'm going to get them, and I'm going to make sure that it happens"? Obviously, you don't want to punish people for thinking outside the box, but, at the same time, if they're wasting money, if they're doing things not by the book that actually cause harm and waste our tax dollars, then that is something we need to hold accountable. Have you put dollars and your comments on that line of questioning, either one of you?

Mr. GIMBLE. We haven't put a total dollar figure. I'm not sure that anybody knows. If you ask how much money is being wasted through poor contracting, I think we'd all say that it's significant,

but I don't think there's anybody that really has a good number for that.

Insofar as the "thinking out of the box," yes, absolutely. I think some of this is from an entrepreneurial point of view, but, on the other hand, what you can't do is allow that to become the crutch for poor contracting and where you give up the basic internal controls that would allow you to know that you're getting best value. I think that's where some of these things have stepped across the line, that it's an expedient way to put money on things; and the truth of it is, one would not argue that we might need more Humvees next year, but there's a process in place to buy those, I'm talking about the armor and the Humvees that we use as an example. The expenditure of taxpayers' dollars should be well-planned and executed to get the best value. I think what we have here is a situation that is not conducive to that.

Senator ENSIGN. Ms. Schinasi?

Ms. SCHINASI. I would agree. I think an entrepreneurial spirit is fine as long as it's accompanied by good business practices. So, there are those lines, and they get crossed for different reasons. You raised the issue of funding, and funding is difficult. We find that one of the reasons that requirements are not established upfront is because they're really budget-driven. "We'll buy as many labor hours as we have money for, and we don't know how much money we're going to have, because we only get our money on a quarterly basis." So, there's a lot of internal instability in DOD's funding processes that might exacerbate some of the things that we're seeing.

Senator ENSIGN. I alluded to it a little bit, but it may be in other parts of these programs, we hear about this throughout Government is: "You're coming at the end of the fiscal year, I have unexpended funds. If I don't spend those funds—and maybe sometimes they're on things that we really don't need, but if I don't spend those funds"—and I don't know if you've looked at any part of that, but if folks aren't spending those funds, they know, in next year's budget, "Oh, they didn't spend it last year, so we don't need to give them the same budget level for next year," even though next year they may need those funds, plus.

Senator AKAKA. Thank you, Senator Ensign.

Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman.

Mr. Gimble, is there a reason why you're still the Acting Inspector General? You've been Acting Inspector General since September 10, 2005.

Mr. GIMBLE. I'm a senior career guy, and if they put a political appointee in there, then I work for the political appointee. Short of that, my mission and role is to run the organization. I have little or nothing to do with it.

Senator MCCASKILL. Okay. When I read all of this, I didn't know whether to laugh or to cry. It is startling to see the enormity of the problem. I mean that in every sense of the word "enormity," because there are several definitions that go with "enormity," and I think several of them apply to this.

I was struck by the interagency contracting. Particularly, I was struck at the use of GSA and DOI as a roundabout, startling that

they would actually use other agencies and pay a surcharge to circle back and use their contracting list. So, we spent millions and millions of dollars paying another agency to buy, when all they had to do was go to their own list and purchase. Did I misread that?

Mr. GIMBLE. The example that you're talking about is of the "pass-throughs," where DOD could go to the Federal Supply Schedules and go directly to that; instead, we went to DOI, as an example, and they simply turn and go to the schedule and do the same thing we could have done, going straight to that. We also have a couple of examples of where we went out to DOI, and they've come back around and actually bought off the existing DOD contracts, and we've paid a surcharge to have that happen. I think that goes back to what Ms. Schinasi was saying. How you execute some of these things needs to be well-defined. That's just a breakdown in processes.

Ms. SCHINASI. In the report that we issued in July 2005 on franchise funds, one of the findings there was, the DOD is supposed to analyze alternatives to decide which way to go. It is supposed to say, "Should we do it ourselves? Should we put it on this inter-agency vehicle? That interagency vehicle?" That was not happening. When we looked at whether or not it could happen, what we found was that the funds themselves were not keeping performance measures to allow anyone to determine which is the best way to go. So, the way they measure their performance is on the increase in fees and customer satisfaction. So, they were interested in reporting that our "customers were satisfied," not that we have a better deal or a better price.

Senator MCCASKILL. I noticed, in one of—

Senator ENSIGN. Senator, if you would yield, maybe they could clarify—it's on your point—just because we've had some history on this very issue; this had to do with the number of acquisition personnel. Could you just maybe clarify for the Senator. The lack of acquisition personnel—in other words, we've had our acquisition workforce cut quite a bit at DOD, and that's the reason they've gone out and done some of this, because they couldn't get the material, they couldn't get some of these contracts as quickly as possible using their own folks, because of the lack of service personnel. Isn't that correct?

Ms. SCHINASI. That is part of it.

Senator ENSIGN. Doesn't justify the other things they did, but, as far as why they did it.

Ms. SCHINASI. Right. Working properly, that's what you would expect to happen. You can get your job done more quickly.

Senator MCCASKILL. Would the people not say to their superiors, "We don't have enough people to do this work; therefore, we're spending millions and millions of dollars to send these contracts circularly through DOI or GSA, and it would be a lot less money for the taxpayers if we just hired a few more people"?

Mr. GIMBLE. Senator, I think that that's a known fact that it is, but typically when these come to light, these examples, they're coming to light through audit reports. I don't know that they're sitting around and that anyone has this visibility over it. The point I was making a while ago about the DOD contract—the people going out to DOI, coming back to DOD—we actually identified 49

contracts, valued about \$5 million, where we sent the contract over to DOI, and then they came back and bought off an existing contract. That's probably not visible to the program manager. We're not sure, as—I think the other part of this is, if you're the program manager, once you put it out to contract, you probably don't worry too much about what—

Senator MCCASKILL. Out of sight, out of mind.

Mr. GIMBLE. "Out of sight, out of mind," "All I want is the product." So, that's kind of what builds. A lot of it is just the fact that they've cut the workforce so small, that was the whole idea, to leverage on some of the buying activities of these other operations.

Now, the other thing that concerns us—and I just need to say this—is that one could understand going to certain places because they have expertise in buying certain things. For example, furniture—you would think GSA has the expertise in buying furniture. The example came up that we're all familiar with, when they needed to have interrogators or interpreters over in Iraq, they went and bought it off an information technology contract down at Fort Huachuca. What was the expertise being used when an Information Technology (IT) Indefinite Delivery Indefinite Quantity (IDIQ) contract that buys computers to be going out and buying interpreter services? If you're going to direct this out somewhere, you need to go somewhere that they have the expertise to make the kind of buys that we're dealing with.

Senator MCCASKILL. It's hard to imagine, utilizing common sense, how you go to an IT supplier to buy interpreters. It's really hard for me to understand how—and maybe the longer I'm here, the more sense it'll make. But right now, it doesn't make much sense.

I think one of the things that struck me was the example of using operational money through GSA to build a building—that was in your report, Mr. Gimble. We actually used operational money to build a two-story office building, 230,000 square feet, and the Army said that they were leasing the use of the buildings, but the buildings weren't there before the contract was issued.

Does somebody get fired when that happens, when you actually use money that's operational to construct a building, and then try to say that you were just leasing a building, and you actually built a building? Does somebody lose their job when that happens?

Mr. GIMBLE. I'm not sure that anyone lost their job over that, but it's hard for us to understand, too, because—the issue there was 1 year of operations and maintenance money for operations versus military construction, which is much more constrained. We have an issue and it's still being reviewed in the DOD. Our position is that it was military construction, because there was not a building there. They did go out and pour foundation. We understand that they're—if you will, the temporary-type building, or the mobile-home-type building—that's probably not a good term, but the temporary building. But the fact is, they laid all the infrastructure and the foundation, and there's a huge building. If you go out and look at it, it's a fairly impressive building. It wasn't there the year before. It was, the year after. We have a hard time, in our organization, understanding how that is not military construction, and that

was the position we've taken. I think the attorneys are still trying to sort that one out.

Senator McCASKILL. I would really be interested in the follow-up on that, what happens. If you would—and I'll send a letter, specifically.

Mr. GIMBLE. Okay.

[The information referred to follows:]

CLAIRE McCASKILL
MISSOURI

United States Senate
WASHINGTON, DC 20510

January 18, 2007

Thomas F. Gimble
Acting Inspector General
United States Department of Defense
400 Army Navy Drive
Arlington, VA 22202-4704

Katherine V. Schinasi
Managing Director, Acquisition and Sourcing Management
United States Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Mr. Gimble and Ms. Schinasi,

First of all I would like to thank you for your testimony in yesterday's hearing. I look forward to working with both of you and your respective agencies in moving forward to provide solutions to the problems existing in DOD contracting. As I alluded to in yesterday's hearing, the oversight of how our government's operation and the assurance that taxpayer dollars are being used wisely is one of my highest priorities and I have every intention in moving aggressively to that end.

Also, in yesterday's hearing, we discussed several issues to which I would like to ask some specific follow-up questions. These questions are set out below. Though they are most specifically tailored to address pieces of testimony given by Mr. Gimble, should Ms. Schinasi and the GAO have information that would also address these questions, I would appreciate any materials or answers you could provide.

Mr. Gimble, in your testimony you discussed that in your initial round of audits you found seventy-two potential violations of the Antideficiency Act and in the latest report you have identified two-hundred and fifty potential violations. My questions relate specifically to these so-called potential violations.

I say "so-called" potential violations because it is curious to me why there is an extra layer of determination as to whether or not these infractions (for use of a better term) are in fact a violation of the Antideficiency Act. I would appreciate an explanation as to how the determination procedure works as it pertains to these violations. Why does there appear to be an extra step that DoD can hide behind while the performance of these

contracts continues? If this is a matter of DoD protocol, I would appreciate that explanation as well. Moreover, what is the status of these seventy-two violations and why has it taken so long to get an answer? Is counsel any closer to determining if these potential violations are, in fact, violations? If not, when is the expected date for a determination?

As it relates to the two-hundred and fifty potential violations, I would like you to explain the one-hundred potential violations that occurred after a warning took place. Specifically, I would like an explanation of the "warning" procedure which doesn't seem to be evident in the Act. Who gives the warnings and what type of warning was given? Additionally, if a warning had occurred, why are they still considered "potential violations"? It seems to me that if a warning had occurred and an officer failed to mitigate, the status of the act would be a direct violation of the Antideficiency Act, not a "potential violation" and the only determination would be the type of violation, administrative or criminal.

Lastly, I would like to be provided with the specifics both the seventy-two potential violations previously found and the two-hundred and fifty most recent potential violations. Specifically, I would like the nature of each potential violation, the details surrounding the potential violation, and the agency committing the violation.

Again, thank you for your time. If anyone appreciates the work you do it is a former auditor and prosecutor. I look forward to reading your responses.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire McCaskill". The signature is fluid and cursive, with a large initial "C" and "M".

Claire McCaskill
United States Senator



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

JAN 30 2007

The Honorable Claire McCaskill
United States Senate
Washington, D.C. 20510

Dear Senator McCaskill:

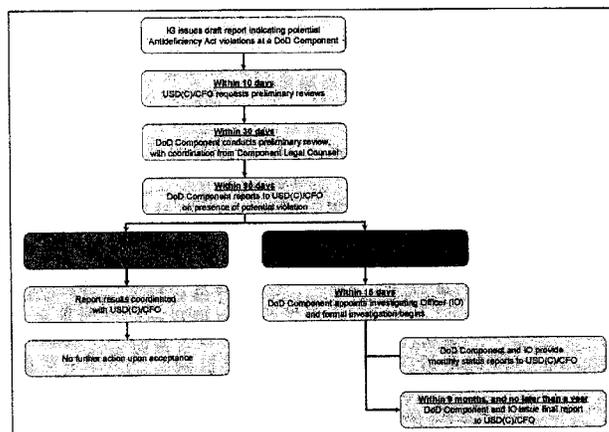
This letter responds to your letter of January 18, 2007, pertaining to the January 17, 2007, hearings on abusive practices in Department of Defense (DoD) contracting for services and interagency contracting.

Question 1. I would appreciate an explanation as to how the determination procedure works as it pertains to these violations. Why does there appear to be an extra step that DoD can hide behind while the performance of these contracts continues?

The audits identified potential Antideficiency Act (ADA) violations. The ADA comprises a number of statutes in Title 31 of the U.S. Code. Violations may be both civil and criminal. For DoD, the process for determining and dealing with violations is contained in DoD 7000.14-R, "Department of Defense Financial Management Regulations (FMRs)." Volume 14 of that regulation outlines the process. These policies are controlled by the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)). Management officials responding to the violations should look at each potential violation separately. Those officials then follow the administrative and disciplinary processes for military and civilian personnel. Accordingly, our audits recommended that the USD(C) direct the Components to conduct the necessary reviews.

Under the process used by DoD, the first step is for the subcomponent to conduct a preliminary review to gather basic facts and determine whether there is an apparent violation of the ADA. The subcomponent may make appropriate accounting corrections, eliminating potential violations. For example, an agency may commit a potential ADA violation by charging a purchase made during FY 2007 to an FY 2006 appropriation; the agency can resolve the issue by reversing the charge made to the FY 2006 appropriation, and charging the correct FY 2007 appropriation. However, correcting accounting entries will not always be an option. For example, if an agency obligates appropriated funds without congressional authorization, in excess of congressionally mandated thresholds, or obligates funds from future years, then a correcting accounting entry cannot resolve the potential ADA violation. If the DoD Component finds that there is a potential violation, a formal investigation is initiated.

The following figure shows the process and the required deadlines for performing the various parts of the ADA evaluation. The figure was developed from the DoD FMR guidance.



Timeline for Reviewing Potential ADA Violations

The FMR, under the cognizance of the USD(C), provides standards for beginning, conducting, reporting progress on, and completing investigations. However, the process is long and cumbersome. The average time for completion is more than 1 year. The USD(C) should be able to obtain the progress of each investigation.

Unlike other types of investigations, once the basic fact-gathering is completed, people to be named responsible are given the opportunity to review and comment on the report. This process may take time, as the people named may be reassigned, retired, or difficult to locate. Finally, the subcomponent concerned must provide a written statement of the action taken or to be taken to address any confirmed ADA violations. After an ADA report is completed at the subcomponent level, it is reviewed at the DoD level by General Counsel and Comptroller personnel.

In addition to due process considerations, several factors appear to lengthen the time taken in the ADA process. Multiple layers of command, fiscal, and legal offices review the reports. Investigators may have little training or experience (although training is required) and no personnel are dedicated solely to this process. Finally, fiscal law policy is inconsistent and unclear; therefore officials often reach differing conclusions. Fiscal law policy is not always consistent with acquisition and other policies.

Question 2. What is the status of these seventy-two violations and why has it taken so long to get an answer? Is counsel any closer to determining if these potential violations are, in fact, violations? If not, when is the expected date for a determination?

Thirty-eight of the 72 violations were identified during our FY 2004 audit of the General Services Administration.¹ The remaining 34 of the 72 potential violations were identified during our FY 2005 audits of the General Services Administration and the Department of the Interior.² Information on the 34 potential violations from our FY 2005 reviews is provided in Appendix D of Inspector General Report No. D-2007-042, Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies,” January 2, 2007 (enclosure 1), items 1-34. Appendix C of that report also provides details on the 38 potential ADA violations identified in our FY 2005 review of the General Services Administration.

As of January 2, 2007, the status on the 72 potential violations is as follows:

11	Formal Investigations Required
10	Corrective Actions Taken
17	DoD Determined that there was no ADA Violation
38	Total for FY 2004
34	Potential violations reported on January 2, 2007
72	Total

For the 17 potential violations that DoD organizations determined that no ADA violation occurred, we believe further review is required for 12. The USD(C) should determine whether formal investigations should be completed.

For the current status of all potential ADA violations, we believe that the USD(C) would be the best source of information.

Question 3. As it relates to the two-hundred and fifty potential violations, I would like you to explain the one hundred potential violations that occurred after a warning took place. Specifically, I would like an explanation of the “warning” procedure which doesn’t seem to be evident in the Act. Who gives the warnings and what type of warning was given? Additionally, if a warning had occurred, why are they still considered “potential violations”?

¹ DoD Inspector General Report No. D-2005-096, “DoD Purchases Made Through the General Services Administration,” July 29, 2005.

² DoD Inspector General Report No. D-2007-007, “FY 2005 DoD Purchases Made Through the General Services Administration,” October 30, 2006; and DoD Inspector General Report No. D-2007-044, “FY 2005 DoD Purchases Made Through the Department of the Interior,” January 16, 2007.

The chart we presented at the January 17, 2007, hearings identified 268 potential ADA violations that we discovered during the initial phase of our follow-up audit at the Department of the Interior contracting activity, GovWorks. Those potential violations will be included in our next audit report to the Senate Armed Services Committee which should be issued around August 2007. A major factor leading to these potential violations is the fact that GovWorks believes it has the legal authority to keep expired funds until the funds are exhausted. The Solicitor for the Department of the Interior and the DoD General Counsel interpret appropriations law differently. The Solicitor believes that funds from outside agencies may be used until fully expended once they are deposited into the GovWorks franchise fund. The DoD General Counsel's position is that use of the GovWorks franchise fund does not extend the appropriation's period of availability.

Our use of the term "warning" is not a term that is part of the ADA process. We used it to describe a series of meetings where the DoD or the Department of the Interior Inspector General advised Department of the Interior management that DoD Components were incurring potential violations of the ADA when GovWorks made purchases for them using expired appropriations. During March 2006, we provided the Department of the Interior senior management with copies of our briefing to Senate Armed Services Committee discussing the DoD problems caused when GovWorks used expired appropriations to make DoD purchases. The Department of the Interior Inspector General also provided a briefing to management discussing the findings. We also advised staff of the USD(C) of the problem and identified about \$393 million in expired DoD funds that needed to be deobligated to avoid future potential ADA violations. We provided a list of all expired funds to both DoD and the Department of the Interior. Following these briefings, we expected to see improvement. |01|The chart that we presented to your Subcommittee shows that these improvements did not happen. Our chart shows purchases made before March 2006 in green and those made after March 2006 in red. We distinguished the purchases made after March 2006 (when we briefed management on the problems) because we believe that the continued purchases indicate that management responses to the identified problems were ineffective in stopping the practices we observed during our FY 2005 audit.

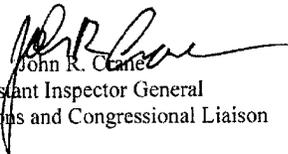
Question 4. I would like to be provided with the specifics of both the seventy-two potential violations previously found and the two-hundred and fifty most recent potential violations. Specifically, I would like the nature of each potential violation, the details surrounding the potential violation, and the agency committing the violation.

DoD Inspector General Report No. D-2007-042, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," (enclosure 1), provides specifics on the 72 potential violations presented at the hearings. Regarding the 268 violations identified this year and discussed in more detail in question 3, we have

enclosed a compact disk containing the details on those transactions and the agencies involved in the potential violations. The compact disk contains the same information that we presented at the hearings.

We appreciate your interest in our work on interagency contracting. Please contact me at (703) 604-8324, if you have additional questions regarding information we presented during the hearings.

Sincerely,


John R. Cane
Assistant Inspector General
Communications and Congressional Liaison

Enclosures:
As stated

Senator MCCASKILL. This is a really good example, but if there's not accountability when something like that happens, I think we might as well throw in the towel.

Thank you for your service to our country, too.

Senator AKAKA. Thank you.

I'm happy to welcome Senator Martinez to the committee and ask for any statement or questions that you may have.

Senator MARTINEZ. Thank you, Senator. I appreciate it very much, Mr. Chairman. I'm going to insert my statement for the record, and go straight to questions.

[The prepared statement of Senator Martinez follows:]

PREPARED STATEMENT BY SENATOR MEL MARTINEZ

Mr. Chairman, thank you for calling this important hearing. Many of my constituents have contacted me regarding the waste, fraud, and abuse that have resulted from some service contracts in Iraq; from a pure fiscal responsibility point of view, I think it is important that we hold this hearing.

The shortcomings that have been reported represent a serious drain on the ability of U.S. and coalition forces to complete the transition to Iraqi control of the country.

Not only do these contracting problems translate into a tremendous loss of money, but because of what is not being done, the success of the mission there is being put at risk—and unnecessarily so.

Recent reports indicated that corruption and waste is widespread among the Iraqi Government. Our men and women on the ground need to set the example, and work with the elected government and the Iraqi Army to stamp out this corruption and help them establish good government.

In this sense, the widespread problems documented to date threaten our most important long-term goals in Iraq. We should be presenting ourselves and our operations as a model of good government.

Through our own example, we are supposed to be showing the Iraqis (and the rest of the coalition) how the greatest nation in the world conducts business.

It is important that we take these first steps by being introspective and noting deficiencies where they exist. Then we need to move forward, and find ways to correct these often overlooked, but very serious shortcomings. I look forward to working with my colleagues on this committee on this issue that is certain to require our attention for the foreseeable future. Thank you again, Mr. Chairman.

Senator MARTINEZ. I must say that you come in with a spirit of criticism, and, as I've sat here, I have been transformed back to my days as a Cabinet officer. I'll begin to feel sorry for those who attempt to run a Federal bureaucracy.

The Senator from Missouri will learn that there's no such thing as firing a Federal employee. It just doesn't happen. [Laughter.]

I also know that the GAO plays a very useful role, not only in identifying problems, but also providing hopeful solutions. I wonder in part of what we have been discussing here is an issue that I also relate to, because, when I was at the Department of Housing and Urban Development, we had the very same problem—is that you go on this binge of contracting services, which is good, and sounds good, and makes sense, but then, at the same time, the corresponding opposite of that is you reduce the workforce, because you're not contracting out the services. What happens then is that the bureaucracy is left shorthanded to oversee and supervise the letting and oversight of contracts. So, then these problems arise.

Are part of your recommendations that you are making as a result of your findings, Ms. Schinasi, are they also to increase the contracting oversight workforce within the DOD?

Ms. SCHINASI. We haven't gone to the quantity of people. We haven't made recommendations on the quantity of people needed. But, clearly, getting all of the players who are responsible for the decisions involved in the targeted training that we need to do is something that we have recommended.

Senator MARTINEZ. Yes, training is the other part, which is not only having the workforce, but having the workforce be trained in the oversight of contracts, which is, to them, a new thing. They haven't done this before; now, all of a sudden, what they used to do in-house, they're doing outside, and someone needs to oversee it, and it's a different skill set that the workforce needs to have from what it used to be, prior.

Ms. SCHINASI. For example, surveillance of contractors is a responsibility that is assigned by the contracting officer, but it's usually an individual who comes out of the program office, presumably because they understand what the contractor is supposed to be doing and can assess how well they're doing that. But those individuals often are not trained, and they just don't pay much attention. So, you need to make sure you have all of the pieces in there when you're writing policy or developing training.

Senator MARTINEZ. One of the things, Ms. Schinasi, that came to mind was that you may have an infantry colonel operating in Iraq, and may be a little uncomfortable with the process, but what I was wondering is how much of this contracting is done on the ground in theater and how much is done in at a strategic level, here in the country?

Ms. SCHINASI. There's very little done at the strategic level, and I think that's part of the message that we've been trying to get across in our most recent report on how do you need to manage service contracting? There is a tactical level, and you need to ensure that competition rules are followed and surveillance takes place, but there is also a strategic level, where you have to decide what is it that you want to achieve through hiring contractors to help you carry out your mission? That hasn't been done.

Senator MARTINEZ. At that level, also, additional training would be helpful.

Ms. SCHINASI. Yes, and knowledge about what you are doing. Do you really know what you're spending it on, who you're spending it with? The answer is no.

Senator MARTINEZ. I saw that in 2005, DOD awarded more than 52,000 contract actions, with a value of over \$5 billion. I presume that's all done under a fairly high-stress environment. I guess that would also be part of what we're dealing with, and I don't know how we do that better under war circumstances. Do you have a suggestion there on how to improve?

Ms. SCHINASI. I think what we're trying to get to is a strategic and a transactional level, should you be hiring that much through service contracting is number one. Then, number two, the imbalance we've talked about between the job of each individual and how many individuals you have doing that job, is another way that you would have to attack that.

Senator MARTINEZ. That's all part of the same issue and part of the same problem?

Ms. SCHINASI. Yes.

Senator MARTINEZ. Any good news you can share? [Laughter.]

Ms. SCHINASI. Mr. Gimble? [Laughter.]

Senator MARTINEZ. Mr. Gimble, maybe you'd like to tackle that one. I didn't ask you any questions.

Ms. SCHINASI. I will say that I'm encouraged, in our discussions with the leadership in the DOD. They are well-meaning people, they recognize what these problems are, and the magnitude that they have to deal with that. The point I made in my oral statement, though, is that these are number whatever—103 in the series of leaders that we have had over there trying to correct the problem, and it's very difficult to get traction, particularly service contracting, where, as you point out, most of the action is at the front-line level, trying to get that vision translated down and actually something changed, as a result.

Senator MARTINEZ. I think something that Mr. Gimble also alluded to, is the fact that sometimes what becomes so apparent at the time of looking at these issues is not apparent on a day-to-day basis to those people who have a responsibility for oversight. I guess that's part of where I'd identify and feel fortunate to no longer be responsible for a government department in the Federal bureaucracy.

But thank you very much, both of you.

Thank you.

Senator AKAKA. Thank you very much, Senator Martinez.

I'd like to ask a question about the Acquisition Advisory Panel in the second round. The question from which we'll hear from the Acquisition Panel later this month. They looked at the state of the acquisition workforce and concluded that "curtailed investments in human capital have produced an acquisition workforce that often lacks the training and resources to function effectively." I think you mention that, too, Ms. Schinasi.

Ms. SCHINASI. Yes.

Senator AKAKA. As a result, the panel concluded, "The Federal Government does not have the capacity in its current acquisition

workforce necessary to meet the demands that have been placed on it.”

Mr. Gimble and Ms. Schinasi, do you agree with the conclusions of the Acquisition Advisory Panel on the state of the defense acquisition workforce?

Mr. Gimble?

Mr. GIMBLE. Yes, Mr. Chairman, we do agree with that. Also, I think there’s something else that hasn’t been mentioned. You have the baby-boom retirement age that’s coming up. There’s another challenge for the acquisition workforce—and it’s not just the acquisition workforce, it’s the whole Federal workforce, as we have a number of folks that are approaching—and, in some cases, such as myself, past retirement. But that’s going to be another challenge. Some of the trained people that we have, experienced people, are going to be retiring in the near-term, so there’s a huge issue laying out there for not only the hiring of acquisition people, but also the training of the people.

Senator AKAKA. Ms. Schinasi?

Ms. SCHINASI. We have ongoing work right now examining all of the recommendations of the 1423 panel, so we’re still working our way through that. But I think one of the things that they did raise in that report is this business of thinking about your acquisition workforce more strategically, being willing to invest in a group of people who help you determine how successful or not you are with your mission. Highly sophisticated, credentialed, and trained business managers is the way that that panel talked about the private sector approach to a kind of workforce, and I would agree that that’s the way we need to start thinking about the capability that the Government has to have.

