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GSA: IS THE TAXPAYER GETTING THE BEST DEAL?

HEARING

BEFORE THE

FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

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TUESDAY, JULY 26, 2005

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room 562, Dirksen Senate Office Building, Hon. Tom Coburn, Chairman of the Subcommittee, presiding.

Present: Senators Coburn and Carper.

OPENING STATEMENT OF CHAIRMAN COBURN

Senator COBURN. Good afternoon. Today's hearing is entitled, "GSA: Is the Taxpayer Getting the Best Deal?"

It is no secret that the Federal Government spends hundreds of billions of dollars on procurement of products and services. When an agency wants to purchase a copy machine, office furniture, or even paper clips, it generally turns to the General Services Administration to do so. One of the most widely-used vehicles and schedules is the GSA's Multiple Award Schedules, which is supposed to make the process of buying goods easier, faster, and, I would emphasize, cheaper.

Every 31 seconds, the Federal Government makes a credit card purchase. Every 77 seconds, it issues a contract worth $25,000 or less. Every 14 seconds, it signs a contract worth more than $25,000. Statistics make it clear why we must ensure that the products being bought by the Federal agencies through GSA are being bought at the best prices available.

GSA's stated mission is to help Federal agencies better serve the public by offering at best value superior workplaces, expert solutions, acquisition services, and management policies. Recent reports issued by the Government Accountability Office and the GSA Office of Inspector General concerning GSA's contract management point to many existing problems that may account for why the taxpayers may not be getting the best deal.

For example, GAO found that the General Services Administration's Multiple Award Schedules program cannot be effectively managed in its present form. It is intended to make a wide variety of commercial products available to Federal agencies, but there are too many items on the schedule, there are too many suppliers of

similar items, and GSA does not have the capability to make sure that the government's interests are protected.

In addition, there is little or no price competition in negotiations or monitoring of the items ordered by the agencies and little or no assurance that suppliers offer items at prices that reflect the government's volume purchases.

In case you are wondering, these findings were released May 2, 1979, in a report entitled, "Ineffective Management of GSA's Multiple Award Schedules Program," a costly, serious, and longstanding program. It was first identified as a problem in 1971, 34 years ago.

For at least three decades or more, the GSA has been unable to correct these ongoing problems. There are several reasons why the cost associated with purchasing commercial goods and professional services from GSA have continued to increase over the past decade. In that regard, I must tell you, I am very puzzled by the reluctance on the part of the GSA to use two of the most powerful tools available to them for ensuring that taxpayer dollars are being spent judiciously.

When a contract is being negotiated, it is imperative that the buyer, in this case, our government, is obtaining the best price. The best way to do that is by looking at the vendor's books and other relevant records and documents to verify prices and sales being submitted by the seller. One of the major goals of GSA during contract negotiations should be to ensure that the vendor pricing information is accurate, complete, and up to date before the contract is awarded. Prequalifying of vendors during contract negotiations has proved to be the most effective method for achieving the best prices because it helps avoid unnecessary cost by providing the agency with detailed information about the vendor's commercial sales and marketing.

GSA's Office of Inspector General reported that as the number of audits performed decreased, so did the amount of negotiated savings. Other evidence that points to the use of pre-award audits as a tool for cost avoidance comes from the Department of Veterans Affairs. When the GAO performed audits in 2004 and 2005 on the VA's pre- and post-award audit programs, it found using these methods resulted in millions of dollars of savings to VA.

When GSA issued a final rule modifying its policy in 1997, the agency eliminated automatic post-award audit rights for pre-award pricing information in every Multiple Award Schedules contract. GSA's rationale for making this change was its belief that a decrease in post-award audits would be offset by an increase in the number of pre-award audits. However, GAO recently reported there has been, in fact, a decrease in the number of pre-award audits.

Despite resistance on the part of commercial contracts to use the post-award contracts, this tool is the most effective means available to verify that vendors are not overcharging the American taxpayers.

We know from both the GAO and the GSA's IG that savings due to pre- and post-award audits have saved the government hundreds of millions of dollars.

In fact, I would ask at this time that the letter that I sent to the GSA in response to their ANP, or Advanced Notice of Proposed

Rulemaking, on whether post-award audit provisions should be included in the GSA's Multiple Award Schedules contract and government acquisition contracts be included in the record, and I will so order that now.[1]

When I started looking at what is driving up the costs, several things came to mind. First of all, the cost to purchase. Last year, the government secured $291 billion. We paid GSA $20 billion to do that. That comes out to 6.87 percent. If you survey industry throughout the country, if you survey other large buying groups, what you find is that is about 3 percent—three times what it costs to buy anything anywhere else.

And so there are some significant questions that we need to ask and be answered. The goal is not to be critical of the GSA. The goal is to be critical of not ever getting the best value for the American consumers' price.

We have qualified people, people who care a lot at the GSA. What we are looking for is to find the direction so that we achieve that goal each and every time and we do it in a way that gives the American taxpayer—and since we are in a deficit and have been in a deficit since essentially 1973—any dollar that we save is $5 or $10 that our children aren't going to have to pay back.

We also have today a company testifying that charges a blank 2 percent on everything. We are going to be introducing into the record the last series of comparisons to GSA and Open Market Quarter and we will be putting in the record they are routinely 4 to 5 percent below GSA after paying a 2 percent charge to them for purchasing. There has to be something that can be learned by GSA from some of these open market and competitive free enterprise firms.

Senator COBURN. I want to welcome our witnesses. I understand Senator Carper will be here in a moment.

I would first like to introduce our first panel. David Cooper, Director, Acquisition and Sourcing Management, the U.S. Government Accountability Office. Next, Emily Murphy, Chief Acquisition Officer, U.S. General Services Administration. And next, Hon. David Safavian, Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

Your written statements will be made a part of the record. I will make a note to talk to Mr. Safavian again. I have a problem with OMB. We got your testimony last night at 8 p.m. For me to effectively read what you want me to know, 24 hours is required for my staff to clear it and me to actually—I am one of those Senators that actually read the testimony. Every OMB person that comes before this Subcommittee that does the same thing, I need to send a message—the message is, our time is just as important as yours and we would appreciate that be recognized, and hopefully throughout the rest of the Congress, they will come to expect that OMB will put the information there on time.

With that, I would like to recognize Mr. Cooper. You will have 5 minutes to summarize your testimony. Your complete statement will be made a part of the record.

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[1] The letter from Chairman Coburn appears in the Appendix on page 35.

TESTIMONY OF DAVID E. COOPER,[1] DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. COOPER. Thank you, Mr. Chairman. I am very pleased to be here this afternoon to discuss the results of our work on GSA schedules contracts. As you pointed out, GSA plays a very important role in Federal acquisition. Many agencies rely on GSA to leverage the government's significant buying power to negotiate the best possible deal for a wide range of commercially available products and services.

Last year, Federal agencies purchased more than $32 billion, and I think this year it is approaching $40 billion, through the Schedules program. However, our work and the work of the GSA Inspector General's Office shows that GSA is not always negotiating the best deal for Federal agencies and, ultimately, the American taxpayers.

In February of this year, in response to a request by Chairman Collins of your Committee, we reported serious shortcomings in the way GSA negotiates contract prices and manages its Schedules program. My testimony today is going to focus on one of the key issues in that report, that issue being the dramatic reduction in GSA's use of pre-award audits.

As you pointed out, such audits are crucial to negotiating good prices. They tell GSA negotiators whether the information provided by vendors is accurate and reliable and whether the information forms a sound basis for negotiating fair and reasonable prices. When such audits are performed, they have saved hundreds of millions of dollars.

I have a couple of charts that I would like to put up to show the decline in the number of pre-award audits and the results of that. The chart is also in the first page of my testimony for anyone who has that.

The chart shows that in the early 1990s, GSA conducted, on average, about 125 pre-award audits annually, saving nearly $496 million between 1992 and 1997, or an average of about $83 million a year. During that period, purchases from the Schedules programs ranged roughly about $5 billion a year, significantly less than what we are seeing in today's environment.

Beginning in 1997 and continuing until now, GSA's use of pre-award audits has declined dramatically. Since 1997, GSA has conducted, on average, only 19 pre-award audits each year. As the number of audits declined, so, too, did the savings. Savings in recent years have only averaged about $18 million per year.

These trends are troubling for several reasons. First, the reduction in pre-award audits has come at a time when agency purchases through GSA schedule contracts have sky-rocketed, reaching to $32 billion last year.

Second, in 1997, GSA, as a matter of policy, virtually eliminated the use of post-award audits. Such audits are a key safeguard against excessive contract prices. They allow the government to recover overpricing when it is determined that vendors failed to pro-

[1] The prepared statement of Mr. Cooper appears in the Appendix on page 39.

vide accurate, complete, and current pricing information during negotiations.

When GSA eliminated post-award audits, it expected to offset that reduction with an increase in pre-award audits. Thus, pre-award audits are one of the government's sole remaining protections against overpricing. However, the anticipated increase clearly, as shown in the charts, has not materialized.

And finally, the failure to use pre-award audits today is reminiscent of the problems GAO found throughout the 1970s and into the 1980s. It is frustrating to see this longstanding problem reappear. We found that GSA negotiators appear to be motivated more toward getting contracts awarded quickly rather than negotiating the lowest possible prices. Not enough time and attention is being given to negotiating the best deal.

We have recommended that GSA take steps to address the decline in audits. GSA agreed with our recommendations and has initiated actions to address this longstanding problem. However, unless GSA's actions are successfully implemented, the risk of pricing problems will continue. If GSA is successful, we believe hundreds of millions of dollars can be saved and Federal agencies will get a better deal.

That concludes my statement and I will be glad to answer any questions you might have.

Senator COBURN. Thank you, Mr. Cooper. Ms. Murphy.

TESTIMONY OF EMILY W. MURPHY,[1] CHIEF ACQUISITION OFFICER, U.S. GENERAL SERVICES ADMINISTRATION

Ms. MURPHY. Thank you, Mr. Chairman. Thanks for inviting me here today to testify on GSA's procurement practices and how we at GSA are doing our best to ensure the taxpayer is getting the best deal possible in the procurement process.

As you already stated, GSA's mission is to help Federal agencies better serve the public by offering at best value superior workplaces, expert solutions, acquisition services, and management policies. Excellence in acquisition is the top priority for GSA.

GSA's mission is important to the efficiency and effectiveness of the Federal Government. We make a difference in the process of delivering goods and services, good government services, and to the well-being of the people of this country. The agency is directly involved in the process of entering into contracts on behalf of our customer agencies to assist them in acquiring the products and services they need.

Our vehicle acquisition and leasing program are good examples of how GSA provides best value. We acquire vehicles for 33 percent below commercial pricing, and GSA lease rates for vehicles are 32 percent below commercial lease rates.

Our long-distance telecommunication contracts have saved the government $705 million last year alone due to negotiated rates being below commercial prices.

Our schedule contract vehicles provide agencies with a streamlined approach to acquisitions. This adds value, and as a result, the utilization is increased. At the same time that the utilization is in-

[1] The prepared statement of Mr. Murphy appears in the Appendix on page 50.

creasing, GSA efficiencies have resulted in a 25 percent reduction in the cost recovery fee for the GSA Multiple Awards Schedules program.

The Federal Technology Service, Federal Supply Service, and Federal Building Service currently operate under revolving fund authority. As you are aware, this is different than most Federal agencies that operate with appropriated funding. GSA is authorized to operate revolving funds under specific statutory authority requiring that revolving funds fully recover all costs for the program and operations in their estimated fees. These costs include direct costs, such as labor and materials, and indirect costs, such as rent and support services. These fee rates are charged to Federal agencies for space, services, and commodities. These fee structures are constantly evaluated for adjustment.

Both the General Supply and Information Technology Funds recover costs to GSA for the services and supplies that they provide the customer through full cost recovery. For the IT Fund, rates are established consistent with the costs and capital requirements plan as approved by OMB. A capital reserve provides financing for one-time capital investments and program costs, allowing more stable rates for our services. The General Supply Fund also sets appropriate rates based on projections with any excess returning to the Treasury.

The Federal Building Fund finances PBS real property management and real property-related activities. The FBF is financed in large part by income from rental charges assessed to occupants of GSA-controlled space approximate with commercial rates, as well as some appropriated funds, typically in the case of new construction. The FBF is subject to annual enactment of new obligation authority by Congress and any balance of the revenue not used in a particular year remains in the fund until authorized for future use through future appropriations acts.

Frequently, GSA's fees are compared to costs associated with other government-wide procurement vehicles. However, other agency GWACs and franchise funds do not include all direct and indirect costs because some of the cost is offset by appropriated dollars. This difference makes any comparison of GSA's fees to other agency fees inequitable.

One of the issues we have been addressing recently is the need to accomplish all of our acquisitions in full compliance with the Federal Acquisition Regulations, GSA's policies, and best practices. When we found instances of noncompliance, we have done the right thing and referred them to the Inspector General to conduct their own nationwide review, and we are currently conducting through my office program management reviews.

The "Get it Right" Plan is a result of that review and demonstrates GSA's strong commitment to the proper use of GSA contracting vehicles and services. The "Get it Right" Plan has improved the Federal acquisition process, allowing agencies to obtain best value when acquiring products and services needed to accomplish their mission.

There are five components of the "Get it Right" Plan, the first being to secure the best value for the Federal taxpayer and for Federal agencies through efficient and effective acquisition, ensuring

full and open competition and instilling integrity and transparency in the use of our vehicles. Second, is to make acquisition policies, regulations, and procedures clear and explicit. Third, to improve the education and training of our workforce. Fourth, to ensure that we comply with all Federal acquisition policies, because simply, noncompliance is unacceptable. And fifth, is to communicate with the acquisition community, how to use the GSA's contracting vehicles and services.

We are making good progress on this initiative and improving our ability to get best value for the taxpayer. To ensure that we are getting it right, we are working very closely with the Inspector General's Office, developing and providing appropriate guidance for contracting officers in the field.

As you are aware, sir, GSA is looking into post-award audits of contracts as part of its continuing efforts to obtain best value, having issued the Advanced Notice of Proposed Rulemaking in April to solicit comments from interested parties. Furthermore, we have significantly increased the number of pre-award audits in recent years to assist in achieving best value.

Finally, we have made the pre-negotiation panels that GAO recommended in February mandatory and we revised our operating procedures to require reporting on those pre-negotiation clearance panels. Reports of these panels are then being used to assess progress in the effectiveness of negotiations and will be used as an opportunity to share best practices.

The acquisition officials at GSA and throughout the government take our roles very seriously. We take seriously the trust placed in us by Federal agencies that rely on our acquisition expertise to obtain best value and adhere to the high principles of ethics and integrity. And we also take seriously our professionalism and our accountability to our customer agencies, OMB, Congress, and most importantly, the American taxpayer.

Thank you very much for the opportunity to testify before you here today. I look forward to continuing to work with your Subcommittee and would be happy to answer any questions you may have.

Senator COBURN. Thank you, Ms. Murphy. Mr. Safavian.

TESTIMONY OF DAVID H. SAFAVIAN,[1] ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, U.S. OFFICE OF MANAGEMENT AND BUDGET

Mr. SAFAVIAN. Chairman Coburn, thank you for holding this important hearing today, and before I begin, my apologies to you and your staff for being late on the testimony. It won't happen again.

Senator COBURN. Can we get Mr. Bolton to assure us of that for all the rest of the committees of Congress?

Mr. SAFAVIAN. Sir, that is above my pay grade.

Senator COBURN. Well, just so everybody will know, I sent him a letter today. This is one of the problems with our Federal Government. We are going to work together, and to do that, we have got to communicate, and you can't communicate—we had several hearings last week in other committees where the stuff didn't come

[1] The prepared statement of Mr. Safavian appears in the Appendix on page 65.

until 4 hours before a hearing. For us, for the future of this country and the debt service load that we have in front of us, we have got to do better. This isn't about meanness or anger or anything else. It is just frustration. I want to do a good job, and I know you all do. And everybody else here got their testimony here on time. Thank you.

Mr. SAFAVIAN. As the Administrator for Federal Procurement Policy, Chairman, I view my charge much like yours, to ensure that the taxpayers get the best value when we buy services and goods. I think we have all seen instances of poor contracting, and indeed, criminal behavior, which call into question the integrity and functionality of the current system. I can tell you that leadership at OMB, GSA, and DOD, as well as other acquisition agencies, take this very seriously and are working together to cure the issues.

For example, DOD has been working in partnership with GSA on the "Get it Right" campaign, and GSA Administrator Perry has undertaken a reorganization to better use those agency assets, reduce costs, and increase service quality.

As you consider additional policy recommendations, I would also urge you to consider the entire picture, because we buy a lot of stuff and we executed, last year, 37 million transactions, and the vast majority of those commercial buys were successful. It is easy to get caught up. There are very specific bad examples, but I would just urge you to look at the whole picture.

As you know, there is this ongoing debate about whether the goal should be getting the absolute lowest price on every buy or whether we should be seeking the best value overall with the acquisition system. It is a nuance, but a critical distinction.

Some activities, such as the use of post-award audits, generate transaction-specific cost savings, but their impact on our government market as a whole can have collateral consequences that may actually increase the total cost the government pays for goods and services.

We can and do negotiate good prices in the current system. In fact, I checked the other day. The GSA performance metric for how it buys IT solutions, for example, is that it generally buys them at 7 or 7½ percent less than independent government cost estimates.

But some in the acquisition community argue that we need more intrusive mandates and regulations, new types of audits, and even legislation in the quest for better pricing, and it is a very seductive argument, I will grant you. Some arguing that subjecting vendors to these requirements can save taxpayer dollars can point to very specific examples. But they fail to take into account overhead charges to generate those savings.

But more importantly, they don't reflect the fact that the more red tape we load on our vendors, the higher the prices are they are going to charge. Simply stated, the more difficult it becomes for companies to do business with us, the fewer vendors we see who are willing to work with us. Less competition brings higher prices, less innovation, and fewer choices, not to mention the disproportionate impact on small businesses.

I think if we are thinking about the mundane types of things we buy—staplers, office products—that type of dynamic wouldn't be a big deal. But when you consider the homeland security environ-

ment or the defense environment, the consequences can be much more significant, and I want to just give you two very brief examples.

I was at a trade show a little while back and I talked to a guy that had come up with a new tool—he had shrunk down magnetometers and he put them in a set of gloves so that people could literally wand their hands over somebody to see if they were carrying a weapon. When I said, "Are you on the GSA schedules?" he said, "No, I don't want to be. Its too difficult to deal with the government."

A similar example just crossed my desk the other day. There is a Fortune 500 company that has technology right now ready to go that can cut the weight of the battery packs that our soldiers and Marines are carrying in the desert by 20 to 30 percent. They refuse to market that technology to the government right now because of the government-specific requirements we lay on them. And as a result, our guys are carrying a whole lot more than they have to.

The issue we have here is a paradox. Increased post-award audits and compliance may generate more savings on individual contracts, but when you look at their impact as a whole, they very well could increase costs when we have fewer companies coming in to bid.

I can't sit here, Chairman Coburn, and defend the status quo. We buy more than anyone else in the world. We should be the best at buying it, and frankly, we are not. But before we turn to these very intrusive alternatives, we should look at the tools we have in our toolbox now, quite frankly, that we aren't using, and that is something that is my responsibility as the OFPP Administrator.

We are not using things like strategic sourcing, where rather than buying a stapler here and a stapler there, we are going out and we are saying, OK, how many staplers is the U.S. Department of Agriculture going to use in the next year and let us negotiate down from that price. We are not using share and savings contracts, which is a technical type of contract where we load the risk off on the vendor rather than have the taxpayer shouldering the risk.

And frankly, one of the challenges we have, I have got to tell you, is we have a human capital crisis coming up in the acquisition community. As you can tell by the poster that your staff put together, it is a very complicated system we have, and we have a whole bunch of folks who know the system and they are retirement-eligible. The numbers we have are 70 percent of our senior executives, 40 percent of our mid-level managers are retirement-eligible, and when those people leave, all the experience that the taxpayers paid for is gone out the door.

And what is really disconcerting, what keeps me up in the middle of the night, frankly, is those folks aren't the ones that have started to retire now. It is the GS–7s, 9s, 11s, the people who should be in journeyman training to step up. Those are the people that are leaving. They don't have the golden handcuffs of the pension program. They are taking their TSPs, walking out the door, and selling out to the highest bidder. And so when we see the senior folks that are doing the job now leave, I am not sure we have enough folks to backfill.

I guess, in short, what I would say is that our acquisition system is really delicate. Changes in one area have unexpected consequences in another. And so when you read that 1977 report, it is hard for me to say this, but I would say there are some things we have to be careful of. We did reevaluate the procurement system in the 1990s. The challenge for you all on the Hill, us in the Administration, is to find this right balance of rules and regulations and policy and law so that the government continues to be the most sought after customer and the taxpayers get the benefit from the competition.

I think I will sum it up there. That is the extent of my oral remarks. Thank you again. I think this is an issue that we need to explore. I hope I will have an opportunity to come back and talk about a few other angles here, but I would be happy to take your questions.

Senator COBURN. I would just note, in 1974, I had a contract for the Defense Supply Agency in Philadelphia. I ended up giving them the product because the cost that they wanted to do it—I gave them $175,000 worth of ophthalmic lenses because of the nightmare.

Now, the point I want to make with you is whose fault is that that they won't sell us the magnetometers or the battery packs? Is that their fault?

Mr. SAFAVIAN. It is hard for me to assess blame, and I am not trying to dodge.

Senator COBURN. But the point is, how do we get to the solution? Obviously, there are a lot of suppliers in this country today that don't want to deal with the GSA and the Federal Government for very good reasons——

Mr. SAFAVIAN. There is no doubt about it.

Senator COBURN [continuing]. And that has nothing to do with price.

Mr. SAFAVIAN. You are right.

Senator COBURN. I was willing to take a large loss to just get out of the contract because I didn't want to mess with it anymore because of the hurdles that you had to jump. That is what they are telling you.

One of the purposes for this hearing is, we are going to spend $20 billion this year, right, GSA?

Mr. SAFAVIAN. If not more, a lot more.

Senator COBURN. OK. No, I am talking about the cost of running the GSA, $20 billion. That is what we are going to spend. Did anybody step back and say, is there a better way to do all this? Does anybody start saying, are we just going to tweak this around the edges or can we step back and say, times are different. We have tremendous technology in terms of electronic technology today. Isn't there a better way? Shouldn't we change? Shouldn't we totally reform what we are doing? Shouldn't we look at it?

I don't want a new bill. I don't want to give new regulations. We are doing oversight. We are one of the few committees in Congress that is going to do oversight. But the way we find out how to change things is to talk about it and to have you come and testify and to ask the tough questions so that maybe we will look at that.

The entire picture, based on the numbers that you gave, it is $600 per purchase based on what you just quoted to me, $600 for anything that the GSA purchases. That is what the cost is. Well, that is pretty steep. If we went to any other large purchaser—nobody is as big as the Federal Government, I understand that. But in terms of segments, nobody is paying $600 when they buy things.

Mr. SAFAVIAN. Let me challenge you if I may, sir. If that number, and I don't know how that number came about, but GSA doesn't just do acquisitions.

Senator COBURN. Oh, I understand that, but you all gave us that only 4 percent of your cost is in management and billings?

Ms. MURPHY. Management was what the question was. I apologize if we were unclear in communicating that to your staff.

Senator COBURN. OK.

Ms. MURPHY. Four percent of our cost is in management. Ninety-six percent of it is actually——

Senator COBURN. In acquisitions?

Ms. MURPHY [continuing]. Spent with contractors or out in the field.

Senator COBURN. So 4 percent is in management. Ninety-six percent is outside of it. So the question comes—and it is not to be critical of the individuals. This hearing is about two generations from now, because as the purchases go up and the lack of savings go down, the people that are paying for that isn't us.

Mr. SAFAVIAN. It is our kids.

Senator COBURN. It isn't us. It is grandchildren.

So my challenge to OMB is to step back from this thing, get way away and say, maybe rather than fix things around the edges, like this thing has been saying for 30 years, which nobody is fixing, maybe we need to say, is there a better way for us to do it? That is my challenge.

Mr. SAFAVIAN. And I think we want to take you up on that challenge. I think there are two data points here that I would add to your point, which is well taken.

One is we are in the process of looking at the acquisition system, particularly for commercial items which we are talking about here, the schedules types of buys, and services. Congress included in a bill about 3 years ago—2 years ago, the Services Acquisition Reform Act, that required us to set up a panel. We have 14 members on the panel who are looking at whether there is a better way for us to skin this cat. They have been meeting since February or so. They are supposed to send up a report to you all as well as to me come the end of this year, and I expect we are going to see them taking an outside-the-box approach—at least I hope they will come back and give us an outside-the-box look at how we are buying commercial goods and services.

The other data point that I would give you is this—in the President's budget, we directed GSA to begin reorganization to do exactly what you are talking about. Let us find a different way to do this where we are providing things better, faster, and cheaper, where we are taking into account new technology. And specifically, we directed that the Federal Technology Service and the Federal Supply Service, these two entities that have grown up over the last 30 years, be merged. I think in the past, it used to be that we

bought technology one way and we bought commercial items another way and so we needed two full organizations.

And so our hope is that Administrator Perry and his team, as they are reorganizing, with a little bit of input, a light touch from OMB, I will grant you, is looking at this to try to come up with that so that we don't have vendors out there that are taking a loss on their goods, but we don't have taxpayers that are taking a bath, either.

Senator COBURN. That is great. They have been authorized for 3 years?

Mr. SAFAVIAN. Two years.

Senator COBURN. And so this year, 2½ years, almost 3 years later, we are going to get something. That is the problem.

Mr. SAFAVIAN. It is. We went without an Administrator of Federal Procurement Policy for 18 months.

Senator COBURN. Last month, the House of Representatives passed H.R. 2066, the GSA Modernization Act. It calls for GSA to merge the FTS and the Federal Supply, which you talked about. How is this going to impact GSA service fees, particularly with respect to alignment with other government-wide acquisition contracts and multiple award contracts?

Mr. SAFAVIAN. I would defer that to the GSA. I mean, I can comment, as well, but I would defer that to the GSA folks.

Ms. MURPHY. The guiding principle in our reorganization has been efficiency, and if it is all right with you, we have Barbara Shelton, who is the Acting Commissioner for the new Federal Acquisition Service, which is going to be that merged service, here with us today, so I may defer to her in a moment to answer part of your question, as well.

But as we are looking at the organization and how we can be a more efficient organization, how we can provide better value for the taxpayer, part of that is going to be looking at our normal process of evaluating our fees. At the same time, comparing our fees to the fees that our other GWACs around the government are charging isn't necessarily a one-on-one comparison. Other GWACs and other franchise fund agencies only retain about 4 percent of what they collect, and that is to go towards additional management structure, putting in financial systems. When GSA receives its funding, we—it has to pay 100 percent of our costs, and anything that we have left over at the end goes back to the Treasury. It is not something that is enriching us long-term.

Senator COBURN. How much did you all return to the Treasury last year?

Ms. MURPHY. Close to $100 million? Approximately $100 million, sir.

Senator COBURN. A $100 million, so 5 percent of your budget.

Ms. MURPHY. Only about $200 million of our budget, also, is appropriated funding.

Senator COBURN. Oh, I know that——

Ms. MURPHY. OK.

Senator COBURN [continuing]. But to me, that doesn't make any difference. The fact is, what is the stimulus for GSA, if they are a cost-plus organization, to control their costs? Within GSA—I am not talking about purchasing, I am talking about what is the stim-

ulus—if you are cost-plus, you get a percentage of anything you buy, what is the stimulus to control your costs?

Ms. MURPHY. Well, I will answer you this way, Senator. A year ago, we actually reduced our costs, so it is something that we have taken very seriously as a mandate, to be performance-based, to only collect the amount that we need every year that has to be reviewed by OMB, what fees we are going to charge. We reduced the fees that we charge on our Multiple Awards Schedules from 1 percent to .75 of a percent, which was a savings of millions of dollars to customer agencies——

Senator COBURN. Let me get you to clarify that. Your total costs—not your rates but your total costs—went down in 2004 over 2003? Is that your testimony?

Ms. MURPHY. I would have to get back to you on the record for that. I apologize. I have only been with the GSA for about 5 months, but——

Senator COBURN. Well, I want you to answer that, because that is how I measure costs. What are the total costs? And again, with the system that we have set up today, what is the incentive within GSA, if they are on a cost-plus basis, to reduce costs?

Mr. SAFAVIAN. Let me take that on.

Senator COBURN. OK.

Mr. SAFAVIAN. You have really hit the nail on the head, at least in terms of past practice. In my prior life, and I should have disclosed this earlier, I was the Chief of Staff at GSA and so I have a particular soft spot for that organization. But what we found when I was there was that one of the performance metrics driving employee behavior was volume. How many contracts could you get in and out of the door? In fact, following some IG reviews, what we found in one region was that the contracts were coming out the door, I think every 2 minutes, 24/7, 365, not a constructive way to buy goods and services. So first and foremost, that contributed to the problem.

I think if the question you asked is what limits that cost-plus dynamic, there are two major things. One is OMB has to—and does—very carefully monitor where the money is going at GSA. Particularly, we ride herd and keep a tight rein on head count over there. So it is not as though we are inflating the numbers of people to do more volume in order to build more money.

But the other part is that we do have a quasi-competitive system here. Prior to 1996, GSA was a mandatory source for everything. You had to go to GSA and it took you 6 weeks to get a box of paper clips—oversimplification, but you can see where I am going. Post-1996, what we said was other agencies can compete with GSA in certain circumstances. And so you have five different agencies, GSA included, that run these big contracting vehicles.

But the other measure that limits poor performance by GSA is that if you are an agency and you don't like the fees that you are being charged by GSA, unless it is a major commodity buy, you are entitled to do it yourself, and most agencies do that in one form or another. That is a check and balance in the system and it does pose a challenge to GSA. When GSA charges too much, business goes out the door to other agencies.

It is not perfect, and in fact, I can argue that in an effort to generate in this theory that let us have competition for GSA to keep price reduction down, we have actually gone a little bit too far the other way insofar as we have too many vehicles out there, too many organizations that are very difficult for us to track.

And what it does is it encourages a strange dynamic. We talked about how we encouraged volume at GSA. Well, the dynamic you have when you have multiple agencies doing multiple buying is you have agencies actually reaching out to see who can do it fastest, who can get more volume in, and the result is we see bent procurement rules and we don't see the taxpayers seeing the best value.

So again, we have to find this right balance between GSA as this mandatory source organization—we don't like that, that doesn't work—and GSA, which is competing with a bunch of mini-GSAs out there—that is not necessarily working, either. The key is going to be, A, strong management at GSA, which they have; B, strong oversight by you all and by OMB; and C, a measure of competition among all of the Federal customers.

Senator COBURN. Thank you.

Ms. Murphy, did you go to Chrysler and Ford and GM and do post-award audits to see if you got the best price? How do you know you bought better than Avis?

Ms. MURPHY. Now, I am not aware of what we did in any specific contract. I would be happy to get back to you on that, but——

Senator COBURN. Your testimony was that you bought at 33 percent better than all commercial buyers, right?

Ms. MURPHY. Yes.

Senator COBURN. And my question is, how do you know that?

Ms. MURPHY. It is one of the performance metrics by which we track our——

Senator COBURN. I know, but how do we know it? Was there a post-contract audit done on those purchases to know that?

Ms. MURPHY. I do not believe so.

Senator COBURN. OK. So we can't know that.

Ms. MURPHY. The way that we determine our prices going in is we do a pre-negotiation panel. When we receive a requirement, or a contractor comes to us and wants to do business with GSA, for example, using our schedules, they would send us an offer. The first thing that our contracting officer or specialist does is review that offer and looking at their pricing practices and their pricing guides. They then look at similar prices that are available on GSA schedule, which are available at GSA match, look at what is available commercially for pricing. They look at——

Senator COBURN. That is process. I am wanting to know how you know that you got that price.

Ms. MURPHY. That is how we baseline the price. We go in, we negotiate with them. What price are you offering Avis? What price are you offering a large vendor?

Senator COBURN. No, but without a post-award notice, how do you keep clarity and truth out there in the contracting? If I am a supplier and I know you are not coming back to check me, I have a wide range of latitude with which to deal with you.

Ms. MURPHY. Well, we do pre-award audits, also. We have been increasing those. I realize that there was a dip in the late 1990s,

but in the past—let me see, in 2003, there were 14. There will be 70 this year. We are going to see an increase again next year. So we are increasing about 500 percent from 2003.

Senator COBURN. OK. So why are we increasing? We have testimony that it has gone down, the savings have gone down. Why all of a sudden this year are we increasing post-award audits—I mean, pre-award audits?

Ms. MURPHY. Actually, we began in November 2001. We formed an IG working group. It is a very good working relationship with the IG to try and address how we could do more pre-award audits. In those negotiations, actually, the Federal Supply Service has provided $2 million to the IG to hire additional auditors so that they can conduct more pre-award audits. We negotiate with them at the beginning of the year, or actually we are in the process of negotiating for next year how many audits they are going to do, what companies, which audits are the ones that they need to be looking at. It has been a very good and positive relationship. It is only one step, though, of our quality control process.

Senator COBURN. But if a vendor knows that you are doing a pre-award audit but you are not going to do a post-award audit——

Ms. MURPHY. Well——

Senator COBURN [continuing]. We will let you see everything now, but things may change.

Ms. MURPHY. We do still have the right to do compliance audits to make sure that they are maintaining their pricing structure, if they are starting to give someone else a better price, that we also get that price.

Senator COBURN. How many compliance audits did you all do last year on major purchases?

Ms. MURPHY. I would have to get back to you on that one for the record. I don't have that number.

Senator COBURN. Is it a significant number? Is it more than 17?

Ms. MURPHY. Honestly, Senator, I apologize. I don't know that number.

Senator COBURN. I think that is important information. I mean, if you read their report, it is a pretty tough report on the fact that they are saying the savings aren't coming now because things—and what you are testifying is that has changed. Is that correct?

Ms. MURPHY. We are changing our pre-award audit process. We are changing our price negotiation panels. This year alone, we have done 57 price negotiation panels that covered over $2 billion in negotiations. The pre-award audits this year are expected to cover another $5 billion in contracts.

And it is also important to remember that once someone is on one of our schedule vehicles, there is additional price competition in place. So while we may have established what is a fair and reasonable price, we are teaching our customers, we are teaching our own associates, and we have put in ordering procedures that comply with DOD's rules as well as additional rules for the civilian workforce to encourage additional competition.

One tool we created was called e-buy that allows us to take a requirement and push that to all the vendors on a schedule and get back as many offers as we can and then negotiate to see if there are even additional savings to be found.

Senator COBURN. I am excited that you are doing that. I think that is really positive. The question my staff couldn't answer and maybe you can is why can they negotiate a better price than you have?

Ms. MURPHY. Because when the Federal Government is negotiating a schedule price, we are only—there is only a guarantee usually of about $2,500 in purchases. If someone can come in and say, "I can guarantee you this is a contract that is going to be for 3,000 laptops," you can give them a better deal than if you are only buying three. If it is the end of the model cycle——

Senator COBURN. Do we know how many laptops we bought 2 years ago in the Federal Government?

Ms. MURPHY. I think we have some data on it. I couldn't tell you comprehensively——

Senator COBURN. So then why wouldn't we——

Ms. MURPHY. We are working toward strategic sourcing those——

Senator COBURN. Yes, but why wouldn't we say $2,500 is out the window on this. Here is what we know we will buy. And the price range, if we don't buy that, then it can go up 1 or 2 percent. Why in the world would we negotiate something less than the best price? This is the biggest purchaser in the world of everything and everybody ought to get the best price every time.

Mr. SAFAVIAN. But Chairman, let me weigh in here, because there is a different dynamic. If we were going to market on every purchase and saying, all 1.8 million civilian employees are going to need a pen, so we need 1.8 million pens, we would get the absolute best price. Unfortunately, the system doesn't work like that.

Senator COBURN. Why not?

Mr. SAFAVIAN. It doesn't work like that because we will have an agency—we can have USDA buying 40,000 pens——

Senator COBURN. Why?

Mr. SAFAVIAN. And the answer to that is we went from the mandatory source where every purchase was funneled into GSA——

Senator COBURN. You can still have them purchase it.

Mr. SAFAVIAN. No, I am not defending the—and let me point out, we went from a system where all of the funding was, or all of the purchases were routed through GSA and GSA would make these mass buys, in theory that we would get the best prices. We stopped making GSA mandatory, but what we also did was we walked away from any concept of leveraging our buying power to that great extent.

One of the things that OFPP, my office has embarked upon is a strategic sourcing effort. Strategic sourcing is just MBA-speaking for us looking at what we are buying and then buying it better. The first part of that, though, is it requires us to understand what we bought last year. Every major company does this, and when they do it, we see 20, 30, 40 percent price reductions in commodities. And that is where we are going.

But I will tell you candidly, right now, our initiative has training wheels on it. We have asked agencies to identify three commodities and do three commodity councils at the agencies to leverage the buys.

Senator COBURN. I want to make the point with you that somebody making $20,000 a year in Oklahoma is paying $2,000 in Social Security and Medicare taxes, another $2,000 in income taxes. What you all have said basically is we can't get it done fast enough, and what they are saying is why in the world, if you are the biggest purchaser, why doesn't everybody in the Federal Government get the best price? I don't think that—give me some defense of what you can tell them. The reason is, is we don't have the information, or we can't——

The fact is, the goal ought to be, I believe, is when you go to a vendor, give us your best shot because here is what we bought last year. Within plus or minus 20 percent, you are going to get a shot at that. And anybody else that wants to compete after we have competitive bidding can compete at that price for a limited portion of the market. But the rest, the guy that got out there and gave us the price and said they were, they ought to be guaranteed a certain volume, and you can do that.

To say we don't have the knowledge——

Mr. SAFAVIAN. That is true, though.

Senator COBURN. And so the testimony is we don't know what we are buying——

Mr. SAFAVIAN. That is absolutely true.

Senator COBURN [continuing]. Because we can't use leverage to get the best price.

Mr. SAFAVIAN. Not in all cases. Many cases, we do, and I can give you chapter and verse on which agencies are doing a great job on their strategic sourcing efforts—the Postal Service, Agriculture, Homeland Security, surprisingly enough, is doing a great job. The challenge is spreading that out to all 26 major agencies and getting everybody singing off the same page of the hymnal, and we are doing it.

Senator COBURN. But that is punching buttons on computers.

Mr. SAFAVIAN. No. I disagree with you. That is not punching buttons on computers.

Senator COBURN. Then that means that our whole purchasing system is a mess, because every organized business and other entity out there now buys computerized generated purchase orders—they have a list against which they buy. They know what the maximum price is. They know what they are going to pay in terms of freight charges. And at the end of the year, they punch a button in February and they know what they bought the last year and they are anticipating that in October, so they are contracting for the next year, and you are telling me we can't do that.

Mr. SAFAVIAN. We can to a limited extent. The government buys differently than the private sector. Whether we like it or not, we have certain mandates and certain social obligations. I saw one of your posters over there that talked about JWOD and talked about some other mandatory source requirements. Like it or not, the procurement system has been turned into a tool of socio-economic engineering in a number of cases and that makes it a different type of buy.

Senator COBURN. Can you assess, can you give me a percentage or a dollar cost for us doing the social engineering through the purchasing system? What does it cost us in terms of increased cost?

I couldn't give you that number. I don't think anybody can give you that.

Senator COBURN. Mr. Cooper, have you all looked at that?

Mr. COOPER. No, we haven't. I don't think there is any way to come up with a dollar amount for that kind of thing.

But I would like to add a couple of points, and I think you are raising some very important, fundamental questions. GSA talks about getting a 33 percent discount. What they don't know is the commercial customers for that same vendor were getting 43 percent discounts. If you look at the GSA IG report that was done in 2001, you will find example after example after example of where the commercial customers were getting a better deal and GSA didn't know because they weren't doing the pre-award audits. So the pre-award audits are very important to know that.

The other thing that Mr. Safavian has raised about strategic sourcing, I think he has got an excellent point. The government can do much better. We have been pushing for the last 4 years to get agencies to adopt strategic sourcing initiatives. We don't know what we are buying. We have no idea. We don't have the information systems. We don't know who we are buying from. We don't know what we are paying. And we need to have all of that information.

As you point out, any major corporation in this world that is worth their salt, and we have gone out and done best practices work at a number of those companies, take purchasing as a very serious function, a function that adds to the profit line of those companies.

Senator COBURN. You bet.

Mr. COOPER. And they go out and they get the best deals they can do and they have the information systems and know who they are buying from, how much they are buying. And the other thing is, those companies also have socio-economic objectives that they meet. So they are spreading that purchasing out. You don't sacrifice one for the other. You have to manage both.

Senator COBURN. Let me ask you one question. Would it make sense to you, if we are the biggest purchaser, we ought to get the best price?

Mr. COOPER. Absolutely, the best possible price in every case.

Senator COBURN. And the best service?

Mr. COOPER. And the best service, the best delivery terms, you name it. The purchasing power of the government should be used to its advantage.

Senator COBURN. And should that be done in a way that vendors like doing business with the Federal Government?

Mr. COOPER. I think there is enough business coming from the Federal Government, there are an awful lot of vendors that want that business, yes.

Senator COBURN. OK. But there are real problems with hurdles in doing business with the Federal Government.

Mr. COOPER. There is no question about that.

Senator COBURN. And is somebody working on solving those problems?

Mr. COOPER. I would like to talk about the battery case for just a minute, because we have, over the years, looked at a number of

different situations where companies are reluctant to deal with the government because of the red tape, the intrusion that Mr. Safavian talked about. The Congress has passed all kinds of legislation that allow us to streamline our processes to reach those people, and I think it comes down to the companies making a business decision of whether it is in their best interest or not to do business with the government.

We have something we call "other transactions." It gets away from cost or pricing data. It eliminates the requirement to follow the Truth in Negotiations Act. It makes it much easier for companies to deal with the Federal Government. There are all kinds of ways. The contractors can ask for waivers of cost or pricing data for these intrusive kinds of things that some companies don't want to deal with.

Senator COBURN. So was that done in these two instances?

Mr. SAFAVIAN. No, but I think this is an absolutely critical point. What we are saying is we can waive data requirements when it is in the government's best interest or we can ask for more data 20 years out after a contract is executed. Those are the two ends of the continuum. Twenty years is a long time. Let me rephrase that.

You can either do the post-award audits, where we are asking for more data after the transaction, or as Mr. Cooper said, there are flexibilities where we can use other transaction authority and say, we really don't need the cost and pricing data to go get this.

Senator COBURN. Or we can do what Ms. Murphy said. We can have a continuing audit, which she alluded to earlier. You can go in—there are other mechanisms which you can check that.

Mr. SAFAVIAN. I think that is right. But what the one thing that I think all of us agree here is that at the pre-award phase, when the vendors come in and say, here is our data, here is what we want to charge you, GSA should be using more pre-award audits. There is no doubt about that. Where we get into, I think, probably an inter-family fight is when we are talking about doing more post-award audits, and what we are talking about is not whether or not Ford delivered the 1,000 cars it said it was going to. We always have the authority to do that.

What we are talking about is 5 years after Ford came in and negotiated its price, can we, as the government, go back to Ford and say, we want to see all of the data that you calculated your price 5 years ago so that we know whether that price 5 years ago was the right price. That is the post-award audit we are talking about.

Now, maybe for Ford, that is fine. But for my family business in Trenton, Michigan, Trenton Forging, they are not going to keep that data for 5 years or 10 years or 13 years, depending on the length of the contract. And that is where we get into that red tape issue.