Senator AKAKA. To both of you, would you agree with the conclusion of the Acquisition Advisory Panel that our failure to fund an adequate number of acquisition professionals is penny wise and pound foolish, as it seriously undermines the pursuit of good value for the expenditure of public resources?

Mr. Gimble?

Mr. GIMBLE. Mr. Chairman, I would agree with that.

Ms. SCHINASI. We need to make greater investments.

Senator AKAKA. On criminal violations of fiscal statutes, Mr. Gimble, I understand that in the course of your reviews of inter-agency contracts awarded through GSA, DOI, DOTREAS, and NASA, you have identified several hundred potential violations of the ADA, more than 100 of which occurred even after officials were warned that continued expenditures would violate funding requirements. The ADA is a critical statute which ensures that money is spent in accordance with congressional appropriations. It is also a criminal statute.

My question is, what has happened to these ADA cases? Have any Federal officials been—instead of saying “fired”—disciplined for these violations?

Mr. GIMBLE. Mr. Chairman, let me put a little perspective on that. We initially identified 72 potential ADA violations in our initial round of audits. The way that works is, when we have a potential violation, where there hasn’t been a conclusive determination that there is, in fact, a violation, that becomes a comptroller/gen-

eral counsel issue which—we're on record saying that we think they should have moved those along quicker than what they've done. They haven't finished any of the 72 that we initially reported. We believe that those have to be done. That would be the baseline from which, if it's determined that there are, in fact, violations, you'd make a determination that, at that point, as to whether they're criminal or not.

The other part of that is the 100 that occurred after—I think we're talking about my red chart up here—we have identified those as “potential.” We will be referring those back into the normal ADA violation process for a determination of whether, in fact, they were a violation, and also, that same determination as to whether, if there was a violation, in fact, was it criminal or administrative? So, I think the jury's out on that.

The answer to the question, nobody's been held accountable on the potential violations that we've identified and reported. So, our position is that the DOD needs to take action to speed those reviews up. We're on record with them, internally in the DOD, telling them that they need to move those forward. We think this is a huge part of the enforcement issue. If we're going to correct these problems and solve them in the future, if they need to be held accountable, they should be held accountable. That process is still working.

Senator AKAKA. Is it true, Mr. Gimble, that one of the major DOI contracting officers advertised on its Web site that DOD officials could avoid congressional limitations on the availability of funds by sending money to them?

Mr. GIMBLE. That is correct. There was an advertisement on the Web site that says that—put your money here—basically, park your money, and it will still be useful in years to come.

Senator AKAKA. Mr. Gimble and Ms. Schinasi, do statements of this kind give you confidence that we are on our way to fixing the systematic problems that you have identified with interagency contracting? What I'm referring to is, the administrator of GSA recently complained about the joint reviews that you have conducted with the GSA IG. The administrator is quoted as saying that there are two kinds of terrorism in the United States: the external kind, and, internally, the IGs have terrorized the GSA regional administrations. Again, I'll come back to the question. Do statements of this kind give you confidence that we are on our way toward fixing the systemic problems that you have identified with interagency contracting? [Laughter.]

Mr. GIMBLE. Mr. Chairman, let me take that, because—actually, it's our joint review. It's not GAO—it was DOD IG and GSA IG. I read that in the paper. Frankly, if that's true that the administrator said that, I think that's a very unfortunate label to be applied to a very respected member of the Federal IG community. You only have to go back and read in the Inspector General Act of 1978, as amended. We have a very clear role in the forefront of the war against fraud, waste, and abuse. Running these joint reviews that we're doing is—we view that as doing value-added work for the taxpayer, in overseeing the expenditure and stewardship of the taxpayers' dollars.

Senator AKAKA. This is my last question, Mr. Gimble. Under these interagency contracts, DOD pays a fee to the contracting agency to conduct contracting actions on its behalf. For example, DOD paid fees to the DOI in the range of 3 to 4 percent of the value of each transaction. Mr. Gimble, do you have a view as to whether the DOD was getting its money's worth for these fees?

Mr. GIMBLE. Mr. Chairman, I think we have some examples where we thought they weren't getting their money's worth. I also would tell you, though, the fee-for-service, in itself, if properly managed, I think you do get value that way. The theory being, if I have a true contracting requirement that I cannot fulfill—I can downsize my acquisition workforce and rely reliably on some other Government activity to do that, then they can't do it for free, so, I think it's not a bad concept. I think what we have here are examples of just poor planning and poor use of what would otherwise be a very valuable resource to the DOD.

Ms. SCHINASI. I would just add to that. The way they manage their own performance set—puts in place a set of incentives that works against, perhaps, the best interests of the Government at large, because they're measuring on the fees that they get and customer satisfaction. So, if that's all you're looking at doing, then you want to make customers happy by bringing more business, and you're willing to do a lot of things that otherwise, in other circumstances, would not constitute good business practice.

Senator AKAKA. Thank you for your responses.

Senator McCaskill.

Senator MCCASKILL. I certainly think if the head of GSA made those comments, especially in light of your record in the military, I would think, Mr. Gimble, that you are owed an apology. I think the IGs and GAO are incredibly important to the expenditure of public money, and I hope that you all feel as valued as you are, especially by those of us who have spent time wading through audit reports; and, second, that if ever your independence is compromised, that the way this wonderful, elegant democracy was designed, the congressional branch is here to try to make sure that your independence is maintained.

I wanted to focus, during this round, just on a couple of practices that are ongoing and are mentioned in both of your reports. One is "costs incurred before scope in work" has, in fact, been laid out. In fact, I believe you cite in your work, Ms. Schinasi, that there's actually an instance where all of the costs had been incurred and paid for before the scope in work had been decided upon.

Ms. SCHINASI. That's correct. There were several instances, but one, the contract was finally agreed to a year after the work had been completed.

Senator MCCASKILL. Can you explain how that phenomena has become something that is accepted and that isn't immediately something that is, with an internal control, basic rudimentary best business practices? It would seem that that would get caught pretty quickly. If money is going out before there is any contractual agreement, how does that happen?

Ms. SCHINASI. "Urgent and compelling need" is the technical term for it, and there is a provision to give a contractor permission to start work as long as you get the terms and conditions set with-

in 180 days. So, the regulations allow for urgent and compelling needs—and these cases were in Iraq—that you can let the contractor proceed without agreeing. But that 180 days is in there for a reason, and that is, the longer it takes, the less chance the Government has of having any influence over the contractor or influence over the contractor's costs. That was what we found in the review that we did, that contracting officers did not feel they had the ability to go back and recover costs that had been incurred, even though the Defense Contract Audit Agency had questioned those as unreasonable.

Senator MCCASKILL. Did they try and were somehow rebuffed in the legal process? Or they just said, "If we've already given them the money, no harm, no foul, they get to keep it"?

Ms. SCHINASI. It would be too hard.

Senator MCCASKILL. What about cost-plus? What is going on with this incredible commonplace practice? At least reading about it from the outside, it appears that cost-plus—where I come from in government contracting, that is something that makes the foundation shake, because it's an absolute ticket to spending as much money as you possibly want to spend, because there is absolutely no bottom-line pressure. How common are these cost-plus contracts? Is this just something that's being taken out of context and it's unusual, or is this truly something that we need to be concerned about, in terms of watching taxpayer money?

Ms. SCHINASI. I'll take a shot at that first. It is a problem that we're seeing so many cost-plus contracts. I think what that is is a reflection of the point that Mr. Gimble and I have both made: that the Government doesn't really know what it wants. It cannot articulate a set of requirements against which a contractor can propose and get the risk under control so that we know what we're going to get when we enter into a contract. Cost-plus is meant to be used in an environment where a contractor is not willing to take on risk. That usually happens when the Government can't say what it is that it wants.

So, it's a very risky place for the Government to be, and also indicative of this growing trend that we see, "We know we need something"—maybe tied back to the capacity we have in our own workforce—"We know we need something, but we don't really know what it is, so can you help us develop the solution?"

Senator MCCASKILL. Is this something that—if we did a graph, would we see that this is something that's growing, the cost-plus phenomena in DOD?

Mr. GIMBLE. We've not done any detail work lately on the volume of cost-plus. Let me get back to you with an answer, if we could do that.

[The information referred to follows:]

Statistical Information on Types of Contracts Used on DoD Procurements for FY 2004 Through FY 2007

Type of Contract	FY 2004			FY 2005		
	Dollars	Percent	Contract Actions	Dollars	Percent	Contract Actions
Fixed-Price Redetermination	\$652,419,925	0.3	7,990	\$541,382,596	1.0	0.099
Firm-Fixed-Price	112,824,488,545	49.1	554,870	137,350,504,084	60.9	3,040,081
Fixed-Price Economic Price Adjustment	11,418,842,294	5.0	23,274	25,178,173,172	8.2	6,984
Fixed-Price Incentive	9,893,459,797	4.3	1,738	6,181,172,288	4.5	2,240
Fixed-Price Award-Fee	1,845,704,632	0.7	2,904	1,827,705,419	0.8	2,277
Fixed-Price Level of Effort	377,592	0.0	1	1,438,448	0.0	13
Total Fixed Price Contracts	\$139,543,335,715	59.3	993,324	\$168,121,625,688	82.7	3,148,540
Cost-Plus-Award-Fee	\$2,939,872,959	1.3	15,299	\$11,160,884,472	11.0	18,550
Cost Contract	4,231,712,157	1.8	31,853	7,131,078,027	2.9	12,515
Cost-Sharing	212,157,931	0.0	226	104,858,951	0.0	240
COST-Plus-Fixed-Fee	28,894,724,263	11.7	47,095	27,970,894,862	10.4	54,891
COST-Plus-Target-Fee	7,678,132,788	3.4	2,913	11,707,585,370	4.4	2,720
COST-Plus-Completion-Fee	8,200,241,356	3.6	20,815	9,420,581,116	3.5	23,184
Time-and-Materials	643,081,920	0.4	3,864	739,644,891	0.3	3,639
Level-of-Effort	\$51,235,265,954	35.3	122,735	\$32,254,927,939	32.7	119,227
Total Cost Type Contracts	\$12,280,517,146	5.3	93,341	\$12,192,436,735	4.5	125,098
Undetermined	\$6,302,981	0.0	32	\$165,181,728	0.1	1,388
Combination (Applies to Awards where two or more of the above apply)	\$6,755,864	0.0	12	\$8,232,315	0.0	17
Other (Applies to Awards where none of the above apply)						
Total Contract Values	\$230,092,182,290	100.0	806,444	\$209,754,783,057	100.0	3,381,878

Source of Information: The statistics above were developed by the DoD Washington Headquarters Services from the Federal Procurement Data System Next-Generation (FPDS-NG) as of January 22, 2007. During FY 2006, DoD transitioned from the DD-350 (Individual Contracting Action Report) database to use of the FPDS-NG.

Most data from FY 2008 and the data from FY 2004 and FY 2005 were migrated from the DD-350 database. Data in FPDS-NG can be modified back to 1878. Starting in FY 2008, as a result of a change in the Defense Federal Acquisition Regulation Supplement 204.6 - Contract Reporting, the contracting reporting threshold changed from \$25,000 to \$2,500.

On September 27, 2005, the Government Accountability Office sent a memorandum to the Director, Office of Management and Budget, called "Improvements Needed to the Federal Procurement Data System-Next Generation." The memorandum stated: "Based on our review, we have concerns regarding the accuracy of the data in the FPDS-NG system. The FPDS-NG system has the ability to capture data on multiple contracts for the same contract award. Consideration of the FPDS-NG transition provides an opportunity for assessing the implementation of the FPDS-NG system. Contracting reporting adjustments as the contractor begins its next period of performance. We are recommending actions to help achieve the intended improvements for FPDS-NG, which should be considered as part of that assessment." Although GAO had concerns on the accuracy of the FPDS-NG system, we believe that the FPDS-NG was the best available source for this information.

Type of Contract	FY 2006*			FY 2007*		
	Dollars	Percent	Contract Actions	Dollars	Percent	Contract Actions
Fixed-Price Redetermination	\$205,413,378	0.1	811	\$3,370,874	0.0	26
Firm-Fixed-Price	118,821,341,985	39.0	3,276,382	12,853,346	36.1	77,676
Fixed-Price Economic Price Adjustment	15,477,687,823	5.1	60,096	253,260,852	0.7	902
Fixed-Price Incentive	3,322,258,179	1.1	1,524	105,764,815	0.3	88
Fixed-Price Award-Fee	396,709,055	0.1	1,427	92,893,276	0.3	226
Fixed-Price Level of Effort	39,941,038	0.0	147	7,587,006	0.0	89
Total Fixed Price Contracts	\$138,626,226,658	45.4	3,345,438	\$13,412,860,325	37.6	78,308
Cost-Plus-Award-Fee	\$6,785,984,532	2.2	6,280	\$3,815,687,132	10.7	2,114
Cost Contract	1,685,359,874	0.0	2,311	373,682,880	1.0	350
Cost-Plus-Fixed-Fee	43,533,671	0.0	117	5,623,157	0.0	44
Cost-Plus-Incentive-Fee	13,880,962,552	4.5	28,282	1,989,331,002	5.8	5,253
Cost-Plus-Lump-Sum-Fee	2,174,622,245	0.7	971	192,232,027	0.5	1,415
Time-and-Materials	5,206,817,050	1.7	10,901	853,548,576	2.4	1,463
Labor-Hour	648,652,607	0.2	4,817	59,353,035	0.2	160
Total Cost Type Contracts	\$30,202,342,137	9.9	51,658	\$7,286,987,817	20.4	9,823
Undetermined Combination (Applies to Awards where two or more of the above apply)	\$154,319,645,433	44.2	313,620	\$11,718,147,800	32.9	19,821
Other (Applies to Awards where none of the above apply)	\$1,516,238,865	0.5	1,718	\$3,235,843,028	9.1	1,019
Totals	\$11,987,300	0.0	537	\$0	0.0	0
	\$304,074,425,281	100.0	3,709,873	\$55,633,548,070	162.0	108,140

* The total dollars and contract actions may be good but the breakdown of types of contracts are not accurate due to \$134 billion in an undetermined category.

Senator MCCASKILL. Sure, that would be great. I'd like to know. On the costs incurred before scope in work, have you done any work following up in terms of if, in fact, it was urgent and compelling? Have you done that audit work to check to see what, in fact, the underlying rationale was for cost incurred before scope in work agreed to?

Ms. SCHINASI. We have a job underway right now to look at a portion of those contracts to get more in-depth insight into what really did happen.

Senator MCCASKILL. I'm worried that urgent and compelling is a phrase that people realize they can use, and just go ahead and

start. Certainly, I think, all of us understand that if it's men and women's lives that are at risk, our soldiers, then, certainly I would be the first to say there might be some instances. But what I worry about is, if this is a practice that has started occurring, it may be like going through the agencies for parking or banking money, once it becomes accepted, then they quit looking, and that just becomes a phrase they use instead of something that's actually urgent and compelling.

Mr. GIMBLE. Senator, I think that urgent and compelling probably has a history of valid uses, and it also probably has a history in the DOD of being abused from time to time. There's a process that you go through to justify urgent and compelling need, and it needs to be documented and defended. We've all looked at—from the audit side of the house, we've all looked and seen instances where the documentation really wasn't sufficient and it would be questionable whether urgent and compelling was really a valid requirement. On the other hand, it is a valid technique if you do have on urgent and compelling need. Sometimes you have to justify it and move forward.

Senator McCASKILL. Okay.

Thank you all.

Senator AKAKA. Thank you very much, Senator McCaskill.

This has been a meeting to discuss the abusive practices of the DOD in contracting for services and interagency contracting. Some of the responses we've heard today are very troubling. We'll have a second hearing later this month on this subject.

But, at this time, I'd like to thank you, Mr. Gimble and Ms. Schinasi, for your responses and your statements.

If there's no further business, this hearing is adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JOHN ENSIGN

USE OF SERVICE CONTRACTS TO ENTER INTO PROPERTY LEASES

1. Senator ENSIGN. Mr. Gimble, a significant finding in your report that has been covered by the press concerns the award of a service contract by the Department of the Interior (DOI) on behalf of the Department of Defense's (DOD) Counterintelligence Field Activity to provide leased office space and the installation of communication and other equipment. You state in your written testimony that "the 10 year, \$100 million lease was disguised as a service contract and exceeded all thresholds that require congressional notification and approval." From your research and in your opinion, is it standard DOD practice to use service contracts to procure property leases and equipment?

Mr. GIMBLE. We are not aware of widespread use of service contracts to obtain real property leases. The Counterintelligence Field Activity lease described in our report and testimony is not standard practice in DOD and it should not be permitted to become the rule rather than the exception. Our concern is that, if the practice of leasing space for use by Government employees via service contracts is not stopped quickly, other DOD activities will circumvent required GSA and congressional approvals to obtain office space.

It is not uncommon to see equipment being purchased in conjunction with services on a service contract. However, the equipment should be needed in order to perform the required service.

2. Senator ENSIGN. Mr. Gimble, in your opinion, in this case, what differentiated a service contract from a property lease?

Mr. GIMBLE. A real property lease would be any agreement which gives rise to a landlord tenant relationship or a contract by which one owning real property grants the right to use and enjoy that property for a specified period of time in exchange for periodic payment of a stipulated price. A service contract would normally

be a contract for the performance of intangible services by individuals for a specified period of time in exchange for periodic payment of a stipulated price. A Federal real property lease to provide office space for Government employees and a service contract are controlled by separate regulations applicable to each. Service contracts are made subject to the Federal Acquisition Regulations while real property leases are subject to the guidance in the Federal Management Regulation. The cost of the Counterintelligence Field Activity contract was primarily for the right to use real property to provide office space for Government employees—\$80.5 million (80 percent of contract value) and tenant improvement costs—\$14.7 million (about 15 percent of contract value) plus associated interest charges on the tenant improvement costs. Although the contractor was responsible for providing services such as facilities management, this made up only a small portion of the contract cost.

3. Senator ENSIGN. Mr. Gimble, you further state in your testimony that “We are aware of two other major leases that similarly circumvented the process.” Can you elaborate on these two leases?

Mr. GIMBLE. The Acting Director of the Counterintelligence Agency, in his management response to our draft audit report, identified another lease for the Counterintelligence Field Activity through the Defense Information Technology Contracting Organization. A similar contract was also awarded by the Missile Defense Agency for the lease of office space.

ASSESSMENT OF DEPARTMENT OF DEFENSE’S REMEDIAL EFFORTS ON INTERAGENCY
CONTRACTING

4. Senator ENSIGN. Mr. Gimble, you mention in your testimony that there are two corrective actions DOD has recently taken to improve oversight of interagency contracting—a December 2006 memorandum from the Director of Defense Procurement and an October 2006 memorandum from the Defense Comptroller’s office. Do you think these memoranda go far enough in effecting positive change within DOD?

Mr. GIMBLE. The December 2006 Memorandum of Agreement between General Services Administration (GSA) and DOD goes a long way in effecting positive change in the working relationship between GSA and DOD. However, similar agreements are also needed with the other activities contracting on behalf of DOD (e.g. the DOI and Department of Treasury (DOTREAS)). The Agreement laid the framework for what is expected from each agency. Specifically, it lets GSA know how DOD wants to do business and what GSA can expect from DOD. The October 16, 2006, memorandum from the Comptroller clarified funding rules for severable services contracts and established a \$500,000 threshold for contracting officer review of interagency purchases, among other requirements. However, it stopped short of providing clear guidance regarding advance payments and the handling of incremental funding of services contracts.

5. Senator ENSIGN. Mr. Gimble, should Congress additionally consider statutory language this coming year?

Mr. GIMBLE. I do not believe additional statutory language is necessary. The DOD Comptroller understands the problems and can fix them by providing additional guidance to DOD organizations. I also believe that the guidance already published needs to be enforced and actions taken against those who ignore the guidance. Following the interagency audits now being conducted, I recommend that my office and the Inspectors General of GSA and DOI conduct joint audits in about 3 years to ensure that interagency contracting procedures are working as intended.

6. Senator ENSIGN. Ms. Schinasi, what are your thoughts on the potential effectiveness of these efforts?

Ms. SCHINASI. The October 2006 memorandum from the Comptroller, which was sent to DOD components, established policies and procedures for ordering goods and services that are not subject to the Economy Act that are purchased from non-DOD agencies. For example, it requires officials to provide evidence of market research and acquisition planning, and a statement of work that is specific, definite, and certain for non-Economy Act orders above the simplified acquisition threshold. The memorandum also included a checklist and responsibilities for DOD officials to use as guidance when placing orders through interagency contracts. These actions should help to address prior Government Accountability Office (GAO) recommendations for better defining contract requirements and outcomes, and the need for guidance on the use of interagency contracts.

The December 2006 Memorandum of Agreement between DOD and the GSA serves to establish expectations for the parties involved in an interagency contracting transaction. For example, the memorandum proscribes that statements of work are complete, interagency agreements describe the work to be performed, and surveillance and oversight requirements are defined and implemented. The planned quarterly meetings for DOD and GSA to evaluate the effectiveness of the Memorandum of Agreement are a positive step.

However, as the acting Inspector General, DOD, pointed out during the January 2007 hearing, the risks associated with interagency contracting are not new and require sustained attention. The use of these types of contracts continues to increase government-wide, and our work and the work of the Inspector General have found that users and administrators lack expertise about how to use these contracts. In addition, adequate oversight is lacking. For example, DOD issued guidance that was signed in October 2004 (effective January 1, 2005) that outlines procedures to be developed and general factors to consider in making the decision to use another agency's contract. However, recent Inspector General audits have found that the guidance is not always followed. In March 2006, the DOD Comptroller issued a memorandum to the military departments, defense agencies, and other components stating that DOD purchases made through non-DOD entities continue to violate policies, existing regulations, and practices regarding the use and control of DOD funds under interagency agreements; the memorandum also stated that this situation needed improvement. Therefore, although recent DOD actions are welcome, DOD will need to continue to monitor its use of interagency contracts and do more to define who is responsible for what in the contracting process.

ASSESSMENT OF DEPARTMENT OF DEFENSE'S REMEDIAL EFFORTS ON THE ACQUISITION OF SERVICES

7. Senator ENSIGN. Ms. Schinasi, how do recent steps taken by DOD, such as the Under Secretary of Defense's October 2006 memorandum concerning the reform of services acquisition, compare to your recommendations regarding strategic and tactical level management?

Ms. SCHINASI. DOD has taken a number of steps to improve its acquisition of services, but these steps do not fully address our recommendations regarding strategic and tactical management. For example, DOD's October 2006 memorandum identified a number of improvements in its current management structure, including providing lower dollar thresholds for reviewing proposed services acquisitions and requiring senior DOD officials to annually review whether service contracts were meeting established cost, schedule, and performance objectives. Further, in its comments to our November 2006 report¹ on DOD services acquisitions, DOD noted that it had made organizational changes to improve its strategic sourcing efforts; it was assessing the skills and competencies needed by its workforce to acquire services; and the military departments and defense agencies were conducting self-assessments intended to address contract management issues we identified in our high-risk report. Each of these efforts are steps in the right direction, but in our view, appeared to be primarily incremental improvements to DOD's current approach to acquiring services.

8. Senator ENSIGN. Mr. Gimble and Ms. Schinasi, what more do you think the DOD needs to do to further address the problems in the acquisition of services?

Mr. GIMBLE. DOD needs to assess its acquisition workforce and identify its capabilities to award and administer service contracts. For example, is DOD using contractors to perform routine duties that should be done by Government workers? DOD needs to establish centers of excellence and leverage its buying power. DOD also needs to look at Performance Based Acquisitions and determine if DOD has the contracting talent to implement it on a department-wide basis. Other areas needing attention are the oversight of service contracts, preparing Quality Assurance Surveillance Plans, and evaluating performance against the plans.

Ms. SCHINASI. At a fundamental level, we believe DOD needs to begin to proactively manage services acquisitions outcomes, an action that will involve making changes at both the strategic and transactional levels. In contrast, DOD's approach to managing the acquisition of services has tended to be reactive, and, as noted above, DOD's reform efforts appear to be primarily incremental improvements

¹ GAO, Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes, GAO-07-20 (Washington, DC: Nov. 9, 2006).

to existing processes. In our view, such incremental improvements will not place DOD in a position to proactively manage services.

As we noted in our November 2006 report, DOD stated that it was examining the types and kinds of services it acquired and developing an integrated assessment of how best to acquire such services. DOD expected that this assessment would result in a comprehensive, department wide architecture for acquiring services that would, among other improvements, help refine the processes to develop requirements, ensure that individual transactions are consistent with DOD's strategic goals and initiatives, and provide a capability to assess whether services acquisitions were meeting their cost, schedule, and performance objectives. DOD expected this assessment would be completed in early 2007. Our discussions with DOD officials indicated that this architecture may hold potential for making the more fundamental change at the strategic and transactions levels that we have recommended. We cautioned, however, that the extent to which DOD successfully integrated the elements we identified would be key to fostering the appropriate attention and action needed to make services acquisitions a managed outcome.

9. Senator ENSIGN. Mr. Gimble and Ms. Schinasi, do you have any recommendations that Congress should consider to ensure that the progress made endures?

Mr. GIMBLE. Although I do not see the need for specific action by Congress, I recommend that in about 3 years, audits of interagency purchases made through GSA and the DOI be jointly conducted by my office and the Inspectors General of the applicable agencies. Other areas of concern include provisions of the Federal Acquisition Regulations pertaining to the definition of a "commercial item," use of service contracts for personal services, and exemptions for certain section 8(a) contractors from the competition requirements.

Ms. SCHINASI. Congressional oversight, including hearings such as this, plays a significant and important role in helping to assess progress, identify challenges, focus senior management attention, and hold DOD accountable for its actions.

BROADER ACQUISITION REFORM

10. Senator ENSIGN. Ms. Schinasi, over the years, this committee has enacted a number of measures aimed at reforming the DOD's acquisition processes and practices. How do, or should, reforms in the acquisition of services fit within this committee's broader acquisition reform efforts?

Ms. SCHINASI. We believe that three elements transcend the type of goods or services DOD buys: recognizing that mission success depends heavily on a successful acquisition function and elevating senior leadership attention and accountability accordingly; ensuring that the government negotiates the best deal possible, a precursor of which is the market-based discipline of competition; and monitoring the outcome of acquisition decisions to ensure that the government gets what it pays for. Although improvements should be targeted according to facts and circumstances, the line between acquiring goods and acquiring services is blurring as DOD contracts out the management of its major systems acquisitions. The subcommittee's efforts to promote good practices are relevant for both the acquisition of goods and the acquisition of services.

11. Senator ENSIGN. Mr. Gimble and Ms. Schinasi, are there common lessons learned or processes to be applied between major weapon systems acquisition—which has been on the government's high risk list for quite some time—and service acquisition reform?