Senator COBURN. Well, you are talking in terms much longer than what I would use that tool. What I would use the tool—I would never give away this tool, and the reason I wouldn't ever give away the tool is you don't even have to use it but once or twice. It is like my proposal. I think we ought to put some doctors that are defrauding Medicare in jail, and if you did that about ten times a year, there would be a whole lot less fraud in Medicare. But we don't use that tool, and so consequently, I believe you have

kind of disarmed yourself by the post-award audit, the lack of—saying it is not going to be there, because what you have done is taken away a tool that is going to intimidate the wrong behavior, to make sure the wrong behavior doesn't happen in some of your contracts.

Look, most people are honest. I want to see a government where we assume people are doing the right thing, not assume people are doing the wrong thing, and all across our government. We have gone in a different direction in this country. We assume everybody is wrong. We have to prove you are right. I would like to see it.

But the tool is to occasionally audit, and that doesn't mean you audit everything. That means use the tool effectively to lower the prices. I guess my comparison, having a pretty long history in business before I was a physician, is we have got great tools and you have got the information. It is just you can't get it to you, somewhere, the information on what we bought. Every agency knows what they bought. We spent $64 billion on IT equipment last year alone as a government. Somewhere, that data is there. The question is that we haven't got the CFOs in everyplace to get the transparency and to get the accountability that we need to be able to get that. But if we start running these under good financial standards, we ought to be able to get that.

Mr. SAFAVIAN. Before we started today, David and I were talking about the report that you all have, the most recent report from GAO, and one of the recommendations, it says—let me back up. When we are talking about post-award audits, these relatively burdensome and intrusive audits, they are in place. There is authority to do that currently at GSA, but it is a very high threshold. To put it simply, it is the tool of last resort, but it is still available.

And the one thing that I noticed in the GAO report was it said—it didn't say that we should make—that we should be lowering the threshold as to whether or not we should do those, only that we need to inform our contracting officers that this is a tool of last resort and that it is available.

Senator COBURN. And it ought to be used every now and then so they still know it is going to be used.

Mr. SAFAVIAN. Once in a while.

Mr. COOPER. Yes. What we recommended was to give those contracting officers guidance so they knew when to use the post-award——

Senator COBURN. Yes.

Mr. SAFAVIAN. But the last thing we want to do is we don't want to see every mom and pop or every large business subject to post-award audits. That just hurts everybody.

Senator COBURN. You don't have to, because that is not the intent of it. The intent of it is to be a tool to encourage good behavior. If it is used properly, you don't have to use it much. It is like a stick on your child. You don't have to use it much.

Mr. COOPER. I think you will hear that from the next panel.

Senator COBURN. All right. Ms. Murphy, do you have any comments on anything we have been talking about here just recently?

Ms. MURPHY. Well, I would just say that we at GSA also have strategic sourcing, are trying to—we have been partnering with the Department of Agriculture, partnering with Homeland Security,

partnering with other agencies to help them better use our schedules, our tools to strategic source to bring down prices. We have been—we really are trying to take a comprehensive approach to prenegotiation. We have been training our contracting officers and specialists. We have got a course that is starting next week on pricing mods and how we can better negotiate.

So we are taking this very seriously. We believe this responsibility to the taxpayers is one of the penultimate responsibilities of a contracting officer and we want to make sure that our acquisition workforce has the tools it needs to give that best value.

We also, though, are very conscious of the fact that 80 percent of our vendors are small businesses, and so any time we impose additional burdens on those vendors, it is a real cost of business for them——

Senator COBURN. And it is a reason some of them might not want to do business with you. I understand that. I had personal experience with it. I understand it.

First of all, let me thank each of you for coming. I am going to invite you back 6 months from today—actually, maybe not 6 months from today, that is after Christmas—after the first of the year and I want us to discuss this again. I want to see whether headway has been made. We are going to have another set of people testifying here in a moment.

Ms. Murphy, you have promised to get us some answers to some questions. We will expect that in a prompt manner, if you would.

We are going to look at this, because there is not one area of the Federal Government we shouldn't concern ourselves with, and I am not just talking about GSA. If you look at the hearings I am having, we are not picking on anybody. We are picking on everybody, and we are going to help drive efficiency and we are going to try to help drive to get rid of the waste.

This is not a criticism of anybody individually. I am proud of the people that work for this government. I think they are great people and I think they do a great service. But I think sometimes the forest and the trees get confused and we need to step back outside.

I would leave you with this to carry home. We ought to know what we are buying. We ought to be able to evaluate that and we ought to be able to use that as a tool to buy better and save a ton of money. And every tool you have to perk that—I guarantee you, the purchasing manager at Ford doesn't wince anything when he goes to try to get a better price, and I guarantee he has got a guaranteed price. Otherwise, that guy won't have the contract the next year and he is going to check it. So we ought to be modeling some of that behavior on a way, and I think that you all will do that and I appreciate you coming to the hearing. Thank you. This panel is dismissed.

I would hope somebody from GSA would remain and maybe somebody from OMB to hear our next witnesses, just so you can have input of what they are going to say, because we will be using this in the next hearing.

Senator COBURN. Welcome. Thank you all. On our second panel is Kathleen Tighe. She is Counsel to the Inspector General, Office of the Inspector General, General Services Administration. Also, John Ames, Director for Contract Review and Evaluation Division,

Office of Inspector General, Department of Veterans Affairs. And also, Thomas Graham, the Chief Operating Officer of Networld Exchange, Carlsbad, California.

Welcome to each of you. Thank you, number one, for coming. Thank you for giving us your testimony earlier than 12 or 13 hours before the hearing. Your full written statement will be made part of the record, and if you would, try to keep your comments to under 5 minutes.

Ms. Tighe.

TESTIMONY OF KATHLEEN S. TIGHE,[1] COUNSEL TO THE INSPECTOR GENERAL, U.S. GENERAL SERVICES ADMINISTRATION

Ms. TIGHE. Thank you very much, Mr. Chairman. Before I begin, I would like to note that our new Inspector General, Brian Miller, was confirmed by the Senate on Friday——

Senator COBURN. Welcome, General.

Ms. TIGHE [continuing]. So he is new to the Inspector General community.

We greatly appreciate the opportunity to testify on GSA's procurement processes and present the views of the Office of Inspector General. I will primarily address the importance of contract audit rights and the vital role we believe they play in ensuring that taxpayers' interests are protected.

The experience of the Office of Inspector General in contract auditing has arisen primarily in the context of the MAS program we have been talking about so much today. One of the aims of the MAS program is to provide agencies with the widest possible choice among qualified vendors. In addition, GSA commits to MAS users that schedule prices are fair and reasonable. Because the goal of the program is to maximize choice, there is no head-to-head competition as a means of ensuring fair and reasonable pricing. Instead, what GSA does is ask for information regarding a vendor's commercial pricing to its best customers and seeks to negotiate a price that is equal to its best price. It is this use by GSA of vendor-supplied information that gives rise to the need to audit.

Currently, there are two main types of audits conducted of MAS contracts, compliance audits and pre-award audits. Compliance audits allow our auditors to examine a vendor's books and records to check for overbillings and ensure compliance with the price reduction and industrial funding fee clauses.

The second type of MAS contract is the pre-award audit. These audits, conducted at the request of contracting officers in coordination with our office, are performed prior to GSA awarding or extending MAS contracts. They examine the pricing information a vendor provides in its proposal. This information is then used by the CO to negotiate a better price for the government under the MAS contract.

In a report issued by our office in 2001 which GAO referenced, we noted the dramatic decline in the use of pre-award audits in the late 1990s. For example, in 1997, only eight pre-awards were conducted. That was the low point. This report spurred the formation

[1] The prepared statement of Ms. Tighe appears in the Appendix on page 77.

of a working group within GSA, which Ms. Murphy noted, comprised of members of GSA's Federal Supply Service and our own office and we were tasked, among other things, with increasing the number of pre-award audits. By the end of this fiscal year, we expect to have conducted about 70 pre-award audits covering about $5.2 billion of expected sales and we hope that the trend does go up, and we are working, I hope, with GSA and have been fairly successfully toward that end.

Prior to 1997, though, GSA also had the ability to conduct post-award audits of pricing information provided during MAS negotiations, the so-called defective pricing audits. We initiated and conducted these audits and their purpose was to determine whether this all-important pricing information MAS vendors provided is current, accurate, and complete.

In 1997, GSA virtually eliminated the authority to conduct post-award defective pricing audits. Although GSA did retain language, which was discussed very briefly, that would allow COs to modify MAS contracts to allow for defective pricing audits, the modification requires a high level of approval and a CO finding that there is a likelihood of significant harm absent inclusion of this audit authority. To date at GSA, this clause has never been modified to exercise defective pricing authority.

We believe defective pricing audits are an important means of protecting the integrity of pricing disclosures and should be reinstated. In the 3-year period prior to the 1997 rule change, 84 percent of our post-award audits contained findings of defective pricing. Looking only at the small numbers of these audits that were referred to the Department of Justice because they had indications of fraud, we recovered $110 million in the 8 years prior to the rule change. This amount of money does not include monies recovered by contracting officers administratively. It also does not include the amounts attributable to improved forward pricing, because the COs can take these reports and negotiate good prices going forward, also. It is not just about getting money back.

Every indication we have based on hotline calls and fraud actions filed under the civil False Claims Act is that faulty and incomplete pricing disclosures are still prevalent at GSA, even though we can't audit for them.

We also don't think, as you yourself mentioned, Mr. Chairman, that audits can be measured in terms of numbers of contracts audited or dollars recovered. Even at the height of our auditing, we conducted only about 40 to 50 post-awards a year. It is really the existence of the audit right that serves as a deterrent, we believe, to vendors that would misrepresent their pricing information to the government, and I believe this right encourages companies to put in place internal compliance programs and other things and good housekeeping measures internally and make them more responsible contractors.

We believe the success of the Department of Veterans Affairs voluntary disclosure program is due in part to the fact that it retained contractual defective pricing audit rights.

We have strongly urged GSA to reinstate post-award audit access to negotiation information. The ability of GSA to negotiate prices commensurate with the government's purchasing power is depend-

ent on getting current, accurate, and complete pricing information from vendors. We believe that post-award defective pricing audits are a critical adjunct to the existing pre-award audits. Although we expect to perform 70 pre-award audits this year, as I noted, this only represents a small percentage of the over 17,000 total existing MAS contracts. We believe that as long as GSA wants to maintain maximum choice, the centerpiece of the MAS program, audit rights over pricing information should be an appropriate, necessary feature of these contracts.

Thank you very much. I am happy to answer any questions.

Senator COBURN. Thank you. Mr. Ames, thank you for being here.

TESTIMONY OF JOHN B. AMES,[1] DIRECTOR, CONTRACT REVIEW AND EVALUATION DIVISION, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. AMES. Mr. Chairman, I am pleased to be here today to explain why pre-award and post-award audits of Federal Supply Schedule proposals and contracts are in the best interest of the government and to discuss the need to maintain post-award audit authority in all FSS contracts.

We strongly believe that pre- and post-award audits help ensure VA is getting the best possible price for the American taxpayer. VA has been delegated authority by GSA to manage 11 schedules for health care products and services. These schedules encompass over 1,400 contracts with annual sales projected to exceed $7 billion in fiscal year 2005.

In fiscal year 1993, VA entered into a Memorandum of Understanding with the OIG to provide audit services for VA's FSS contracts on a reimbursable basis, paid for by VA's revolving supply fund. This partnership with VA has proven to be very successful. During the past 12 years, we have conducted 240 pre-award audits. These audits contain recommendations for better use of funds by obtaining lower contract prices of approximately $2.2 billion, of which $390 million was actually sustained during contract negotiations.

In addition, 238 post-award audits were conducted, resulting in approximately $319 million in recoveries for VA. The recoveries have more than paid for the cost of conducting these audits, with a return on investment of $11 for each dollar expended. Of the 238 post-award audits, we initiated 107 in response to vendors' voluntary disclosures. These vendors collectively offered to pay back $37.5 million in overcharges. However, as a result of post-award audits, we actually recovered $113 million for VA.

The number of voluntary disclosures shows that post-award audit authority has had a deterrent effect on industry. These audits also provide valuable insight into each vendor's commercial practices, which VA has used to improve its contracting and purchasing activities.

In response to industry objections to post-award audits of FSS contracts, GSA issued a final rule in August 1997 that virtually eliminated the clause permitting post-award examination of records

[1] The prepared statement of Mr. Ames appears in the Appendix on page 87.

for the purpose of auditing pricing information submitted during contract negotiations. Because of opposition from VA, the Department of Justice, and the GSA OIG to eliminating post-award audits, GSA compromised and the final rule allowed the awarding agency some very limited discretion to include the clause in schedules that were determined to be a risk for harm if the clause was not included.

To further appease industry, the final rule imposed a 2-year limitation on auditing commercial sales practices and other information relied on by the contracting officer in awarding a contract or modification.

In response to the final rule, VA evaluated its schedules, identified those that were at risk, and took the actions necessary to include the post-award examination of records clause in these schedules. As a result, we have continued to perform post-award audits.

In March 2005, GSA has once again raised the issue concerning the need and benefit of post-award audits. In response to their advance notice, we maintained our position that post-award audit clauses, which existed prior to the August 1997 final rule, should be reinstated and should be included in all FSS contracts. We believe this is needed to protect the interests of the government and to ensure that we receive fair and reasonable pricing.

Throughout the past 10 years, industry has made a number of arguments in opposition to post-award audits. A primary argument is that the audits are overly burdensome on the contractors' operations. Our on-site audits at the vendor's place of business are only conducted on an as-needed basis and are usually completed in 2 days or less. We have reviewed large and small businesses and found that most maintain records in electronic format, that the information is maintained for many purposes, not just government audit requirements, and that the information is readily available for review.

Last, notwithstanding GSA's lack of involvement with VA's 11 schedules, GSA retains the authority to interpret and issue rules affecting all FSS schedules. Because of this, we propose that GSA transfer to VA complete authority to manage its 11 schedules, including all rulemaking authority. This will ensure our ability to continue to negotiate and obtain the best prices for the government.

For the reasons stated above, we recommend that GSA reinstate the post-award access to records and right to examine records clause that was deleted by GSA's final rule. We also recommend that Congress consider transferring the 11 schedules that VA currently manages from GSA to VA.

I thank you for the opportunity to testify. This concludes my formal statement. I will be pleased to answer any questions.

Senator COBURN. Thank you, Mr. Ames.

Mr. Graham, thank you. Welcome. We are glad you came. Thank you for coming.

TESTIMONY OF THOMAS GRAHAM,[1] CHIEF OPERATING OFFICER, NETWORLD EXCHANGE, CARLSBAD, CALIFORNIA

Mr. GRAHAM. Good to be here, sir. I really appreciate the opportunity to appear before this Subcommittee to talk about GSA—GSA fees.

My answer to your question, is GSA getting the best deal, or giving the taxpayer the best deal, I believe very strongly that we have to look at this from a balanced and unique perspective and we need to look at the current press on GSA, which prior testimony more than documented. As we look at this current press, it clearly indicates that there is a problem within the GSA hierarchy in terms of is GSA doing the best job for the American Government. We have to look at GSA not only from the perspective of the fees that GSA charges, but we have to look at GSA and contracting in terms of the effectiveness and the efficiency in which the agency operates as they charge those fees.

I believe that GSA, frankly, mirrors problems that are endemic to the government acquisition domain, meaning that problems at GSA can be found across the board when we talk about franchise agencies as they conduct business for the U.S. Government and as they charge fees in the conduct of that business.

If we look at these fees from a larger perspective, one could reasonably conclude that they are high. If we look at these fees from the perspective of the value that the agencies bring to the table and we measure the efficiency and the effectiveness of these practices, one element becomes very clear. GSA, to quote GSA, GSA has indicated that from their own IG that they are not as efficient as they could be. So one could conclude that with a bit of reform, with a bit of change in the way the GSA does business, that, in fact, they could be effective and efficient.

One of the things that I would like to propose today is that that is, in fact, the case and, quoting from GSA's own staff, the staff feels that if GSA could automate their purchasing practices and create tools that automate what they do across the board in terms of compliance and results, that a lot of the issues that are being discussed today in terms of costs for service and value would be decreased.

For example, GSA currently operates at a cost to the taxpayer averaging 5 percent per action. In previous testimony, it has been indicated that an average of about $600 per action is the average cost.

In our case, we believe that we have, and when I say "we," my company, Networld Exchange, has created in cooperation with the Navy Postgraduate School and the Department of Interior a contract that responds to a number of the issues and questions that have been raised here today.

For example, the Federal Government has increased spending on acquisition issues between 2000 and 2005 by about 30 percent. This data is public, and one of the things that we know is that as the cost of goods and services have increased and the cost of acquiring those goods and services using GSA and other Federal agencies like GSA, what has occurred at the same time is that the

[1] The prepared statement of Mr. Graham appears in the Appendix on page 98.

acquisition workforce that conducts these actions have been actually decreasing, taking away with them past knowledge that could be very useful in creating new opportunities and new knowledge base to create new opportunities.

The Navy Postgraduate School conducted a study a number of years ago, and in the findings at the Navy Postgraduate School, the question was raised whether the efficiency of the current acquisition workforce could be improved to save money for the Federal Government and the answer was clearly no. So as a direct consequence, the Navy Postgraduate School created a think tank that would study acquisition, logistics, research and development, and the result of that effort was the creation of what is currently called the Open Market Corridor.

The Open Market Corridor is administered by the Department of Interior National Business Center in Fort Huachuca, Arizona, and research and development in a constant form is conducted between the Navy Postgraduate School and my company, Networld Exchange. OMC was developed with zero up-front costs to the Federal Government. The government paid nothing for the software.

One of the other issues that OMC brought to the table was the fact that this development was done in collaboration between industry and the government. Current purchasing practices at GSA does not have that selective kind of collaboration, particularly when dealing with IT purchases. Information technology purchases particularly are a fast-growing item within the acquisition milieu of the Federal Government.

The Federal Government pays more for IT purchases than the private sector does, and one of the reasons for that is that the knowledge base within the Federal Government regarding IT purchases is suspect. As a matter of fact, recent publications indicate that many agencies now are hiring chief executives to handle IT purchases.

The intent of OMC was to demonstrate that a web-based procurement execution and administration system compliant with the FAR, particularly FAR 12, could be an effective tool that could be applied across government. Using OMC, we think that the shrinking procurement workforce can become a more efficient organization in the sense that OMC allows greater use of time and availability of folks that are involved in the procurement domain.

Senator COBURN. Can I get you to summarize, if you would.

Mr. GRAHAM. Yes, sir. We believe that, basically, as a developer, that the government needs to take a very close look at how purchases occur in terms of working collaboratively with industry to reduce costs. Thank you.

Senator COBURN. Thank you.

Ms. Tighe, who set the policy that choice is more important than price and quality?

Ms. TIGHE. I think that has been the longstanding sort of reason for the MAS program, so it was sort of no one person or no one time. Ever since I have been involved in the MAS program, which has been the last 15 years, that has been the operating principle of the program.

Senator COBURN. Can you give me the background on why that would be? I am having trouble understanding why that trumped price and service.

Ms. TIGHE. Well, I don't think it is intended to necessarily trump price. I think it just means you have to go about getting good prices another way. I mean, one way of getting good prices on the MAS program would, of course, be to limit the number of people who can get schedules. Now, that would instill competition on the front end. You wouldn't necessarily need to go get data, wouldn't necessarily need to go do pre- or post-awards. But I think the intention is to—you know, it is sort of the big umbrella for the Federal Government and you want to—the agencies like to know that they can go at a very low, good price and go to Dell Computer and buy computers or go to Gateway or go to whoever they want to and not be limited in their choice, and I think that has always been sort of the reason behind the thought.

Senator COBURN. Can you give me the logical reason behind it? I mean, there is not that much difference between a Gateway, an IBM Thinkpad, and a Dell, other than price. I mean, they are all using Intel chips. So can you explain to me where that came about? What was the reason behind that? Is it because that was demanded by the different agencies, that they wanted more say in it?

Ms. TIGHE. That is essentially my understanding, is that was the feedback they were getting from other agencies.

Senator COBURN. You talked about the $5 billion that was purchased this last year. I think you made mention of——

Ms. TIGHE. Yes. Actually, I think it is—this year is looking at, like, $31 billion under the MAS program.

Senator COBURN. But of the total government purchases—this is an important number—$291 billion, right? And so if we look at the total purchases and we look at what it costs to run GSA, which is the $20 billion, we are at almost 7 percent cost. The question is, if we are motivated based on choice, not on price, and the price is actually too high, then that ratio actually goes much higher, the cost of GSA services for the price.

Ms. TIGHE. I understand. I believe it is possible to keep what GSA wants to—maximum choice and get good prices if you do a better job of looking at the information vendors give up front and have ability to check it, spot check it as contract terms go on.

Senator COBURN. And you agree that we need to have pre- and post-award audits?

Ms. TIGHE. I do agree. Yes, absolutely.

Senator COBURN. Was that a unilateral decision that was made by GSA, to eliminate—this happened in 1997, correct?

Ms. TIGHE. Nineteen-ninety-seven, correct.

Senator COBURN. To eliminate post-award audits?

Ms. TIGHE. It was a decision made by GSA, but also with the blessing of the Office of Federal Procurement Policy——

Senator COBURN. In OMB?

Ms. TIGHE. Yes, in OMB. There was much discussion during the time. Department of Justice had input. We had input. VA had input. They certainly listened to our viewpoints, and I don't quibble with that. But in the end, GSA made the decision that it was going to eliminate post-award audit rights.

Senator COBURN. And if you were to try to defend that based on what you have heard here today, can anybody legitimately defend that position of not having that tool out there where it can be used?

Ms. TIGHE. In my opinion, no. I think it was very short-sighted. I think GSA gave in to vendor pressure and arguments that it was unduly burdensome, which I don't agree with.

Senator COBURN. Well, it could be.

Ms. TIGHE. I understand that.

Senator COBURN. If you are a small business and you are doing it all the time——

Ms. TIGHE. Absolutely.

Senator COBURN. But that wasn't what it was intended and that wasn't——

Ms. TIGHE. And that is what we try to focus our auditing on the large dollar contracts or the contractors with risk factors or have a reason to audit. It is not done to go out and look at small businesses.

Senator COBURN. Or to raise costs.

Mr. Ames, why does GSA want to take your authority for pre- and post-audits away? You have done a wonderful job, another area where the VA is leading. The VA is leading in the Internet technology in health care. You are leading in terms of purchase savings. Why do they want to take that away?

Mr. AMES. I would comment and echo some of the same statements that Ms. Tighe just made. I distinctly remember the years following up to the 1997 final rule. I felt as if we were in the vanguard, trying to protect the pre- and post-award audit rights. The GSA basically caved into industry pressure. Now, you also had FASA of 1994 in that time frame and you had the Clinger-Cohen Act and some people went so far as to say, well, those pieces of legislation prohibited post-award audits. We never saw it that way at all.

We didn't think the legislation did prohibit the audits, and quite frankly, with the voluntary disclosures that we have had, when I heard the critics mention that the audits are overly burdensome and cumbersome, some of our best corporate citizens, best corporate companies are ones that we have had voluntary disclosures and we have had settlement agreements with. One drug company in particular, we had an $8 million settlement with. Following that settlement, they have come forward with about 15 voluntary disclosures. So time and time again, and they have come forward with things that probably we would not have found had it not been for their disclosures.

So I think that, from our standpoint, we feel that we conclusively know that were it not for post-award audits, the voluntary disclosure program would dry up overnight. And we equate business integrity and accountability. If you have business integrity, you shouldn't mind being accountable for your business transactions.

Senator COBURN. All right. I would like to submit for the record an OMC/GSA comparison table on six items,[1] and I think these were in the last month, where it shows every time OMC beats

[1] Chart entitled "OMC/GSA Comparison Table" submitted by Senator Coburn appears in the Appendix on page 154.

GSA, plus OMC is taking 2 percent off the top for their own profits. We are going to ask for more records.

There are also some other interesting things associated with it. The delivery is faster, 2 weeks versus 5 days or 2 days. Vendor choice is not necessarily less. And yet the savings looks to me about somewhere around 4 or 5 percent over what GSA can buy the same thing.

Without your objection, Senator Carper, I would like to introduce that into the record.

Senator CARPER. Clearly, it ought to be in there.

Senator COBURN. I would like to recognize Senator Carper now. We have had a great hearing. Sorry you couldn't be here earlier. I know you had a conflict in your schedule, but we have had good testimony and it is your time.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. I apologize for not being here for all of it. We are trying to get to a place where we can bring the Postal reform bill, that I know you have an interest in——

Senator COBURN. Yes.

Senator CARPER [continuing]. To the Senate floor, so we have been distracted with that for the last hour or so.

I have a number of questions, one of which I want to submit for the record. I will mention that one first.

It is an outfit, a private company, I think they are called Silver Oak Solutions, that works with a number of States, maybe some local governments, as well, and one of the things that they do is try to help those States to reduce their cost of purchasing all kinds of items, and I think the approach is an online bidding competition that pits all kinds of vendors for the same particular commodity or product, enables them to bid against each other, and in the end, somebody has the low bid and wins the bid and the State walks off with a little bit of savings and the goods that they need.

I just want you to take a look at it and see if there are any lessons, any applicability for what is going on in those State Governments that might help us at the Federal level.

Not having been here to hear your testimony, let me just ask each of you, and I will just start with you, Mr. Graham, because I like your first name——

Mr. GRAHAM. OK. Fantastic. [Laughter.]

Senator CARPER. I want to start with you and just ask you to share with me some of the take-aways. I ask you, what should I be taking away in terms of what you presented to this Subcommittee?

The other thing I am going to ask, after we go through that and talk about that for a while, I am going to ask you, what should we do? What should this Subcommittee do? What should this Committee do? What should the Senate and the Congress be doing, and the Administration? What should we be doing?

We all know we have these huge budget deficits. They are out of control. There are a variety of things we need to do, probably all of them that we need to do, I think will help us rein this deficit back in. But what should specifically this Subcommittee and this

Senate be doing in response to the concerns that we are discussing here today?

First, though, if you will, the take-aways for me, and for others who might not have been here.

Mr. GRAHAM. OK, fantastic. The first take-away, I think we would like to address, is the entire issue of government acquisition and how it works. A number of folks here have testified that government acquisition is actually—the way the system works can be actually a deterrent to participation from large and small business and that, in fact, occurs.

But the other thing, of course, is that is just part of the problem. We want to talk about solutions and the solution resides in really reform, and the particular issue that I would like to bring forward is automation. There have been a number of cases where agencies have decided to automate. There are a number of initiatives in government, IAE initiatives and DOD. However, there is no commonality among those initiatives so the result is usually the same in the sense that everybody does their own thing and there is no connectivity between those agencies.

What I believe is that the Federal Government, particularly this Subcommittee, should insist on that, especially insisting on it within the milieu of Homeland Security. There are two major IT projects currently in the Homeland Security Department where they started last year, they awarded it to Bearing Point, and less than a year later, they are not sure where they are going, and both of those projects are literally today at a standstill.

To address your suggestion from the company you are talking about that helps the States, what you are talking about are reverse auctions. The government has tested reverse auctions with mixed results because——

Senator CARPER. When you say the government, the Federal Government?

Mr. GRAHAM. The Federal Government, yes.

Senator CARPER. OK.

Mr. GRAHAM. Particularly the Navy. The U.S. Navy uses reverse auctions quite frequently, and one of the things that occurs is that——

Senator CARPER. Do you think my interest in reverse auctions has anything to do with my being a Naval flight officer for 23 years? Do you think it is just a coincidence, maybe? [Laughter.]

Mr. GRAHAM. Probably a coincidence. I believe that the results are not usually the results that are expected, because many times, if you do a reverse auction, participants in that reverse auction usually decrease over time if you use it as your only tool.

For example, the Navy has a contract called Seaport Enhanced. The entire Seaport Enhanced contract is a reverse auction involving 650 vendors, and they have mixed success in Seaport. They are in their third or fourth year. Today, they still cannot quantify savings. So they are moving in the right direction. However, there needs to be a little more oversight of that program.

I don't know if there is any optimal solution to Federal savings. However, I believe that the government, and I do agree with you, Dr. Coburn, that the government can, in fact, demand lowest price. The number of corporations in the United States that would not

exist without doing business with the government, there are quite a few of them, and all the usual suspects—the Lockheed Martins of the world and the SAICs of the world.

The question still remains, however, is how do you accomplish that, and I am not sure you can accomplish that with the current practice across the board, including practices at GSA.

Senator CARPER. Later on, I will come back to you and just ask what should we be doing.

Mr. AMES. Two major take-aways, Senator Carper, from my testimony. The first is that we strongly believe that there is a place for pre- and post-award audits under the Federal Supply Schedule or Multiple Awards Schedules Program.

And the second matter is that we would like to see the 11 schedules that GSA has delegated to the VA—these schedules deal with health care products and health care services—that those be transferred to the VA and the VA have complete rulemaking authority over those schedules.

Senator CARPER. Ms. Tighe.

Ms. TIGHE. I think my take-aways are very similar to Mr. Ames's, because we are sort of like-minded on the issues of pre- and post-award audits. At the Office of Inspector General, we feel we work for the taxpayers ultimately and it is the taxpayers we look to first to make sure that they are getting the best prices or whatever the issue happens to be.

We worry about the prices on the MAS schedule, not because we necessarily have hard, concrete data that there is widespread overpricing problems, but we see enough problems in the course of the few audits that we do that we worry about the audits we don't do. Our past history has indicated that, in fact, there is a problem out there and GSA has backed away from it. We would like to see them reinstitute post-award defective pricing audits and we will be happy to work with them, as we are right now, to continue to increase the number of pre-awards.

Senator CARPER. Going back to you, Mr. Graham, were you in the Navy?

Mr. GRAHAM. No, sir. I am an Air Force person.

Senator CARPER. Air Force, good for you. Were you ever stationed at Dover?

Mr. GRAHAM. No, sir.

Senator CARPER. OK. What should we do in response to what you are presenting to us and the first panel presented to us today?

Mr. GRAHAM. Well, I believe that the first order of business is to insist that agencies like GSA do their job, and by that I mean this. We see a lot of plans. We see a lot of intentions, fully well documented intentions. For example, one of those is the "Get it Right" Program. If you look at the elements of the "Get it Right" Program that was just agreed to between DOD and GSA, one would have no quarrels with that if, in fact, it gets done and if, in fact, the results prove the intent.

We think, and rather than do a shameless plug for my company, we think that working with the Navy Postgraduate School, we have at least gotten a handle on a number of the problems that were raised here today, and I will give you a few examples of those.

We have created a product where any company listed on the central contractor registry can, in fact, do business with the Federal Government. For example, Mr. Safavian gave an example of two companies that had fairly innovative products that have refused to do business with the Federal Government because of the red tape.

Senator CARPER. Because of what?

Mr. GRAHAM. Red tape. Our contract, in effect, has eliminated quite a bit of that red tape, at least in the methodology that we use today. If the Federal Government needed those products, wanted those products, they could get at those companies today if they needed to use our contract.

One of the other issues that has been discussed extensively here is the entire issue of audits and post-audits and more than look at the element of the audits and post-audits, I think that the Subcommittee needs to take into consideration why we do these audits. One of the reasons that I think these audits are necessary is to ensure that, in fact, the government is getting what it is paying for.

In our situation, we have created a domain where every element of every contract within the—or tasked within our contract can be audited from the first time someone enters into the system to the time they execute the buy to the time they close out the buy. Every piece of paper that is attached to that contract is done in an automated form and it is easy.

For example, one of the things that many vendors complain about, particularly in post-audit situations, is the cost to that vendor of money because, let us say the government, particularly the Defense Department, DFAS, it takes a long time for them to pay you sometimes, and if you are a small business, 90, 120 days is a very long time. It is probably, Dr. Coburn, why you gave those folks those lenses a number of years ago, because it is frustrating.

Well, we have created a situation where, in fact, the agency and the vendor can actually look at issues as they occur, pieces of paper. You go to the site and if you lost the piece of paper which is necessary for payment in some cases, you can download the form again that is filled out because the computer does all that and sign the piece of paper and pay. And I think that kind of automation needs to happen more often than not in the government.

Senator CARPER. Thank you. Mr. Ames, what should we do?

Mr. AMES. Senator Carper, I would say that in terms of what I think you should do would be very similar to my two take-aways that I gave in the testimony, and that is——

Senator CARPER. This is what we call staying on message in my business. [Laughter.]

Pretty good at it, too, isn't he? [Laughter.]

Mr. AMES. Which we do strongly feel that the post-award audits and the pre-award audits have their place. We strongly believe that we should be able to manage and do all of the things that would be done with the 11 schedules that we have.

And also, I guess I would say that I certainly applaud the opportunity to be at a hearing of this type, because I think it is something that for years has needed to be looked at and I applaud you for having the hearing.

Senator CARPER. Well, it was hard for me to convince Dr. Coburn to do this, but he finally relented. No, no, no—— [Laughter.]

It wasn't hard at all. It was hard to drag the rest of us here.

Senator COBURN. I wonder which dog is dragging which? [Laughter.]

Senator CARPER. All right. Ms. Tighe, at least from you, the last word in this round.

Ms. TIGHE. Senator, I would would hope that GSA on its own would restore our post-award audit rights that they took away from us in 1997. If they aren't willing to do so administratively on their own, it may be that some legislative fix needs to happen. I think they are important and I think it is an area that we could really do something for the taxpayer by having that right back.

Senator CARPER. Good. Thanks. I think my time may have just expired. Thank you, Mr. Chairman.

Senator COBURN. Just for your benefit, Senator Carper, one of the points I made with OMB is, and I will paraphrase it in a different way, if somebody came to Earth today and said, you are going to spend $291 billion for the American Government and you want to design a system to buy it efficiently, on time, best price, best quality, would you have the GSA, and that is a legitimate question we have. Or, if not, how would you have it? Would it be totally automated? Would it be to where everybody had information at their fingertips? Would it be the audit trail that you can track electronically rather than have to be there? So I think there is a lot of place for movement.

I want to ask just a couple favors of you, Mr. Graham. You said that there were a couple of projects with Bearing Point ongoing right now that haven't maybe accomplished what they intended. Would you mind giving that stuff to my staff?

Mr. GRAHAM. Yes, I certainly will.

Senator COBURN. And I want to have a conversation with you about the magnetometer, the hand-held, and the battery pack, because I think it would be a wonderful demonstration project if we started buying those for the Federal Government through this Subcommittee so they could show they could buy them.

Mr. GRAHAM. Yes, sir.

Senator COBURN. So I look forward to your help on that.

Any other questions, Senator Carper?

Senator CARPER. I said earlier I was going to submit at least one question in writing, and if you will take a few minutes and look it over and give me a good response, I would be grateful. Again, we appreciate your being here. Thank you.

Senator COBURN. Thank you all very much. The hearing is adjourned.

[Whereupon, at 4:17 p.m., the Subcommittee was adjourned.]

APPENDIX

SUSAN M. COLLINS, MAINE, CHAIRMAN

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

June 7, 2005

Ms. Emily W. Murphy
Chief Acquisition Officer
Office of the Chief Acquisition Officer
General Services Administration
1800 F Street, NW, Room 4040
Washington, DC 20405

ENRE: [GSAR ANPR 2005 – NO1]

Dear Ms. Murphy:

I am writing in response to the General Services Administration's (GSA) request for comments on the April 12, 2005 Advance Notice of Proposed Rulemaking [GSAR ANPR 2005 – NO1] on whether "post award" audit provisions should be included in GSA's Multiple Award Schedules (MAS) contracts and Government acquisition contracts.

The Subcommittee on Federal Financial Management, Government Information, and International Security, which I chair, has direct oversight responsibility regarding the effectiveness and efficiency of Federal financial management. Since the Government Accountability Office (GAO) has found that pre- and post- award audits have helped GSA avoid or recover hundreds of millions of dollars in excessive pricing, I encourage your agency to increase the use of pre-award audits and the use of post-award audits to verify pre-award pricing information used to negotiate the agreed upon contract.

One of the major goals of GSA during contract negotiations should be to ensure that vendor pricing information is accurate, complete and up-to-date before the contract is awarded. Pre-award audits during contract negotiations have proven to be the most effective method for achieving the best prices because it helps avoid unnecessary costs by providing the agency with detailed information about vendors' commercial sales and marketing. GSA's Office of Inspector General reported that as the number of pre-award audits performed decreased, so did the amount of the negotiated savings. Other evidence that points to the use of pre-award audits as a tool for cost avoidance comes from the Department of Veterans Affairs (VA). When the GAO performed audits in

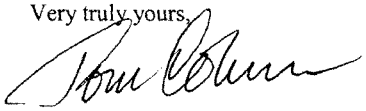
2004 and 2005 on the VA's pre- and post-award audit programs, it found these programs to be a best practice resulting in millions of dollars in savings to VA.

When GSA issued a final rule modifying its policy in 1997, the agency eliminated automatic post-award audit rights for pre-award pricing information in every MAS contract. According to GAO's "Contract Management: Opportunities to Improve Pricing of GSA Multiple Award Schedules Contract" report issued in February 2005, GSA's rationale for making this change was its belief that a decrease in post-award audits would be offset by an increase in the number of pre-award audits. However, GAO recently reported there has in fact been a decrease in the number of pre-award audits.

Despite resistance on the part of commercial contractors to the use of post-award audits, this tool is the most effective means available to verify that vendors are not overcharging the American taxpayers. We know from both the GAO and the GSA's Office of Inspector General that savings due to pre- and post-award audits have saved the Government hundreds of millions of dollars.

I share your commitment for improving GSA's contract negotiation practices and look forward to working with you to ensure that the Federal Government is receiving the most value for the taxpayer's dollar.

Very truly yours,



Tom Coburn
Chairman
Subcommittee on Federal Financial
Management, Government Information, and
International Security

United States Government Accountability Office

GAO

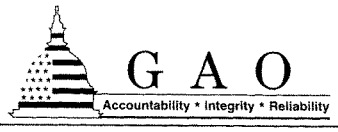
Testimony Before the Subcommittee on Federal Financial Management, Government Information, and International Security, Committee on Homeland Security and Governmental Affairs, U.S. Senate

For Release on Delivery
Expected at 2:30 a.m. EDT
Tuesday, July 26, 2005

CONTRACT MANAGEMENT

Opportunities Continue for GSA to Improve Pricing of Multiple Award Schedules Contracts

Statement of David E. Cooper, Director
Acquisition and Sourcing Management



GAO-05-911T

July 26, 2005

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-05-911T, a report to the Subcommittee on Federal Financial Management, Government Information, and International Security, Committee on Homeland Security and Governmental Affairs, U S Senate

CONTRACT MANAGEMENT

Opportunities Continue for GSA to Improve Pricing of Multiple Award Schedules Contracts

Why GAO Did This Study

Each year, federal agencies spend billions of dollars to buy commercial products and services through the General Service Administration's (GSA) Multiple Award Schedules program. The program has grown significantly over the past several years. Currently, federal agencies can directly purchase, through more than 16,000 schedule contracts, over 8 million products from more than 10,000 commercial vendors. In fiscal year 2004, purchases from these contracts totaled more than $32 billion.

The multiple award schedules program is designed to take advantage of the government's significant buying power. To maximize savings, GSA negotiates discounts that are equal to or greater than those given to the vendor's most favored customers. This testimony focuses on GSA's historic use of two proven negotiation tools to improve the pricing of schedules contracts—pre-award audits and postaward audits of pre-award information. Pre-award audits allow GSA to avoid potential overpricing by verifying vendor pricing information before contracts are awarded. Postaward audits allow GSA to identify overpricing of awarded contracts and recover overcharges.

What GAO Recommends

In its February 2005 report, GAO made three recommendations aimed at improving the multiple award schedules contracts pricing.

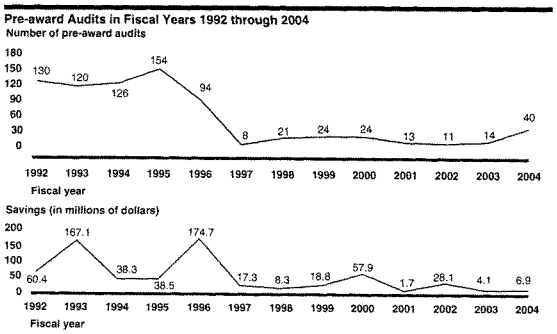
www.gao.gov/cgi-bin/getrpt?GAO-05-911T

To view the full product, including the scope and methodology, click on the link above. For more information, contact David E. Cooper at (202) 512-4841 or cooperd@gao.gov

What GAO Found

Historically, GSA has used pre-award and postaward audits sporadically, thereby minimizing its ability to avoid excessive pricing and recover overcharges and potentially save millions of federal dollars. For more than 25 years, GAO has reported on GSA's multiple award schedules program pricing problems. In March 1977, we reported that pre-award information on 6 of 15 contract proposals was not accurate, complete, or current. In 1979, we again reported that pricing information submitted by some vendors was unreliable. Moreover, only 1 pre-award audit and 10 postaward audits had been conducted during fiscal years 1977 and 1978 of which 9 found inaccurate sales information had been reported by vendors or the availability of better discounts had not been disclosed. These problems continued throughout the 1980s. In the early 1990s, GSA made good use of pre-award and postaward audits, negotiating nearly $480 million in cost savings and recovering about $90 million in vendor overcharges over 5 years.

However, in August 1997, GSA revised its acquisition regulations and effectively eliminated the use of postaward audits. While GSA expected pre-award audits to increase, this increase never materialized. In August 2001, the GSA Inspector General reported that GSA was not consistently negotiating most favored customer pricing. For just one contract, the Inspector General projected that over the contract's term, GSA customers would pay nearly $40 million more than they should have. In February 2005, we completed our most recent review of the multiple award schedules program and found that pricing problems persist and that the number of pre-award audits continued to decline. We concluded that GSA was continuing to miss opportunities to save hundreds of millions of dollars.



Source: GSA Inspector General data.

Chairman Coburn and Members of the Subcommittee:

Thank you for inviting me here today to discuss the General Services Administration's (GSA) use of pre-award and postaward audits in pricing its multiple award schedules contracts. Each year, federal agencies spend billions of dollars to buy commercial products and professional services through GSA's multiple award schedules program. The program is designed to take advantage of the government's significant buying power when purchasing a wide range of commercially available products—such as office furniture and supplies, personal computers, and tools—and a variety of professional services. Through more than 16,000 contracts, federal agencies can directly purchase more than 8 million products from more than 10,000 commercial vendors. The multiple award schedules program has grown significantly over the past several years. In fiscal year 2004, federal agencies purchased more than $32 billion of products and services through the program.

To get the most out of each taxpayer dollar, GSA seeks to leverage the government's immense buying power by negotiating discounts from the vendor's price list that are equal to or greater than the vendor's most favored customers.[1] These negotiations have a direct bearing on how economically government agencies procure products and services. Today, my statement will focus on GSA's historic use of two proven negotiation tools to improve the pricing of schedules contracts—pre-award audits and postaward audits of pre-award information. Pre-award audits allow GSA contract negotiators to avoid potential vendor overpricing by verifying pricing information before contracts are awarded. Postaward audits allow negotiators to identify overpricing of awarded contracts and recover overcharges.

In summary, GSA has used these two key price negotiation tools on a limited basis. When GSA has used pre-award and postaward audits, it has been able to avoid or recover hundreds of millions of dollars in overcharges. In recent years, however, the use of these pricing tools has declined dramatically—despite dramatic increases in program sales. Consequently, GSA has less assurance that vendor-supplied pricing information is accurate, complete, and current, and its ability to deter overpricing and recover overcharges has been minimized. By delaying

[1]The most favored customer is a customer or category of customers that receives the best discounts from the vendor's commercial price list. 48 C.F.R. 538.270(a).

action to address its contract pricing problems, GSA continues to miss opportunities to minimize prices paid for goods and services and save significant sums of federal dollars.