Mr. GIMBLE. All Government officials have a responsibility to ensure funds are used efficiently and effectively to meet the requirements of DOD and the Federal Government. The common lesson that can be applied is that program office officials need to be just as aware of funding and contracting controls as financial management and contracting office officials. A second lesson learned is that activities must provide clear and concise statements of work to contracting organizations. The contracts most often abused are those with vague requirements. Services contracts contain a much higher level of cost and performance risk when the quality of a contractor's performance cannot be objectively quantified using objective metrics.

Ms. SCHINASI. Services acquisitions parallel major weapon system acquisitions in that both should start with well-defined requirements, conduct sufficient market research, maximize competition, use qualified contractors, appropriately incentivize contractor performance, provide oversight or surveillance of the contractor's performance, and accept and pay for only quality outcomes. Our work has repeatedly found weaknesses in these processes. As we noted in our January 2007 testimony

before the subcommittee, DOD does not know how well its services acquisition processes are working and whether it is obtaining the services it needs while protecting DOD's and the taxpayers' interests. Key to achieving better outcomes will be DOD's ability to translate well-meaning guidance and policy into actual practice. In trying to improve the acquisition of both goods and services, the underlying incentives that drive behavior—particularly funding—are most often ignored.

ACQUISITION WORKFORCE

12. Senator ENSIGN. Mr. Gimble and Ms. Schinasi, there are a number of concerns regarding the acquisition workforce. It is an aging workforce and is losing much talent through retirement. The talent that does remain may not match up well with the skills needed to buy software-intensive, net-centric weapons. What are your views on the health and composition of the acquisition workforce?

Mr. GIMBLE. The simultaneous growth of contracting for services by DOD and the reduction of acquisition personnel is a principal cause of contracting problems within DOD. I agree with the Director of Defense Procurement and Policy, who on January 31, 2007, testified to your subcommittee that because of the downsizing of the acquisition workforce in the 1990s, the DOD acquisition workforce now requires improvement.

Ms. SCHINASI. Although defining the acquisition workforce as the focus of attention is appropriate in some respects, the problems facing DOD today are broader as the increased demands on the acquisition workforce also stem, in part, from declines in the capacity of the overall DOD workforce and, in part, from the demands emanating from the requirements process. That said, we have raised concerns about the health and composition of DOD's acquisition workforce for several years. DOD's acquisition workforce must have the right skills and capabilities if it is to effectively implement best practices and properly manage the goods and services it buys. We noted in reports issued in 2003 and July 2006, however, that procurement reforms, changes in staffing levels, workload, and the need for new skill sets have placed unprecedented demands on the acquisition workforce.

Further, DOD's current civilian acquisition workforce level reflects the considerable downsizing that occurred in the 1990s. DOD carried out this downsizing without ensuring that it had the specific skills and competencies needed to accomplish DOD's mission. As a result, these factors have challenged DOD's ability to maintain a workforce with the requisite knowledge of market conditions and industry trends, the ability to prepare clear statements of work, an understanding of the technical details about the services they buy, and the capacity to manage and oversee contractors. In the case of the \$160-billion Future Combat Systems (FCS) program, for example, the Army chose to use a lead systems integrator because it did not believe it had the in-house resources or flexibility to field such a complex system in the time required.²

DOD has acknowledged that it faces significant workforce challenges that if not effectively addressed could impair the responsiveness and quality of acquisition outcomes. In June 2006, DOD issued a human capital strategy that identified a number of steps planned over the next 2 years to more fully develop a long-term approach to managing its acquisition workforce, including developing a comprehensive competency model for each functional career field including the technical tasks, knowledge, skills, abilities, and personal characteristics required of the acquisition workforce.

13. Senator ENSIGN. Mr. Gimble and Ms. Schinasi, what are the immediate priorities that must be addressed to ensure that the workforce can meet the demands of today's acquisitions?

Mr. GIMBLE. The Director of Defense Procurement and Policy, Mr. Shay Assad, testified that his office, in concert with the Defense Acquisition University, the military departments, and the defense agencies, has been developing a model that will address the skills and competencies required. Mr. Assad testified that the contracting competency model will be complete in March 2007, and that after the results are tested, his office will implement actions to address overall acquisition workforce deficiencies. Although my office has not done a thorough review of the acquisition workforce since 2000, we do see shortages of personnel and skills in the contract offices we are visiting.

²The FCSs program is a family of weapons, including 14 manned and unmanned ground vehicles, air vehicles, sensors, and munitions that will be linked by an information network.

Ms. SCHINASI. First, we have reported that senior DOD leaders need to set the appropriate tone at the top and ensure that its personnel adhere to sound contracting practices.³ Senior leadership is a critical factor in providing direction and vision as well as in maintaining the culture of the organization. As such, senior leaders have the responsibility to communicate and demonstrate a commitment to sound practices deemed acceptable for the acquisition function. Without sustained and prominent senior leadership, DOD increases its vulnerability to contracting fraud, waste, and abuse if it does not ensure that its decisionmakers, personnel, and contractors act in the best interests of DOD and taxpayers. DOD has emphasized making contract awards quickly; sometimes, however, the focus on speed has come at the expense of sound contracting techniques.

Second, DOD needs to determine what skill sets its current workforce has, and what skill sets the workforce needs, to carry out DOD's mission. As I previously noted, DOD's June 2006 strategic human capital plan identified a number of steps planned over the next 2 years to more fully develop a long-term approach to managing its acquisition workforce, including developing a comprehensive competency model for each functional career field. The model should identify the technical tasks, knowledge, skills, abilities, and personal characteristics required of the acquisition workforce. As part of this effort, DOD also needs to assess whether it has sufficient numbers of adequately trained personnel to plan, negotiate, and award contracts, and to manage and assess contractor performance.

14. Senator ENSIGN. Mr. Gimble and Ms. Schinasi, are you concerned that we are relying too much on service contractors to augment DOD program offices?

Mr. GIMBLE. My office has not done an analysis or study of this subject, however, clarification of the term "inherently governmental" would help DOD program offices to draw the line on what types of services should be contracted. This is particularly true in contracting offices when you have contractors performing much of the work where many of the duties performed appear to be inherently governmental and may involve potential conflicts of interest.

Ms. SCHINASI. We have expressed concern about DOD's growing reliance on contractors. This reliance is a government-wide phenomenon and is occurring across a wide variety of activities and functions, including support for program offices. In recent years, for example, DOD has been using a lead systems integrator approach that allows one or more contractors to define weapon system's architecture and then manage both the acquisition and integration of subsystems into the architecture. This approach relies on contractors to fill roles and handle responsibilities that differ from the more traditional prime contractor relationship the contractors had with the program offices and can blur the oversight responsibilities between the lead systems integrator and DOD program management representatives. To illustrate this point, the Army's FCSs program is managed by a lead systems integrator that assumes the responsibilities of developing requirements, selecting major system and subsystem contractors, and making trade-off decisions among costs, schedules, and capabilities. While this management approach has some advantages for DOD, we found that the extent of contractor responsibility in many aspects of program management is a potential risk. Given the growing role of contractors, we believe it is important for DOD to identify the functions and tasks contractors are performing, the reasons or justifications for choosing a contractor instead of using a government employee, and the costs and risks inherent in such choices. In addition, we believe it is important for DOD to identify and mitigate the risks that can accompany increased reliance on contractors—risks such as organizational or personal conflicts of interest and insufficient in-house capacity to ensure that contractors meet cost, schedule, and performance requirements. We are conducting work to explore these issues.

15. Senator ENSIGN. Mr. Gimble and Ms. Schinasi, Congress has provided many different tools to DOD to improve the hiring and training of acquisition personnel. Have the tools for rapid hiring authority been given to the acquisition workforce?

Mr. GIMBLE. The Director of Defense Procurement and Policy, Mr. Assad, has testified that his model will allow DOD to assess the acquisition workforce in terms of size, capability, and skill mix and to develop a comprehensive recruiting, training, and deployment plan to meet the identified capability gaps. Once the model is completed his office will be better equipped to answer this question.

Ms. SCHINASI. We have not evaluated the use of the tools that have been provided to DOD for rapid hiring authority.

³ GAO, Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse, GAO-06-838R (Washington, DC: July 7, 2006).

16. Senator ENSIGN. Mr. Gimble, your testimony includes an observation that resonates with all of us: “Unless responsible individuals are held accountable, the problems will remain (page 12).” What can be done to increase accountability for individuals in DOD who execute contracts without regard to the requirements of law, as you have described in your testimony?

Mr. GIMBLE. The DOD Financial Management Regulation procedures used to determine whether an Antideficiency Act violation has occurred stipulate that if a violation has occurred, a culpable individual will be identified. Right now, the completion of the formal investigations and resultant identification of responsible individuals will be the most efficient method of increasing the perceived accountability of other individuals currently executing contracts. Current law states that an officer or employee of the U.S. Government that knowingly violates Antideficiency laws can be fined up to \$5,000, imprisoned for up to 2 years, or both. Enforcement of current law is the key to fixing this problem.

17. Senator ENSIGN. Mr. Gimble and Ms. Schinasi, in your opinion, do the new authorities under the National Security Personnel System (NSPS) for performance management offer an opportunity for improved accountability? If so, have you made such a recommendation to the DOD leadership?

Mr. GIMBLE. I do not believe the NSPS changes DOD opportunity for accountability.

Ms. SCHINASI. Our past testimonies and work indicate that evaluating the effect of NSPS will be an ongoing challenge. However, we believe NSPS does offer an opportunity for improved accountability. In our July 2005 report on DOD’s efforts to design NSPS, we recommended that DOD develop procedures for evaluating NSPS that contain results-oriented performance measures and reporting requirements.⁴ Our prior work also indicates that involving employees and other stakeholders helps to improve overall confidence and belief in the fairness of the system, enhance their understanding of how the system works, and increases their understanding and ownership of organizational goals and objectives. Organizations have found that the inclusion of employees and their representatives needs to be meaningful, not just pro forma. Results-oriented performance measures and reporting requirements along with employee involvement can improve accountability.

CONTINUED GENERAL SERVICES ADMINISTRATION INTERACTION

18. Senator ENSIGN. Mr. Gimble, this past year, the Senate Armed Services Committee, working with the House Armed Services Committee, reviewed and rejected an unprecedented proposal by the DOD to use the GSA to obtain a long-term lease that would lead to the construction of a headquarters facility for United States Southern Command in Miami, Florida. During the review, we asked why the DOD was willing to pay GSA a 3 percent service fee for the transaction as opposed to carrying out the lease with their own existing statutory authorities. DOD representatives responded that GSA would have “a more favorable and flexible” contracting climate to enter in a long-term lease with specific terms and conditions meeting the requirements of DOD, as well as satisfying an offer by the State of Florida. In your opinion, is DOD still to this date actively seeking opportunities to contract through other Federal entities with the deliberate intent of seeking more lax rules and processes for the procurement of goods and services?

Mr. GIMBLE. Some program offices in seeking to address the needs of the program will always see the faster procurement of goods and services that result from lax rules and processes as a benefit to the program. Program offices must be educated to understand proper contracting and funding controls ensure good prices and performance. Most of the problems we have identified do not involve corrupt officials but rather officials who do not understand the responsibilities inherent in Government service and are individuals that only want to satisfy their customers’ desires. I believe the interagency audits completed by my office over the last 3 years will greatly lessen the amount of DOD offices contracting through other agencies with the intent of seeking more lax rules and processes.

⁴GAO, Human Capital: DOD’s National Security Personnel System Faces Implementation Challenges, GAO-05-730 (Washington, DC: July 14, 2005).

QUESTIONS SUBMITTED BY SENATOR SAXBY CHAMBLISS

RECRUITMENT AND RETENTION

19. Senator CHAMBLISS. Mr. Gimble and Ms. Schinasi, the vast number of retirement eligible Federal employees presents a manpower challenge across the Federal Government, and specifically in adequately replacing members of the acquisition workforce. What innovative recruitment, retention, hiring, and/or training methods have been employed to address this inevitable force reduction?

Mr. GIMBLE. We have not conducted any reviews in this area. We have seen contracting activities employ hiring methods that may not be in the best interest of DOD or the Government. Specifically, some activities have started contracting for contract specialist services. For example, the Naval Sea Systems Command used a contractor which it had obtained through a GSA information technology contract to solicit bids and evaluate quotes for impending contracts. Although a warranted Government official signed the final contract, all analysis and preparation of the contract was handled by contracted employees. We do not feel this is an appropriate response to the shortfall in the acquisition workforce.

Ms. SCHINASI. Our prior work has shown that DOD needs to conduct comprehensive acquisition workforce planning to address recruitment, hiring, retention, and training issues. We reported in April 2002 that DOD recognized the need as well as the substantial challenges involved in implementing a strategic approach to shaping the acquisition workforce.⁵ In June 2004, we reported that DOD had taken steps to develop and implement civilian strategic workforce plans to address future civilian workforce needs, but these plans generally lacked some key elements essential to successful workforce planning.⁶ None of the plans included analyses of the gaps between critical skills and competencies currently needed by the workforce and those that will be needed in the future. Without including analyses of gaps in critical skills and competencies, DOD and its components may not be able to design and fund the best strategies to fill its talent needs through recruiting and hiring or to make appropriate investments to develop and retain the best possible workforce. Such gap analyses need to be completed to address acquisition workforce shortcomings and to identify methods that might prove successful for recruiting and retention. While we made several recommendations to improve DOD's strategic workforce planning efforts, the work we have completed has not identified the need for legislative changes or authorities to enhance DOD's efforts in the areas of recruitment and retention. However, we continue to be concerned about strategic human capital issues at DOD, as well as across the Federal Government, as we point out in our recently issued high-risk report.⁷

20. Senator CHAMBLISS. Mr. Gimble and Ms. Schinasi, what methods have proven successful thus far?

Mr. GIMBLE. DOD has successfully implemented the Defense Career Intern Program, which works well for recruiting college students into professional government positions such as DOD auditors and contracting officers.

Ms. SCHINASI. See response to question for the record number 19.

21. Senator CHAMBLISS. Mr. Gimble and Ms. Schinasi, what limitations stymie more robust recruiting and retention results, and are there legislative changes or authorities that would enhance DOD's efforts in this area?

Mr. GIMBLE. Lengthy security clearance processes and low starting pay are the main limitations that stymie the DOD OIG's recruiting practices. All Government activities are recruiting new personnel to reduce the effect of the coming force reduction due to retirements. DOD acquisition personnel are often targeted by other agencies and commercial contractors due to the extensive training and experience with large contracts that they have. However, I believe these are local management issues and do not require legislative changes beyond those already planned for the DOD workforce.

Ms. SCHINASI. See response to question for the record number 19.

⁵ GAO, Acquisition Workforce: Department of Defense's Plans to Address Workforce Size and Structure Challenges, GAO-02-630 (Washington, DC: April 30, 2002).

⁶ GAO, DOD Civilian Personnel: Comprehensive Strategic Workforce Plans Needed, GAO-04-753 (Washington, DC: June 30, 2004).

⁷ GAO, High Risk Series: An Update, GAO-07-310 (Washington, DC: January 2007).

ACQUISITION PRACTICES

22. Senator CHAMBLISS. Mr. Gimble and Ms. Schinasi, the administration has made clear the priority of success in the global war on terrorism, and the DOD has an enormous role in this fight. Given your finding that DOD needs significant improvement in both contract oversight and interagency contracting practices, DOD clearly faces multiple challenges on the contracting front as part of its role in global war on terrorism support. What are your recommendations for how DOD might simultaneously develop and implement strategic acquisition processes and improve contract management practices in its Iraq reconstruction mission?

Mr. GIMBLE. We have not addressed these types of issues in our audits. However, the lack of security in Iraq is obviously the foremost problem for contractors attempting to perform on construction type contracts. From a contracting perspective, contingency contracting practices that streamline contracting procedures in theater should only be used to support forward deployed combat forces and should not be used for contracting civil construction or service contracts under other conditions as the streamlined techniques used will often not result in best value contracting. In March 2004, we reported numerous contracting problems that were primarily attributed to the need to react quickly to the rapidly changing situation in Iraq and that acquisition support was an afterthought to the Office of Reconstruction and Humanitarian Assistance. At that time, we recommended that the Deputy Secretary of Defense designate an office to study existing strategy and establish responsibilities, policies, and procedures for the acquisition of goods and services in support of future post-war occupation and relief operations. The Deputy Secretary of Defense concurred with the recommendation and designated the Under Secretary of Defense for Acquisition, Technology, and Logistics to conduct the study. Since then, the office of Defense Procurement and Acquisition Policy established a Joint Contingency Contracting Working Group that will develop a Joint Contingency Contracting Guide. This guide will be in the Defense Federal Acquisition Regulations Supplement Part 18 and incorporated into specific Procedures, Guidance, and Information. A committee including representatives from the military Services, the Defense Contract Management Agency, and Defense Logistics Agency is currently reviewing and identifying differences between service contingency contracting supplements and will recommend standardized procedures.

Ms. SCHINASI. As the Comptroller General noted during testimony in February 2007, the challenges faced by DOD on its reconstruction and support contracts in Iraq often reflected systemic and longstanding shortcomings in DOD's capacity to manage contractor efforts.⁸ Such shortcomings result from various factors, including poorly defined or changing requirements; the use of poor business arrangements; the absence of senior leadership and guidance; and an insufficient number of trained contracting, acquisition, and other personnel to manage, assess, and oversee contractor performance. In turn, these shortcomings manifest themselves in higher costs to taxpayers, schedule delays, unmet objectives, and other undesirable outcomes.

Through the years, we have made recommendations to help DOD address these shortcomings, including recommendations intended to assure that adequate acquisition staff and other resources are available to support future operations, to emphasize the need to clearly define contract requirements in a timely manner, to improve the management of interagency contracting, and to resolve longstanding issues with regard to the management and use of support contractors. DOD has generally agreed with our recommendations and has some actions underway to address them. However, senior DOD leadership is needed to address these issues on a systemic level and ensure that subsequent changes in DOD's policies and practices are implemented, as appropriate, in Iraq.

[Whereupon, at 3:51 p.m., the subcommittee adjourned.]

⁸ GAO, *Rebuilding Iraq: Reconstruction Progress Hindered by Contracting, Security, and Capacity Challenges*, GAO-07-426T (Washington, DC: Feb. 15, 2007).

CONTINUE TO RECEIVE TESTIMONY ON ABUSIVE PRACTICES IN DEPARTMENT OF DEFENSE CONTRACTING FOR SERVICES AND INTERAGENCY CONTRACTING

WEDNESDAY, JANUARY 31, 2007

U.S. SENATE,
SUBCOMMITTEE ON READINESS
AND MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:40 p.m. in room SR-222, Russell Senate Office Building, Senator Daniel K. Akaka (chairman) presiding.

Committee members present: Senators Akaka, McCaskill, and Ensign.

Majority staff member present: Peter K. Levine, general counsel.

Minority staff members present: Gregory T. Kiley, professional staff member; Derek J. Maurer, minority counsel; Lucian L. Niemeyer, professional staff member; Bryan D. Parker, minority investigative counsel; and Diana G. Tabler, professional staff member.

Staff assistants present: David G. Collins and Benjamin L. Rubin.

Committee members' assistants present: Darcie Tokioka, assistant to Senator Akaka; Lauren Henry, assistant to Senator Pryor; Nichole M. Distefano, assistant to Senator McCaskill; Arch Gallo-way II, assistant to Senator Sessions; and D'Arcy Grisier, assistant to Senator Ensign.

**OPENING STATEMENT OF SENATOR DANIEL K. AKAKA,
CHAIRMAN**

Senator AKAKA. The Readiness and Management Support Subcommittee meets today to continue its review of abusive practices in the Department of Defense (DOD) contracting for services and interagency contracting. At our first hearing the DOD Inspector General (IG) and the Government Accountability Office (GAO) told us that poor DOD business practices, such as poorly defined requirements, inadequate competition, inadequate monitoring of contractor performance, and inappropriate uses of other agencies' contracts, expose the DOD to fraud, waste, and abuse.

The Readiness and Management Support Subcommittee has long been concerned about these problems. More than 5 years ago, in our committee report on the National Defense Authorization Act (NDAA) for Fiscal Year 2002 we stated, "Last year the DOD IG re-

viewed the Department's \$10 billion of annual expenditures for professional, administrative, and management support services and found an almost complete failure to comply with basic contracting requirements. Other reviews by the IG and the General Accounting Office have revealed the Department has failed to complete requirements for the delivery of services as required by law and regulation and has barely begun to implement requirements for performance-based contracting. The GAO and the DOD IG have found that DOD managers failed to compete services work in up to three-quarters of the cases they examined.

"At a more fundamental level, DOD has no centralized management structure for services contracts. Rather, the award of these contracts is dispersed throughout the Department, with little management oversight. As a result, the Department has never conducted a comprehensive spending analysis of its services contracts and has made little effort to leverage its buying power, improve the performance of its services contractors, rationalize its supplier base, or otherwise ensure that its dollars are well spent.

Moreover, the Department has failed to provide its acquisition professionals with the training and guidance needed to manage the Department's service contracts in a cost effective manner."

The persistence of these problems leads me to believe that there is a real need for strong action by this committee. Today we will hear from the Acquisition Advisory Panel chartered pursuant to section 1423 of the NDAA for Fiscal Year 2004, followed by a panel of witnesses from the administration. I hope that these witnesses will be able to propose some constructive solutions to the problems we have identified.

In my view, the key is the acquisition workforce. According to the Acquisition Advisory Panel, "Curtailed investments in human capital have produced an acquisition workforce that often lacks the training and resources to function effectively." The report states: "The drought in hiring, the inadequacy of training in some agencies, and the increased demand for contracting have together created a situation in which there is not in the pipeline a sufficient cadre of mature acquisition professionals who have the skills and the training to assume responsibility for procurement in today's demanding environment. As a result, the Federal Government does not have the capacity in its current acquisition workforce necessary to meet the demands that have been placed on it."

As I pointed out at our last hearing, the DOD has almost doubled its spending on service contracts over the last 5 years while the number of procurement personnel available to oversee these contracts has dropped by more than 25 percent. As a result, we have fewer and fewer procurement officials responsible for managing more and more contract dollars. I believe it is vital for Congress to address this structural problem at this time.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT BY SENATOR DANIEL K. AKAKA

The Readiness and Management Support Subcommittee meets today to continue its review of abusive practices in Department of Defense contracting for services and interagency contracting. At our first hearing, the DOD Inspector General and the Government Accountability Office told us that poor DOD business practices, such as poorly defined requirements, inadequate competition, inadequate monitoring of

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“Last year, the DOD Inspector General reviewed the Department’s \$10 billion of annual expenditures for professional, administrative, and management support services, and found an almost complete failure to comply with basic contracting requirements. Other reviews by the Inspector General and the General Accounting Office (GAO) have revealed that the Department has failed to compete requirements for the delivery of services, as required by law and regulation, and has barely begun to implement requirements for performance-based services contracting. The GAO and the DOD Inspector General have found that DOD managers failed to compete services work in up to three-quarters of the cases they examined.

“At a more fundamental level, DOD has no centralized management structure for services contracts. Rather, the award of these contracts is dispersed throughout the Department with little management oversight. As a result, the Department has never conducted a comprehensive spending analysis of its services contracts and has made little effort to leverage its buying power, improve the performance of its services contractors, rationalize its supplier base, or otherwise ensure that its dollars are well spent. Moreover, the Department has failed to provide its acquisition professionals with the training and guidance needed to manage the Department’s service contracts in a cost-effective manner.”

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Senator AKAKA. Senator Ensign, you may present your opening statement.

STATEMENT OF SENATOR JOHN ENSIGN

Senator ENSIGN. Thank you, Senator Akaka.

I want to welcome our panelists and before we begin today I want to thank all of you and the 13 members of the Acquisition Advisory Panel. We gave you very little staff and very little money, but you completed your mission in the last 18 months and we are very grateful.

Today we begin to reap the benefits of your labor. I look forward to this hearing and its findings, more importantly recommendations on improving DOD’s acquisition practices. I also look forward to a robust discussion with Mr. Denett from the Office of Federal Procurement Policy and Mr. Assad from the DOD. I hope they bear

messages of good news on how they are improving their stewardship of the taxpayers' dollars.

Let me provide some historical context for today's discussion. In the early 1990s, Congress passed laws aimed at fundamentally changing the way the DOD and other Federal agencies acquire goods and services. We intended to make it easier for Federal agencies to purchase commercial items, to streamline the purchase of small orders, and to open the door to more flexible contracting vehicles.

In the 1990s, we also saw a downturn, what some call a halt, in defense procurement activity. Faced with less work and more efficient contracting methods, the DOD began to reduce its acquisition workforce and in just 10 years they cut their acquisition workforce by almost half. Unfortunately, we are now seeing the unintended consequences of that grant of flexibility and we are grappling with the problems caused by the large reductions in acquisition personnel.

This committee has noted on more than one occasion that DOD made such cuts haphazardly, without any strategic vision on maintaining a well-trained, professional acquisition workforce. Of course, the tragic events of September 11 forced us to increase our defense procurement activity exponentially in the past 5 years, stretching an already thin workforce even thinner.

Two weeks ago, we received testimony from the DOD IG and the GAO on problems and interagency contracting and the acquisition of services at the DOD. In the area of interagency contracting, the problems ranged from failures to use best practices to knowingly disregarding the rules. In the acquisition of services, we see the stark impact of deep cuts to the acquisition workforce. Many of the recommendations we have heard and which we will hear focus on such things as contracting personnel performing better market research and better contract surveillance. Yet, when the workforce is already strained and not adequately trained, best practices give way and the order of the day becomes getting the job done in the shortest time possible. That does not excuse some of the bad practices described to us, but it does put them in proper context.

With that stage set, I hope we can focus today less on the problems and more on the solutions and preventative measures. I am especially interested in what best commercial practices from the private sector DOD can effectively adopt.

In closing, I know that these issues may at times seem esoteric or arcane. In some ways they are. But their nature does not undermine their importance. Every dollar we save through improved acquisition practices and policies is another dollar for Humvee armor, another dollar for body armor, another dollar for ammunition, or another dollar for medical supplies. Let us not forget that.

Thank you, Mr. Chairman.

[The prepared statement of Senator Ensign follows:]

PREPARED STATEMENT BY SENATOR JOHN ENSIGN

Thank you, Senator Akaka. Welcome to our panelists. Before we begin, I want to thank the members of the Acquisition Advisory Panel for their hard work and dedication. I know all 13 members are employed full-time, and had little staff or money to complete the mission Congress set before them. Nevertheless, they labored for 18 months to fulfill their congressional mandate. Today, we begin to reap the benefits

of their labor. I look forward to hearing their findings and, more importantly, their recommendations on improving the Department of Defense's acquisition practices.

I also look forward to a robust discussion with Mr. Denett from the Office of Federal Procurement Policy and Mr. Assad from the Department of Defense. I hope they bear messages of good news on how they are improving their stewardship of the taxpayer's dollar.