Background

GSA established the Federal Supply Schedule (FSS) program in 1949 to facilitate federal agencies' purchase of common products and services from commercial vendors through schedule contracts. The multiple award schedules program, the largest FSS program, was designed to provide agencies with a simplified method for purchasing varying quantities of a wide range of commercially available products, such as office furniture and supplies, personal computers, scientific equipment, network support, and various professional services.[2] The schedules program provides advantages to both federal agencies and vendors. By using this simplified method of procurement, agencies can avoid using other more time-consuming and administratively costly procurement methods. Vendors receive wider exposure of their commercial products and services and expend less effort to sell them.

In administering the multiple award schedules program, GSA is responsible for ensuring that negotiated prices reflect the government's aggregate buying power. GSA contracting officials seek discounts from a vendor's price list that are equal to or greater than the vendor's most favored customer's discounts. GSA awards contracts to multiple vendors supplying comparable commercial products and services. Federal agencies order products and services directly from the vendors that best meet their needs. Prices paid by federal agencies include a fee for GSA to recover program costs, including contract administration and program support.[3]

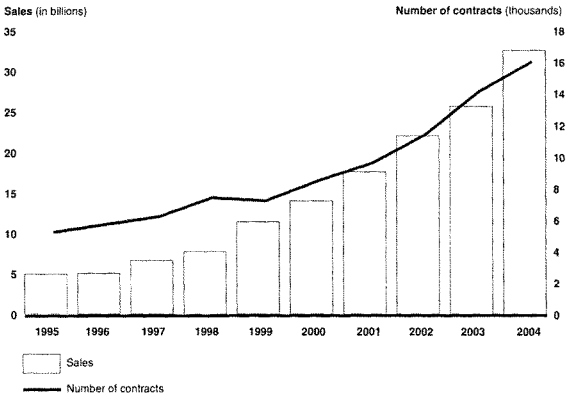
In the mid-1990s, GSA had about 5,200 schedules contracts. By fiscal year 2004, this number had increased to over 16,000 contracts. As the number of contracts offering products and services to federal agencies increased, the sales volume skyrocketed. Between fiscal years 1995 and 2004,

[2]In 1960, GSA delegated authority to the Veterans Administration to manage and award schedules contracts for all medical products and services needed throughout the federal healthcare system.

[3]The GSA schedule fee in fiscal year 2005 is 0.75 percent of negotiated item or service price. 68 Fed. Reg. 41286 (July 11, 2003).

program sales increased more than sixfold, from $4.9 billion to about $32.5 billion (see fig. 1).

Figure 1: Multiple Award Schedules Sales Volume and Contracts, Fiscal Years 1995 through 2004



Source: GAO analysis of GSA data.

Because prices that agencies pay for schedule products and services are the result of negotiations between GSA and individual vendors, the pricing of products and services being offered is key to the contract negotiation process. GSA contracting officials use various tools to analyze vendor offers and establish negotiation objectives. Tools commonly used include market research, sales histories, invoices and references, and competitor price lists. Of all the pricing tools available for contract negotiation, two tools—pre-award audits and postaward audits of pre-award information—are specifically designed to protect the government from overpricing. Pre-award audits enable contract negotiators to verify that vendor-supplied pricing information is accurate, complete, and current before the contract is awarded. Postaward audits serve as a deterrent to overpricing and a primary tool for recovering vendor overcharges.

Historically, GSA Has Not Consistently Made Good Use of Pre-award and Postaward Audits

GSA's use of pre-award audits and postaward audits of pre-award information has been sporadic—a finding we have reported for more than 25 years. For example, in March 1977, we reported that although sales from multiple award schedules contracts amounted to $840 million, vendor proposals were rarely independently audited and the veracity of the information submitted was suspect.[4] We found that sales and discount information submitted on 6 of 15 contract proposals was not accurate, complete, and current. Further, we found that 25 pre-award audits done in fiscal years 1973 and 1974 had resulted in recommendations of $962,000 in savings. Eighteen postaward audits done in the same years resulted in GSA claims of more than $1.4 million. In 1979, we again reported that price information submitted by some vendors was unreliable.[5] Also, our comparison of 29 products available through four states' annual contracts, as well as GSA schedules, found that prices were on average 20 percent to 57 percent lower under the state contracts. We estimated that had GSA obtained the same discounts as did the states, $5.8 million would have been saved in fiscal year 1978 on purchases of calculators, dictating equipment, typewriters, and lamps from the same manufacturers. Moreover, of the 11 audits (1 pre-award and 10 postaward) that had been done during fiscal years 1977 and 1978, all but 2 found inaccurate sales information had been reported by vendors or the availability of better discounts had not been disclosed.

Pricing problems continued throughout the 1980s, and GSA's use of pre-award audits and postaward audits of pre-award information was limited. For example, in 1986, we again reviewed GSA's price negotiations for the multiple award schedules program, which at that time consisted of about 3,300 contracts with sales of about $2.3 billion. Our review of 20 contracts found that while the prices GSA obtained appeared to be fair and reasonable, action was needed to obtain better prices.[6] On one multiple award schedules contract, where the vendor did not offer the government discounts comparable to the most favored customer, a reopening of contract negotiations resulted in an estimated savings of $1.6 million. We also found that the number of pre-award audits decreased between fiscal

[4]GAO, *Federal Supply Service Not Buying Goods at Lowest Possible Price*, PSAD-77-69 (Washington, D.C.: Mar. 4, 1977).

[5]GAO, *Ineffective Management of GSA's Multiple Award Schedule Program—A Costly, Serious, And Longstanding Problem*, PSAD-79-71 (Washington, D.C.: May 2, 1979).

[6]GAO, *GSA Procurement: Are Prices Negotiated for Multiple Award Schedules Reasonable?*, GAO/GGD-86-99BR (Washington, D.C.: July. 8, 1986).

years 1984 and 1985. The decrease was attributed to reductions in the Inspector General's staff, a shift in resources to audits of higher dollar value contracts, and the change from single-year to multiple year contracts. In response to our concern about the continuing decline in the number of pre-award audits, GSA agreed to take actions to provide adequate audit coverage, including shifting resources from other GSA offices to the Inspector General's office, as well as within the office, and an increase in the Inspector General's fiscal year 1987 budget.

In the early 1990s, schedules sales remained relatively stable, ranging between $4 billion and $5 billion, annually. During this period, GSA successfully performed a significant number of pre-award and postaward audits. For example, from fiscal years 1992 through 1996, the GSA Inspector General conducted 624 pre-award audits—an average of 125 each year. These pre-award audits resulted in nearly $480 million in negotiated cost savings for GSA's customers. Additionally, from fiscal years 1990 through fiscal year 1994, the GSA Inspector General reported that it recovered an average of $18 million each year in vendor overcharges. Most of these postaward audit recoveries were the result of vendor failure to provide accurate, complete, and current information in the negotiation of their contracts and their failure to report and offer price reductions.

Despite Skyrocketing Sales, Pricing Problems and the Overall Decline in the Use of Pre-award Audits Have Continued

In August 1997, GSA revised its acquisition regulations to expand access to commercial products and services and implement greater use of commercial buying practices. As part of this revision, GSA specifically removed[7] language from the examination of records clause that automatically granted postaward audit rights for pre-award pricing information in every schedules contract.[8] To offset the reduction in these postaward audits, GSA proposed to increase emphasis on the use of pre-award audits. According to GSA, this approach would provide the contracting officer a mechanism for verifying information submitted by vendors and avoid pricing problems instead of uncovering problems after contract award. However, recent GSA Inspector General and GAO reviews have shown that GSA's long-standing pricing problems have continued and the plan to increase the use of pre-award audits never materialized.

GSA's Inspector General and GAO Continue to Identify Pricing Problems

In August 2001, the GSA Inspector General reported that while schedules program sales had grown dramatically, certain program fundamentals—including pricing objectives and other pricing tools—had been marginalized.[9] Specifically, the Inspector General found that contracting officers were not consistently negotiating most favored customer pricing or adequately performing price analyses. For example, the Inspector General reported that a major distributor of information technology products sold its top 10 GSA-selling models to commercial customers at an average price that was 6 percent lower than the price offered to federal agencies. The Inspector General projected that over the contract's term, GSA customers would pay nearly $40 million more for these products than they should.

In February 2005, we completed our most recent review of the multiple awards schedules program and found that contract pricing continues to be

[7]The revised regulations allow the contracting officers to modify contract language to provide for postaward access to vendor-supplied information if they determine there was a likelihood of significant harm to the government without such access, and obtain the senior procurement executive's approval.

[8]GSA, however, retained the right to conduct postaward audits for overbilling, billing errors, and compliance with the Price Reduction and Industrial Funding Fee clauses. GSAR 552.215-71.

[9]General Services Administration, Office of Inspector General, *MAS Pricing Practices: Is FSS Observing Regulatory Provisions Regarding Pricing?* (Washington, D.C.: Aug. 24, 2001).

a problem.[10] Table 1 summarizes the extent of the problems found with 62 contracts in June 2004.

Table 1: Contract Documentation Weaknesses of Schedules Contracts by Acquisition Center

Acquisition center	Contracts reviewed	Contracts that did not meet pricing documentation requirements[a]	Contracts with inadequate price analysis	Contracts that did not fully document price negotiations	Contracts that did not identify most favored customer price
Center for Facilities Maintenance & Hardware	2	2	0	0	0
General Products Acquisition Center	10	5	5	0	0
Information Technology Center	10	8	5	7	4
Management Services Center	10	10	9	9	4
National Furniture Center	10	2	1	2	1
Office Supplies & Administrative Services Acquisition Center	10	9	6	6	2
Services Acquisition Center	10	1	0	0	1
Total[b]	**62**	**37**	**26**	**24**	**12**

Source: GAO analysis of GSA data.

[a]Contract file documentation is to clearly establish that the vendor-supplied pricing information was accurate, complete, and current; that the vendor information was relied upon during the negotiations; adequate price analysis was conducted; reasonable negotiation objectives were established; the leverage of the total government's requirements was considered in negotiating prices; and the prices awarded were determined fair and reasonable.

[b]Each contract could have all, some, or none of the weaknesses listed in each of the columns.

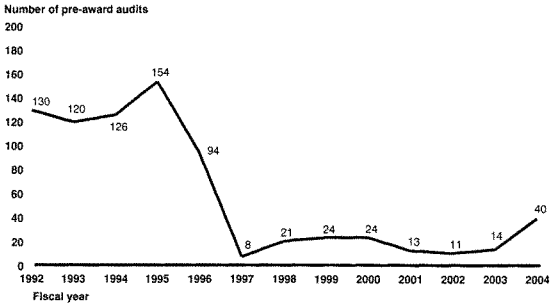
We found that a GSA review of 62 contract files identified 37 contracts—nearly 60 percent—that lacked sufficient documentation to clearly establish that the contracts were effectively negotiated. Twenty-six of the 62 contracts—roughly 40 percent—lacked adequate price analyses or price negotiation documentation.

[10]GAO, *Contract Management: Opportunities to Improve Pricing of GSA Multiple Award Schedules Contracts*, GAO-05-229 (Washington, D.C.: Feb. 11, 2005).

Decline of Pre-award Audits Continued

Between fiscal years 1997 and 2004, GSA completed only 155 pre-award audits—an average of about 19 each year, compared to the average of 125 pre-award audits annually for the prior 5 years (see fig. 2). During this same 8-year period, schedules sales increased nearly five-fold from about $6.6 billion in fiscal year 1997 to $32.5 billion in fiscal year 2004.

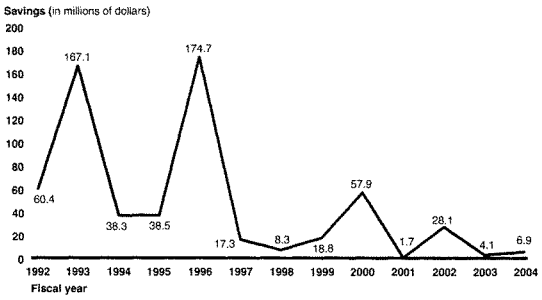
Figure 2: Pre-award Audits Conducted in Fiscal Years 1992 through 2004



Source: GSA Inspector General data.

As the number of pre-award audits performed continued to decline, so too did the amount of negotiated cost savings. Between fiscal years 1992 and 1997, the GSA Inspector General reported a total of nearly $496 million in savings—an average of nearly $83 million per year. Between fiscal years 1998 and 2004, the total savings reported had dropped to about $126 million—an average of only $18 million per year (see fig. 3).

Figure 3: Negotiated Cost Savings from Pre-award Audits Conducted in Fiscal Years 1992 through 2004



Source: GSA Inspector General data.

According to GSA Inspector General and contracting officials, the decline in pre-award audits was largely due an organizational culture that stresses making award decisions quickly and because pre-award audits were not emphasized institutionally in GSA. Also, GSA management officials told us that they believe increasing the contract length from 1 year in the mid-1990s to the 5 years of today has also limited pre-award audits because the number of opportunities for pre-award audits has been reduced. We believe, however, that the potential for pre-award audits is substantial. Since the mid-1990s, the number of schedules contracts awarded increased from about 5,200 in fiscal year 1995 to over 16,000 in fiscal year 2004, significantly increasing the potential for pre-award audits.

While conducting our review, we tested GSA's assertion that longer-term contracts reduced the opportunity for pre-award audits, applying GSA's guidance[11] to contract negotiators on when to request audit assistance. As we reported in February 2005, we found that 71 contracts awarded or extended in fiscal year 2003 met the pre-award audit threshold, but GSA

[11]Procurement Information Bulletin (PIB) 03-4: Audit Assistance–Multiple Award Schedule (MAS) Contracts; General Services Administration, June 20, 2003. This guidance instructs contract negotiators to request audit assistance when the dollar value for estimated sales of a contract offer or extension exceeds $25 million for the 5-year contract period.

only completed 14 pre-award audits—57 fewer than we identified as potential audits. In fiscal year 2004, GSA selected 55 contract offers for pre-award audits. The GSA Inspector General completed 40 of these audits.

In our most recent review, we also found that GSA has not conducted postaward audits of pre-award information since 1997—when GSA revised its policy on the use of such audits. The revised policy had the effect of eliminating the use of postaward audits. With the dramatic increase in sales and the continuing decline in pre-award audits, the potential for significant recoveries of vendor overcharges could be substantial.

Recent GSA Actions to Improve Price Negotiations

In our February 2005 report, we made three recommendations aimed at helping GSA ensure that prices are effectively negotiated for schedules contracts. We recommended that the GSA Administrator (1) ensure that pre-award audits are conducted when the threshold is met for both new contract offers and contract extensions, (2) develop guidance to help contracting officers determine when postaward audits are needed, and (3) direct GSA program management to revise its quality control program to (a) determine the underlying causes for contract pricing deficiencies and (b) develop appropriate plans to implement corrective actions.

GSA management officials agreed with our recommendations, and stated that GSA would

- continue to work with the Inspector General to increase and improve the number of pre-award audits,
- publish an advance notice of proposed rulemaking in the Federal Register to request comments on the role of postaward audit reviews in the acquisition process,[12] and
- evaluate the results of the fiscal year 2004 contract file review and that this evaluation would involve a discussion and identification of the underlying reasons for any weaknesses.

[12]GSA published advance notice of proposed rulemaking in the *Federal Register* on March 11, 2005, requesting comments on whether postaward audit provisions should be included in its FSS contracts and governmentwide acquisition contracts. The *Federal Register* notice was amended on March 17, 2005 (70 FR 13005) and again on April 12, 2005 (70 FR 19051) to extend the comment period until May 10, 2005, and to add further comments concerning the Examination of Records clause at GSAR 552.215-71.

We believe that GSA's actions are a good first step toward addressing its long-standing pricing problems with multiple award schedules contracts. However, unless these actions are effectively implemented the risk of pricing problems will continue.

In conclusion, while GSA's schedules program has provided the government with a more flexible and cost-effective approach to buying commercial items, our work has shown that the program has long been fraught with problems of contract overpricing—resulting in millions of taxpayer dollars being wasted. Historically, pre-award and postaward audits have proven their value in deterring overpricing and recovering vendor overcharges. Until GSA takes steps to ensure the appropriate use of available pricing and negotiation tools, it will continue to miss opportunities to save the government hundreds of millions of dollars in the procurement of goods and services.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared statement. I will be happy to address any questions you may have at this time.

Contact and Acknowledgments

For further information, please contact David E. Cooper at (202) 512-4841 or by e-mail at cooperd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Individuals making key contributions to this testimony include James Fuquay, Sanford Reigle, Victoria Klepacz, Karen Sloan, and Sylvia Schatz.

PREPARED STATEMENT OF EMILY MURPHY
CHIEF ACQUISITION OFFICER
OF THE GENERAL SERVICES ADMINISTRATION

Good afternoon Chairman Coburn, Ranking Member Carper and other distinguished members of the committee. I am Emily Murphy, Chief Acquisition Officer of the General Services Administration (GSA). Thank you for inviting me here today to testify on GSA's procurement practices and how we at GSA are doing our best to ensure the taxpayer is getting the best deal possible in the procurement process.

GSA's mission is to help Federal agencies better serve the public by offering, at best value, superior workplaces, expert solutions, acquisition services, and management policies. As Administrator Perry said, "Excellence in acquisition is a top priority at GSA. There is nothing more important than providing acquisition services to our federal agency customers in a way that delivers best value to support the achievement of their missions of service to the American people, while adhering strictly to federal acquisition policies, regulations and best practices."

GSA's mission and achievements are very important to the efficiency and effectiveness of the Federal government, and that we make a difference in the process of delivering good government services, and to the well-being of people who live in this country. It is through the dedication, effort and expertise of GSA associates in every Region, every Service and every Office that we are continuing to make good progress in rising to the challenge of providing our customer agencies with the excellent acquisition services they need to achieve their missions of service to the American people at the best value to the taxpayer.

GSA is the premier acquisition agency of the Federal government. The Agency is directly involved with or supporting the process of entering into contracts on behalf of our customer agencies to assist them in acquiring the products and services they need relating to their workspace and workplace solutions.

President Bush's Management Agenda calls on GSA and all Federal agencies to improve their performance in providing services through the use of good management practices. In response to the President's call, GSA has established a rigorous performance management process. Through the use of this process we are becoming much more focused on understanding

our customer requirements. Based on those requirements, we are setting challenging, customer-focused goals and detailed action plans necessary to achieve these goals.

We are achieving good results and our customer satisfaction scores are rising. For example, we have made major improvements in managing our federal building assets. Agencies see the improvements in the quality of their workspaces and our tenant satisfaction scores have increased from 81% to 89% being highly satisfied. Additionally, we have cut the number of underutilized and non-performing assets in half and increased the percentage of financially performing assets from 36% to 50%. In so doing, we eliminated 2.2 million sq. ft. of vacant space and achieved a cost avoidance of $207 million in capital reinvestment needs.

We are putting National Broker Contracts in place to leverage our capacity to handle lease procurements. Our long distance telecommunication contracts have saved the government 705 million dollars last year alone due to negotiated rates being below commercial pricing. Additional agencies are coming on board as they realize GSA's contracts provide the best value available.

Our schedule contract vehicles provide agencies with a streamlined approach to acquisitions. This adds value and as a result, their utilization has increased to a projected $40 billion this fiscal year. At the same time that agency utilization is increasing, GSA efficiencies have resulted in a 25% reduction in the cost recovery fee for the GSA Multiple Awards Schedule Program -- from 1% to 0.75%.

Our vehicle acquisition and leasing program are good examples of how GSA provides best value. We acquire vehicles for 33% below commercial pricing and GSA lease rates for vehicles are 32% below commercial lease rates.

Mr. Chairman, I know the committee is interested in GSA's fee structure and while I am not an expert on the matter I will discuss this briefly.

Currently at GSA, FTS, FSS and PBS operate under revolving fund authority. As you are aware, this is different from most Federal agencies that operate with appropriated funding. GSA is authorized to operate revolving funds under specific statutory authority requiring the revolving funds to fully recover all costs for program and operations in their estimated fee rates. These costs

include direct costs, such as labor and materials, and indirect costs, such as rent and support services. These fee rates are charged to Federal agencies for space, services and commodities rendered. The fee structures in the various GSA revolving funds are constantly evaluated for adjustment.

Both the General Supply and the Information Technology revolving funds recover costs to GSA for the services and supplies they provide the customer through full cost recovery. For the IT fund, rates are established consistent with the Cost and Capital Requirements Plan (as approved by OMB). A capital reserve provides financing for capital investments and program costs that are one-time or non-recurring in nature, allowing for more stable rates for services. The General Supply Fund also sets appropriate rates based on projections with any additional earnings in excess of expenses and reserve requirements are returned to Treasury

The Federal Buildings Fund (FBF) is an intragovernmental revolving fund that finances PBS real property management and real property related activities. The FBF is financed in large part by income from rental charges assessed occupants of GSA-controlled space (the charges approximate commercial rates) as

well as some appropriated funds, typically in the case of new construction. The FBF is subject to annual enactment of new obligation authority by Congress and any balance of the revenue not authorized for use in a particular year remains in the Fund until authorized for use in future appropriation acts.

Frequently GSA's fees are compared to costs associated with other government-wide procurement vehicles. However, based upon GAO's July 2002 report on Contract Management Fees, it was determined that other agency's GWACs and franchise funds do not include all direct and indirect costs (i.e., NASA excludes costs for rent/utilities and NIH excludes costs for support services). Accordingly, this difference makes any comparison of GSA's fees to other agency's fees inequitable.

Of course, some of GSA's performance measures show the need for improvement. For example, while the percentage of construction projects completed on time and on budget is high, we still have some projects which are not on time or on budget. We are taking aggressive corrective action in these cases.

One of the big issues we have been addressing recently is the need to accomplish acquisitions in full compliance with the Federal Acquisition Regulation, GSA policies and best practices. When we found instances of non-compliance, we did the right thing by asking the GSA Inspector General to conduct a nationwide review. Again, we addressed the issue directly and took the necessary corrective action to “Get It Right.”

People out there really do rely on the quality of GSA services to make a difference in their organization, and in their ability to deliver excellent government services to the American people.

Excellence in acquisition is the top priority for GSA. Conducting acquisitions the right way is critical to everyone.

The "Get It Right" Plan demonstrates GSA's strong commitment to the proper use of GSA contracting vehicles and services in order to be in full compliance with Federal Acquisition Regulations (FAR) and best practices. The "Get It Right" Plan will improve the federal acquisition process, thereby allowing agencies to obtain best value when acquiring products and services needed to accomplish their missions.

The five major objectives of the "Get It Right" Plan are to:

- Secure the best value for federal agencies and American taxpayers through an efficient and effective acquisition process, while ensuring full and open competition, and instilling integrity and transparency in the use of GSA contracting vehicles.
- Make acquisition policies, regulations and procedures clear and explicit.
- Improve education/training of the federal acquisition workforce on the proper use of GSA contracting vehicles and services.
- Ensure compliance with federal acquisition policies, regulations and procedures. Non-compliance is unacceptable!
- Communicate with the acquisition community, including agencies, industry partners, Office of Management and Budget (OMB), Congress, and other stakeholders, regarding the use of GSA contracting vehicles and services.

We're making good progress on this initiative and strengthening our ability to get the best value for the taxpayer. We've traveled to our regions to meet personally with the contracting officers and talk about the Get It Right plan, making the Deputy Administrator or Chief of Staff and the Chief Acquisition Officer or Deputy Chief Acquisition Officer available to answer questions. We've updated policy guidance on doing business with other agencies, increasing the use of competition in the procurement process and raising our own goals for competitive contracting, including small businesses in acquisition strategies and the use of small businesses to achieve socio-economic goals, and we've clarified how to account for other direct costs when ordering from the schedule.

To ensure we're doing things right, we're working closely with our Inspector General's office in reviewing our procurements and developing and providing appropriate guidance for contracting officers out in the field. Additionally, my office has been traveling to each of the regions conducting Program Management Reviews, working with the region to review contracting actions and provide constructive suggestions on how we can be better.

Our workforce will be better prepared through our efforts to provide them with better training. We've begun a thorough

assessment of our acquisition workforce as to whether they have the skills needed to “Get It Right” and obtain the best value for the taxpayer as well as our customers. We’ve updated several of our course offerings, and are working with the Defense Acquisition University on joint training opportunities and a standard curriculum for all government contracting professionals. My office has instituted an “Ask Acquisition” website dedicated to answering questions from contracting officers in the field relating to their work.

President Bush has made improving government performance one of his top priorities. The "Get It Right" Plan is a major step toward achieving excellence in the Federal acquisition process.

The efficient and effective operation of the Federal acquisition process is critical to the performance of each agency of our Federal government and, therefore, critical to our nation. The "Get It Right" Plan calls upon every person who is a part of the Federal acquisition community to focus on proper use of GSA contracting vehicles and to improve the overall performance of the Federal acquisition process.

In February, GAO released a report on GSA's multiple award contracts (MAC) and the opportunities available to make sure GSA is getting the best value for its services. GAO's audit findings were very closely tied to the results of our own internal contract quality reviews. Our reviews found that documenting the contract files was a weakness that needed to be addressed. Immediately after the GSA commented on the draft of the GAO Report, GSA conducted a complete price verification of all 62 contracts identified in the report as lacking the "documentation needed to clearly establish that the best price objectives were negotiated." We found that, in 93 percent of the cases in question, GSA had negotiated and received excellent prices equal to or better than the offerors' Most Favored Customer (MFC) prices. Typically, the discounts over MFC pricing were significant and included an Free On Board (FOB) Destination delivery requirement, saving Government customers additional freight charges.

Even in the four instances where clear quantification of discounts over MFC pricing was not feasible, price-related factors such as delivery terms and flat discounts were traded-off, strongly indicating that fair and reasonable prices were negotiated.

Also in the report GAO touched on the use of pre and post award audits on Multiple Award Schedule contracts. I think it is important to mention that an internal working group with GSA's Office of Inspector General has been put in place and is working to improve the audit process both in terms of numbers and coordination between the Agency and the Inspector General. While the number of audits has dropped over the past 10 years, there has been a steady increase in the number of audits over the last three years. We've gone from approximately 14 pre-award audits in FY2003, to 40 in FY 2004, to a goal of approximately 70 for this fiscal year and are working with the IG to continue this growth trend in FY 2006. The goal of this process is to reach a certain dollar level of audit coverage each year to determine whether GSA is obtaining reasonable pricing across its contracting vehicles.

As you are aware, Mr. Chairman, GSA is looking into the issue of post award audits of contracts to see how they can assist the Agency in continuing its efforts to obtain the best value, having issued an advanced notice of proposed rule in April to solicit comments from interested parties. The comment period has closed and we are reviewing all of the comments we have received thus far to decide the best course of action going

forward. It should be noted that we still have audit rights to determine contract compliance, just not the right post award to go back and audit pre award negotiation information submitted by the contractor. While we do not currently include post award audit rights in the contracts, we indicated we would increase the number of pre award audits which is finally now happening as mentioned earlier.

As a result of our reviews we have developed a new course aimed at improving documentation entitled, "Building on Acquisition Excellence Workshop." The course was developed in response to the findings expressed in two separate internal reviews of contracts award processes.

Those reviews were the Contract Quality Review and the Special Order/Stock Program Review. Each review indicated the need for more GSA/FSS internal associate training to encourage consistency in awarding contracts across all business lines.

This 2-day course is now available to all GSA/FSS contracting associates nationwide. The first class is scheduled for August 2-3, 2005 in the Washington D.C. metropolitan area. Sixteen

Continuous Learning Points (CLPs) can be earned and credited towards the 80 CLPs required every two years of the contracting (1102) series.

Finally, we have made the pre-negotiation panels GAO recommended in their February 2005 report mandatory and have already revised our program operating procedures to require reports on pre-negotiation clearance panels. The reports of these panels will then be used to assess progress in the effectiveness of negotiations and will be an opportunity to share best practices.

The acquisition officials at GSA and throughout government take seriously our roles and responsibilities in order to achieve excellence in the Federal acquisition process. We take seriously the trust placed in us by Federal agencies that rely on our acquisition expertise to obtain best value. We must fulfill our missions while complying with Federal acquisition policies and regulations that promote full and open competition. We must adhere to the high principles of ethics and integrity. We must take seriously our professionalism and our accountability to our customer agencies, OMB, Congress and, most importantly, to the American taxpayers. The "Get It Right" Plan is designed to assist the acquisition community in achieving these results.

Thank you very much for the opportunity to testify before you here today. I look forward to working with the committee as we continue in our efforts to get the best deal for the taxpayer. I will be happy to answer any questions you might have.

STATEMENT OF DAVID H. SAFAVIAN
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
BEFORE THE
FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION AND INTERNATIONAL SECURITY SUBCOMMITTEE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
UNITED STATES SENATE
JULY 26, 2005

Good afternoon Chairman Coburn, Ranking Member Carper and other distinguished members of the committee. Thank you for inviting me here today to testify on the General Services Administration's (GSA) procurement practices and fee structure.

Chairman Coburn, you have called this hearing today because you are rightly concerned about the taxpayer getting the best deal when the federal government uses hard earned tax dollars to buy goods and services. I, too, share that concern and consider it my chief responsibility as the Administrator for Federal Procurement Policy. My most important performance metric is to identify ways the Office of Federal Procurement Policy (OFPP) can improve the federal acquisition process and ensure that the federal government is getting the 'best value' when it acquires goods and services.

Leveraging Taxpayer Dollars

The federal government will spend approximately $300 billon next year on goods and services. No other nation or company rivals our buying power. The American taxpayers have every right to expect that they are getting the best deal out there. Unfortunately, we are not all the way there yet. The federal government has only recently begun to aggregate and leverage our buying power. Also referred to as strategic sourcing, leveraging our purchasing power is a much more difficult challenge for the federal government than it may first appear. Realizing the full potential of leveraging involves collecting and managing the necessary data, developing an acquisition workforce that

thinks strategically and possesses the right skill set, and creating and establishing strategic acquisition vehicles for commodities. This concept of realizing the full potential of leveraging forces the federal government requires that we think in terms of 'the end cost to the taxpayer' instead of 'the end cost to the agency.'

I believe that the (GSA) is uniquely positioned to play a lead role in this endeavor. GSA is the only agency whose sole purpose is to find the best way of procuring goods, services, and buildings for other federal agencies. By doing so, GSA's customers may concentrate their time and resources on accomplishing their respective mission and serving the American public. For GSA, the mission *is* acquisition. It is their responsibility to understand all of the complex laws and regulations that govern the federal market. It is their duty to know their customer agencies – to understand their requirements and their mission, and to buy efficiently. I consider it my duty as the OFPP Administrator, to ensure that my office creates the policies and provides the necessary guidance for GSA to accomplish this mission.

GSA and Strategic Sourcing

As OFPP Administrator I have been a strong advocate of increasing the use of leveraging the government's buying power through strategic sourcing[1]. This has been evident through my vocal support of designated common acquisition vehicles, which aggregate the purchases of commodities already being made across government. This past May, Clay Johnson, OMB's Deputy Director for Management, sent out a memorandum to Chief Acquisition Officers, Chief Financial Officers, and Chief Information Officers asking them to identify by October 1, 2005 at least three commodities that could benefit from the application of strategic sourcing. The identification of the three commodities, is intended to be the beginnings of a strategic sourcing pilot program, which each agency will execute under its agency-wide strategic sourcing plan coordinated by each agency's Chief Acquisition Officer. I believe that GSA has already demonstrated the ability to

[1] Strategic sourcing is the collaborative and structured process of critically analyzing an organization's spending and using this information to make business decisions about acquiring commodities and services more effectively and efficiently.

lead in strategic sourcing initiatives that successfully leverage the government's buying power through the success of the FTS2001 telecom contract (soon to be replaced by Networx), and the management of the SmartBuy program[2].

On telecom contracts, GSA receives pricing of up to 50% lower than standard commercial rates. By treating telecom as a commodity and leveraging buyer power, we expect even better performance as GSA brings its next generation contract known as Networx online. Recently, GSA led the SmartBuy team that brokered a deal with Oracle that will reduce by 75% to 84% the price of enterprise licenses[3]. The SmartBuy program establishes a single contract vehicle that every agency must use if it needs Oracle products. This is the fifth SmartBuy agreement – and the largest to date. Others will be forthcoming.

GSA already performs the bulk of the interagency contracting for the federal government, in addition to being the manager of the largest number of interagency acquisition vehicles. Additionally, as noted in a July 2002 GAO report on Contract Management Fees, GSA has established an infrastructure to collect the data necessary to determine a total cost of operations. Thus, I believe that GSA is well positioned to begin collecting and analyzing customer buying patterns necessary to identify trends that may be used to leverage our buying power more effectively. The result would be a measurably more effective use of taxpayer dollars. I am hopeful that GSA will take advantage of the timing of their reorganization to position the agency as a leader in strategic sourcing for the federal government – a value added function for agencies and the taxpayers alike.

Now, I must admit that I have a fondness for GSA. Prior to coming to OMB, I served as Chief of Staff of the agency for two years. During my tenure at GSA, I became familiar

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[2] SmartBUY is a government-wide enterprise software licensing initiative, created by OMB, that streamlines the acquisition process and provides best priced, standards-compliant Information Technology (IT). SmartBUY does not mandate the use of a particular brand; rather, it mandates the use of the cost-effective common vehicle when an agency decides to purchase the software of a designated brand.

[3] The U.S. General Services Administration (GSA) is designated the Executive Agent for the program under Section 5112(e) of the Clinger-Cohen Act and leads the interagency team in negotiating government-wide enterprise licenses for software.

with the hard working people and the complex and varied operations of GSA's three components: the Federal Technology Service (FTS), the Federal Supply Service, and the Public Building Service (PBS). I found it very disheartening when I began reading the press coverage of contracting improprieties at FTS. I believe that GSA reacted swiftly and appropriately by asking the Inspector General to audit each region to determine if inappropriate contract practices identified in one region were also taking place in others. In addition to requiring disciplinary action, where necessary, Administrator Perry immediately launched the current "Get It Right" effort which emphasizes customer acumen and employee training, an institutional focus on ethics and compliance, and documentation of due diligence. With continued high level management attention by GSA and its customers, this effort will pay off in terms of better quality acquisitions that drive best value for the customer agencies.

Roles and Responsibilities in Interagency Contracting

The improper use of the GSA's IT Fund, a critical component of effective interagency contracting for information technology, drew necessary attention to the problems in interagency contracting identified in 2005 GAO High-Risk report. OMB recognizes that interagency contracting practices need to be improved to reduce the risk that results from poor acquisition management, both by the managers of interagency contracts and the customers that use them. We have been and continue to work with GSA on steps toward improvement on adherence to sound fiscal principles, such as making sure that monies are used for their intended purpose and obligated within the period Congress made the funds available. OMB strongly supports steps that GSA is taking to ensure full compliance with the law. Equally important, we appreciate that customers, such as DOD, are also taking steps to remind buyers that funding limitations remain in effect even when an acquisition is done on an interagency basis. Scope and "color of money" issues will continue to be the subject of heightened Office of Federal Procurement Policy (OFPP) and OMB scrutiny.

The challenge GSA is currently seeking to address reflects the increasing reliance agencies are placing on GSA's interagency contracting vehicles. Interagency contracting

offers an important tool for agencies to buy commonly used goods and services at prices that reflect the government's buying power. But like all acquisition tools, interagency contracting has its challenges. These challenges include making sure that the roles and responsibilities between agencies that provide services and the agencies that buy services from them are clearly delineated. It also includes making sure that when monies are transferred from one agency to another to pay for goods and services, the monies are used for their intended purpose and within the period and limitations that Congress has made them available for obligation.

The Federal Supply Service has had its share of criticism in recent months as well. In February, GAO released a report on GSA's multiple award contracts that revealed serious deficiencies in proper documentation in the contract files, a lack of oversight and follow-through in regards to pre and post award audits, and missed opportunities to make sure GSA is getting the best value for its customer agency and the taxpayer.

OMB is pleased that GSA has already taken several actions in response to the February GAO report. An internal working group with GSA's Office of Inspector General (OIG) has been established to address deficiencies in the audit process. Audits have increased, and the pre-negotiation panels are now mandatory and include reporting requirements. FSS has also stepped up their customer training efforts on the Schedules through both on-site training sessions, as well as web-based training. OMB considers this an important remediation tool. It is imperative that customer agencies understand that they have an obligation to conduct secondary negotiations directly with vendors when buying in bulk off of the GSA Schedules, so that the purchasing power of taxpayers is maximized whenever possible[4].

It now appears to OMB that performing customer training on use of the schedule as well as pre-award due diligence, including audits, is a high priority at FSS. OMB expects to

[4] The list Schedule prices negotiated by GSA are intended to be the Most Favored Customer pricing for every item; however, GSA's negotiations do not assume or guarantee any particular volume level.

continue to work with GSA to ensure that this emphasis will continue after GSA merges their two acquisition services.

I firmly believe that building a right-sized acquisition workforce with the right skill set given the appropriate resources is the best solution to the problems we have seen in interagency contracting and to the other contracting problems we are seeing in the federal market. Over the past fifteen years we have more than doubled the number of contracting actions, while reducing the acquisition workforce by one-sixth. Retirements threaten to further deplete our workforce. According to a study the Federal Acquisition Institute released in April, the government could lose up to 30 percent of its contract specialists in the next four years to retirement and fifty-one percent will be eligible by 2014. Add to that the fact that acquisitions have grown in dollar amount, become more complex, and almost always involve an IT component. All of these factors combined are presenting a daunting challenging to our aging acquisition workforce.

I am also concerned about the large number of workforce leaving government for the private sector. Improving and preserving the acquisition workforce has been one of my top priorities since coming to OMB. In April, OFPP issued new governmentwide training standards for the acquisition workforce. By creating more mobility and career advancement opportunities, my intent is to promote retention and maximize the use of the federal government's top acquisition talent. In addition, having one standard set of certification requirements for contracting officials allows the civilian agencies to leverage our limited training resources by working with DOD. This spring, OFPP moved the Federal Acquisition Institute to Fort Belvoir, Va., home of the Defense Acquisition University, so that the two institutions can harmonize their training programs and share best practices.

There have been a limited number of instances where officials responsible for managing interagency contacting have acted inappropriately, putting at risk the flexibilities granted to the federal acquisition workforce in the 1990s. A healthy acquisition system must hold these individuals accountable to discourage further abuse and retain needed acquisition

flexibilities. The integrity of the federal market depends upon the enforcement of the rules. That said, I have cautioned GSA and the acquisition workforce community at large not to lose sight of the fact that the regulations which govern procurement, the Federal Acquisition Regulation, encourage innovation and creativity to meet the acquisition demands of a 21st Century government.

The streamlined reforms Congress granted to us in the 1990s took federal acquisition out of the days of being a never-ending series of standardized checklists and specifications. Back then, there was little room for deviations or outside-the-box solutions to address complex acquisition issues for which there were few clear guidelines. Thankfully, through the Clinger-Cohen Act, Federal Acquisition Streamlining Act and other reforms, Congress provided much needed flexibilities. Acquisition processes became streamlined and innovative acquisition programs practices, such as the SmartBuy program, the Networx program[5] and performance based service acquisition and performance based service acquisition slowly began emerging. Acquisition practices such as these allow the federal government to state their requirements, and contractors to propose whatever method of meeting those requirements they view as the most efficient. The government then gets to select from the various types of solutions proposed. The taxpayer wins when the federal government has the opportunity to leverage industry's expertise to propose more efficient and cost-effective ways of meeting a requirement.

Some of the GSA procurement violations of the past can be attributed to a lack of understanding on the part of customer agencies as to regulations governing the IT Fund. Although the use of the IT Fund is limited to technology procurements, we have seen situations in which IT funds were errantly used in non-IT acquisitions. Moreover, interagency contracting often requires the involvement of multiple parties, including contracting, program, and finance officials from both the customer agency and the servicing agency -- in this case GSA. These parties have not always understood their respective roles and responsibilities, including any applicable appropriations limitations. To address these concerns, OFPP is working with the Defense Acquisition University

[5] the Networx program consists of two multiple award procurements (i.e., Universal and Enterprise).

(DAU) and the Federal Acquisition Institute (FAI) to ensure that our training curriculum appropriately educates the acquisition workforce on effective interagency contracting.

OMB has also strengthened governance over the Government-wide Acquisition Contract (GWAC) [6] Executive Agent designations and renewals. GWACs, which are operated by Executive Agents designated by OMB, seek to help agencies leverage their resources with other agencies to obtain favorable pricing, terms, and conditions that are reflective of the government's buying power. GSA is the Executive Agent with the largest number of GWACs.

As part of the process for Executive Agent designation, OFPP is asking agencies to establish quality assurance plans, which ensure that GWACs are facilitating cost-effective and responsible contracting. This includes making sure that there is a clear understanding of the role and responsibilities between the Executive Agent and its customer. For instance, the executive agent should remind customers to use the government-wide past performance retrieval system to record contractor information regarding contractor performance on individual orders and make such information available to source selection officials in awarding subsequent task orders for the same or similar supplies and/or services.

FSS currently manages GSA's GWACs[7], which are all associated with FSS's General Supply Fund.

Federal Acquisition Service: The Future of GSA

The President's FY 2006 budget proposes to merge GSA's IT and General Supply funds in conjunction with merging of its two acquisition services. The proposal is largely

[6] Six agencies currently serve as executive agents of government-wide acquisition contracts (GWACs) pursuant to designations granted by OMB under section 5112(e) of the Clinger-Cohen Act of 1996, 40 U.S.C. 11302(e): (1) GSA, (2) NASA, (3) DOC, (4) HHS (NIH), (5) Agriculture, and (6) EPA. Each individual designation from OMB to the agency defines the scope of the designation (i.e., no agency has blanket authority).

[7] FTS2001, and the follow-on Networx contract, also hold an Executive Agent Designation and are managed by FTS.

driven by an interest in streamlining operations, facilitating internal communication and partnering, and improving customer service. However, by combining the two funds, OMB believes that some of the past misuses of the IT fund will be avoided. At the time the IT Fund was created, it was much easier to distinguish between an IT acquisition and a non-IT acquisition. Since that time the federal acquisition market has shifted from being primarily products-based to primarily service-based, often with significant IT components. Under current market conditions, it is often difficult to determine if these "IT related" acquisitions may be made using IT funds. OMB agrees with GSA that many of the cases now under the microscope fall under this gray area. In order to address this problem and bring the federal acquisition fund structure in line with the current market conditions, I am advocating for Congressional support for the merger as described in the President's FY 2006 Budget.

Interagency Contracting Fees

I understand that the Subcommittee has a particular concern with the fees associated with interagency contracting and is concerned that these fees may not always reflect the best interests of the taxpayer. I share the Subcommittee's desire to ensure that fees are assessed consistently with sound financial management practices so customers may consistently secure high quality goods and services at lower costs. This morning, Emily Murphy from GSA will describe how their funding authorities operate. I would like to augment her discussion with several general guideposts that I intend to use to ensure that fees are being assessed in a sound manner.

First, as a general matter, projected total revenue generated by the use of an interagency contract must not exceed the projected actual costs. Revenues generated in excess of the agency's actual costs must be transferred to the Treasury's Miscellaneous Receipts. Accordingly, fees must be adjusted periodically so that total revenues do not exceed actual costs.

We continue to advocate the lowest possible fee level at GSA and all other fee-for service organizations. Last year, GSA returned over $100M in excess revenue to the U.S.