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Unfortunately, we are now seeing the unintended consequences of that grant of flexibility, and we are grappling with the problems caused by the large reductions in acquisition personnel. This committee has noted on more than one occasion that the Department made such cuts haphazardly, without any strategic vision on maintaining a well-trained, professional acquisition workforce. Of course, the tragic events of September 11 forced us to increase our defense procurement activity exponentially in the past 5 years, stretching an already thin workforce even thinner.

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Senator AKAKA. Thank you very much.

At this time I would like to welcome our first panel of witnesses. The Acquisition Advisory Panel was chartered by Congress in section 1423 of the NDAA for Fiscal Year 2004 to review laws and regulations regarding the use of commercial practices, performance-based contracting, the performance of acquisition functions across agency lines of responsibility, and the use of government-wide contracts. The panel's 500-page report is a product of more than 2 years of hard work by some of our leading experts on acquisition policy in the public and private sectors.

I thank our witnesses for their public service. It is particularly gratifying to see Mr. Etherton here today as Jon served for more than a decade on the Senate Armed Services Committee staff, working on some of the same issues that we will be discussing today.

Ms. Madsen, do you have a statement and would you like to give the statement on behalf of the panel?

STATEMENT OF MARCIA G. MADSEN, CHAIR, ACQUISITION ADVISORY PANEL; ACCOMPANIED BY JONATHAN L. ETHERTON AND JAMES A. HUGHES, MEMBERS, ACQUISITION ADVISORY PANEL

Ms. MADSEN. Thank you, Mr. Chairman and Senator Ensign. I do have a brief oral statement and then I would like to ask that my more fulsome statement which I submitted be included as part of the record.

Thank you very much for inviting us here today. As members of the Section 1423 Acquisition Advisory Panel we are very pleased to be here to talk about our work and our findings and our recommendations. Accompanying me are: to my left, Ty Hughes, who is Deputy General Counsel for Acquisition of the Air Force; and as you have already noted, Jonathan Etherton, who today is self-employed as Etherton and Associates. Both of these gentlemen chaired working groups for the panel, Mr. Etherton on interagency contracts and Mr. Hughes on commercial practices.

Also with us is Laura Auletta, who has been the panel's Executive Director. Senator Ensign, you were nice enough to note our staffing shortages. Laura has really been the backbone of the panel's efforts and we could not have completed our work without her.

I would also like to recognize two other people who are in the room who supported the panel's efforts: Denise Benjamin from the Small Business Administration and Diane Newburg from ATT, who worked for one of the panel members. Both of these individuals helped tremendously with preparation of the panel's report and we are very grateful to them.

We on the panel have recognized the work of the subcommittee over many years in monitoring and providing guidance regarding the use of service contracts. We have been looking at it very carefully.

Mr. Chairman, as you mentioned, section 1423 identified the key topics for the panel as commercial practices, performance-based contracting, and the use of government-wide contracts or, as we have been calling them, interagency contracts. The panel was sworn in in February 2005 and consisted of 13 members, balanced between government and the private sector. All of us—I hate to say volunteers because people might wonder, why would you volunteer for something like this. But we did.

We heard testimony from more than 100 witnesses representing industry, government, and public interest organizations in more than 30 public meetings. We adopted over 100 findings and 80 recommendations. The volume of those can only be touched on here. Our process has been very public and transparent and our in-process efforts posted on our web page so that everyone could look at them, including our draft final report.

I am pleased to say today that our final report is at the Government Printing Office (GPO). I might also say that I am relieved to say that it is at GPO.

The panel was well aware that with Federal procurement spending approaching \$400 billion annually and with serious and competing demands that have already been identified on taxpayer dollars, that an accountable and transparent acquisition system that

delivers innovative high-quality goods and services is critical to our national interest.

Let me talk for a moment about commercial practices. Because of the emphasis in the legislation regarding appropriate use of commercial practices and because performance-based acquisition is a commercial practice, the panel reached out to large commercial buyers of services, who testified about current commercial services acquisition. We also took testimony from government buyers and from users of services, both at DOD and the civilian agencies.

As detailed at length in our report, there is a large and robust private sector market for services, particularly information technology (IT) and IT-related services. Commercial companies are acquiring billions of dollars in services and they have well-developed acquisition and contracting procedures. The large commercial buyers who testified before the panel identified requirements development and competition as the keys to successful service contracting. These companies make large upfront investments in defining requirements, typically on an outcome basis. This investment makes vigorous competition possible and it facilitates the use of performance-based contracts as well as fixed-price contracts. As one witness told us, if you do not know what you are going to buy perhaps it would be better to buy nothing until you do.

Government practice, on the other hand, is clearly driven by the need to get to award quickly, to meet mission needs, and to obligate funds. We recognize that inadequate requirements definition is not a new problem. Every group that has looked at acquisition issues for the last 30-plus years has identified it as an issue. However, the problem in the services context is that poor requirements definition results in reduced competition, the inability to effectively use performance-based contracts, the inability to make use of fixed-price contracts, and ultimately it results in increased costs to the Government.

The panel's commercial practices recommendations for this reason focus on improving competition. The panel's recommendations recognize that competition fuels innovation, drives fair prices, disciplines the responsible use of streamlined acquisition vehicles, and improves opportunities for small business.

The panel worked very hard to develop data on the extent to which government acquisition is competitive. First we noted that spending on services as, Mr. Chairman, you noted has increased dramatically and accounted for 60 percent of procurement dollars in 2004 and 2005, including at the DOD. The details are in our report, but in fiscal year 2004 one-third of the government's procurement dollars were awarded noncompetitively. Even when competed, the percent of dollars awarded when only one offer was received has more than doubled from about 9 percent in 2000 to about 20 percent in 2005.

We fear that the amount of noncompetitive awards actually may be understated. Although we tried for months, we could not obtain reliable data on competition for orders under multiple award contracts available for interagency use. We do know that in 2004 \$142 billion, or 40 percent of procurement spending, went through these interagency contracts. But again, we could not develop reliable data on the extent of competition.

Our commercial practices recommendations include: improving requirements development and doing that through the use of centers of excellence and by mandating that the program manager and the contracting officer be responsible for the requirements, regardless of the acquisition vehicle they have selected.

With respect to competition under interagency contracts, our recommendations try to achieve a balance between recognizing that these vehicles are necessary to allow for streamlined acquisition of bite-sized requirements for repetitive needs on the one hand with the fact that a significant proportion of large orders—and by that I mean significant transactions in excess of \$5 million, single transactions in excess of \$5 million—is flowing through these vehicles.

For interagency contracts, we recommended making the requirements of section 803 be applicable government-wide for orders over \$100,000 placed against multiple award contracts or against General Services Administration (GSA) schedules, and applicable to supplies as well as services. We also recommended requiring a synopsis post-award for sole source orders to increase transparency, and for orders over \$5 million we recommended three things: first, a more formalized competitive procedure that requires agencies to clearly state their requirements, allow adequate time for response, disclose their evaluation factors, and document their award decisions.

We recommended post-award debriefings as currently set forth in the Federal Acquisition Regulation (FAR) for circumstances where statements of work are used. We also recommended allowing protests for orders over \$5 million.

Separately, we recommended a new competitive IT schedule at the GSA that will require all orders to be competed.

With regard to interagency contracting, in addition to the competition requirements we also recommended a number of steps that should lead to better management and accountability for interagency contracts. The panel's findings recognize very clearly the importance of interagency contracts in helping agencies meet their missions and in allowing the government to take advantage of its purchasing power. But there are significant issues that we addressed in our report regarding the proliferation of these contracts and with the exercise of proper management responsibilities between the agency holding the contract and the agencies ordering from them. These issues include just simply identifying how many of these contracts there are and where they are, which was our very first recommendation.

With regard to the workforce, an issue that both of you mentioned, the panel determined that there is a significant mismatch between the demands placed on the acquisition workforce and the personnel and skills available within that workforce to meet those demands. The problem the panel encountered was that there was not reliable information about the size, composition, and competencies of the acquisition workforce.

To assist in our analysis, the panel commissioned a significant study, which we can provide to the subcommittee, analyzing available data regarding the acquisition workforce.

We actually went back and looked at workforce studies and reports from the 1960s all the way forward to today. Because of the

volume of the data involved, this report is contained in nine large volumes. I brought the executive summary with me. It is not insubstantial.

We also noted that the Commission on Government Procurement actually experienced similar frustrations 30 years ago plus in 1972 and had to commission its own study on the workforce. So it is not a new problem.

With respect to workforce recommendations, we start with the basic proposition that prompt and aggressive action is necessary to improve the workforce. In our view, this must begin with the establishment of a consistent definition and method for measuring the workforce and that effort must be completed by the Office of Federal Procurement Policy (OFPP) within a year. I know Mr. Denett will be attuned to this.

Second, agencies in our view should undertake human capital planning for acquisition workforce needs immediately if they have not already done so.

The panel did not recommend that agencies rush out and hire scores of new acquisition professionals. This is because we do not have current evidence that allows definition of the issues to tell the relationship between the numbers of acquisition professionals, the competencies of those people, gaps in the competencies, and where the use of contractors figures into the workforce. But instead we stated that a flexible planning process should be used and it should begin immediately so that changes can be made quickly as information becomes available.

The panel also looked at the challenges of the blended workforce and in that regard we were very focused on the question of determining when the government's reliance on contractor support actually affects the government's decisionmaking process to the point that the integrity of that process may be questioned. We recognize that our findings and recommendations in this particular area of blended workforce are a beginning point, but we believe that we have identified the issues and the relationships between the issues correctly. Among other things, we recommended: one, that OFPP update the principles for agencies to apply in determining which functions must be performed by Federal employees, so that agencies understand that these principles apply even outside the A-76 context.

Second, we recommended removing the prohibition on personal services contracts. We heard a lot of testimony in our panel hearings about how this prohibition is ignored or results in inefficient work-arounds. Because contractors are a reality in the government workplace today, we believe the policies in this area need to be updated to reflect that reality.

Third, with respect to conflicts of interest, the panel did not see a need for new statutes. Rather, it recognized that these issues likely are contract-specific. We recommended that the FAR Council develop government-wide policy and new clauses if necessary to address these issues, but especially update the rules regarding organizational conflicts of interest to deal with cases of impaired objectivity.

Finally, although time does not permit me to discuss all of these here, I would be remiss not to note that the panel devoted signifi-

cant time and attention and made findings and recommendations in the areas of performance-based acquisition, small business, and procurement data.

That concludes my statement. Mr. Hughes, Mr. Etherton, and I would be happy to answer your questions.

[The prepared statement of Ms. Madsen follows:]

PREPARED STATEMENT BY MARCIA G. MADSEN

Mr. Chairman, Senator Ensign, and members of the subcommittee, thank you for the opportunity to appear before you to address the Acquisition Advisory Panel's findings and recommendations. Two of the panel members have joined me today, Jonathan Etherton of Etherton and Associates, and James "Ty" Hughes, Deputy General Counsel (Acquisition), Department of the Air Force. In addition to chairing this panel, I am a partner in the law firm of Mayer, Brown, Rowe & Maw LLP and I have 20 years of experience in government procurement law.

You have asked specifically for the panel's views with respect to: enhancing competition and adopting more commercial practices; implementing performance-based acquisition; the management and use of interagency contracting; acquisition workforce deficiencies; and the appropriate role of contractors supporting the government.

The panel was established pursuant to section 1423 of the National Defense Authorization Act For Fiscal Year 2004. Since the appointment of its members in February 2005, the panel has held 31 public meetings and heard the testimony of 108 witnesses representing 86 entities or groups from industry, government, and public interest organizations. The panel's public deliberations produced approximately 7,500 pages of transcript. In addition, we received written public statements from over 50 sources, including associations, individual companies, and members of the public.

My comments here do not cover the panel's 100 findings and 80 recommendations in their entirety, but provide a good overview. I would like to personally thank the 13 panel members for their dedication over the course of our deliberations. Each of them has a full-time and highly responsible "day job." With very little panel staff or money, the level of participation by the members was substantial.

The panel is grateful to the many witnesses and members of the public who helped shape the panel's report through their active participation and interaction with the panel. The insight gained from this exchange has been invaluable. In many instances, approaches under consideration by the panel were revised or adjusted based on input from the witnesses who helped the panel see many different perspectives. I would like to especially thank those commercial companies that addressed the panel. We invited large commercial buyers of services to address the panel in an effort to determine their current best practices for services acquisition. These companies generously shared their expertise with the panel even though many of them do little or no business with the government. We are grateful for this rare opportunity to learn how they buy services and where they invest in the services acquisition process.

My testimony covers the following topics:

Enhance Competition by Investing in Planning

- Commercial buyers invest heavily in planning and requirements analysis to obtain meaningful competition
- Government practice focuses on rapid awards at the expense of planning
- Recommendations to enhance the government's ability to develop/maintain market expertise and define requirements

Encourage Competition to Produce Fair and Reasonable Prices

- Commercial practice relies on competition for innovation and pricing
- Government practice
 - Interagency Contracting
 - Incentives to compete lacking
 - Recommendations to insert incentives

Removing Other Obstacles to Achieving Fair and Reasonable Prices

- Current regulatory definition of "commercial services" does not require an efficient market as statutorily intended
- Regulatory guidance unclear about obtaining contractor information to support government determination of fair and reasonable prices

- Recommendations to restore statutory definition of commercial services and clarify regulations on obtaining price information and “other than cost or pricing data”

Accountability and Transparency Inadequate for Interagency Contracting

- No consistent, government-wide policy for agencies who manage or use interagency contracts
- Accountability and transparency lacking in interagency contracting
- Recommendations to require formal business cases to support interagency contracts, greater accountability in their management, and more transparent use

The Acquisition Workforce Requires Immediate Attention

- Demands on the acquisition workforce have outstripped its capacity, but assessment not possible
- Recommendations to move toward an expedited assessment of the workforce in order to improve capacity

Appropriate Role of Contractors Supporting the Workforce

- Management challenges of a “blended” workforce
 - Blurring the distinctions between
 - Inherently governmental and commercial functions
 - Personal and Non-Personal Services
 - Rising concerns about
 - Organizational and personal conflicts of interest
 - Protection of contractor proprietary/confidential data
- Recommendations to promote ethical/efficient use of “blended” workforce

ENHANCE COMPETITION BY INVESTING IN PLANNING

Commercial Practice

The commercial buyers described a vigorous requirements definition and acquisition planning process. They consider requirements definition of equal importance to the selection of the right contractor. These companies invest the time and resources necessary to clearly define requirements upfront in order to achieve the benefits of competition. They perform ongoing rigorous market research and are thus able to provide well-defined, performance-based requirements conducive to innovative fixed-price solutions. They obtain buy-in on their requirements from all appropriate levels in the corporation.

Government Practice

The panel’s work shows that the government fails to invest in this phase of procurement, focusing instead on rapid awards. While there appears to be a conceptual understanding of the importance of requirements definition to successful, cost-effective contracts, culture and the metrics focus on “getting to award” rather than contract results. Public sector officials and representatives of government contractors testified that the government is frequently unable to define its requirements sufficiently to allow for fixed-price solutions, head-to-head competition, or performance-based contracts.

Ill-defined requirements fail to produce meaningful competition for services solutions. Instead, agencies often rely on time-and-materials contracts with fixed hourly rates that lack incentives for innovative solutions. The testimony was consistent that the major contributors to this problem are the cultural and budgetary pressures to quickly award contracts or orders, combined with a lack of market expertise in an already-strained acquisition workforce. The government’s lack of investment in acquisition planning is well-documented beyond the testimony heard by the panel. For instance, two recent audits from the Department of Defense Inspector General (DOD IG) found that of the \$217 million spent under 117 awards reviewed, 116 lacked acquisition planning or market research.¹

Recommendations

The panel recommendations are based on current commercial sector practices. For instance, to develop and maintain market expertise, the panel recommended that agencies establish “centers of expertise” to protect their high-dollar investments in

¹DOD IG Report No. D-2007-007, “Fiscal Year 2005 Purchases Made Through the General Services Administration,” Oct. 30, 2006, at 1-4 (general discussion of the issue); DOD IG Report No. D-2007-032, “Report on Fiscal Year 2005 DOD Purchases Made Through the Department of Treasury,” Dec. 8, 2006, at 32 (specific statistics cited).

recurring or strategic requirements. The panel also saw a need for a central source of market research information comparable to that maintained by private companies. We recommended that the General Services Administration (GSA) establish such a capability to monitor services acquisitions by government and commercial buyers, collect information on private sector transactions that is publicly available, as well obtain information on government transactions, and make this information available government-wide. Under our recommendations for improving Performance-Based Acquisition (PBA), the panel recommended that the Office of Federal Procurement Policy (OFPP) be more guidance to agencies regarding how to define requirements in terms of desired outcomes, how to measure those outcomes, and how to develop appropriate incentives for contractors to achieve those outcomes. Because defining needs/requirements upfront is one of the most critical aspects of a PBA, the panel recommended that the FAR require the government to develop and provide to contractors a “baseline performance case.” The panel’s report contains details about what this baseline performance case would entail, but it is essentially a framework to provide discipline in the government’s requirements definition process. We also recommended an educational certification program for contracting officer representatives to help them become effective planners and monitors of PBAs. With respect to the concerns expressed by the GAO and Inspectors General (IGs) regarding ill-defined requirements for orders under interagency contracts, the panel recommended criteria for requirements planning by ordering agencies before access to an interagency contract is granted.

ENCOURAGE COMPETITION TO PRODUCE FAIR AND REASONABLE PRICES

Commercial Practice

In addition to learning that basic commercial practice involves substantial investment in requirements analysis, the panel also was advised that commercial buyers rely extensively on competition to produce innovation and fair and reasonable prices. In fact, competition is their “gold standard” for driving innovation and for determining fair and reasonable prices. Because there is no substitute for competition, commercial companies rarely buy on a sole-source basis. In those rare cases where they do not seek or cannot achieve competition, commercial buyers rely on their own market research, benchmarking, and often seek data on similar commercial sales to establish fair and reasonable pricing. In some cases, they may even obtain certain cost-related data, such as wages or subcontract costs, from the seller to determine a price range. But they generally find these methods far inferior to competition for arriving at the best price. As a result, they monitor non-competitive contracts closely, and eliminate such arrangements as soon as the requirement can be moved to a competitive solution.

Government Practice

It is instructive to compare the strong commercial preference for competition to the government’s competition statistics. In fiscal year 2004, the government awarded \$107 billion, or over one-third of its total procurement dollars, non-competitively. Over one-fourth, or \$100 billion, was awarded non-competitively in 2005.² The number of competitions that result in the government only receiving one offer doubled between 2000 and 2005. Spending on services in both 2004 and 2005 accounted for 60 percent of procurement dollars with 20 percent and 24 percent awarded without competition, respectively.³

Interagency Contracting

The panel believes the amount of non-competitive awards may, in fact, be under-reported for orders under multiple award contracts available for interagency use, generally known as “interagency contracts.” The panel’s repeated attempts over several months to obtain information about the extent of competition for orders under these types of contracts were frustrated. The government’s database on Federal procurement spending, the Federal Procurement Data System-Next Generation (FPDS-NG) only began to collect data on interagency contracts in 2004. Due to a number of factors, including poor reporting instructions, faulty validations, and even DOD policy, the “extent competed” field in FPDS-NG for these orders overwhelmingly reflects the competitive nature of the master contract, rather than the actual level of competition for orders. This reporting problem skews the data such that it is unreli-

²Standard Competition Report from FPDS-NG, available on-line at <https://www.fpds.gov> under Standard Reports (last visited Jan. 29, 2007). The competitive/non-competitive base (against which the percentage is derived) is \$338 billion for fiscal year 2004 and \$371.7 billion for fiscal year 2005.

³FPDS-NG special reports for the panel.

able. The lack of transparency into the nature of these orders is a significant weakness. FPDS-NG reports spending under contracts available for multi-agency use at as much as \$142 billion, or 40 percent of procurement spending, in fiscal year 2004.⁴

Despite the panel's overarching concern with data reliability and transparency, there certainly appears to be sufficient cause for concern in addition to these statistics. You already have heard from both the DOD IG and the GAO regarding orders placed against interagency contracts. The panel was well aware that GAO put management of interagency contracting on its High Risk Series in 2005. Since the GAO high risk designation in 2005, more data regarding orders under these contracts has become available. In fact, in a recent audit, the DOD IG found that 62 percent of reviewed orders, totaling nearly \$50 million, failed to provide a fair opportunity to compete as required by law. In addition, 98 of 111 orders valued at \$85.9 million were either improperly executed, improperly funded, or both.⁵

The panel's report sets forth the history and efforts by Congress to improve competition. The intent of interagency contracts, most of which are assumed to be multiple award contracts, was to lower administrative costs, leverage buying power and provide a streamlined acquisition process—all well-meaning goals. Such contract vehicles were never intended to be used to avoid competition.

Interagency contracts generally are indefinite-delivery/indefinite-quantity type contracts with very broad scopes of work, most of which provide for multiple awardees that will compete with one another for specific orders at a later point when an agency identifies a requirement. Therefore, where services are concerned, the initial competition is based on loosely defined statements of the functional requirements resulting in proposals for hourly rates for various labor categories. The expectation is that once an agency identifies a specific need, a more clearly defined requirement will be provided at the order level allowing the multiple awardees to submit task-specific solutions and pricing. Because this process narrows the number of eligible contractors at the order level, Congress has insisted that these multiple awardees be given a "fair opportunity" to compete for the task orders.

So why do interagency contracts seem to be drawing so much non-competitive activity? There appear to be a number of checks and balances missing that would otherwise contribute to healthier incentives for competition.

Incentives to Compete Lacking

There is no government-wide requirement that all interagency contracts provide notification that a task order is available for competition. There is no visibility into sole-source orders, as there is no requirement for a synopsis or public notification for orders under multiple award contracts, regardless of the size of the order. Even where a best value selection is made at the order level, there is no requirement for a detailed debriefing, regardless of the amount of the order or the amount of bid and proposal costs expended by the eligible contractor, thus denying the contractor information that might enable it to be more competitive on future orders/contracts. Further, without regard to size of the order, there is no option for contractors to protest the selection process under multiple award contracts, reducing the pressure on the government to clearly define requirements, specify its evaluation criteria, and make reasonable trade-off decisions among those criteria. For example, even issues that affect the integrity of the competitive process such as organizational or personal conflicts of interest cannot be protested.

However, the panel also took testimony from agency officials who told us they could not meet their missions without the use of interagency contracts. Therefore, the panel has sought to achieve a balance in its recommendations that will introduce incentives to encourage more competition while not unduly burdening these tools for streamlined buying. For instance, some of our recommendations only apply to orders over \$5 million. Why this threshold? We found that of the \$142 billion spent on orders under these interagency contracts in fiscal year 2004, \$66.7 billion, nearly half, was awarded in single transactions (at the order level) exceeding \$5 million. The fiscal year 2005 statistics show total spending on these contracts at \$132 billion with \$63.7 billion in single transactions over \$5 million.⁶

Nearly half of the dollars are spent on single transactions over this threshold, but the majority of transactions are actually below it. By using this threshold, we were able to impact a significant dollar volume, but not the majority of transactions. "Bite-sized" orders for repetitive needs can be placed using the current methods under this threshold, while large transactions involving the need for requirements

⁴*Id.*

⁵DOD IG Report No. D-2007-023, "fiscal year 2005 Purchases Made Through the National Aeronautics and Space Administration," Nov. 13, 2006, at ii.

⁶FPDS-NG special reports for the panel.

in a Statement of Work, evaluation criteria, and best value selection procedures would be subject to a higher level of competitive rigor.

Recommendations

The panel recommended expanding government-wide the current DOD Section 803 requirements that include notifying all eligible contractors under multiple award contracts of order opportunities. We also recommended that the 803 procedures apply to supplies and services. While we agreed that a pre-award notification of sole-source orders might unduly burden the ordering process, the panel recommended post-award public notification of sole-source orders finding that it would improve transparency. For single orders exceeding \$5 million, the panel recommended that agencies adhere to a higher competitive standard by: (1) providing a clear statement of requirements; (2) disclosing the significant evaluation factors and subfactors and their relative importance; (3) providing a reasonable response time for proposal submissions; and (4) documenting the award decision and the trade-off of price/cost to quality in best value awards. We also recommended post-award debriefings for disappointed offerors for orders over \$5 million when statements of work and evaluation criteria are used. Concerned that the government is buying complex, high-dollar services without a commensurate level of competitive rigor, transparency, or review, we recommended limiting the statutory restriction on protests of orders under multiple award contracts to orders valued at \$5 million or less.

Specific to the GSA Federal Supply Schedules program, the panel recommended a new services schedule for information technology that would require competition at the task order level and reduce the burden on contractors to negotiate upfront hourly labor rates with GSA. The panel sees the exercise of negotiating (and auditing) labor rates as producing little in the way of meaningful competition given that solutions are project-specific and the price depends on the actual labor mix applied. In such cases, analyzing labor rates contributes little to understanding the price that the government will pay for the project.

REMOVING OTHER OBSTACLES TO ACHIEVING FAIR AND REASONABLE PRICES

Definition of Commercial Services

The Federal Acquisition Streamlining Act (FASA) defined commercial services as those offered and sold competitively in substantial quantities in the commercial marketplace. When commercial services are sold competitively in substantial quantities, commercial market forces determine both the price and the nature of the services offered. The statutory definition was designed to allow such services to be purchased using the more streamlined commercial buying procedures of FAR Part 12. Unfortunately, the regulatory implementation of the statutory definition allowed services not offered and sold in substantial quantities in the commercial marketplace, or those “of a type,” to nonetheless be classified as commercial and, therefore, eligible for the streamlined procedures of FAR Part 12. These streamlined buying procedures, while effective in an efficient market, become problematic in circumstances where the services are not offered and sold in substantial quantities. In that situation, the government is placed at a significant disadvantage with respect to pricing when there is limited or no competition, leaving it with too few tools to determine fair and reasonable prices.

Recommendations

The panel recommended revising the FAR to be consistent with the statutory definition of commercial services. This recommendation has been inaccurately portrayed by some who claim it will prevent the purchase of cutting-edge technology. However, restoring the statutory definition in the FAR would not preclude the government from purchasing services that are not offered and sold in substantial quantities in the commercial marketplace. Rather, it would require that such services be purchased using FAR Part 15 procedures, giving the government tools for determining fair and reasonable prices absent an efficient market.

The panel also recommended specific regulatory revisions that would clarify and provide a more commercial-like approach to determining price reasonableness for commercial items in cases where a competitive acquisition is not used. These revisions, which apply to commercial items generally, clarify the contracting officer's right to ask for information “other than cost or pricing data,” and provide an order of precedence for the type of information a contracting officer should seek. This recommendation is based on testimony received by the panel from government and contractor representatives. Both groups complained that the current regulatory treatment of “other than cost or pricing data” was confusing. On the one hand, government representatives complained that they cannot obtain necessary information be-

cause contractors argue that it is not required. On the other hand, contractor representatives complained that the government presses for inappropriate information. The panel's proposed regulatory change is consistent with the testimony we received from commercial buyers regarding the types of pricing information that they receive and the circumstances under which they ask for limited types of cost data such as wages and subcontractor costs.