Treasury. This year, GSA expects to make another large Treasury deposit. As most of this revenue was derived from the IFF, OMB believes that it may be necessary to lower this fee in the near future. We will work with GSA to perform an evaluation of the fund so that further fee reductions may be put in place if warranted. However, we also recognize that GSA is mid-stride through a massive reorganization and that their revenue has been less consistent over the recent year. The prospective consolidations of FTS and FSS into FAS and of the IT Fund and the GSF are expected to lower operating cost and streamline internal processes for GSA. So long as GSA's revenue intake remains stable, the lower operating cost of the consolidated FAS organization should allow GSA to lower fees once the implementation of the reorganization plan is completed and accessed. As GSA evaluates its organizational structure, we will want them to ensure, to the extent possible, that fees for each business line fully support its activities, generating revenue that equals the expenses for the services it provides. This will require that GSA identify all costs associated with its activities and assign these costs to appropriate business lines.

With respect to GWACs, we have been working with our executive agents to enhance their reporting on revenues and costs. We hope this will help to provide a clearer indicator of cost-effectiveness and help OMB in understanding if and when adjustments may need to be made to fees. OMB is also reviewing fees assessed by franchise funds. We have concerns about the transparency of the use of franchise funds fees and how they are being used. We appreciate that franchise funds are authorized to retain 4% of the total annual income taken in by the fund, so long as it is used for the acquisition of capital equipment or for the improvement and implementation of department financial management and support systems. This notwithstanding, we must still ensure their activities, like those of any other service provider are consistent with sound fiscal management.

Second, fees should reflect the level of assisted service requested on a given contract. If an agency conducts an acquisition through a GWAC using their own contracting personnel, then they would pay the base fee. The fee would escalate concurrently with the level of assisted service requested of the fee-for-service agency. You may be

thinking, "if the agency receives no assisted service, why pay the fee?" In this instance, just like when a purchase is made directly off the Schedules, the customer agency is paying a fee to cover the cost associated with setting up and managing that vehicle.

I understand the Committee has a specific concern over the multiple layers of fees, which can be charged when a fee-for-service agency uses a vehicle such as a GWAC or a Multiple Award Schedule (MAS) during the course of an assisted acquisition and charges the customer agency two fees: one fee for the assistance and a fee for use of the GWAC or MAS vehicle. This practice occurs internally at GSA quite often. In fact, FTS is one of biggest users of the FSS Schedules program. The same practice of charging multiple fees during an assisted acquisition may also occur between any two fee-for-service organizations (i.e. Interior's GovWorks may use NASA's GWAC or FSS's Schedules).

In some instances, paying two separate fees for assistance with one acquisition project may actually make the most sense, when evaluated from the standpoint of the total cost of the project. In addition to benefiting from having a contracting officer perform all of the necessary market research, documentation, and paperwork, the customer agencies using an assisted acquisition service also receives an acquisition strategy from acquisition experts, presumably with both contracting and programmatic expertise. So, if an agency is seeking assistance with a technology acquisition, they would choose FTS. Particularly in the instance of large, complex, or unusually technical procurements, enlisting the help of an assisted acquisition service, like FTS, may be the most efficient and cost-effective method of conducting the acquisition. A seven percent fee may seem large in the abstract, but may be well justified for an agency with a complex requirement in need of acquisition expertise that might otherwise be left entering a hastily negotiated contract that puts the taxpayer at risk.

Large, complex projects often involve multiple acquisitions; an assisted acquisition service may opt to use an acquisition vehicle already in place for some of the acquisitions, such as the FSS Schedules program. In this instance, it may seem like it would be more economical for the customer agency to separate this acquisition from the

rest of the project and execute it themselves by using the Schedules. This may not be true for two reasons: 1) the customer agency loses the benefit of receiving comprehensive acquisition guidance if they choose to split the project into separate acquisitions and conduct some themselves and 2) the assisted acquisition service can conduct additional negotiations with Schedule vendors to ensure lower prices consummate with the volume of the purchase.

Third, we must take steps to improve the transparency of fees. Customer agencies need to be fully apprised of the fees that are to be assessed so they can make a determination that use of the contract and any needed assisted services is in the best interest of the taxpayer. I intend to work with our executive agents and other service providers to ensure that every effort is being made to disclose fee information to agency customers.

Chairman Coburn, I want to thank you very much for the opportunity to testify before you today. I look forward to working with you and the committee as we strive toward our common goal of getting the most out every of taxpayer dollar. I am happy to respond to any questions you may have.

Statement of

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United States General Services Administration

Before the

Subcommittee on Federal Financial Management, Government Information, and International Security

Committee on Homeland Security and Governmental Affairs

United States Senate

Hearing on

"GSA – Is the Taxpayer Getting the Best Deal?"

July 26, 2005

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify regarding GSA's procurement processes and to present the view of the General Services Administration, Office of Inspector General. I will address two areas -- contract audit rights and, briefly, the user fees charged by GSA under its major contract vehicles. We applaud your decision to hold a hearing on this topic.

Contract Audit Rights

We believe that contract audit rights play a vital role in ensuring that taxpayers' interests are protected in the federal contracting arena and ensuring that taxpayers are, in fact, getting the best deal.

The MAS Contracting Program

The experience of the Office of Inspector General (OIG) in contract auditing has arisen primarily in the context of the Multiple Award Schedules (MAS) program, which is administered by the General Services Administration (GSA).[1] Under the MAS program, federal agencies and other entities can buy a wide range of commonly used commercial products and services at volume discount prices using a simplified buying method. The MAS program makes available a range of commercial items and services, from information technology products and services to office furniture and scientific equipment. The MAS program is currently comprised of over 17,000 individual contracts organized under 43 schedules (commodity or service groupings) encompassing over 6.8 million products and services. From a vendor's perspective, an MAS contract award enables a company to sell its products or services to the entire federal Government, as well as to a host of other entities, through a single contract vehicle. Individual MAS contracts are awarded for a five-year base period with three five-year options; these contracts, therefore, can be effective for up to a 20-year period. The popularity of the MAS program is undisputed; in fiscal year 2004, users bought over $31 billion in products and services under these contracts.

[1] The Department of Veterans Affairs, under a delegation of authority from GSA, also awards and administers some MAS schedules -- including those for the purchase of pharmaceuticals and hospital supplies.

One of the aims of the MAS program is to provide agencies with the widest possible choice among qualified vendors. As such, the MAS program is open to all responsible vendors. In addition, GSA commits to MAS users that the schedule prices are fair and reasonable. Because the goal of the program is to maximize choice, there is no head-to-head competition as a means of ensuring fair and reasonable pricing. Instead, to get fair schedule pricing, GSA asks for information regarding a vendor's commercial pricing to its best customers and seeks to negotiate a price that is equal to this best price.[2] This most-favored customer (MFC) negotiation objective ensures that the negotiated MAS price reflects the purchasing power of the entire federal Government, rather than the less favorable price an agency could expect to achieve for a single, more limited quantity individual purchase. It is this reliance by GSA on vendor-supplied pricing information to achieve fair and reasonable pricing that gives rise to the need to audit.

MAS Audits – Preaward and Compliance Audits

Currently, there are two main types of audits that are conducted of MAS contracts: compliance audits and preaward audits. Compliance audits are conducted under GSA's Examination of Records clause (MAS), GSA Acquisition Regulation 552.215-71. This clause allows GSA -- typically the OIG Office of Audits -- to examine a vendor's books and records to check for overbillings or billing errors and to ensure compliance with the contract's Price Reduction and Industrial Funding Fee clauses.[3] This audit authority extends up to three years from final payment under the contract. The OIG Office of Audits performed 14 of these audits in fiscal year 2004.

The second type of MAS audit is the preaward audit. These audits, conducted at the request of Contracting Officers (COs) by the OIG Office of Audits, are performed *prior* to GSA awarding or extending MAS contracts. Preawards examine the pricing information a vendor provides in its proposal. These audits provide COs with information about the accuracy of and any deficiencies in a vendor's pricing proposal. A CO uses the information in the audit report to negotiate a better price for the Government

[2] The most-favored customer (MFC) negotiation objective directs Contracting Officers to target commercial pricing and discounts from sales made under terms and conditions similar to those under which the Government would buy.

[3] The Price Reduction clause is a mechanism that ensures that the Government keeps any relative advantage in pricing that it negotiated on a going forward basis throughout the 20-year MAS contract term. 48 C.F.R. § 552.238-75. The Industrial Funding Fee provisions require vendors to pay a percentage of their reported MAS sales to GSA in order to fund the costs of the program. 48 C.F.R. § 552.238-74.

under the MAS contract. As with other types of audits, the OIG is required by the Inspector General Act of 1978, as amended, 5 U.S.C. App § 4(b)(1)(A), to adhere to the Government Auditing Standards, also known as GAO's Yellowbook Standards, in performing preawards.[4]

In a report issued by our Office in 2001, we noted that despite GSA's public statement in 1997 that it intended to increase preawards, in fact the number of these audits had declined. In 1997, only 8 preawards were conducted; in 1998 and 1999, 28 and 24 preawards, respectively, were conducted of MAS contracts; whereas in the 7 years prior to 1997, an average of 148 preawards were conducted each year.[5] During this same period, we note that sales under the MAS program rose from $5.6 billion in 1997 to $10.4 billion in 1999. Our report spurred the formation of a MAS Working Group within GSA, comprised of members of the Federal Supply Service (FSS) and the OIG, tasked in part with increasing the numbers of preaward audits. We are strongly encouraged by GSA's current efforts to develop a robust preaward program. By the end of this fiscal year, we expect to have conducted about 70 preaward audits covering $5.2 billion of expected sales under the MAS program.

Preaward audits are a key control on pricing disclosures, and, when used effectively by COs, can generate significant savings for the Government. In fiscal year 2004, for example, the OIG conducted 40 preaward audits. With these audits, COs were able to negotiate better pricing, saving the Government at least $75.4 million over the term of the affected contracts.[6] For the current fiscal year, we have so far issued 46 preaward audits, which have recommended cost avoidances totaling $612 million. For one recently completed preaward audit of a large information technology services vendor, the CO negotiated better pricing that will save the Government over $70.7 million during the 5-year base term of the contract.

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[4] These standards, which address requirements regarding level of work, as well as auditor independence and ethics, dictate in many respects how audits are performed, and what types of documentation or records auditors seek in a standard preaward audit. Preaward MAS audits, as performed by our Office, are known as attestation reviews under current Yellowbook Standards. We also note that the GSA OIG, like other OIGs, undergoes a peer review every three years that examines, among other activities, the quality of preaward audits and their adherence to Yellowbook Standards.

[5] Special Report on MAS Pricing Practices: Is FSS Observing Regulatory Provisions Regarding Pricing? (GSA OIG, August 24, 2001).

[6] The $75.4 million in savings relates to only 30 of the 40 preaward audits performed in fiscal year 2004; for the remaining 10 audits, we do not yet have the results of the negotiations.

Postaward Audits of Negotiation Information

Until 1997, GSA also had the ability to conduct postaward audits of pricing information provided during MAS negotiations -- so called defective pricing audits. The OIG Office of Audits initiated and conducted these audits, and their purpose was to determine whether the all-important pricing information MAS vendors provided was current, accurate and complete. Where an audit determined that a vendor provided faulty negotiation information, the report and contract would then be evaluated by the OIG for indications of fraud. If such indications were present, the OIG would refer the matter to the Department of Justice for action under the civil False Claims Act.[7] Where there was no significant evidence of fraudulent conduct, the OIG would refer the audit report to the CO who would resolve the matter by seeking a simple refund of any overpayments and by negotiating improvements in the contract prices over the remaining term of the contract.

Industry groups have used the term "burden" to connote the potential for fraud liability and its consequences when defective pricing is found and then referred to the Department of Justice. Simply stated, this concern has always been greatly exaggerated. In the last period of time we have to measure (the 1994-1996 time period), only 15 percent of the over 70 postaward audits with defective pricing findings issued by the GSA OIG were referred to the Department of Justice based on concerns regarding the fraudulent nondisclosure or misrepresentation of pricing information. The remaining postaward audits were referred to GSA COs for administrative resolution.

In 1997, as part of a rule change revising the MAS program to implement the Federal Acquisition Streamlining Act, Pub. L. 103-355, and the Clinger-Cohen Act, Pub. L. 104-106, GSA virtually eliminated the authority to conduct postaward defective pricing audits. GSA Acquisition Regulation; Acquisition of Commercial Items, 62 Fed. Reg. 44518 (August 21, 1997). Instead of defective pricing audits, GSA noted that it expected to shift emphasis to conducting preaward audits in order to catch problems before contract award. Although GSA did retain language that would allow COs to modify the GSA Examination of Records clause to allow for defective

[7] The civil False Claims Act provides for the Government to recover up to treble damages and penalties for fraudulent conduct involving submission of false claims to the Government. 31 U.S.C. §§ 3729-3733.

pricing audits, the modification requires high level approval and a CO finding that "there is a likelihood of significant harm" absent inclusion of the audit authority. To date, at GSA, this clause has not been modified and this contractual defective pricing audit authority has not been exercised. In contrast, the Department of Veterans Affairs (VA) modified its clause in 1997 and its OIG continues to conduct defective pricing audits under the VA MAS contracts; that Office's postaward defective pricing recoveries since 1997 have exceeded $151 million.

Postaward Audits Rights Over Negotiation Information Are An Important Means of Ensuring the Integrity of Pricing Disclosures

We believe that postaward defective pricing audits are an important means of ensuring the integrity of pricing disclosures and should be reinstated. Their existence serves to ensure that the commercial pricing information vendors provide -- which is key to the Government negotiating a good MAS contract price -- is current, accurate, and complete.

In the three-year period prior to the 1997 rule that eliminated postaward audits, fully 84% of postaward audits contained findings of defective pricing. Although, as already stated, the great majority of our audits with defective pricing findings were referred to contracting officials for administrative resolution, they were nevertheless compensable to the Government. Looking only at the small numbers of audits that we referred to the Department of Justice, the Government recovered over $110 million in civil fraud penalties in the eight years prior to the rule change. This does not include monies recovered by GSA COs administratively. It also does not include any amount attributable to improved forward pricing COs achieved based on the audit results.

Every indication we have, including hotline calls and qui tam actions filed under the civil False Claims Act,[8] is that defective pricing is currently alive and well at GSA, although the contractual right to audit for it is not. Recently for example, in one case brought to our attention through a qui tam action, Humanscale, Inc., a company that supplies the Government with office chairs and ergonomic equipment through several MAS contracts, paid

[8] The qui tam provisions of the civil False Claims Act allow private persons to bring fraud actions on behalf of the United States and receive a portion of any money recovered. 31 U.S.C. § 3730.

the Government $9 million to settle allegations that it provided false pricing information to the Government during negotiations.

Audit rights also have important benefits that cannot be easily quantified. Audits cannot be measured solely in terms of numbers of contracts audited and dollars recovered. Even at the height of our postaward audit program in the 1990s, we conducted only approximately 40 to 50 postaward audits of negotiation information per year. Regardless of the actual number of audits conducted, it is the very existence of the audit right that serves as a deterrent to vendors that would misrepresent their pricing information to the Government and that encourages companies to put in place internal compliance or housekeeping measures. We believe that the success of the VA OIG's voluntary disclosure program is due in part to the fact that it retained contractual defective pricing audit rights; of the $151 million the VA OIG has recovered since August 1997, fully $105.7 million represents recoveries directly related to voluntary disclosures. In contrast, our Office has had a less successful voluntary disclosure program; we have had only 4 such disclosures and recovered $1.7 million during that same period, despite the fact that GSA generates over 5 times the sales under its MAS program than does VA. We also point out that the existence of audit rights provides assurance to the vast majority of honest contractors that GSA is committed to providing a level playing field for all contractors.

Audits Exist in Commercial Practice; Alleged Burdensomeness of Audits

We are aware that the vendor community has argued that defective pricing audit rights should not be reinstated because they are not consistent with commercial practice and are overly burdensome. We disagree on both counts.

While we acknowledge that audits necessarily involve some degree of effort by a vendor, we point out that our Office has always taken steps to minimize burden by tailoring the audit process to a company's recordkeeping systems; by keeping our on-site fieldwork to reasonable time frames (typically 1-3 weeks); and by using electronic audit processes. We do not feel this level of "burden" is unreasonable given the risks to the Government of not having postaward audit rights and the monetary benefits that accrue to vendors with an MAS contract award. For example, one MAS vendor that was audited last year holds a contract that is expected to generate over $1.5 billion in MAS sales for the five-year base contract period.

We also believe there is evidence of audit rights in commercial practice. We note that two studies -- one by our Office together with the VA OIG and one by GSA itself -- developed evidence that audit clauses do exist in various forms in the commercial world, and are used by commercial buyers and suppliers.[9] As for industry's argument that some of these commercial audit clauses are not as broad in scope as the defective pricing audit authority, we note that there is no real commercial analog to the GSA MAS program; as such, it is unreasonable to expect commercial audit clauses to mirror the type of pricing information used to negotiate MAS contracts. Commercial purchasing arrangements do not typically involve multiple contracts for the same or similar items with as many suppliers; commercial buyers tend to use direct competition to limit more sharply the number of awards they make to suppliers. In contrast, as we already noted, multiple awards are key to the MAS program in that they are necessary to offer maximum choice. Making multiple awards, in turn, requires GSA to rely on pricing disclosures in order to effectuate its policy of targeting most-favored customer pricing. Thus, the fundamental structure of the MAS program dictates that any meaningful audit clause must cover such pricing information.

We nevertheless note that it is fairly evident from the commercial audit clauses we have reviewed that commercial contracts provide for audit authorities coextensive with the contractual requirements imposed, so that such rights cover access to any information provided by the seller to meet its obligations under the contract. In response to an industry petition challenging the existence of postaward audit rights in 1999, the Office of Federal Procurement Policy (OFPP) concluded that "the challenged safeguards are consistent with commercial practice to the maximum extent practicable given the current objectives of the MAS program." [10]

GSA Should Reinstate Postaward Audit Rights

We have strongly urged GSA to reinstate postaward audit access to negotiation information. The ability of GSA to negotiate prices commensurate with the Government's purchasing power is dependent on

[9] *See* GSA FSS Acquisition Management Center's "Anthology of Commercial Terms and Conditions" (July 1996); GSA and VA OIGs' "Procurement Reform and the MAS Program" (July 1995).
[10] OFPP Response to Government Electronics and Information Technology Association (GEIA) Petition, July 30, 1999.

getting current, accurate and complete pricing data from vendors. We believe that postaward defective pricing audits are a critical adjunct to existing preaward audits. Although we expect to perform 70 preaward audits this year, we note that this represents only a small percentage -- less than 1% -- of the over 17,000 total existing MAS contracts. Postaward audits over negotiation information are a necessary piece of an effective MAS oversight program. We believe that as long as GSA wants to maintain maximum choice (and multiple awards) as a centerpiece of the MAS program, audit rights over pricing information should be an appropriate and necessary feature of these contracts.

Contract User Fees at GSA

GSA assesses user fees for the use of its interagency contracting vehicles, which mainly include MAS contracts and Governmentwide acquisition contracts (GWACs). These fees are intended to cover the administrative costs of the contracting vehicles and associated procurement consulting services. On the MAS side, GSA's FSS charges a .75% Industrial Funding Fee (IFF) to contract users on all MAS contract sales. When initiated in 1995, the IFF was 1% of MAS sales. GSA reduced the IFF to .75% in 2004 in response to findings by both our Office and the GAO that the MAS program was recouping significantly more in IFF than it cost to run the program.[11] We believe that this reduction more appropriately aligns fees with the actual costs of running the program.

FSS now also has responsibility for running GSA's GWACS. There are generally up to three types of fees that may apply under these vehicles. First, agency users of these vehicles pay a contract access fee of 1% for the use of most of these contracts. In addition, if they elect to seek procurement assistance services, users pay a fee ranging generally from 2% to 5% of the order amount; this fee reimburses GSA for services rendered in connection with conducting the task order procurement, such as performing market research or drafting the statement of work. Finally, on very large projects, users may elect to engage GSA as the project manager. These services, too, can vary in nature and complexity and are billed on an hourly rate basis. We

[11] GSA OIG, *Audit of the Federal Supply Service's Industrial Funding Fee for the Schedules Program*, Report Number A83309/F/H/V99513 (5/28/99)(found that for fiscal years 1998 and 1999, GSA recouped about $30 million more per year than necessary to fund the full costs of the MAS program); GAO, *Contract Management-- Interagency Contract Program Fees Need More Oversight*, GAO-02-734 (July 2002)(found that GSA collected $151 million more in fees than costs for the years 1999 through 2001 under the MAS program).

have a pending audit that would review whether current GWAC user fees are aligned with actual costs. However, because GSA is currently combining and restructuring FSS and FTS, which will necessarily impact the structure and nature of costs to administer these contracts, we have determined it is not practicable to continue this audit at the current time. We expect to resume the audit once the restructuring is in place.

Thank you again for the opportunity to testify. This concludes my formal statement. I will be glad to answer your questions.

STATEMENT OF

JOHN B. AMES

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OFFICE OF INSPECTOR GENERAL

DEPARTMENT OF VETERANS AFFAIRS

BEFORE

THE UNITED STATES SENATE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY

JULY 26, 2005

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to provide information on the pre-award and post-award audits of Federal Supply Schedules (FSS) proposals and contracts that the Department of Veterans Affairs (VA) manages. I will explain why pre-award and post-award audits are in the best interests of the Government and discuss the need to maintain post-award audit authority in all FSS contracts, in light of previous and current efforts to eliminate or restrict this authority.

BACKGROUND

Since 1960, VA has been delegated authority by the General Services Administration (GSA) to solicit, negotiate, award, and administer certain FSS schedules. The delegation currently encompasses eight schedules for various categories of medical/surgical supplies and equipment and pharmaceuticals, and three schedules for healthcare services. Within these schedules, VA has over 1400 active contracts in place, with annual sales exceeding $6 billion in FY 2003 and 2004. Projected sales for FY 2005 exceed $7 billion. These contracts are managed by contracting officers located at VA's National Acquisition Center (NAC) in Hines, Illinois. Although VA is the primary purchaser off these contracts, all Government agencies can use the contracts, including the Department of Defense, Bureau of Prisons, Indian Health Services, Public Health Services, and some state Veterans Homes.