ACCOUNTABILITY AND TRANSPARENCY INADEQUATE FOR INTERAGENCY CONTRACTING

While I have already discussed interagency contracting with respect to requirements analysis and competition, the panel also separately addressed the issues of management of, accountability for, and transparency of interagency contracts. We included in our review the practice of using assisting entities that buy from interagency contracts. The panel found that while some competition among interagency contracts is desirable, there is no coordination regarding the creation or continuation of these contract vehicles to determine whether their use is effective in leveraging the government's buying power or whether they have proliferated to the point of burdening the acquisition system. The panel also was concerned that recent focus on the problems of interagency contracting would result in an increase of so-called "enterprise-wide contracts." Such contracts are operationally the same as interagency contracts, except they are restricted for use by one agency. The panel found the trend toward such contracts to result in costly duplication if the existing problems with interagency contracts can be addressed through better management discipline and a more transparent competitive process.

Recommendations

Specifically, the panel found that the lack of government-wide policy regarding the management of interagency contracts is a key weakness that can be addressed by OFPP. In fact, you will soon hear from Administrator Paul Denett of OFPP's initiative to develop just such a policy. (As the panel was developing its findings and recommendations in this area, panel members met with OFPP to provide input regarding the panel's work). The panel also recommended that agencies, under policy guidance issued by OFPP, formally approve the creation, continuation, or expansion of interagency contracts using a formal business case. Agencies managing these contracts would, among other things, be required to identify and apply the appropriate resources to manage the contract, clearly identify the roles and responsibilities of the participants, and measure sound contracting procedures. As discussed above, there is little visibility into the numbers and use of interagency contracts. The data must be derived from FPDS-NG and is not, as discussed earlier, completely reliable. Therefore, the panel made a number of recommendations to improve the transparency and reliability of data on interagency contracts.

THE ACQUISITION WORKFORCE REQUIRES IMMEDIATE ATTENTION

The panel determined that a quantitatively and qualitatively adequate workforce is essential to the successful operation of the acquisition system. But the demands on the acquisition workforce have outstripped its capacity. Just since September 11, the dollar volume of procurement has increased by 63 percent. While the current workforce has remained stable since 2000, there were substantial reductions in the 1990s accompanied by relatively little new hiring. Compounding the problem, while a variety of simplified acquisition techniques were introduced by the 1990's acquisition reforms for low dollar value procurements, higher dollar procurements require greater sophistication by the government buyer due to the growth in best value procurement, the emphasis on past performance, and the use of commercial contracting. Accompanying these trends is the structural change in what the government is purchasing, with an emphasis on high-dollar, complex technology related solutions. However, due to the lack of a consistent definition of the workforce and lack of ability to measure the workforce, as well as the lack of competency assessments and systematic human capital strategic planning, determining the needs of this workforce is difficult. The panel was struck by the difference from commercial practice. Private sector buyers of services use extremely well-qualified employees and consultants in designing and carrying out their acquisition of services. Larger acquisitions—\$10 million and up—are subject to a tightly controlled and carefully structured process overseen by highly credentialed and experienced buyers. The committee need only look at the presentations to the panel by the private sector buyers and the consulting firms that support them for comparison.

Recommendations

An accurate understanding of the key trends about the size and composition of the Federal acquisition workforce cannot be obtained without using a consistent

benchmark, and none is currently available for such an assessment. The panel recommended that OFPP prescribe a consistent definition and methodology for measuring the workforce. The urgency of this task is reflected in another recommendation that OFPP collect data using this definition and measuring methodology within 1 year of the panel's final report. Consistent with this, OFPP should be responsible for creating and maintaining a mandatory government-wide database for members of this workforce. The panel noted that the Commission on Government Procurement recommended just such a system over 30 years ago—in 1972. While there are a great many recommendations for workforce improvement in the panel's report, one of the key recommendations is that each agency must engage in systematic assessment and human capital strategic planning for its acquisition workforce. Without such plans, it is impossible to know how and to what extent a given agency's workforce is deficient. It is also difficult to know to what extent and how efficiently agencies are using contractors to support the acquisition function. In support of this recommendation, the panel has also suggested that these plans be reviewed by OFPP for trends, best practices, and shortcomings as part of an agency's overall human capital planning requirements. Finally, the panel recommended a government-wide intern program, as well as the reauthorization of the Services Acquisition Reform Act training fund.

APPROPRIATE ROLE OF CONTRACTORS SUPPORTING THE WORKFORCE

Management challenges of a "blended" workforce

The panel heard testimony regarding the use of and management of the "blended" workforce, where contractors work side-by-side with government employees, often performing the same or similar functions.

Blurring the Distinctions

In the mid-1990s, the Federal acquisition workforce was reduced by 50 percent and hiring virtually ceased during that time. The structural changes in what and how much the government is buying since September 11 have left agencies with no alternative to using contractors to deal with the pressures of meeting mission needs and staying within hiring ceilings. Agencies have contracted for this capability and contractors are increasingly performing the functions previously performed by Federal employees. To a significant degree, this has occurred outside of the discipline of OMB Circular A-76, with the result that there is no clear and consistent government-wide information about the number of people and the functions performed by this growing cadre of service providers.

While the A-76 outsourcing process provides a certain discipline in distinguishing between "inherently governmental" and commercial functions, it is less clear if and how agencies apply these concepts to the blended or multi-sector workforce that has arisen outside of the A-76 process. The challenge is determining when the government's reliance on contractor support impacts the decisionmaking process such that the integrity of that process may be questionable. A second challenge that arises is how the government effectively manages a blended workforce given the prohibition on personal services.

Rising Concerns

The panel identified the increased potential for conflicts of interest, both organizational and personal, as a significant challenge that arises from the blended workforce and from the consolidation in many sectors of the contractor community. Alongside this issue is the need to protect contractor proprietary and confidential data in such an environment when a contractor supporting one agency in a procurement function may be competing against other contractors for work that is in the subject area of its support contract at another agency.

Recommendations

The panel recommended that OFPP update the principles for agencies to apply in determining which functions must be performed by Federal employees, so that agencies understand that such principles apply even outside the A-76 process.

The panel also recommended lifting the prohibition on personal services contracts. The panel heard a great deal of testimony about how this prohibition is either effectively ignored or how agencies use awkward and inefficient work-arounds to ensure they do not direct the work of contractor employees. The GAO has acknowledged the need to rely on contractors to meet government missions. Panel witnesses have confirmed the necessity of contractors in the workplace. Therefore, the panel finds the prohibition to be akin to a "myth." OFPP should develop new policy guidance on the appropriate and ethical use of service contractors that would allow appro-

appropriate government employees to direct the substance of their work, but not perform supervisory functions such as hiring, firing, disciplinary actions, etc.

With respect to the growing potential for conflicts of interest, the panel did not see a need for new statutes. Instead, it viewed the issues as contract-specific and suggested that the better approach would be policy guidance and new solicitation and contract clauses. Therefore, the panel recommended that in its unique role as developer of government-wide acquisition regulations, the FAR Council review existing conflict of interest rules and regulations, and to the extent necessary, create new, uniform, government-wide policy and clauses regarding conflicts of interest, as well as clauses protecting contractor proprietary and confidential data. In particular, the rules regarding organizational conflicts of interest need to be updated to address situations involving impaired objectivity. The panel also recommended that the FAR Council work with the Defense Acquisition University and the Federal Acquisition Institute to devise improved training for contracting officers to assist in identifying and addressing potential conflicts and to develop better tools for the protection of contractor proprietary and confidential data.

Finally, a general comment about the panel's recommendations: while most of them can be implemented through policy or regulation, a few require legislation.

CONCLUSION

Mr. Chairman and members of the subcommittee, thank you for your interest in the panel's efforts. We are available to provide any additional information or assistance that the committee may need.

This concludes my prepared remarks. My colleagues and I are happy to answer any questions you might have.

Senator AKAKA. Thank you very much for your statement. Your full statement will be included in the record.

Before I begin with my questions, I would like to ask Senator McCaskill if she has an opening statement?

Senator MCCASKILL. Believe it or not, I am anxious to have a look at the executive summary. I was particularly startled by how long this effort was and how voluminous the testimony was. So I am anxious to be as knowledgeable as possible, because if I am going to really focus on trying to do something about this. I want the benefit of everything that you learned.

So if I could get a copy of the full executive summary I would appreciate it. Then I would just reserve anything further until questioning.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you.

Ms. Madsen, the Acquisition Advisory Panel recommended enhanced competition for task orders in excess of \$5 million.

This process would make large task orders more like contracts by requiring that the agency provide a clear statement of requirements, disclose significant evaluation factors and subfactors, provide a reasonable response time for proposal submissions, document the selection decision, and provide post-award debriefings for disappointed offerors.

Ms. Madsen, can you explain why you think this recommendation is important?

Ms. MADSEN. Certainly, Mr. Chairman. I think, as detailed in our report, as we looked at the data on orders under multiple award interagency contracts, we realized that there was a very substantial quantity of those orders being placed that exceeded \$5 million in value. Some of them exceeded \$5 million in value by a very substantial amount, orders in the neighborhood of \$100 million or more in value.

Our review of the legislative history in this area indicates that the purpose for these ordering vehicles was to allow repetitive needs to be satisfied in a streamlined manner, not to allow very large orders to be placed that really looked more like contracts. Because of the fact that the process is set up so orders are placed under multiple award contracts, of course there is limited visibility into the ordering process that would not exist if those orders were placed as contracts under FAR Part 15.

We just could not get good data on the extent of competition for orders. But we have data indicating that in 2004 \$66.7 billion was expended in single transactions over \$5 million, with services accounting for 64 percent or about \$42.6 billion of that amount. So there are a number of large transactions passing through that system without oversight.

I think the other observation that we made was that once you get above about \$5 million, these look like other kinds of procurements that people would recognize. They have a statement of work, they have a solicitation, they have evaluation criteria. Agencies are using best value techniques for larger orders. It looked like to us if an agency is going to go to all that work anyway it might as well do it in a more formal form and give the contractors a better opportunity to have a more reasonable competitive process.

I do not know if Mr. Hughes has anything he wants to add to that.

Mr. HUGHES. I think that covers it. The thought here was that the government benefits because this approach enhances competition. It creates an opportunity for competitive bidding on these large task orders. At the same time, the panel was careful not to make this a full Part 15 process, so they were preserving some—a more informal but structured process.

Looking at the contractor's side, I think a contractor that invests in putting together a complex proposal is entitled to know the basis on which the government is going to evaluate the proposal and document the decision, and if the contractor wants a debriefing we felt on these large task orders they are entitled to that.

So the objective here was really to help sharpen the government's requirements and promote competition, which ultimately benefits the government.

Senator AKAKA. One of the advantages that Federal agencies see in task order contracts is that they can award task orders with minimal effort. Would not the process that you recommend require more personnel and attention to manage? If so, do you believe that it would be worth the investment?

Ms. MADSEN. I am happy to respond to that and then if Mr. Hughes wants to say something. I think that our conclusion was definitely yes. Again, as we looked at this, once you get above about \$5 million the process is more formal anyway, but it does not meet in many instances the kinds of requirements for due process and fairness that we thought were important.

So it is not that there is not more work being done for those larger orders. It is just that it is not as perhaps fair and transparent as it should be.

So will it have an impact on staffing? It may, but we think it is probably well worth it because the government is going to get a

much better competitive process. As I think I said in my statement, we traded this off. We recognized that the majority of transactions are under \$5 million. But, the majority of dollars is over \$5 million. So we do not think that we are unduly burdening the transactions that are really, as we refer to them, bite-size as they are for repetitive needs. Those transactions would go forward just as they do today.

Mr. HUGHES. There was also a recommendation on the section 803, the fair opportunity. What that is essentially is a requirement that is imposed on DOD to give all of the people in the contract, who are on the contract, an opportunity to compete for the items that are being ordered. It has worked well within DOD. We thought it would be an appropriate model to extend across the Federal Government.

You are correct in your question. It is some additional work to evaluate the additional offers, but with respect to the benefits we thought that would be significant. The notion of having competition at the task order level and being a little more rigorous about that would avoid, we thought, a large number of the sole source task orders that we see. So clearly there is a cost, a small cost, because the contract vehicles are already in place. The large ordering vehicle is already awarded. This is simply a communication to the people who might be able to propose against particular task orders the opportunity to make that proposal.

So correct, a little more work, but the panel thought very strongly that the government would benefit with reduced pricing and greater competition.

Senator AKAKA. The Acquisition Panel, Ms. Madsen, found that commercial organizations invest the time and resources necessary to understand and define their requirements, facilitate competition by defining their requirements in a manner that allows services to be acquired on a fixed-price basis in most instances, and ensure continuous evaluation and ongoing monitoring of supplier performance.

Is it your view, Ms. Madsen, that the Federal Government needs to adopt these best commercial practices if it is going to achieve better results in its contracting for services?

Ms. MADSEN. Mr. Chairman, we certainly tried to take a lesson from the commercial buyers that we heard. Somebody who recently commented on the panel's work said that our recommendations in that regard sounded like Procurement 101. That is really what our commercial buyers told us, if you do these things you get better competition, you get contracts that because they are well scoped can be in many cases fixed price, so they are easier to administer, and you get better prices.

We thought all of those were things that actually the Federal Government not only could and should do, but in many cases these are already required by law and regulation.

Mr. HUGHES. Just one other point I think is important to make. The current commercial buying of items and services is working fairly well. We are talking at the margins here where we have seen noncompetitive procurements. So the recommendations are not to suggest that the commercial buying practices are somehow inadequate themselves. They are not. They are good and they work

well. At the margin, we propose these changes to where we found that, for a number of different reasons, some categories of procurements wind up being sole source or limited competition or not enough definition of requirements.

So the criticisms are to improve the process, but I did not want to suggest that the panel thought that the system was just fundamentally flawed. It is not. This is more in the line of an incremental or an evolutionary improvement of what Congress started with FASA a number of years ago.

Senator AKAKA. Let me defer to questions from Senator Ensign.

Senator ENSIGN. Thank you, Mr. Chairman.

I want to explore this idea of the whole idea of competitive contracts. You are comparing some of these things to contracts because of the size of them. When we get into competitive contracting sometimes in the government purchasing, we have seen where folks underbid knowing that they are underbidding and then later come back and say, well, we are halfway through this and we do not have the money to be able to finish this, and then the government ends up spending a lot more money in the long run because of that.

Is there any danger in that happening with the recommendations that you are talking about? Did you see any evidence that people were trying to avoid that? If anybody on the panel wants to take a shot at that, that is fine.

Ms. MADSEN. Well, I guess I will take the first shot. I think, with respect to the practice of probably what you are calling buying in, I think that is not something we looked at specifically, but good requirements definition definitely helps, because when people know what it is that they are proposing on it is easier to price it properly, it is easier to price it accurately.

Something else that we also recommended, it is kind of a common sense recommendation, is that the government be given better tools to just do market research so that the government can make better judgments about those kinds of issues. For instance, we learned from the commercial companies that they maintain very extensive collections of data on transactions. There is a lot of information that is available in the public sector about services transactions. Commercial companies collect it, they pay attention to it, they analyze it. We did not see any reason that the government could not do that also.

So we actually made a recommendation that a market research operation be set up. We suggested GSA. It made sense to us.

Senator ENSIGN. When you are looking at the acquisition personnel issue, do you have just two or three specific recommendations for us on improving the type of people? Obviously we have a lot of senior people that are getting ready to leave. We all see that coming. What were the panel's recommendations on making sure that we, one, replace some of the people, but also in making sure that we are hiring really good, talented people? Does outsourcing play a role in that? I know there has been some problems, but there has been successes in outsourcing, some of these issues of advising how to do acquisition.

So do you have any thoughts on any of that?

Ms. MADSEN. Well, a couple of thoughts. With respect to workforce, we were very struck by the commercial organizations that

talked to us about the credentials and the experience of the people that are handling particularly their larger transactions, transactions \$10 million and above. Very highly credentialed, very experienced people who view acquisition of services very much in a strategic mode.

You will see this in our findings and our recommendations, that one of our questions really is how does the government sort of stack up and how does the government get access to those kinds of people and those kinds of resources. Our very first question was do we know what we have?

One of the reasons we did this study is to try and ascertain how do you define the acquisition workforce? Where are the people who build requirements? Where are the people who are doing analysis of the government needs? Do we have the right people in the right places?

Those are very difficult questions to get the answers to, which is why our recommendations really begin with, let us find out what we have and make some decisions there. Then we made a series of recommendations about attracting, since obviously the government cannot pay at the private sector scale, about attracting people, starting with intern programs, easier hiring, better opportunities to identify talent, bring people into the government.

Now, I will tell you one thing that we did not tackle, we did not have the time, was the whole personnel system. So we really looked at it from an acquisition standpoint.

Mr. ETHERTON. Senator Ensign, I think if you look at chapter 5 of the report and follow the recommendations, what you will see is a very logical sequence of how to address some of the issues that have been raised both in our report—I know that they were discussed at the hearing 2 weeks ago, addressing some of the shortfalls in the acquisition workforce. I think that the recommendations follow a pattern that basically talks about data collection and trying to really get a clear understanding of what the current makeup of the acquisition workforce is and who would be included and try to identify where the shortfalls might be occurring; then to shift from that mode into a more aggressive human capital planning effort specifically focused on the acquisition workforce throughout the Federal Government; and then going from there to look at some of the tools that you have for both recruiting people and also to try to do some things on the retention side; and then finally, as you are doing all that and I guess more or less concurrently with it, trying to get a clearer sense of what your resources and needs are with respect to training and education. There are a number of very specific recommendations along those lines in chapter 5 of the report.

I guess I would say from my perspective, having worked up here for a time, this is a very complex area that will require a lot of sustained long-term focus and long-term oversight if you are likely to have any success in playing a role in bringing about those improvements.

Senator ENSIGN. Jon, most of the issues this subcommittee deals with fit into how you just described this issue: long term, a lot of oversight, staying the course with it. We have noticed that over the last few years.

According to the report the panel believes that a best practice measures guide is critical to providing instruction and illustration in the use of measures as part of performance-based service acquisition. Have you seen any such guides either in the private sector or the public sector that would serve as a good model for the guide that you suggested?

Ms. MADSEN. Senator, we did not look at guides specifically. We looked at practices, however. We had a lot of, a lot of testimony, both from the public sector and the private sector, about how to do performance-based acquisition. We have collected that information. Some of our private sector witnesses actually provided us with proprietary information and explanations as to how they go about this process.

So we have that information and we have tried to reflect the conclusions we drew from it in our report, but we do not really have in our hand a tidy best practices guide that we could hand out. We do recommend that one be created.

Senator ENSIGN. Thank you, Mr. Chairman.

Senator AKAKA. Thank you, Senator Ensign.

Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman.

At the risk of sounding sarcastic, and I do not mean to be sarcastic, but as somebody who is new and who comes from an auditing background this is incredibly complex when you realize what we are trying to do is get stuff as cheaply as possible that we need.

That is really what this all boils down to, is for the government to be able to buy things for the best bargain that they need. I have some questions that I have asked—let me ask you all first, have you read the IG's report that we talked about in this hearing? [Witnesses nod affirmatively.]

If I can just stay on that report for the entire time of this term and fix some of those things, I will consider my term to be incredibly successful, because it was eye-opening for me. Understand if that report had been issued by my State auditing agency it would have been front page news for weeks. Building a building with operational funds that is 230,000 square feet? Paying for services before there has been scope of a contract? Having the contract signed years after they finished paying for the work that had been done?

This is really, a lot of this is over the top for somebody who is taking a fresh look at it. I want the first ask you about what seems to me to be really kind of down the rabbit hole, and that is the part of your testimony and the part of your work on the committee where you talked about the reduced workforce. I am assuming the workforce was reduced because people were trying to save money, correct?

Ms. MADSEN. Senator, certainly in the mid-1990s, particularly with I think what was probably then viewed as the benefit of the end of the Cold War, there was a perception that we did not need as many Federal employees. There were certainly—and our study that we did on the workforce, the nine-volume study, certainly documents the reductions in the workforce. But the Federal acquisition workforce was reduced about 50 percent between like 1993 and 2000. It is a significant number.

Senator MCCASKILL. Well, the interesting thing to me is in reading all this material last night, is that we reduced the workforce to save money and as a result we are now contracting out with this huge workforce to do this work, and because we are contracting out we have no idea what is going on. Is that fair?

Mr. HUGHES. I think one of the chapters in our report, chapter 6, deals with appropriate role of contractors. I think it is an interesting issue because you have this question of how you buy services. We testified about that and talked about that, requirements development and how we do it. The other part of the question is what is the appropriate role for contractors in this process, decisionmaking. One of our recommendations is that agencies review, make sure they are maintaining core capabilities in house, in other words sufficient core capabilities to do things that are an inherent part of the government decisionmaking process. There is a lot of related issues that go with this too: What is an inherently governmental function? Who should be performing it?

But you raise a question, but your question raises an issue that the panel looked at and the numbers are there. Sixty percent of the procurement spend is on services and those services move closer to the decisionmaking side, the inner circle of the government. One of the things we did worry about as a panel is what is the appropriate role as you move closer to the circle.

The complexity of this can be overwhelming. If you just take DOD's spend, it is about \$250 billion. If you were to convert that to Fortune 500 and convert that spend to revenue, DOD would be right up there maybe after two or three of the oil companies in terms of complexity. There are a lot of different issues here. We focused on services in a number of areas, but it is a very complex process.

Senator MCCASKILL. Honestly, Mr. Hughes, I think that the more complex it is the harder it is for us to figure out how to get a handle on it. I have a feeling that if somebody does not try to do something bold and dramatic—I mean, talk about the cow being out of the barn. Anybody coming with a fresh look on this can do one of two things. I think people have thrown up their hands and said, this is too complicated. There is this policy and that policy.

I tried to get through your testimony and there are so many acronyms and so many numbers, but it can be boiled down. I mean, if you look at the issue of competitiveness, how in the world do we get to the point that one-third of the procurement is noncompetitive in government?

Mr. HUGHES. We had a lot of internal debate about this issue and I think one of the things that we discovered, and it is written in the report, is—by and large, let me just say we heard a lot of great testimony. There is a lot of folks out there in the government trying really hard to do the right thing. In every case, they look at their agency's mission and they have a mission, and then they have a very narrow period of time in which to obligate money. We have a fiscal rule system, and if you have an auditing background from the State you understand that. In other words, there is a rule set by which we obligate government money.

So what we have seen in the testimony is I think people trying very hard to do their agency's mission, whatever their mission was.

We talked to civilian agencies, defense agencies. Then we have this rule set by which we have to run procurements because we have to be transparent, we have to be accountable, we have to obey the fiscal rules. Then you have heard evidence that the workforce has been relatively flat or maybe decreasing and the number of procurements have gone up.

So there are lots of stories like the ones that you are citing to in the IG report. I am not refuting that. I think we have to fix those things when we find them. But I also think that the sense of the panel was that the system is not fundamentally broken, that there is a lot of professionals working hard to do the right thing, and what our view was was to look at the areas that we did look at and recommend specific improvements.

So it is complex, it is tough. We have tried to lay it out sequentially in the different chapters. But I did want to say that there were some good news stories out there too that we heard in the course of taking the testimony, and it is a tribute sometimes that things get done, given the constraints that we put in front of the acquisition workforce.

Senator MCCASKILL. At this point I am trying to get a handle on how much we are buying without competition. That is what I am trying to focus on right now. Reading what I have read, a third in 2004, which was \$107 billion, and \$100 billion in 2005. Then you look at how much is interagency and then you say further that we cannot really tell with the interagency purchases whether they are even competitive or not.

So what we know is at least a third are noncompetitive, but 40 percent of 2004 was all interagency and what you have said is you cannot tell me how much of that interagency was competitive.

Ms. MADSEN. That is correct, Senator. We actually invested a lot of—I am going to speak specifically to Ms. Auletta because she had more of those midnight hours than I did, looking at the data from the Federal Procurement Data System-Next Generation. In 2004 really was the first time that that system started to capture data on the interagency contracts.

So we just did not have a good view of the ordering process. We could tell how much was going through it, but we just could not tell how competitive it was. Really, our source of information about competitiveness on those contracts are the IG and GAO reports going back to 1997, 1998 and coming forward, which consistently indicate with orders under those multiple award contracts that somewhere around 40 to 50 percent of the orders that they sample—and they always do relatively small samples—you will see 17 contracts, 20 contracts. The samples show about 40 to 50 percent are not competitive.

But that is information that was not available to us. Now, if you get to sort of the back of our report you will see we have made a number of recommendations with respect to collecting data and particularly data on competition so that folks, especially you, can get a better handle on the questions you are asking.

Senator MCCASKILL. Well, it seems to me that it is pretty basic that we should at least know whether something is competitive or not. I mean, that to me is fundamental to government acquisition, and if we cannot tell whether or not what we are buying is being

done competitively I do not know how we think we are ever going to get our hands around the fact that we have government waste. I think it is impossible. Correct? Am I wrong in that?

Mr. ETHERTON. No, Senator McCaskill, you are correct. I think that one of the major themes that you see going throughout the recommendations is the sense that we need to get a better understanding of what is actually happening. There are a number of—for example, in the interagency contracts section we endorse the current effort underway at the Office of Management and Budget to figure out how many of these vehicles we have out there, what the activity that we have going through them, as a baseline then to make further improvements on the system and better manage that entire contracting universe.

Ms. Madsen also pointed out that there is a section in the back of the report which talks about improvements to the database so we have a better understanding about that. On the other side of that, we made some recommendations with respect to competition, one in particular being the extension and expansion of the section 803 requirements on a much greater basis, so that everyone—

Senator MCCASKILL. You have to tell me what section 803 is.

Mr. ETHERTON. I am sorry. Section 803 basically says that when you have a multiple award task or delivery order contract, in most circumstances you are supposed to let all the people who are under that contract or are eligible to get a task or delivery order, to give them information about any pending awards that they may be eligible to try to compete for, in other words to get the information out there so that everybody can see it. There are a number of other recommendations along those lines. So as we are gathering the information and trying to get a better understanding of what the current state of play is, we also have the ability to disseminate these opportunities to a much broader universe of folks in a more formal way so that people are aware of the opportunities and we can increase competition in that fashion.

Senator MCCASKILL. Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator McCaskill.

I want to thank the panel. We do have questions which we will include for the record for you to respond to and I want to thank you for your responses today.

I would like to now call the second panel to the dais.

Ms. MADSEN. You are very welcome, Senator, and if there is any other information we can provide we would be happy to do so.

Senator MCCASKILL. Thank you all.

Senator AKAKA. Our second panel includes: Paul Denett, the Administrator for Federal Procurement Policy; and also Shay Assad, the Director of Defense Procurement and Acquisition Policy. Mr. Denett and Mr. Assad are the two senior officials responsible for developing and implementing Federal policy on contracting for services and interagency contracting.

I want to welcome both of you to the committee. I want to emphasize that Mr. Denett and Mr. Assad are not personally responsible for the extensive problems that we have experienced with contracting for services and interagency contracting. Both took office fairly recently and have been working to address the problems that

we have identified. The record of these hearings makes it clear that much more remains to be done.

Mr. Denett and Mr. Assad, we look forward to your statements. Mr. Denett, you may begin.

STATEMENT OF HON. PAUL A. DENETT, ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET

Mr. DENETT. Thank you. Chairman Akaka, Senator Ensign, and members of the subcommittee: I appreciate the opportunity to appear before you this afternoon to discuss contracting for services, interagency contracting, and related issues. My remarks will focus on acquisition from a government-wide perspective. I prepared a full statement for the record and with your permission would like to insert it into the record and highlight a few key points.

Senator AKAKA. Your full statements will be included in the record.

Mr. DENETT. First, we must do a better job ensuring that our acquisition workforce has the proper skills and competencies to deliver the best results possible for the American taxpayer. Assessment of acquisition skills is an essential step in agencies determining the necessary acquisition staffing levels.

We acquired over \$400 billion in goods and services in fiscal year 2006. Many of the shortcomings that have been identified by the GAO, the agency IGs, and the Services Acquisition Reform Act (SARA) panel lie not in the acquisition tools themselves, but rather in the management, practice, and training surrounding their use. Adequate, proper, and timely acquisition and project management training is essential.

As Administrator of OFPP, I am focusing policy development, management attention, and training on the tools that our workforce is relying on most to meet the unprecedented challenges of the 21st century. For example, OFPP is developing guidance to strengthen the interagency contracting with the assistance of an interagency team that includes DOD and other large customer and servicing agencies. The guidance will be designed to ensure requesting and servicing agencies understand and carry out their respective responsibilities for each step in the acquisition process.

In addition to guidance, we will work with the Federal Acquisition Institute and the Defense Acquisition University and private training companies to increase training offered in this area.

OFPP and the interagency team will also be exploring ways we might improve strategic use of interagency contracts.

Second, I share the SARA panel's overarching conclusion that competition, transparency, and accountability for results are the underpinnings of a solid Federal acquisition system. As a general matter, the current statutory acquisition authorities will produce good results for taxpayers when they are followed and coupled with sound planning, competition, and effective management and oversight.

I work closely with the Chief Acquisition Officers Council and the Federal Acquisition Regulatory Council, industry associations, and scholars to carefully analyze the panel's many recommendations.

We will implement those that make sense. We will track and have agencies review to ensure compliance and results.

I intend to pay particular attention to panel proposals that strengthen the management and transparency of task and delivery orders, especially for complex services. Services now account for over 60 percent of all our acquisition dollars. I will also focus on the panel proposal that can improve the quality of acquisition planning, such as through the establishment of agency centers of expertise to assist with the analysis related to common recurring needs. I am glad that many of the panel's proposals can be addressed through regulatory or policy action.

Third and last, I am a strong supporter of giving credit and recognition. Too often we fail to recognize when acquisitions are conducted well and miss opportunities for employees to learn through the success of their peers. I have launched the SHINE initiative to increase the visibility of acquisition excellence within our workforce.

For example, the following individuals from the DOD have received well-deserved recognition for achieving great results through their hard work: Nancy Gunderson as the acquisition and contracting team leader of the Pentagon renovation program, for being instrumental in renovating and repairing the Pentagon on time and in an efficient manner following the September 11 attack;

Lieutenant Commander Jeffrey Davies of the Naval Supply Systems Command, for his outstanding leadership in combining contracting and logistics for superior regional patrol boat maintenance and crew swaps at significantly lower cost and reduced times in support of the warfighter;

Lieutenant Commander Kristen Aquavella of the Naval Sea Systems Command, for her contracting accomplishments on the repair and overhaul of submarines, which played an integral role in saving the Navy \$75 million. She also volunteered and served as the chief of a Baghdad contracting office where she led direct acquisition support of Operation Iraqi Freedom.

The last person I would like to recognize: Mark Strawn of the Department of the Air Force, for increasing the efficiency of the acquisition process undertaken by the Landing Gear Commodity Council. He reduced the processing time of acquisitions for landing gear from 75 days to an average of 3 days with advanced contracting.

I will use this SHINE initiative to help ensure that the best practices are shared and that the value of our Federal acquisition employees is appropriately recognized.

Today our agencies are more reliant on contracting to support their missions than ever before. I am proud to work with the acquisition contracting personnel to produce good results for our taxpayers. The OFPP is committed to addressing shortcomings and reinforcing successful practices.

I welcome the opportunity to work with the subcommittee and other Members of Congress in a bipartisan effort to ensure a contracting system that is competitive, transparent, and accountable.

This concludes my prepared remarks. I would be happy to answer any questions that you might have.

[The prepared statement of Mr. Denett follows:]

PREPARED STATEMENT BY HON. PAUL A. DENETT

Chairman Akaka, Senator Ensign, and members of the subcommittee, I appreciate the opportunity to appear before you today to discuss contracting for services, interagency contracting, and related issues. You have asked for my views on the report of the Acquisition Advisory Panel established under the Services Acquisition Reform Act (the “SARA Panel”) as well as my thoughts on recent assessments by the Inspectors General (IGs) for the Department of Defense (DOD) and other Federal agencies.

My remarks will focus on acquisition from a government-wide perspective, consistent with my responsibilities as Administrator for the Office of Federal Procurement Policy (OFPP). Mr. Shay Assad will provide a departmental perspective on issues before us today.

The beginning of the 21st century has presented our acquisition workforce with unprecedented challenges. We are more reliant on contracting to support the numerous agency missions. While I have great confidence in the dedication of our workforce, I am concerned that we have not adequately trained them and strengthened their competencies so that they can deliver the best results possible. Over the past decade, spending on services has outpaced spending on products, as agencies shift from buying items to buying solutions. Today, service contracting represents just over 60 percent of the almost \$400 billion in total acquisition dollars. Similarly, interagency contracting has also grown significantly as agencies look to reduce administrative expenses and leverage resources. While neither of these trends should, by themselves, be cause for alarm, the level of management attention given to service contracting and interagency contracting must be increased accordingly to ensure these tools are used properly and effectively.

The SARA Panel’s report on Federal acquisition practices is especially timely. I welcome the anticipated arrival of the final report. Through a highly transparent process and input from members and witnesses representing diverse perspectives and backgrounds, the Panel has produced a comprehensive report with a number of findings and recommendations that are deserving of our careful consideration to improve contracting for the American taxpayer.

I share the Panel’s overarching conclusion that competition, transparency, and accountability for results are the underpinnings of a solid Federal acquisition system. Many of the shortcomings identified by the Panel, the IGs, and the Government Accountability Office (GAO) lie not in the acquisition tools themselves, but rather in the management, practices, and training surrounding their use. As a general matter, the current statutory acquisition authorities will produce good results for the taxpayer when they are coupled with sound planning, competition, and effective management and oversight. Oversight should contribute to improvement and results. Hold the contracting personnel, including myself, accountable.

IMPROVING INTERAGENCY CONTRACTING

With respect to interagency contracting, in particular, OFPP is taking a number of steps to address weaknesses identified by the GAO, agency IGs, the SARA Panel, and others. Our goal is to ensure these contracts are used properly and in a strategic manner.

Clarifying roles and responsibilities

The GAO, IGs, and others have found that breakdowns in interagency contracting are often associated with unclear lines of responsibilities and a failure to carry out key responsibilities. OFPP is leading an interagency working group to establish guidance clarifying responsibilities between the requesting (customer) agency and the servicing agency for each key step in the acquisition process—from the determination of needs and development of the statement of work, to the determination of price reasonableness, and the performance of contract surveillance. Participants include DOD and other major requesting and servicing agencies, including the General Services Administration (GSA), the Department of the Interior, the National Aeronautics and Space Administration, the Department of Energy, and the Department of the Treasury, among others. We anticipate completing the guidance in the spring.

This exercise is especially important in an assisted acquisition, where a contract action is placed by the servicing agency on the requesting agency’s behalf. Absent a clear understanding between the parties, there is increased risk that responsibilities will not be accomplished. We are working to develop a model interagency agreement to facilitate greater consistency and clarity in the identification and documentation of roles by the respective parties.

I commend DOD for taking actions to improve its interagency contracting. As the DOD IG noted before this subcommittee, the recent memorandum of understanding between DOD and GSA includes a number of basic contracting management controls, such as ensuring that sole-source justifications are adequate and interagency agreements describe the work to be performed.

Strategic use

We wish to ensure strategic use of interagency contracting vehicles. Many in the contracting community, including the SARA Panel, have raised concerns that there may be unnecessary duplication of interagency vehicles. We are exploring whether we may need a governance structure for multiagency contracts (MACs). MACs operate separate and apart from the Federal Supply Schedules, which are governed by rules established by GSA, and government-wide acquisition contracts (GWACs), which are subject to review by OMB. As a first step, OFPP conducted a data collection to gain a better understanding of the number of MACs. According to the latest count, agencies have identified at least 55 MACs. These contracts are predominantly for professional and technical services and information technology, which appear to overlap the scope of GWACs and some schedule contracts. We are currently working to identify the dollars obligated through these MACs. We are also reviewing acquisition activity on franchise funds. The SARA Panel recognized and endorsed these efforts, concluding that increased visibility is a prerequisite to improving the strategic use of interagency contract vehicles.

OTHER OFPP PRIORITIES

In addition to our work on interagency contracting, other priorities that I have laid out for OFPP also address the types of concerns identified by the SARA Panel, the IGs and the GAO. They include: (1) increasing attention on acquisition planning and contract management, (2) strengthening the acquisition workforce, and (3) improving the Federal Procurement Data System (FPDS).

(1) *Increasing attention on acquisition planning and contract management.* We must ensure that agencies do a better job of planning and articulating contract requirements. We must also pay greater attention to overseeing our contractors to ensure they meet their contractual obligations efficiently and effectively.

This past June, OMB revised its Capital Programming Guide, which discusses the policy for planning, budgeting, acquisition, and management of Federal capital assets. The development of business cases remains a central feature of the process. Agencies must conduct comprehensive planning to support the business case, including a needs assessment and an alternatives analysis. The Guide emphasizes the importance of cross-functional participation in the planning process to ensure the ultimate success of the acquisition.

In addition, OFPP plans to:

- Enhance the quality and consistency of agency internal control reviews by issuing guidance to agencies on assessing their acquisition function, taking into consideration the GAO's 2005 framework for assessing risk in acquisition activities.
- Issue guidance to ensure the proper use of contract incentives.

(2) *Strengthening the acquisition workforce.* Getting good results from our acquisitions ultimately depends on the capabilities of the workforce. Our workforce must be equipped with the skills and competencies required to meet the needs of our end-users. Adequate training is a must. To achieve these results, OFPP plans to:

- Place greater emphasis on the recruitment and retention of top talent through improved acquisition intern programs, cross-agency rotational assignments, and special training for interns and new members of the workforce.

The Federal Acquisition Institute (FAI) has developed the blueprints for a Federal Acquisition Intern and Career Development Coalition that will promote acquisition intern and career development programs for entry and mid-level professionals.

- Seek legislation to make the acquisition workforce training fund (AWTF) permanent.

By using the AWTF, FAI was able to leverage its demand for course work, save an average of 45 percent per student over the commercial price for these classes, and increase the amount of training available to the acquisition community.

- Ask agencies to conduct a competency assessment on the acquisition workforce to help agencies identify skills gaps.

- Support efforts by the Chief Acquisition Officers (CAOs) to identify hiring, training, and developmental needs for their respective agencies for incorporation into the agency's human capital strategic plan.
- Establish program/project manager and contracting officer's representative certification programs to support common competencies and training standards for this important acquisition function.

FAI and the Defense Acquisition University (DAU) now offer classroom and online training on performance-based service contracting to contracting officers, program managers, and other members of the acquisition team who play a critical role in service contracting. These courses will better enable all members of the acquisition team to contribute to the creation of performance work statements and support management of the resulting contracts.

- Work with DOD to study the feasibility of a Federal Acquisition University.

Over the last 2 years, FAI and DAU have developed a close partnership to leverage resources for training and other professional development efforts. In fiscal year 2006, FAI delivered classroom training to over 2,800 contracting professionals and provided on-line training to over 20,000 students—a substantial increase over any previous year.

- Work with DAU and FAI to develop additional emergency contracting training and expand reference materials available through the DAU/FAI online community of practice Web site to meet the needs of the Department of Homeland Security and other agencies with emergency responsibilities.

In addition, I launched the “Shine” initiative to increase the visibility of acquisition excellence within our workforce. Too often, we fail to recognize when acquisitions are conducted well and miss opportunities for employees to learn through the successes of their peers. The Shine initiative will help ensure best practices are shared and the value of our Federal employees are appropriately recognized.

(3) *Improving FPDS*. FPDS must be an authoritative source for acquisition information that allows the government and industry to make decisions and measure results with accurate data. We will implement a data verification process to achieve this outcome.

REVIEWING THE SARA PANEL'S RECOMMENDATIONS

I will work closely with the Chief Acquisition Officers Council (CAOC) and the Federal Acquisition Regulatory Council (FAR Council) to analyze the Panel's recommendations, identify those that deserve priority attention, and take timely action. In this regard, I am glad that many of the Panel's proposals can be addressed through regulatory or policy actions.

I intend to pay particular attention to proposals that would strengthen the management and transparency of task and delivery orders, especially for complex services. The Panel, IGs, and GAO each have raised concerns about high-dollar value orders for services being placed with inadequate planning, competition, and post-award surveillance.

I also intend to pay close attention to proposals that can improve the quality of acquisition planning. The Panel offers several common-sense ideas to help agencies better define their requirements. For instance, they recommend the establishment of agency centers of expertise to assist with analysis related to common recurring needs, and the centralization of market research information at GSA to organize and make this information available for government-wide use.

I am pleased to tell you that OFPP, through its ongoing initiative to improve interagency contracting, has already taken actions to address some of the recommendations made by the Panel in this area. The Panel acknowledged our data collection as an important first step to ensuring these vehicles are being used strategically.

While not specifically addressed in the Panel's report, other ongoing OFPP initiatives are also serving to help agencies improve their operations through the synergies of marketplace competition, including:

- Greater use of strategic sourcing, where agencies collaborate to leverage the government's buying power and reduce costs for commonly used products.

GSA recently awarded a blanket purchase agreement (BPA) with a nationwide domestic delivery service company to leverage the government's volume, reduce prices, and improve commodity management. By February, agencies will have placed over \$55 million in orders against this BPA to

take advantage of significant price reductions—which could be as high as 40 percent, depending on the services ordered.

- The reasoned and responsible use of competitive sourcing to reduce costs and improve the performance of commercial support activities.

Improvements set in motion by competitions completed in fiscal year 2006 are expected to generate net savings or cost avoidances totaling about \$750 million over the next 5–10 years. Expected annualized savings from competitions completed between fiscal years 2003–2006 is approximately \$1 billion.

CONCLUSION

Mr. Chairman and members of the subcommittee, OFPP is committed to addressing shortcomings and reinforcing successful practices. I look forward to working with DOD and the other agencies, the members of this subcommittee, and other members of Congress in a bipartisan effort to ensure our acquisition system produces the good results our taxpayers deserve.

This concludes my prepared remarks. I am happy to answer any questions you might have.

Senator AKAKA. Thank you.

Mr. Assad.

STATEMENT OF SHAY ASSAD, DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY, DEPARTMENT OF DEFENSE

Mr. ASSAD. Chairman Akaka, Senator Ensign, members of the subcommittee, my name is Shay Assad. I serve as the Director of Defense Procurement and Acquisition Policy. Before assuming this position in April 2006, I served as the Senior Contracting Official within the Marine Corps. Prior to entering government service in 2004, I spent 25 years in industry serving as a member—serving in a number of operational and contract management capacities, primarily with Raytheon Company. My experience includes serving as a Senior Vice President of Contracts, and President and Chief Operating Officer of one of Raytheon’s major subsidiaries, and lastly as an Executive Vice President and Chairman and Chief Executive Officer of one of Raytheon’s major subsidiaries.

Thank you for the opportunity to participate in today’s discussion on contracting for services and interagency contracting practices. I would like to take a moment to thank the committee for its support of our troops and all you have done to help with their mission.

In your invitation to appear before this subcommittee, you stated that you were interested in hearing my views on several matters related to DOD contracting. With regard to the findings and recommendations of the advisory panel, I have read the draft advisory report. It is comprehensive and covers matters ranging from the workforce, small business participation, ethics, contracting for services, interagency contracting, and commercial practices, to name a few. The report certainly provides a framework for improvement in a number of areas and we will be busy addressing them. In general, I agree with most of the panel’s recommendations.

With regard to the joint interagency contracting reviews of the Inspectors General, as was noted in our written response to the DOD IG’s reports, we have concurred with their findings and we are taking several steps to respond to those findings. I recently met with both the DOD IG and the Department of Interior (DOI) IG in order to review each and every finding that were the result of their initial second year audit of the DOI contracting activities.

We will continue to work diligently with our sister agencies to further improve business practices and to more effectively conduct business in a manner that is compliant with fiscal law requirements. We believe the progress being made is responsive to the findings of the DOD IG and will help ensure that in an overall sense DOD funds are spent wisely and in accordance with all Federal law and fiscal policy.

I would also like to comment on the GAO and DOD IG oversight functions. In my view both of these organizations play key and important roles. My experience with both organizations is that they are extremely competent, they are independent, and they are necessary. They either reaffirm that we are doing the job right or they highlight areas that require improvement. In either case, in general, I find their views to be constructive and meaningful.

Concerning the implementation of legislative provisions regarding the management of services contracts, most recently the DOD issued a policy memorandum implementing the legislation provisions of section 812 by requiring all DOD components to establish and implement a management structure for the acquisition of services based on dollar values and review thresholds.

With regard to the adequacy of the DOD acquisition workforce to carry out its responsibilities, in my role I serve as the functional leader of the contracting professionals of the DOD, both military and civilian. Over the past 10 years our workload has increased significantly. The number of actions in excess of \$100,000 has increased by well over 60 percent. The total value of our procurement actions has increased by well over 130 percent. I believe that our workload will continue to increase.

During that timeframe, our acquisition workforce has decreased by approximately 5 to 10 percent. We have useful information regarding the numbers of our contracting professionals and we have a very good sense of how they have been trained. We also believe that because of the downsizing of the workforce that took place in the late 1990s the overall capability of our workforce requires improvement. However, while we can surmise, we cannot determine with specificity where those shortfalls in capabilities exist.

For the past 5 months my office, in concert with the Defense Acquisition University, the military departments, and the defense agencies, has been developing a workforce assessment model that will address the skills and competencies necessary for our contracting workforce. We will complete the development of that contracting model in March 2007. Beginning in the second quarter of this year, we will begin deployment of the competency model across the entire DOD contracting workforce. This is a major undertaking and will be the first time the DOD has attempted to assess its contracting capability across the entire enterprise.

The assessment will allow the DOD to evaluate the workforce in terms of its size, its capability, its skill mix, and to develop a comprehensive recruiting, training, and deployment plan to meet the identified contracting capability gaps.

Concerning DOD contracting for services and interagency contracting, the DOD is taking action to improve the way it acquires and manages services. This integrated action involves changes and

improvements in our organization, our strategic approach, and the tactical methods we will use to acquire and manage services.

We have made organizational changes and are taking steps to improve workforce skills to more efficiently and effectively acquire services. In addition to my duties as the Director of the Defense Procurement and Acquisition Policy Organization, I am now charged with the responsibility for oversight of strategic sourcing activities across the DOD. In this new role, I am responsible for working with the military departments and the defense agencies to craft a coordinated and integrated strategic approach to the acquisition and management of services.

We concurred with the GAO when they said that a more coordinated and integrated strategic approach to acquiring services was necessary. DOD is developing that approach. The basic tenets of our architecture are straightforward and simple: maximum use of competition, use of acknowledged best practices, appropriate application of performance-based approaches, enhanced contract surveillance by early on identification of appropriate contract performance metrics, quality assurance surveillance plans included in our contracts, appointment of properly trained contracting officer representatives, enhanced application of past performance information, and finally, maximum small business participation in socio-economic goal achievement.

In conclusion, I believe that there is not another organization that rivals the procurement and contracting expertise residing within the DOD. The range and depth of the approximately \$300 billion of items and services that we buy on an annual basis are unparalleled in any other procurement organization in the world. Our training programs are the envy of industry. The contracting functions that we perform are not trivial. Whether contracting for base operating support, contingency contracting, or the procurement of an aircraft carrier, our contracting professionals require unique and significant skill and expertise.

We recognize that there is much improvement needed in order to ensure that we provide the most effective and efficient means of contracting for the goods and services necessary to support our warfighters. We must always remember, however, that while we strive to provide our warfighters the very best, we must also ensure that we do so while being good stewards of taxpayer funds. Our warfighters deserve nothing less and our taxpayers rightfully should insist on nothing less.

Mr. Chairman, I thank you and the members of the committee for your interest in our efforts and would be happy to address any questions that you may have for me. Thank you very much, sir.

[The prepared statement of Mr. Assad follows:]

PREPARED STATEMENT BY SHAY ASSAD

Chairman Akaka, Senator Ensign, and members of the subcommittee: I am Shay Assad and I serve as the Director, Defense Procurement and Acquisition Policy in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics. Before assuming this position in April 2006, I was the Assistant Deputy Commandant, Installations and Logistics (Contracts) for the Marine Corps and, as such, served as the senior civilian contracting official within the Marine Corps.

Prior to Government service, I spent 25 years in industry serving in a number of operational and contract management capacities, primarily with Raytheon Company. My experience includes serving as a Senior Vice President of Contracts, a

President and Chief Operating Officer of one of Raytheon's major subsidiaries and lastly, as an Executive Vice President of the company and the Chairman and Chief Executive Officer of one of its major subsidiaries. I am a graduate of the United States Naval Academy and I started my career as an officer in the United States Navy serving two tours on U.S. Navy destroyers and lastly as a Navy Procurement Officer at the Naval Sea Systems Command.

Thank you for the opportunity to appear before you today to participate in today's discussion on contracting for services and interagency contracting practices. I would like to take a moment to thank the committee for its support of our troops and all you have done to help with their mission. I would also like to thank the men and women who serve our great country. When I say men and women, I mean our military service men and women, our Government civilian employees and those in industry who support our mission. None of us could get the job done without the other.

The Department of Defense (DOD) acquisition team strives to provide our warfighters the support they need, consistent with responsible management and stewardship to our taxpayers. We strive to effect timely acquisition planning, contract execution and responsible contract management oversight in order to provide our warfighters the contractor support they need to accomplish the mission. We are doing everything it takes to make sure our soldiers, marines, airmen, and sailors are provided with the safest, most dependable, and highest performing equipment available within fiscal constraints, together with the logistics and material support necessary to ensure performance whenever, and wherever they are needed. We will continue to work everyday to improve the service that we provide our men and women in the Armed Forces.

In your invitation to appear before this subcommittee you stated that you were interested in hearing my views on several matters related to DOD contracting. Among them were: (1) the findings and recommendations of the Acquisition Advisory Panel; (2) the results of the joint reviews conducted by the Department of Defense Inspector General (DOD IG) and the Inspectors General of the other Federal agencies; (3) the implementation of legislative provisions regarding the management of services contracts; (4) the adequacy of the DOD acquisition workforce to carry out its responsibilities; and (5) DOD contracting for services and interagency contracting. For the record, I will provide a brief summary of my views.

ACQUISITION ADVISORY PANEL FINDINGS AND RECOMMENDATIONS

With regard to the findings and recommendations of the Acquisition Advisory Panel, I have read the draft Acquisition Advisory Panel Report. It is comprehensive and includes a number of recommendations and findings on matters ranging from the workforce, small business participation, ethics, contracting for services, interagency contracting and commercial practices, to name a few. The report certainly provides a framework for improvement in a number of areas and we will be busy addressing them. While I agree with most of the panel's recommendations, I would like to note that with regard to the recommendations concerning the assessment of the acquisition workforce, the Department has already done a significant amount of work in this area. We already have an AT&L Human Capital Strategic Plan and we are moving forward with our workforce assessment initiatives.

INSPECTOR GENERAL REVIEWS

With regard to the joint interagency contracting reviews of the Inspectors General, as was noted in our written response to the DOD IG's reports, we have concurred with their findings and we are taking several steps to respond to those findings. I recently met with both the DOD IG and the Department of the Interior (DOI) IG in order to review each of the recent findings that were the result of their initial second year audit of DOI contracting activities.

The Department takes seriously its fiduciary responsibilities and we are working closely to effect both programmatic and financial corrective actions that will ensure mission accomplishment and protect the integrity of our fiscal requirements. Our efforts to effect sound financial management of our complex business area are an object of continuous improvement. We believe that actions being taken are resolving the issues identified in the audit reports. As we make progress to resolve the issues surrounding Interagency Agreements, we are working concurrently with our providers of goods and services as well as the DOD IG to seek optimum solutions.

At the very heart of the issue is an understanding that departmental funds have a common and consistent statutory basis, regardless of the agency that we charge with executing those funds. It is both our philosophy and practice that "the (fiscal)

rules follow the funds.” Much improvement has been made over time and some of the significant financial actions taken include the following:

- Established and reinforced standard fiscal policy and correction of common misinterpretations that exist both within and outside the Department. Our new policy provides a standard business model for conducting business with other Federal agencies, regardless of their statutory authority. In essence, the policy establishes the requirements for initiating an agreement, the timing of the obligation, and the period of performance.
- Ensure that the use of an Interagency agreement is consistent with its statutory authority.
- Tightened internal controls to more effectively manage agreements with other Federal agencies. For example, DOD Components are now required to conduct tri-annual reviews to validate open obligations on Interagency Agreements.
- Reviewed all Interagency Agreements and the financial records from the providers to determine the status, reconcile transactions, return outstanding balances, and take corrective actions to ensure compliance with fiscal policy requirements. As a result, approximately \$550 million has been deobligated.

In addition to these measures, we are clarifying our advance payment policy. The Department will also evaluate internal fund certification policy and related training requirements to improve accountability, understanding of fiscal requirements, and further strengthen internal controls.

We will continue to work diligently with our Interagency partners to further improve business practices and to more effectively conduct business in a manner that is compliant with fiscal law requirements. The Department’s new financial policy has taken the proper approach to business being conducted with our interagency providers.

We believe the progress being made is responsive to the findings of our DOD IG and will help ensure that, in an overall sense, DOD funds are spent wisely and in accordance with all Federal law and fiscal policy.

I would also like to comment on the Government Accountability Office (GAO) and the DOD IG oversight functions. In my view, both of these organizations play key and important roles. My experience with both organizations is that they are extremely competent, independent, and necessary. They either reaffirm that we are doing our jobs or they highlight areas that require improvement. In either case, in general, I find their views to be constructive and meaningful.

IMPLEMENTATION OF MANAGEMENT OF SERVICES CONTRACTS LEGISLATIVE PROVISIONS

Concerning the implementation of legislative provisions regarding the management of Services’ contracts, over the past years there have been numerous legislative provisions that have addressed the Department’s management of services contracts. We have responded with incremental policy and regulation revisions. While we are in process of developing policy associated with the National Defense Authorization Act (NDAA) for Fiscal Year 2007, most recently, the Under Secretary of Acquisition, Technology, and Logistics (USD(AT&L)) issued policy on October 2, 2006 implementing the legislative provisions of section 812 of the NDAA for Fiscal Year 2006 by requiring all DOD components to establish and implement a management structure for the acquisition of services, based on dollar values and review thresholds. The DOD components have largely completed their implementations. However, in addition, the Department is now taking a strategic approach to the acquisition of services, and is developing a comprehensive DOD-wide architecture for the acquisition of services. Basic tenets of this architecture will include:

- Maximum use of competition to ensure pricing based on competition.
- Use of acknowledged best practices.
- Appropriate application of performance-based approaches.
- Enhanced contract performance management supported by:
 - Early-on identification of appropriate contract performance metrics.
 - Quality Assurance Surveillance Plans included in the contract.
 - Appointment of properly trained contracting officer representatives.
- Enhanced application of past performance information.
- Maximum small business participation and socio-economic goal achievement.

ACQUISITION WORKFORCE

With regard to the adequacy of the DOD acquisition workforce to carry out its responsibilities, in my role I serve as the functional leader of the contracting profes-

sionals of the DOD, both civilian and military. I am also a member of the Acquisition, Technology, and Logistics Steering Group established by the USD(AT&L) to address the implementation of our AT&L Human Capital Strategic Plan.

Frequently, I am asked two questions regarding our workforce: (1) whether or not we have enough people in the Department to perform our mission effectively, efficiently, and in a manner that assures the lawful operation of the Federal acquisition system; and (2) whether or not our contracting workforce is sufficiently qualified to do the same.

Over the past 10 years our workload has increased significantly. The number of actions in excess of \$100,000 has increased by over 60 percent, the total value of our procurement actions has increased by well over 100 percent and I believe that our workload will continue to increase. During that timeframe, our acquisition workforce has decreased by approximately 5–10 percent.

We have useful information regarding the numbers of our professional contracting employees and we have a very good sense of how they have been trained. We also believe that because of the downsizing of the workforce that took place in the late 1990s the overall capability of our workforce requires improvement. However, while we can surmise, we can not determine with specificity, where those shortfalls in capability exist.

Earlier in my comments, I mentioned that we have done a significant amount of work associated with the assessment of our workforce. For the past 5 months, my office, in concert with the Defense Acquisition University, the military departments and the defense agencies, has been developing a model that will address the skills and competencies necessary for our contracting workforce. We will complete development of the contracting competency model in March 2007. Beginning in the second quarter of calendar year 2007, we will begin deployment of that competency modeling across the entire DOD contracting workforce. This is a major undertaking and it will be the first time the Department has attempted to assess its contracting capability across the entire enterprise. The modeling will enable us to assess workload demands for and the degree to which members of the workforce possess these competencies. The competency assessment will also allow the Department to assess the workforce in terms of size, capability, and skill mix and to develop a comprehensive recruiting, training, and deployment plan to meet the identified capability gaps.

DOD CONTRACTING FOR SERVICES AND INTERAGENCY CONTRACTING

Concerning DOD contracting for services and interagency contracting, the Department is taking action to improve the way it manages and acquires services. This integrated action involves changes and improvements in: (1) our organization, (2) our strategic approach, and (3) the tactical methods we will use to manage and acquire services. We have made organizational changes and are taking steps to improve workforce skills to more efficiently and effectively acquire services. In a recent organizational realignment within the Department, responsibility for Strategic Sourcing has been moved to the Acquisition and Technology organization. In addition to my duties as the Director of Defense Procurement and Acquisition Policy, I am now charged with the responsibility for oversight of the strategic sourcing activities across the Department. In this new role, I am responsible for working with the military departments and the defense agencies to craft a coordinated and integrated strategic approach to the management and acquisition of services.

We believe the consolidation of the development of acquisition and procurement policy with the oversight of strategic sourcing of services will result in a more cohesive and integrated approach. It will ensure that the tactical approaches utilized within the Department are consistent and aligned with the strategic objectives for the acquisition of services.

In addition, the Department has set a course to completely reassess its strategic approach to services. This involves the examination of the types and kinds of services that we acquire and an integrated assessment of how to meet the needs of our warfighters while ensuring that the expenditure of taxpayer funds is wise and effective. We concurred with the GAO when they said that a more coordinated and integrated strategic approach to acquiring services is necessary. The ongoing reassessment also includes examination of how those services are acquired by the Department or how they are acquired on its behalf by other Federal agencies, such as General Services Administration (GSA) and the DOI. We expect to have the reassessment completed in the second quarter of calendar year 2007.

Upon completion of that reassessment, we will develop an effective strategic sourcing deployment plan. We expect the plan to be completed in calendar year 2007. The fundamental tenets of our strategy will be straightforward: Ensure that we effectively and efficiently, in terms of both timeliness and cost effectiveness, ac-

quire the services necessary to meet the needs of our warfighters. Underpinning our strategy will be the utilization of contracting tools that ensure competition whenever possible.

While we look for areas where combined buying power will result in savings, we are ever mindful of our responsibilities to fulfill the socioeconomic goals of the Department. It is our belief that the use of competition, at all levels, is the most effective tool we have in the acquisition of services.

Finally, we must implement our strategy with straightforward and simple tactical methods: (1) ensure that we clearly identify our requirement; (2) select the most efficient and effective tool to acquire particular services; (3) drive consistency and discipline across the Department; and (4) ensure that we have metrics and accountable individuals who will oversee performance.

We would like to point out some specific actions we have taken with regard to interagency contracting and contract surveillance. With regard to interagency contracting, the Department is proactively and aggressively working to improve policies, procedures and oversight of interagency acquisitions. DOD is an active participant in the Office of Federal Procurement Policy (OFPP) working group to improve the management and use of interagency contracts. We are working with the GSA and DOI to reconcile and return unused funds to DOD. For example, by working together, GSA has already been able to return virtually all unused DOD funds from prior years. We continue to update policies and procedures to ensure DOD properly uses "Assisting Agencies" (e.g. GSA, National Aeronautics and Space Administration, Interior, and Treasury) acquisition services. For example, we have issued revised guidance specific to interagency acquisition and now require DOD components to review interagency acquisitions as part of our tri-annual review process. We are coordinating with the Under Secretary of Defense (Comptroller) (USD(C)) and the Office of General Counsel on issuing additional legal guidance governing the proper use of funds under interagency agreements.

The Department has issued a series of policy memos on Interagency Acquisition dating back to October 2004. The policies established standards for using assisting agencies providing acquisition support to the Department. The policies were issued both jointly by USD(AT&L) and USD(C) and separately by each organization. In addition, we developed and revised training materials to address the deficiencies identified in the Interagency Acquisition process.

Since April 2006, the Department has collaborated with the senior leadership at GSA, National Aeronautics and Space Administration, Interior, and Treasury to identify solutions to the issues identified in the audits. We have hosted a number of meetings with the military department Senior Procurement Executives to collaboratively strategize on long-term goals and objectives related to interagency acquisition.

We recently signed a memorandum of agreement with the GSA that includes an action plan that addresses 24 specific actions the Department and GSA will undertake to ensure acquisition excellence when GSA acts on behalf of DOD. The Administrator of General Services has also issued guidance that brings her agency's fiscal policies into harmony with DOD's. We expect to have similar agreements with all executive agencies that support the Department. Additionally, the Department has been very active in working with the OFPP on their study of the proliferation of multiple award contracts and the Government's response to GAO's High Risk Report of January 2005, which added the "Management of Interagency Contracting" as an issue area.

In October 2006, the Department issued a policy memorandum that requires a DOD contracting officer review any action greater than \$500,000 that is going to an assisting agency for contract placement. This review should assist in alleviating many of the concerns raised in recent audit reports.

When utilizing interagency acquisitions our goals and objectives are the same as if we were doing the acquisition ourselves: acquiring the right product or service, at the right price, at the right time, consistent with statute, regulation and policy. When done properly interagency acquisitions can be an efficient and effective means to meet critical DOD requirements. It maximizes the buying power of the Department and is a good business decision. When done improperly interagency acquisitions can be inefficient, ineffective, and result in poor business decisions.

With regard to contract surveillance for contracts for services, we have made numerous adjustments to our policies and guidance. We issued a policy memorandum, "Interagency Acquisition: A Shared Responsibility," dated September 20, 2005, which addresses proper contract administration functions. We also updated and clarified the Defense Federal Acquisition Regulation Supplement (DFARS) and DFARS Procedures, Guidance, and Instructions with a requirement for designating a properly trained Contracting Officer's Representative (COR) before contract per-

formance begins and issued a policy memorandum in December 2006, reinforcing this requirement. The Defense Acquisition University deployed an updated, web-based COR training module "COR with a Mission Focus" in December 2005.

In conclusion, I believe that there is not another organization that rivals the procurement and contracting expertise residing within the DOD. The range and depth of the approximately \$300 billion of items and services that we buy on an annual basis are unparalleled in any other procurement organization in the world. Our training programs are the envy of industry. The contracting functions that we perform are not trivial. Whether contracting for base operating support, contingency contracting or the procurement of an aircraft carrier, our contracting professionals require unique and significant skill and expertise. We recognize that there is much improvement needed in order to ensure that we provide the most effective and efficient means of contracting for the goods and services necessary to support our warfighters. We must always remember, however, that while we strive to provide our warfighters the very best, we must also ensure that we do so while being good stewards of taxpayer funds. Our warfighters deserve nothing less and our taxpayers, rightfully, should insist on nothing less.

Mr. Chairman, I thank you and the members of the committee for your interest in our efforts, and would be happy to address any questions that you may have for me. Thank you.

Senator AKAKA. Thank you very much for your testimony.

I am going to defer to Senator Ensign and ask that we maintain a 5-minute time limitation for each. I will do the last questioning.

Senator ENSIGN. Thank you, Mr. Chairman.

Mr. Assad, Congress required in the NDAA for Fiscal Year 2006 the DOD to study the feasibility of establishing the position of chief management officer within the DOD. The GAO has long advocated and the Comptroller General, Mr. Walker, has often testified on the need of such senior leadership positions to help oversee and manage defense business transformation efforts.

The report was due to Congress by December 1, 2006. I understand that you have been told to expect this question. I will ask the question and make one quick comment. What is the status of the report on having a chief management officer oversee business transformation at the DOD, and to what extent do you know what is DOD's position?

One caveat to that. I just want you to know that we have understood that we are not going to receive the report and we are going to receive the recommendations based on the report, but not the report itself. I just want you to know that if we do not receive the report that I will be recommending to Senator Akaka that the bill that he and I have introduced to form this position, that we will recommend that it goes into this year's defense authorization bill.

So what is your response to the question?

Mr. ASSAD. Senator, I was not aware that the report was not going to be delivered and that just recommendations were going to be delivered in March. My understanding is that the report is complete and it is in coordination and it is being reviewed, and that our senior leadership will be reviewing that report shortly with the Secretary. Beyond that, I do not know much more about the status of the report other than that it is in coordination and it is expected to be completed in March.

I will take for the record and back to my senior leadership, I understand very clearly what you are saying, sir.

Senator ENSIGN. Thank you.

[The information referred to follows:]

The report by a Federally Funded Research and Development Center required by section 907 of the National Defense Authorization Act for Fiscal Year 2006 was pro-

vided to the chairman and ranking member of the Senate Armed Services Committee and the House Committee on Armed Services by Deputy Secretary England by letter on January 31, 2007. As stated in these letters, Deputy Secretary England intends to reserve comment on the report by the Institute for Defense Analysis and S.179, which would establish a Deputy Secretary for Management until he is able to fully discuss these management issues with Secretary Gates. These discussions are expected to be completed in March 2007.

Senator ENSIGN. Go ahead.

Senator AKAKA. I just want to tell Senator Ensign—and he knows this—that I share his views on the issue he just mentioned. If we do not get the report in a timely manner, we will certainly have to give strong consideration to including a chief management officer provision in the committee mark.

Senator ENSIGN. Thank you, Mr. Chairman.

Mr. ASSAD. Thank you, Mr. Chairman. I know that we have both been trying not to force this on the military. Secretary England had asked us to wait and do this report and we did the in lieu of that. So we are anxiously awaiting that so that we can make the decision whether or not to include that this year. So we look forward to that report.

In both his report and his testimony, the DOD IG labeled problematic the practice of DOD using advanced payments on orders made through the DOI. As I understand it, the DOD fully pays for goods and services before the DOI has even awarded the contract. For both of you: Do you agree that using advance payments is a bad practice? Why or why not? Mr. Assad, what specific steps, if any, has the DOD taken to mitigate the problem?

Mr. DENETT. It should not be done, and I will yield to them, because I know DOD has worked aggressively with GSA and DOI and others so that they can get fiscal responsibility on record. I will let him address what they have done.

Mr. ASSAD. Yes, sir. In the past it is true that we have in fact advanced paid DOI for purchases through GOVWORKS and other organizations, and the Comptroller, DOD Comptroller, right now is assessing that particular policy and is considering changing that policy. That should come out very shortly.

I do not concur, I do not agree with making advance payments. I do not think it is necessary and I think that the Comptroller is taking that under serious consideration.

Senator ENSIGN. Thank you.

Mr. Chairman, we have a couple votes coming up, so to make sure that both of you get to ask your questions I will yield and submit the rest of my questions in writing.

Senator AKAKA. Thank you very much, Senator Ensign.

Senator McCaskill.

Senator MCCASKILL. Just a couple of things. I noticed in the testimony of one of the panel members they were talking about interagency contracting and part of it they were saying is we cannot figure out to what extent some of the interagency work is competitive. They said there were many factors that made it difficult for them to figure out whether or not these interagency contracts were in fact competitive. She specifically mentioned DOD policy.

I would appreciate it, Mr. Assad, and you do not need to do this today, but if in writing you would explain the DOD policy that

makes it more difficult for us to keep a very strong handle on whether or not the interagency contracting is in fact competitive.

Mr. ASSAD. Yes, ma'am, I will be happy to do that. I am not aware of any policy that we have that would cause that to happen. But I will absolutely research it and get back to you.

[The information referred to follows:]

In my original response to your question, I indicated that I am unaware of any policy of the Department of Defense that makes it difficult to know whether interagency contracting is, in fact, competitive. Subsequently, I have reviewed the Federal Acquisition Regulation (FAR) at Subpart 8.4 regarding the ordering procedures for Federal Supply Schedules, also known as multiple award schedules. The FAR outlines certain procedures, depending upon the applicable monetary threshold, for placing orders or establishing blanket purchase agreements for supplies and services. If these procedures are followed, the FAR stipulates the order is considered to be issued using full and open competition. However, the FAR procedures recognize limited circumstances when consideration of schedule vendors may be restricted and orders placed on a sole source basis. The Department is working with the Office of Federal Procurement Policy and GSA to review practices for reporting orders against Federal Supply Schedules in the Federal Procurement Data System to ensure consistent practices are used for reporting such orders and that differentiation is made between orders that have been competed and those that have not been competed.

Senator MCCASKILL. I will take the extra step of visiting with the panel members and making sure that I can specify the policy they are referencing that is making it more difficult for us to figure out of it is competitive.

Mr. ASSAD. Okay.

Senator MCCASKILL. The other thing I would like from you in writing is how many times that you are aware of—and I will ask others in the DOD this when the time is appropriate—how many times you are aware of the there has ever been a criminal or administrative action taken under the Anti-Deficiency Act (ADA) within the DOD?

[The information referred to follows:]

The Department has made measurable progress on Ant-deficiency Act (ADA) violations. The attachment shows ADA violations status and progress on actions since 2003.



UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON DC 20301-1100



COMPTROLLER

The Honorable Claire McCaskill
United States Senate
Washington, DC 20515

February 23, 2007

Dear Senator McCaskill:

Thank you for the opportunity to discuss the Department's Financial Management progress on February 8th and to brief your staff today.

The Department has made measurable progress on Antideficiency Act (ADA) violation issues (enclosed). Specifically, since Fiscal Year 2003, the Department has reduced ADA violations reported to the President by 38%. Additionally, the Department has reduced the number of backlogged cases by 47% since Fiscal Year 2003.

As I told you during our discussion, the DoD IG made 12 specific recommendations to my office to correct problems with purchases made from other federal agencies. As of February 14th, all 12 recommendations have been implemented. Unfortunately, we expect the number of ADA cases to increase in FY2007 as a result of the DoD IG's ongoing audits. To correct the deficiencies, the Department has established an ADA metrics oversight program, expanded the availability of ADA investigator training courses, and increased the training on statutory and regulatory requirements.

We appreciate your interest and concerns. I look forward to working with you in the future.

Sincerely,

Tina W. Jonas

Enclosure:
As stated



DoD ADA Violations Status

	FY03	FY04	FY05	FY06	Reduction
Cases Reported to President	26	21	14	16	38%
Number of Backlogged Cases	38	23	22	20	47%

Actions On ADA Violations Since 2005

	FY05	FY06	1st QTR FY07	Total
Cases Resulting in Punishment	7	9	3	19
Cases with No Willful Intent	7	7	0	14
Cases Resolved through Correction of Appropriation	1	7	3	11

*Data as of 31 January 2007

Mr. ASSAD. Well, let me just give you a little bit of a framework for the ADAs. We have had about 150 investigations in fiscal years 2005, 2006, and 2007. Of that 150, ADA investigations that we have done, we have determined that about 30 of them, approximately 20 percent, have in fact been ADA violations. Of those 30, I think about 10 or 11 resulted in adverse personnel actions.

What the exact action was, I do not have that. But I can tell you it is about a third of those things that we find are in fact ADA violations, about a third of them result in adverse action. Whether it is criminal or not, I could not answer that.

Senator MCCASKILL. That is something I would like to know, and I would like to know if anyone has lost their job because of an Anti-Deficiency violation, the ADA.

Mr. ASSAD. Yes, ma'am.

Senator MCCASKILL. It was also interesting to me, in the letter I got from the IG after a specific inquiry I made in the last hearing he said that many of them can be corrected with an accounting entry. They can go back and make an accounting entry. I am curious if there is any discipline action taken towards that employee or if everybody can go back and just make the correcting accounting entry and it is no harm, no foul?

Mr. ASSAD. Well, I think that if there has been a deliberate intent to do something that is not proper, then I do not think there is—I think no harm, no foul is not the case. But oftentimes what we do is we do discover that there has been an inadvertent error, whatever it might be, that would have caused it, and so you can go back and correct the funding in the fiscal year while it is happening.

Senator MCCASKILL. My concern is it seemed to be a wholesale activity in terms of spending expired funds, and if this was a matter of being able to go back and correct the fiscal year that it was

attributable to, if it has been done literally hundreds of times that the IG report indicated, it is hard for me to believe that this is isolated error.

Mr. ASSAD. We would be happy to brief the committee or to brief your staff with some further details on the ADA.

Senator McCASKILL. That would be great.

Thank you both very much.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you.

Mr. Assad, last October DOD issued a new policy setting forth the following objectives, and I have five here: one, acquisition of services should be based on clear performance-based requirements; two, expected cost, schedule, and performance outcomes should be identifiable and measurable; three, acquisitions of services should be properly planned and administered; four, services should be acquired by sound business arrangements that are in compliance with applicable statutes, regulations, and policies; and five, services should be acquired using a strategic enterprise-wide approach which is applied to both the planning and the execution of the acquisition.

Unfortunately, DOD remains far short of these objectives. My question to you, Mr. Assad, is would you agree that some of the objectives of your new policy, such as the development of clear performance-based requirements and measurable performance outcomes, are likely to be resource-intensive?

Mr. ASSAD. I do agree, Senator, that it will require additional resources or capability to make sure that the happens. I am not sure we need more people to do it, but we certainly need to refocus the capability that we have to ensure that that gets done. Part of our strategic approach to the acquisition of services—I provided the committee a slide on that. Part of that approach is to look at that capability and to see how we in fact need to realign some capability to get that done.

There is no doubt about it, there is a great payoff. If we do this right, defining requirements properly, writing good statements of work, ensuring that we have proper metrics, ensuring that we have quality control assurance surveillance plans, there is no doubt that we can save some money here.

Senator AKAKA. Mr. Assad, I understand that you have proposed the development of a multifunctional support cadre to assist in the acquisition of services by the DOD. These functional experts would help DOD apply best practices, state requirements early, develop acquisition objectives, draft quality assurance and contractor surveillance plans, identify appropriate performance measures, and develop incentive fee structures tied to expected outcomes.

Do you currently have trained acquisition experts in the DOD who are available to perform these functions, or would new resources be required?

Mr. ASSAD. Senator, we do not have overall enterprise-wide the capability to do this. We have pockets of this capability that exists now and they do it very well. I will tell you that my perception is that one of the things that we are doing is we have asked all four Services—Army, Navy, Marine Corps, Air Force—to take a look at

how they are organized and how they would respond to that multifunctional support capability.

We expect to get our first inputs from the Services probably by the end of March. We then intend in the second quarter to sit down with the service acquisition executives to examine the resources that are necessary to get this job done, because there is no doubt about it, if we focus on this multifunctional support cadre concept we can save money.

Senator AKAKA. To both you, Mr. Denett, and Mr. Assad. At our earlier hearing our GAO witness testified that the Federal Government has failed to make needed investments in its acquisition workforce. One of the results, according to GAO, is that we have become more and more reliant upon contractors, even when it comes to performing acquisition functions.

According to GAO, "Contractors now provide services for which DOD has historically had in-house capacity. For example, we have recently reported on the declining status of cost estimators in the space acquisition community and have heard concerns about losing capability in other key functions, such as pricing and systems and software engineering."

To both of you: Do you agree or disagree with GAO's assessment? Does it concern you that we may have lost the capability to perform some basic acquisition functions in house, including cost estimating and system and software engineering? Also, what steps do you think we need to take to address this problem?

Mr. DENETT. We have had a decrease in the availability of cost estimators. I think that is a mistake. The procurement shops that I have run over the last 3 decades, I always had a cost estimator. They are worth their weight in gold. They always find things and assist negotiators in identifying things that you could negotiate and get better deals.

I think we need to make sure that we increase our capabilities in that area, that we have our contracting people also get trained in cost-price analysis. They do get some training. They need more. We are offering courses through the Defense Acquisition University and Federal Acquisition Institute. We have to make sure we have adequate funds and people actually get that training so they can apply it.

I believe this is an extremely important area, and I think Mr. Assad can tell you about some good initiatives that he is taking in this area.

Mr. ASSAD. Senator, I also agree with Mr. Denett with regard to cost and pricing skills. That capability in general needs in my opinion significant improvement across the board. What are we doing about it? Well, the first thing we need to do is understand where we are at. So that is what this competency modeling is all about. We have been working for the past 5 months to develop a competency model. It is complete. We have the preliminary model right now. We are going through a final review of that model within our own organization. We have had 400 of our best folks look at it, give us their views of what they think.

Starting in the second quarter of this year, we intend to apply that model across the entire workforce. It is going to take us about

a year to get that done. It is 26,000 people. At the end of that, we will have a much better feel for what our capability shortfalls are.

The situation that we have right now is that if Mr. Krieg or the Under Secretary was to come to me or Mr. Finley and say, here is an additional X number of people, we could not tell them where we want them, what skill sets they should have, where exactly, which location do we want to place them in. When we get this work done, we will be in a much better position to do that.

Senator AKAKA. There is a vote on now, so we are going to have to answer that call. But I want to thank you so much for your responses. I have additional questions that we will put into the record for your response. I would like to thank you very much for your responses here today. Of course, we look forward to dealing with this problem and to make important progress to help save our country money that is being really wasted. We have objectives, but we have not met them, and we will continue to look at this as a committee and hope that we can make better progress than we have made already.

So I thank you very much. This concludes the hearing.
[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JOHN ENSIGN

PERFORMANCE-BASED SERVICE ACQUISITION

1. Senator ENSIGN. Ms. Madsen, for quite some time, there has been much talk about using a performance-based service acquisition approach, an approach that focuses on describing results and measuring contractor performance, rather than dictating the manner in which the contractor performs the work. In its draft report, the panel suggests that our acquisition workforce currently has problems understanding and, consequently, implementing such an approach. With respect to the acquisition of services, what are the advantages in using a performance-based acquisition (PBA) approach?

Ms. MADSEN. As discussed in the panel's report and in testimony before the panel from numerous private sector witnesses, there are many direct advantages of using PBA. Achieving any of those benefits, however, is predicated on the acquiring organization determining its requirements for the acquisition of services. If an organization is capable of determining and stating its needs and doing so in the form of performance objectives, PBA can be an extremely valuable tool that allows entities to transform their business practices and to reduce their costs. At the heart of PBA, however, is the necessity for the acquiring organization to make critical decisions about what it wants to achieve and state those decisions as performance objectives. This approach allows suppliers to apply their knowledge and experience and innovate to provide the best solution. Also, both providing incentives that encourage innovation by the suppliers and monitoring performance to make sure the incentives are working are critical to PBA.

The panel heard considerable testimony from major commercial buyers about their use of PBA. All of them emphasized the need for a rigorous and disciplined requirements definition process that occurs at a high level in the organization where management is focused on driving the business forward. It eschews allowing parochial interests to determine outcomes. The presenters told the panel that these are hard decisions and some companies actually may exclude parts of the organization that may be too change resistant. The approach is to state outcomes and let the experts, who are the suppliers, create innovative solutions. The advantages that were presented to the panel included:

- (i) a focus on the organization's key mission needs and the results that are required to meet those needs;
- (ii) harnessing supplier expertise and creativity to provide solutions (rather than performing to a specification), and to continue to improve the solution;
- (iii) improved competition;
- (iv) with appropriate incentives, enhanced performance;
- (v) less performance risk; and

(vi) lower costs.

2. Senator ENSIGN. Ms. Madsen, what are the risks inherent in using this approach?

Ms. MADSEN. The panel heard testimony from buyers and sellers alike, including government buyers and government contractors about how failure to define requirements, failure to create proper incentives, and failure to monitor performance all can lead to unsuccessful contracts, not to mention disputes and investigations. There is also a risk of misapplying PBA to efforts that should be strictly prescribed, such as in the case where failure to perform to specific guidelines risks public health and safety. The Government Accountability Office (GAO) has recognized that in these circumstances, PBA is not appropriate. Therefore, the panel recommends developing a PBA assessment tool.

3. Senator ENSIGN. Ms. Madsen, how are these risks exacerbated by an acquisition workforce that has not been properly trained to understand and implement PBA initiatives?

Ms. MADSEN. Certainly training and qualifications are important. The difficult issues arise in complex, high value and technology-heavy acquisitions. As we heard from the private sector, the individuals involved in structuring large transactions are very highly-credentialed and experienced. Corporations treat these large services deals as significant to their bottom line. For most companies, we heard that the key group involved in such transactions is small, experienced, familiar with the marketplace and likely supplemented by experienced outside advisors. Part of the message is that not every government acquisition professional should be handling large and complex services transactions. Nor is every acquisition suitable for use of performance-based techniques.

In addition, the panel learned that there are aspects of PBA that can be applied in many contexts to services procurements, even when the entire acquisition is not suitable for performance-based techniques.

Significantly, the panel's recommendations emphasize the need for improved training, including specialized training for individuals tasked as Contracting Officer Performance Representatives. The panel also recommended that, under the Office of Management and Budget's (OMB) guidance, agencies be given better tools to determine when PBA is appropriate, as well as guidance on structuring incentives.

The key to successful PBA, however, remains requirements definition and high level management involvement and commitment to the use of a performance-based approach. There are management issues here that transcend training of acquisition personnel.

4. Senator ENSIGN. Ms. Madsen, I think we all agree that there is a difference between common, routine, or relatively simple service acquisitions and long-term or complex service acquisitions. A "one-size-fits-all" approach is therefore not appropriate. The panel's report recognizes as much. What criteria should be used in deciding whether a service acquisition should be performance-based?

Ms. MADSEN. The panel's findings and recommendations recognize that the government-wide quota of requiring 40 percent of acquisitions be performance-based is not consistent with analysis of individual agency missions and procurement portfolios. The panel agrees that goals are important, but believes the each agency's mission should be taken into account. The panel believes that OMB guidance would be helpful and it should allow each agency to assess its own ability to make use of PBA.

In this regard, the panel recommended that the Office of Federal Procurement Policy (OFPP) should provide much more explicit guidance about the use of PBA and actually recommended creation of a self-assessment tool to assist agencies in analyzing when to use PBA. This tool would guide a user through an analytical process that would, hopefully, produce better decisions about the use of PBA in particular circumstances. Some of the analytical points are: (i) identifying if there is a baseline issue that is performance-related, such as cost or quality; (ii) examining the level of risk to the agency and its mission of not having the services provided at the highest levels (i.e., can the agency tolerate less than optimal performance?); (iii) whether the agency has an adequate work statement to address the baseline problem, or whether that work statement requires refinement; (iv) whether the agency is in a position to shift risk for management of the performance to the vendor, or for policy reasons the agency must have direct management responsibility; (v) whether agency/program management is ready to accept having the service quality measured on a performance basis; and (vii) whether the staff (acquisition and program staff) are trained and prepared to use PBA. This list of issues illus-

trates what the panel heard from the private sector—that PBA involves a careful internal analysis of the organization’s objectives and senior management commitment.

5. Senator ENSIGN. Ms. Madsen, can you give us specific examples of successful uses of PBAs at the Department of Defense (DOD)? Other departments or agencies? Why were they successful?

Ms. MADSEN. While the panel did not focus solely on DOD, it did conduct a random survey of acquisitions that were coded as PBA in the Federal Procurement Data System-Next Generation (FPDS-NG) for the top 10 contracting agencies, including all the services within DOD. What we found was that out of the actions reviewed, 36 percent contained all of the elements of a PBA, while 22 percent required significant improvement and 42 percent were clearly not PBA. Of those that were PBA, the use of service level agreements seemed to be effective with information technology requirements. The panel also heard testimony from agencies that one of the major impediments to achieving successful PBAs is insufficient investment of time and resources in developing the requirements and appropriate outcomes. Frequently, this lack of investment results in little or no market research and hastily or ill-defined needs. Some agencies, however, have invested in centers of expertise that analyze and write performance requirements. The Coast Guard, for instance, has set up a permanent group, that focuses solely on writing performance-based requirements for the agency. They are experienced at asking users the right questions to get to a performance work statement. They maintain and build on their experience and market expertise. They are multi-functional with experience in quality assurance, Six Sigma, etc. This is not unlike what commercial buyers build within their own organizations to ensure that they maintain expertise in the marketplace and that their description of their requirements can form the basis for a meaningful competition and successful performance. The panel suggests adopting this practice with its recommendation for agencies to establish centers of expertise in requirements analysis and a government-wide center for market research.

BROADER ACQUISITION REFORM

6. Senator ENSIGN. Ms. Madsen, over the years, this committee has enacted a number of measures aimed at reforming the DOD’s acquisition processes and practices. How do, or should, reforms in the acquisition of services fit within this committee’s broader acquisition reform efforts?

Ms. MADSEN. As discussed in my testimony, DOD actually spends more on services than on major weapons systems. That fact has significant implications for acquisition. As reflected in the panel’s findings and recommendations, there are aspects in which acquisition of services is different—or requires different skills and emphasis. Some of these aspects include the fact that technology related services are sold in the private sector involving a wide variety of skills. Private sector buyers focus on bringing the right mix of skills together for a project and on the price for that project. The government tends to buy services on an hourly basis without adequate emphasis on the objective. In addition, because the private sector sees services acquisition as a major transaction that can improve an organization’s performance and reduce its costs, services acquisition in the private sector is treated accordingly—such transactions are carefully planned, subject to competition, and managed tightly. These efforts take a different skill set and emphasis than are used in weapons system procurement. The private sector has realized that the requirements for services acquisition can be defined to permit use of fixed-price contracts, performance-based contracts, and healthy competition.

7. Senator ENSIGN. Ms. Madsen, are there common lessons learned or processes to be applied between major weapon systems acquisition—which has been on the government’s high risk list for quite some time—and service acquisition reform?

Ms. MADSEN. Key issues in common with services acquisition are:

1. the necessity for requirements development and management buy-in on requirements prior to undertaking an acquisition;
2. competition; and
3. effective management of contract incentives.

PATH FORWARD

8. Senator ENSIGN. Ms. Madsen, in the broader context of acquisition reform, do you have any suggestions for this committee on areas to focus on?

Ms. MADSEN. Congress should seek a “good government” balance between ensuring efficiency and responsible stewardship of taxpayer money. Maintaining balance is critical. The Federal Government should monitor commercial buying practices on an ongoing basis, not just each time a panel is authorized. Commercial buyers told the panel that their processes and techniques are constantly adapting to ensure continuous improvement. Continuous monitoring of these practices to determine what can be applied to the government should be the goal. In this way, we could ensure that acquisition reform is not seen as some set of immutable “reforms” developed in the mid-1990s, but rather a fluid and ongoing process that welcomes dialogue and is always ready to adapt and improve on the ideas of the past.

9. Senator ENSIGN. Ms. Madsen, do you have suggestions of possible legislative remedies that this committee should consider?

Ms. MADSEN. Of course, it would be no surprise that I would recommend the panel’s legislative recommendations. But in a more general context, as you see from the panel’s recommendations, the panel addresses areas for improvement from the earliest stages of acquisition. For instance, the panel found that the first step toward improving competition is improving the requirements definition process and making government officials responsible for those requirements. By doing so, the government can create an environment conducive to meaningful competition. Then the panel makes recommendations to improve the evaluation process, ensure reasonable award decisions, and provide debriefings and redress to contractors who invest in high dollar procurements. The panel’s interagency contracting recommendations focus on how interagency contracts are created, approved, and managed as the means to address misuse of them at the ordering level. Therefore, it is important that proposed legislation not only seek to identify problems after-the-fact, but to also create an environment with appropriate internal controls and incentives in which the likelihood of such problems occurring is reduced. When oversight mechanisms are proposed, thoughtfully applying these, perhaps based on dollar thresholds or some other characteristic is preferable to a one-size-fits-all approach. The panel was careful when it imposed oversight or “self-policing” measures favoring applying them, for instance, at higher dollar thresholds where the majority of dollars are spent rather than lower thresholds where we found the majority of transactions. Again, maintaining a “good government” balance between efficiency and responsible stewardship is critical.

DOD’S TRACK RECORD OF WORKFORCE IMPROVEMENTS

10. Senator ENSIGN. Ms. Madsen, I was struck with the urgent tone of the panel’s findings concerning acquisition workforce improvements, and the need for “immediate” action. While there has been some short-term progress, in terms of long-term human capital planning, it seems that the DOD is just scratching the surface in gaining an understanding of the needed size, qualifications, and mix of the acquisition workforce of the future. Do you agree with that assessment?

Ms. MADSEN. The panel’s emphasis on prompt attention begins with immediate acquisition workforce human capital planning. As can be readily seen from the panel Report and findings, the data regarding the workforce and the skills necessary to meet current demands in acquisition are not available. The panel’s recommendations start with establishing a consistent definition of the workforce and method for measurement, as well as a government-wide database. But, a key set of findings and recommendations go to determining the competencies of the workforce and the gaps, especially given the growth in acquisition of services. The panel found that resources are inadequate; however, it is not clear that the needs are in traditional procurement specialties. Thus, the panel’s recommendation was that human capital planning must take place before additional personnel are hired.

DOD, of course has its own workforce count. Our understanding is that DOD has underway an assessment of competencies and gaps in the workforce. DOD advised the panel that it intended to complete this assessment within 12 months and then to make decisions about areas to add personnel, including whether people with additional substantive skills are needed.

11. Senator ENSIGN. Ms. Madsen, how has the DOD distinguished itself by moving ahead with many of the workforce recommendations that the panel has formulated for the government as a whole?

Ms. MADSEN. Certainly, DOD has demonstrated a seriousness of purpose in analyzing its workforce needs. It has set out a disciplined approach, very similar to the one also outlined by the panel, designed to answer the questions of whether there

are enough people with the right skills to meet mission needs. Such discipline (i.e., human capital planning that includes needs and workforce assessments) is necessary for a responsible approach to improving the workforce and planning for the future. OFPP just announced that an Internet-based tool to assess skills will be available for voluntary use in April 2007 through the Federal Acquisition Institute. Clearly, some civilian agencies are farther along than others in their own efforts and sustained emphasis by Congress on workforce improvement will be necessary to ensure results.

12. Senator ENSIGN. Ms. Madsen, when do you think we can expect to see results?

Ms. MADSEN. The timing of results depends entirely on when OFPP and Congress implement the recommendations. For instance, some Panel recommendations, once implemented will demonstrate immediate results (for example, producing greater transparency by giving public notice of all sole-source orders over \$100,000). Other recommendations, such as improving acquisition workforce capability are longer term requiring a disciplined approach and a number of incremental steps in order to effectively conduct human capital planning and needs and capability assessments. But while the results are longer term, the sense of urgency with respect to workforce issues compelled the panel to recommend a 12-month deadline for the initial incremental steps (i.e., defining and measuring the acquisition workforce). Congress can assist by conveying to the agencies that they must be actively engaged in human capital planning for the acquisition workforce.

RELIANCE ON CONTRACTORS FOR ACQUISITION SUPPORT

13. Senator ENSIGN. Ms. Madsen, the panel's draft report acknowledges that agencies have been compelled to rely on contractors for acquisition tasks due to several factors: a decrease in government personnel, increasing complexity of value-based performance contracts, and an increase in the volume of such contracts. I share your concern that the so-called "blended workforce," in which contractor and government personnel work side-by-side, can impact the integrity of acquisition decisionmaking processes. A contractor working on performance evaluation criteria today, could become part of an organizational entity of a potential bidder the next. Proprietary information—both of a contractor and of the government—can be easily compromised. Wouldn't the cleanest solution to the problem of organizational conflict of interest be to identify certain functions within government acquisition processes that are 'reserved' for government personnel only?

Ms. MADSEN. As discussed in the panel's report, an area in which data was not available was the number of contractors supporting acquisition functions and the types of tasks that they are performing. The panel's sense was that increasingly contractors are involved in supporting the acquisition process in various capacities—in many instances providing technical expertise that is not available within the government. A portion of the panel's recommendation regarding data, also is directed at obtaining a better sense of where contractors are being used and in what capacities. The panel also recommended that OFPP update the principles for agencies to apply in determining what core agency functions must be performed by Federal employees and then ensure that those functions are, in fact, staffed by Federal employees. That said, however, the panel recognized that the government will always need the ability to obtain technical expertise in certain areas—the government simply does not have all of the experts it may need at a given point to meet mission needs. The panel thus recommended that the Federal Acquisition Regulation (FAR) Council consider regulatory amendments to take into account current circumstances and the GAO rulings in several cases over the past 10 years regarding impaired objectivity and unfair competitive advantage. GAO has set forth principles to be used by agencies in analyzing organizational conflicts of interest (OCIs); however, these principles are not reflected in the regulations. The panel also recommended consideration of additional FAR clauses that would allow an agency to obtain information sufficient to analyze possible OCIs. Some of the most sensitive areas, such as requirements development are areas where it is likely the government often may need outside technical expertise. Given that fact, better rules, training, and guidance should be available for agencies to help avoid or mitigate OCIs.

USE OF ADVANCED PAYMENTS

14. Senator ENSIGN. Mr. Assad, you indicated that the DOD was revising its policy on the use of advanced payments to acquire goods and services through inter-

agency contracting, and that the new policy was presently in coordination. When will the DOD complete its revised policy on the use of advanced payments?

Mr. ASSAD. The Under Secretary of Defense (Comptroller) issued a policy memorandum titled "Advance Payments to Non-DOD Federal Agencies for Interagency Acquisitions," on March 1, 2007.

15. Senator ENSIGN. Mr. Assad, as soon as the new policy on advanced payments is finalized, will you provide a copy to the Readiness and Management Support Subcommittee?

Mr. ASSAD. Yes. The Under Secretary of Defense (Comptroller) issued a policy memorandum titled "Advance Payments to Non-DOD Federal Agencies for Interagency Acquisitions," on March 1, 2007. (The requested policy memorandum is attached.)



COMPTROLLER

UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

MAR 1 2007

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND
COMMANDER, U.S. TRANSPORTATION COMMAND
ASSISTANT SECRETARIES OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT
OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Advance Payments to Non-Department of Defense (DoD) Federal Agencies
for Interagency Acquisitions

In accordance with current DoD policy, all DoD Components are directed to stop the practice of advancing funds to non-DoD federal entities unless the DoD Components are specifically authorized by law, legislative action, or Presidential authorization. This includes the practice of permitting advance billings without the receipt of goods or services. All existing advancements retained by a non-DoD federal agency must be returned.

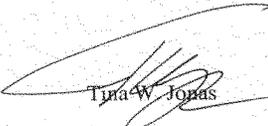
Components requesting goods or services from a non-DoD federal agency must be fully aware of the outside agency's billing practices and take appropriate action to ensure DoD funds are not disbursed in advance of contract performance. In addition, Components must work with their servicing disbursement sites to revise trading partner agreements to restrict other federal agencies' ability to withdraw funds prior to the delivery of goods or services performed.

The Department's legal authority to make advances is contained in Title 31, United States Code, Section 3324 and the Department of Defense Financial Management Regulation ("DoDFMR"), Volume 4, Chapter 5, which states that an advance of public money may be made only if it is authorized by:

- a. a specific appropriation or other law; or
- b. the President to be made to—
 - (1) a disbursing official if the President decides the advance is necessary to carry out—
 - (a) the duties of the official promptly and faithfully; and
 - (b) an obligation of the Government; or
 - (2) an individual serving in the armed forces at a distant station if the President decides the advance is necessary to disburse regularly pay and allowances.”

The specific appropriation or law authorizing the advance must be cited on the obligating and/or interagency agreement documents for those few exceptions where advances are authorized in a specific appropriation or law authorizing DoD to advance funds.

My point of contact is Ms. Kathryn Gillis, who can be reached at (703) 697-6875 or by e-mail at kathryn.gillis@osd.mil.



Tina W. Jonas

STRATEGIC APPROACH TO PURCHASING SERVICES

16. Senator ENSIGN. Mr. Denett, at our last hearing, the GAO testified that “[t]he debate on which parts of DOD’s mission can best be met through buying contractor services has not yet taken place . . . we are in the midst of a strategic expansion in service contracting without strategic direction or decisions.” Based on your government-wide perspective, what more can the DOD do to address, on a strategic level, its policies and practices in acquiring services?

Mr. DENETT. The steps Mr. Assad described in his testimony, including the development of a comprehensive DOD-wide architecture for the acquisition of services, should help the Department award better structured contracts and manage risks more effectively. In terms of additional steps, I have encouraged all agencies, including DOD, to complete a skills assessment of their contracting professionals. Through this process, agencies will identify skills gaps and related training to ensure their workforce can obtain the skills it needs. There are many options available if an agency’s workforce needs training in services contracting. Through the partnership between the Defense Acquisition University (DAU) and the Federal Acquisition Institute, the acquisition workforce has access to classroom courses, continuous learning modules, and other training opportunities to develop service contracting skills. Additionally, team-based training for performance-based services acquisition is offered to all agencies, and the Acquisition Center of Excellence for Service Contracting provides an online resource for service contracting information policy, guidance, samples, and best practices.

ADEQUACY OF DOD ACQUISITION WORKFORCE

17. Senator ENSIGN. Mr. Assad, do you agree that the Acquisition Advisory Panel’s assertion that there is an “acute shortage” of experienced acquisition professionals applies to the DOD acquisition workforce today?

Mr. ASSAD. The DOD acquisition workforce has been impacted by downsizing and, since September 11, the need for updated skills and new mission challenges. With the growth in contracting for services, we are re-assessing all of our acquisition oversight processes to improve acquisition outcomes. For example, the Under Sec-

retary of Defense for Acquisition, Technology, and Logistics has established a management structure, to include defined roles and responsibilities, for the review and approval of services acquisitions. The Under Secretary took this action to ensure that the services acquisition is improved in compliance with statutes, policy and other requirements. In addition to contract oversight, we continue to expand our training infrastructure and available training resources to provide the acquisition workforce with better knowledge sharing tools and web based performance support resources. Although we are very successful today with hiring and high retention, we will face significant challenges as the highly experienced Baby Boomer generation departs the workforce. Approximately 78 percent of our current acquisition workforce is in the Baby Boomer generation. We are working hard on many fronts to ensure we have the right acquisition capability now and into the future. In June 2006, we published both the DOD Civilian Human Capital Strategic Plan (HCSP) and the Acquisition, Technology, and Logistics (AT&L) HCSP. Meanwhile, the AT&L Workforce Senior Steering Board has been working aggressively to position the DOD to be successful in the future. The Board has met three times since May 2006, and it is now planning to meet quarterly to develop and implement strategies for identifying capability gaps and for improving the effectiveness of the acquisition workforce. The Under Secretary for AT&L deployed a joint competency management initiative in October 2006 in alignment with the Quadrennial Defense Review, the DOD Human Capital Strategy, the AT&L Human Capital Strategic Plan, and the AT&L Implementation Plan. This initiative is expected to update and assess acquisition competencies for twelve functional communities within the DOD acquisition workforce. Each update will identify behaviors and underlying knowledge, skills, and abilities for successful performance. We have made significant progress in the development of competency models for program management, life cycle logistics and contracting. Between now and June 2008, the Department will begin pilot workforce assessments for program management and life cycle logistics. In the fourth quarter of fiscal year 2008 it will commence a DOD-wide assessment of the contracting workforce. These competency assessments will help our senior leaders to reallocate resources, target recruitment, improve retention strategies, and expand education and training resources. The combination of our competency assessment initiative and other leadership actions to address workforce quality and capability will allow us to more accurately assess and address staffing sufficiency. We have the right sense of urgency, and we are confident that we will shape the acquisition workforce in an intelligent manner.

18. Senator ENSIGN. Mr. Assad, in your opinion, will that characterization apply to the DOD workforce in 2010? 2012?

Mr. ASSAD. As provided in my written testimony, frequently, I am asked two questions regarding our workforce: (1) whether or not we have enough people in the Department to perform our mission effectively, efficiently, and in a manner that assures the lawful operation of the Federal acquisition system and (2) whether or not our contracting workforce is sufficiently qualified to do the same. Over the past 10 years our workload has increased significantly. The number of actions in excess of \$100,000 has increased by over 60 percent, the total value of our procurement actions has increased by well over 100 percent and I believe that our workload will continue to increase. During that timeframe, our acquisition workforce has decreased by approximately 5 to 10 percent. We have useful information regarding the numbers of our professional contracting employees and we have a very good sense of how they have been trained. We also believe that because of the downsizing of the workforce that took place in the late 1990s the overall capability of our workforce requires improvement. However, while we can surmise, we can not determine with specificity, where those shortfalls in capability exist. In response to other questions for the record, I mentioned that we have done a significant amount of work associated with the assessment of our workforce. For the past 5 months, my office, in concert with the DAU, the military departments, and the defense agencies, has been developing a model that will address the skills and competencies necessary for our contracting workforce. We will complete development of the contracting competency model in the second quarter of 2007. Beginning in the third quarter of calendar year 2007, we will begin deployment of that competency modeling across the entire DOD contracting workforce. This is a major undertaking and it will be the first time the Department has attempted to assess its contracting capability across the entire enterprise. The modeling will enable us to assess workload demands for and the degree to which members of the workforce possess these competencies. The competency assessment will also allow the Department to assess the workforce in terms of size, capability and skill mix; and to develop a comprehensive recruiting, training, and deployment plan to meet the identified capability gaps. With regard

to 2010, 2012 we will have to assure that we are able to track the improvements and changes made in response to our competency modeling on a continuing basis. In addition, we will also have to periodically reassess the workforce competency in order to ensure that the capability gaps as identified are addressed.

19. Senator ENSIGN. Mr. Assad, what are the key bottom-line elements that you would look for to solve the Department's workforce shortages?

Mr. ASSAD. In order to ensure we have the right people, doing the right jobs, at the right place and time, and at the best value to achieve mission success, we are moving forward aggressively on many fronts to implement the AT&L Human Capital Strategic Plan and continue to improve our contracting workforce capability. First and foremost we will continue to work with the DAU, military departments, and defense agencies to assess our workforce, identify capability gaps, and address those gaps. The key bottom line elements we will use to target the capability gaps are education, training, professional development, improved contracting tools, and the addition of resources—where needed, through recruitment and retention. The specificity provided by our Contracting Competency Model will enable us to identify and focus our efforts to fill the aforementioned gaps. I will continue to work closely with DAU and the DOD senior procurement executives to increase emphasis in areas such as major systems contracting, pricing, contract incentive and award fees, services acquisition, small business and contingency contracting. Our available training resources are extensive and will continue to improve. We have modernized training for the contracting workforce in all aspects: certification training, continuous learning, performance support, and knowledge management. We are expanding the use of knowledge management and web-based performance support resources so the workforce can always be engaged in learning and quickly apply best practices as they perform in the workplace. We also have the ability to support new or updated policy implementation and to address skill gaps by quickly creating and providing targeted training to the workforce.

20. Senator ENSIGN. Mr. Assad, do you believe that there is an imbalance of government and contractor personnel in the acquisition workforce? If so, what is needed to correct that imbalance?

Mr. ASSAD. My answer is limited in scope to the Contracting Career Field 1102, the civilian career series for government contracting professionals. I am not able to answer the question as to whether there is an imbalance at this time as we are presently assessing the make-up of contracting workforce. While initial indications are that we do not have an imbalance in terms of the number of contractors working in the contracting field, I believe that we should focus on exactly what functions those contractors are performing. It is my view that the functions performed by 1102s in the areas of contract formation should be accomplished solely by Government employees, whenever possible. There are certainly times when contractor personnel may be used in pre-award functions to provide expert professional support in specific areas, but it is my view that the day-in, day-out performance of contract formation should be accomplished by government employees. Once our contracting workforce assessment is complete I will encourage the military departments and other defense agencies to reduce and preferably eliminate, whenever possible, the nongovernment 1102 personnel performing contract formation functions in our contracting offices. We are conducting a broader review of acquisition structures and capability in response to section 814 of the National Defense Authorization Act for Fiscal Year 2006. This review will address contractor support of the acquisition mission. Results of this study are scheduled to be provided to Congress this summer.

USE OF SERVICE CONTRACTS TO ENTER INTO PROPERTY LEASES

21. Senator ENSIGN. Mr. Assad, a significant finding by the DOD Inspector General (IG), that has been covered by the press, concerns the award of a service contract by the Department of the Interior on behalf of the DOD's Counter Intelligence Field Activity to provide leased office space and the installation of communication and other equipment. The IG testified that "the 10 year, \$100 million lease was disguised as a service contract and exceeded all thresholds that require congressional notification and approval." Is it standard DOD practice to use service contracts to procure property leases and equipment?

Mr. ASSAD. No. It is not the policy of the Department to utilize services contracts to procure property leases. We recently issued a policy memorandum titled "Contracts for Services" reminding the acquisition workforce of both the Department's policy and the proper procedures regarding the use of services contracts.

22. Senator ENSIGN. Mr. Assad, in your opinion, in this case what differentiated a service contract from a property lease?

Mr. ASSAD. It was inappropriate to utilize a "services" contract to contract for a lease for office space. The only time it might be appropriate is in the circumstance in which services are being performed by a contractor and the lease of office space is for those contractor employees performing the services work under that particular contract.

23. Senator ENSIGN. Mr. Denett, are you aware of any other agencies that have arranged for leases under a similar mechanism and called them service contracts? Does this practice give you cause for concern?

Mr. DENETT. The OFPP does not track this information, though I understand the acting DOD IG advised this committee of two other instances. I agree that lease transactions must be conducted in accordance with applicable laws and regulations, including congressional notification when required.

REMEDIAL MEASURES IN RESPONSE TO DOD IG AUDITS

24. Senator ENSIGN. Mr. Assad, in separate audit reports, the DOD IG has identified serious problems the Department has encountered when using interagency contracts with the Department of Interior (DOI), the Department of Treasury, the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA). I know that the Department has undertaken some remedial measures with the DOI and the GSA. Is the Department satisfied with the assistance and responses from those two entities?

Mr. ASSAD. The actions taken by both the DOI and the GSA have been satisfactory to date. Only time and demonstrated performance will affirm whether the improvements made have taken hold. The cooperation at the senior leadership level and the action officer level has been excellent. We recently signed a Memorandum of Agreement (MOA) with GSA (December 2006) and with DOI (February 2007) that outline the roles and responsibilities of each organization in the Interagency Acquisition process. We expect to sign an MOA with NASA in April 2007. Ultimately, we expect to have an MOA with every agency that supports the Department.

25. Senator ENSIGN. Mr. Assad, what has the DOD done with respect to the problems identified with the Department of Treasury and NASA interagency contracts?

Mr. ASSAD. We have taken specific action with NASA to collaborate on the Department's proper use of NASA's Scientific and Engineering Workstation Procurement Government-Wide Acquisition Contract (SEWP GWAC). For example, in keeping with one of the DOD IG's recommendations, we have made it mandatory that any DOD user of NASA's SEWP GWAC must have training before being allowed to utilize that contract vehicle. In addition, we plan to sign an MOA with NASA in April 2007 that will define the roles and responsibilities of each Agency when utilizing NASA's SEWP GWAC. We will also be signing an MOA with the Department of Treasury that will address each of the IG's findings and the collaborative corrective actions that are required to ensure compliance with statute, regulation, and policy when the Department utilizes its assisting services.

[Whereupon, at 4:10 p.m., the subcommittee adjourned.]