Under current GSA regulation, VA has authority to conduct pre-award and post-award audits of FSS proposals and contracts. The goal of these audits is to ensure the Government receives the best possible prices. VA has a vested interest in the 11 schedules maintained by VA because approximately 60 percent of the total sales off these schedules represent VA purchases.

Prior to FY 1993, pre-award and post-award audits were conducted by the Defense Contract Audit Agency (DCAA). Based on information obtained as part of VA Office of Inspector General (OIG) oversight of the audits done by DCAA, the OIG submitted a business proposal to VA's Office of Acquisition and Materiel Management (OA&MM) showing that the audits could be conducted in a more effective and efficient manner if performed by an independent group of auditors placed under the OIG umbrella, but not paid for by OIG appropriations and not available to perform OIG oversight. This is necessary because pre-award and post-award audits are a VA program responsibility, not part of OIG oversight activities under the Inspector General Act.

In FY 1993, OA&MM entered into a Memorandum of Understanding with the OIG for the Contract Review and Evaluation Division (Division) to provide these services on a reimbursable basis, paid for by VA's Revolving Supply Fund under the provisions of the Economy in Government Act. The Division functions as a group separate and distinct from OIG operations. The reimbursable funds are not used to conduct OIG oversight activities of VA programs and operations. The Revolving Supply Fund was established for the operation and maintenance of VA's supply system. The FSS is part of that system.

This partnership with VA has proven to be very successful. During the past 12 years, the Division has conducted 240 pre-award audits which resulted in recommendations for better use of funds in the amount of approximately $2.2 billion. Of this recommended amount, more than $390 million has been sustained during contract negotiations, which represents 40 percent of the recommendations for better use of funds in those contracts that have been awarded. In addition, 238 post-award audits were conducted, resulting in approximately $319 million in recoveries for VA. A majority of the funds recovered were returned back to the VA Revolving Supply Fund, which greatly exceeds the reimbursable operational costs for the Division.

Of the 238 post-award audits, 107 were initiated in response to the vendor's voluntary disclosures. In their disclosures, these vendors collectively offered to pay back $37.5 million in overcharges; however, as a result of post-award audits, the Division actually recovered $113 million. The number of voluntary disclosures shows that post-award audit authority has had a deterrent effect on industry, which is one of the primary purposes of having the authority to conduct these audits. In addition to the monetary benefits, these audits provide valuable insight into each vendor's commercial practices, which VA has used to improve its contracting and purchasing activities.

FSS PROGRAM

The FSS program is unique because it allows vendors the opportunity to non-competitively enter into a contract to offer their entire product line to the Government. Because the contracts are awarded without competition, and in order to ensure prices are fair and reasonable, prices are negotiated by comparing the prices and incentives offered to the Government to those offered to the vendor's commercial (non-Government) customers. The Government's negotiation objective is to obtain prices that are equal to or better than the vendor's Most Favored Customer (MFC). The MFC is the lowest net price the vendor offers its commercial customers, taking into consideration discounts and other incentives, such as rebates, free goods, trade-ins, etc.

When a proposal for a contract or request for modification to add products to an existing contract is submitted, vendors are required to provide VA with specific information regarding their Commercial Sales Practices (CSP) and to state whether the prices offered are equal to or less than MFC. CSP information identifies the vendor's best commercial customers, the discounts off list price those customers receive, and any programs or incentives that commercial customers are offered which may result in lower net prices. The Government relies on CSP information to determine whether offered prices are fair and reasonable. If the vendor supplies pricing information that is not accurate, complete, and current, the Government can end up paying more for products than similarly situated commercial customers.

Another pricing feature of FSS contracts is the Price Reductions Clause. The purpose of the clause is to ensure that the Government maintains fair and reasonable pricing throughout the term of the contract. VA relies on the CSP data provided by the vendor to identify one or more commercial customers as tracking customers. During the term of the contract any additional discounts or incentives offered to the tracking customers also must be offered to the Government.

Pre-award audits assist contracting officers in selecting the tracking customers and post-award audits monitor compliance with the Price Reductions Clause.

Pre-Award Audits

The primary purpose of a pre-award audit is to evaluate the CSP information provided by the vendor and determine whether offered prices are fair and reasonable. These audits provide advice to contracting officers on negotiation strategies, other issues that may affect the decision to award or non-award a contract or individual line items, the selection of tracking customers for purposes of the Price Reductions Clause, and Government purchasing practices that may impact negotiations. Under current VA policy, pre-award audits are required on pharmaceutical FSS offers with estimated annual sales of $5 million or greater and for all other FSS offers with expected annual sales of $3 million or greater.

Post-Award Audits

Post-award audits are conducted after the award of a contract or contract modification. The audit includes the verification of CSP information provided prior to the award or modification of a contract if a pre-award was not conducted. A post-award also includes a review of whether the vendor has complied with the Price Reductions Clause, whether Government customers were charged more than the contract price, and whether sales were accurately reported as required under the terms of the contract.

Post-award audits can be initiated by the Division, requested by the VA contracting officer, or conducted in response to a vendor's voluntary disclosure. In the past 8 years, the majority of our post-award audits have been initiated in response to voluntary disclosures. In addition, some post-award audits are initiated in response to civil complaints filed in a United States District Court pursuant to the *qui tam* provisions of the False Claims Act. Post-award audits result in the adjustment of contract prices and the collection of overcharges. Out of the 238 post-award audits conducted, all but one was settled without the need for litigation. The VA Board of Contract Appeals ruled for the VA on the one remaining claim.

Pre-award audits of CSP information are preferable to post-award audits because they impact on decisions that affect contract prices at the time of award. In addition to the resulting up-front cost savings, pre-award audits reduce the need to identify, calculate, and collect overcharges. However, post-award audits are the only vehicle available to monitor compliance with the Price Reductions Clause and other contract terms and conditions. There are not sufficient resources to conduct pre-award audits of all proposals, and requests for modifications to add new products to a contract rarely undergo a pre-award audit because they do not reach the dollar threshold triggering such audits. This is significant because it is a common practice for vendors to submit requests for modification to add items to an existing FSS contract. Through modifications, vendors can add thousands of line items that can significantly increase the value of the contract. For example, a recent review by the Division of FSS contract files identified a contract that was modified 10 times in the 16 months after award. Seven of the 10 modifications added over 1200 line items to the contract.

POST-AWARD AUDIT RIGHTS

In 1995, GSA began the process of amending the Federal Acquisition Regulation (FAR) to implement the provisions of the Federal Acquisition Streamlining Act of 1994 (FASA), which affected the Truth in Negotiations Act and the acquisition of commercial items, and the Clinger-Cohen Act of 1996. With respect to the FSS program, GSA's intent was to reinvent the program to move to a future environment of greater use of commercial practices, increased competition, and greater responsibility in making smart buying decisions.

Although post-award audits were not specifically addressed in FASA or the Clinger-Cohen Act, the issue was subject to much debate. This was due in great part to a move

by industry to have the post-award audit and access to records provisions eliminated from FSS contracts, particularly with respect to information provided in support of negotiations prior to award or contract modifications. Although GSA had no objection to eliminating these provisions, such action was opposed by VA, VA OIG, GSA OIG, and the Department of Justice. After considerable discussion among GSA, the Office of Management and Budget (OMB), and the Government entities opposing the changes, GSA published its Final Rule on August 21, 1997.

The Final Rule eliminated the contract clause that automatically provided post-award audit rights for pricing information in every FSS contract, including those maintained by VA. Although the new rule provided the contracting officer the opportunity to modify the Examination of Records by GSA (Multiple Award Schedule) clause to provide for post-award access to records, it permitted verification of the pre-award/modification pricing, sales, and other data submitted, which related to supplies or services offered under the contract. This modification could only be made after the contracting officer determined that there was a likelihood of significant harm to the Government without the authority to verify information and only after the contracting officer obtained the approval of the Senior Procurement Executive at VA or GSA that the contracts were at risk. However, as a compromise with industry, the Final Rule also imposed a 2-year limitation on auditing commercial sales practice and other information relied on by the contracting officer in awarding a contract or modification. In response to the Final Rule, VA evaluated its schedules, identified those that were at risk, and took the actions necessary to include the post-award examination of records clause in those schedules.

In implementing the Final Rule, GSA stated that it expected to shift its emphasis to pre-award audits of pricing information. In compliance with GSA's intent, VA placed a greater emphasis on pre-award audits through a policy that mandates pre-award audits of proposals based on specific dollar thresholds. Of note, however, a report issued by the Government Accountability Office (GAO) in February 2005, *Contract Management — Opportunities to Improve Pricing of GSA Multiple Award Schedules Contracts*, revealed that GSA did not shift its focus to pre-award audits; rather very few audits were conducted at all.

In FY 1999, the Government Electronics & Information Technology Association (GEIA) submitted a petition to OMB, Office of Federal Procurement Policy (OFPP) under the provisions of Section 25(c) of the Office of Federal Procurement Policy Act, challenging these provisions in the Final Rule. The petition was denied based on OFPP's determination that the practices and their use were in concert with the FAR requirement to be consistent with customary commercial practice to the "maximum extent practicable."

On March 11, 2005, GSA published an Advance Notice of Proposed Rulemaking (Advance Notice) requesting comments on several issues, including the right to examine contractor records after contract award. GSA stated in an April 12, 2005, amendment to the Advanced Notice that it had questions as to how the taxpayer might benefit from any revisions to the General Services Administration Acquisition Regulation (GSAR) to

address contractor concerns regarding post-award audits. GSA stated that it was interested in exploring whether GSA should modify the Examination of Records clause at GSAR 552.215-71 to reinstate the pre-August 1997 post-award audit rights clause and the right to examine records to verify that pre-award/modification pricing, sales, and other data was accurate, complete, and current. The Advance Notice stated that the major concerns raised by industry with respect to the post-award audit authority included complaints that the audits are too broad and are not consistent with commercial contract practices.

VA and VA OIG submitted joint comments in response to the Advance Notice. We advised GSA that it would be in the best interest of the Government to modify the Examination of Records clause at GSAR 552.215-71 to reinstate the post-award access to records and right to examine records clause that was deleted by GSA's August 21, 1997, Final Rule. One position supporting the need to reinstate the prior clause is that if GSA initiates post-award audits under the current Final Rule, it may have a negative impact on VA's post-award audit program.

The August 21, 1997, Final Rule deleted the clause that permitted post-award examination of records for the purpose of auditing pricing information, but it allowed the awarding agency some discretion to include the clause in schedules that were determined to be at risk for harm if the clause was not included. However, the Final Rule states that "GSA anticipates that such instances [where the contract clause would be modified to include the post-award examination of records clause] would involve a limited number of schedules." One of the arguments that industry made in 1999 to OFPP was the VA's inclusion of the clause in most of its schedules violated the "limited number of exceptions" language in the Final Rule. It was determined that VA's schedules represented a limited number of the total schedules; therefore, VA's decision to include the clause did not violate the Final Rule. However, if GSA now attempts to modify its solicitations to include the post-award access to records and right to examine records clause, without reinstating the clause that was deleted in 1997, the number of schedules that will be modified will likely exceed a reasonable interpretation of a "limited number" of schedules, which could impact on VA's schedules.

Reinstating the prior clauses will also eliminate the 2-year limitation on post-award audits of pricing information. Although the Final Rule provided VA authority to include the access to records and examination of records clause, it did not provide VA authority to amend the 2-year limitation imposed by the Final Rule. Based on the audits we have conducted since 1997 and other information, the 2-year restriction has limited VA's ability to recover some overcharges that were incurred by the Government outside the 2-year time period. Because the majority of our post-award work has been in response to voluntary disclosures, we have not been able to conduct self-initiated audits of awards and modifications within the 2-year time period. Reinstating the pre-1997 clause which allowed for post-award audit rights for pricing information in all FSS contracts would resolve the 2-year restriction.

The evaluations conducted by GAO of VA and GSA's FSS programs that were published in reports issued in June 2004, *Contract Management — Further Efforts Needed to Sustain VA's Progress in Purchasing Medical Supplies*, and February 2005, *Contract Management — Opportunities to Improve Pricing of GSA's Multiple Award Schedules Contracts*, show that post-award audits are clearly in the best interest of the Government.

In the June 2004 report, GAO stated:

> "VA's FSS and national contracts generally provide favorable prices and have achieved savings – in part, because VA has built into its contracts important clauses that allow it to aggressively pursue best prices for medical products and services. For example, through its FSS contracts, VA exercises audit rights and access to contractor data, which have helped VA negotiate better prices and achieve savings totaling $240 million from fiscal years 1999 to 2003."

Response to Concerns Raised by Industry

Throughout the past 10 years, industry has made a number of arguments in opposition to post-award audits of commercial sales practice information submitted during negotiation of the contract or contract modification. These arguments include that the audits are not a commercial practice, are overly broad, and are overly burdensome on the contractor. We do not believe these arguments have merit.

As the custodians of the public trust, we believe that the proper benchmark on the issue of conducting post-award audits is whether the audits are in the best interest of the Government, not whether they are a commercial practice. The reports issued by GAO that evaluated and compared the schedules managed by VA and GSA clearly show that the post-award audits are in the best interest of the Government. Conducting post-award audits of pricing information provided during negotiations is not a commercial practice; but, the manner in which FSS contracts are negotiated, awarded, and managed is not a commercial practice either. Therefore, it would be inequitable to apply a commercial practice standard to aspects of the program for which there is no commercial equivalent.

As VA and VA OIG noted in response to the Advance Notice, there are many benefits in Government contracting that do not exist in the commercial market; yet industry has not requested that these procedures be changed to reflect commercial practices. For example, the commercial market does not provide contractors with the opportunity to file a protest challenging the award process; in addition, the Competition in Contracting Act provides industry with broad opportunities to compete for Government business.

Industry has not provided any evidence to support the general complaint that the audits are overly broad. The time period covered by the audit and the information that can be reviewed are defined by the terms and conditions of the contract. We are not aware of any specific audit in which the Division acted outside the scope of the terms and

conditions of the contract. If such an event occurred and was reported, appropriate action would be taken.

Industry also has not provided evidence to support its complaint that the audits are overly burdensome, intrusive, and significantly disrupt business activities. Since 1993, the Division and the NAC have taken steps to streamline the pre-award and post-award audit process to make them more efficient and less burdensome on the vendors. For example, a key aspect of either audit is the review of the vendor's commercial sales transaction data, needed to verify the commercial sales practice information, provided in response to the solicitation or a request for modification. To streamline the process, vendors are asked to provide commercial sales transaction data in electronic format. This eliminates the need for the vendor to locate, audit, and copy volumes of hard copy invoices and other sales records. We have reviewed large and small businesses and found that most maintain records in electronic format, that the information is maintained for many purposes, not just Government audit requirements, and that the information is readily available for review. If additional information is needed, such as commercial contracts, policies, etc., the vendor is asked to provide copies either electronically or by mail. On-site audits at the vendor's place of business are only conducted on an as-needed basis and are usually completed in 2 days or less. To further streamline the process, when the solicitation for the pharmaceutical schedules were issued in 2002, VA included a provision that notified vendors that a pre-award audit would be done, identified specific information that would be needed for the audit, and required vendors to have the data available when they submitted their proposal.

PRE-AWARD AND POST-AWARD AUDITS IMPROVE CONTRACTING AND PURCHASING PRACTICES

Pre-award and post-award audits provide VA with valuable information regarding the commercial practices within the various industries and among the vendors who sell products under FSS contracts awarded by VA. This information has been used to develop pricing schedules and agreements that allow VA and other Government customers to take advantage of discounts and incentives offered commercial customers. The information obtained also provides VA within broad insight into VA purchasing practices and the impact they have on VA's ability to negotiate and maintain fair and reasonable prices.

Audits have shown that vendors often do not provide accurate, complete, and current CSP information. It is not uncommon for the audit to identify discounts or other incentives which result in lower net prices that were not disclosed. In many cases, vendors do not provide this information to VA because they maintain that the Government is not entitled to or eligible for these discounts. However, this is not consistent with GSA policy which requires full disclosure and allows the contracting officer to make the determination.

The following are examples of commercial sales practices that often have not been disclosed or were misrepresented during negotiations:

- Quantity Commitments: Commercial customers receive better net prices than FSS because they have committed to purchase specific quantities of the vendor's product. It was represented that FSS customers were not qualified to receive these lower prices because the FSS contract was an indefinite quantity contract. The audits found that there was no real distinction, because the value of the commitment was often far less than the Government purchased without a commitment. With one exception, the commitment goals were not monitored by the vendor and there was no penalty for non-compliance or penalties were not enforced.

- Market Share Commitments: Commercial customers commit to purchasing a percentage of their annual needs of a specific product or group of products from the vendor, whereas, the FSS contract does not. The audits found that the customer's annual needs were not quantified in the agreement. Without a basis to compare the amount purchased from the vendor versus the amount purchased overall, the commitment is unenforceable.

As a result of audit findings such as these, contracting officers are now more familiar with commercial sales practices and are able to ask pertinent questions or request specific information to determine whether there is a valid distinction and, if so, whether the Government can meet the requirements. As one example, a vendor offered the Government a 15 percent discount on its entire product line. The pre-award audit showed that 92 percent of commercial customers received discounts that ranged from 35 to 41 percent. The vendor argued that these discounts were offered only to customers that entered into single source agreements that required the customer to purchase these products only from that vendor; whereas, under the terms of the FSS, customers were not required to enter into similar agreements. The pre-award audit established that there were only two vendors who manufactured this product; it also found that medical facilities purchased one vendor's product or the other but not both. An audit of records maintained by the vendor showed that VA's purchasing patterns mirrored those of commercial customers. Based on these findings, it was determined that the vendor's distinction between Government and commercial customers was without merit. Once a medical facility selected one vendor's product over the other, the facility had, in fact, committed to buying that vendor's product. Based on the audit, VA was able to implement a tiered pricing structure and negotiate discounts for FSS customers that paralleled those offered to commercial customers. The estimated cost savings was $9 million.

Information obtained through pre-award and post-award audits has been used by VA to improve procurement practices in general.

- On December 23, 1992, the Division issued a report, *Review of VA's Negotiations on Selected High Dollar Value Federal Supply Schedule Pharmaceutical Contracts,* in which we identified systemic issues relating to the negotiation and award of FSS contracts. One finding was the identification and use of wholesaler

as the tracking customer for purposes of the Price Reductions Clause. This was found not in the best interests of the Government; since this category of customer did not receive discounts, the Government would not receive additional discounts or incentives offered to commercial customers during the term of the FSS contract. The report resulted in changes to the negotiation and award of FSS contracts, including the selection of a customer other than wholesalers as the tracking customer.

- In May 2001, the OIG issued a report to the VA Secretary, *Evaluation of the Department of Veterans Affairs Purchasing Practices*, which identified purchasing practices at VA medical centers that were negatively impacting the FSS program. In response to this report, the Secretary convened the Procurement Reform Task Force (PRTF) to develop a plan to implement changes to VA's procurement and purchasing practices. In May 2002, the Secretary approved the PRTF report and recommendations which made significant changes to VA's purchasing and contracting practices. For example, the OIG report stated that pre-award and post-award audits showed that vendors were opting not to have FSS or other contracts, or were not placing high-dollar/high-volume items on contract, because they were able to sell open market to VA medical centers at higher prices and without competition. One of the most significant outcomes of the PRTF was the identification of a mandatory purchasing hierarchy, which identifies FSS contracts as a mandatory source that must be used by VA purchasers before buying through a local contract or open market. As a result, vendors who previously decided not to have an FSS contract because it was more advantageous to sell open market submitted proposals for FSS contracts.

PROPOSAL TO TRANSFER 11 FSS SCHEDULES TO VA

We have submitted a proposal to VA and to the House Veterans Affairs Committee to transfer to VA the 11 schedules VA currently manages. For the past 45 years, VA has effectively and independently managed its FSS schedules. GSA does not contribute any resources to the solicitation, negotiation, award, or administration of any of VA's schedules; does not derive any financial benefit from sales under the schedules; and does not monitor VA's management of the schedules. In addition, the Government is represented by VA in protests and other administrative actions relating to the contracts and claims brought before the VA Board of Contract Appeals. Notwithstanding GSA's lack of involvement with VA's schedules, GSA retains the authority to promulgate and interpret regulations, and make decisions that affect these schedules – some of which have not been in the best interests of VA and other Government agencies that purchase products off VA's schedules. Through our audits, we have learned that there is a wide disparity in commercial practices among the various industries and among vendors within an industry. In addition to the cost savings and recoveries from pre-award and post-award audits, if the schedules are transferred from GSA to VA, VA would be able to use this information to promulgate regulations and develop contract clauses that are specifically tailored to the products and services on the VA schedules. We believe that this will result in contracts that better protect the interest of the Government.

CONCLUSION

Pre-award and post-award audits of FSS proposals and contracts are vital to ensuring that the Government negotiates and maintains fair and reasonable prices during the term of the contract. In addition to cost savings and recoveries, these audits help to ensure the integrity of the FSS program and provide the Government insight into commercial sales practices that can benefit the Government purchaser. While industry may not like the possibility of an audit, there is no objective data to support concerns that pre-award or post-award audits should be prohibited because the audits are unduly burdensome, intrusive, or otherwise disruptive of a vendor's business.

For the reasons stated above, we recommend that GSA modify the Examination of Records clause at GSAR 552.215-71 to reinstate the post-award access to records and right to examine records clause that was deleted by GSA's August 21, 1997, Final Rule. We also recommend that Congress consider transfer of the 11 schedules that VA currently manages from GSA to VA.

Thank you for the opportunity to testify. This concludes my formal statement. I will be pleased to answer any questions the Subcommittee may have.

Tying IT Together: Is GSA Providing Best Value to the Taxpayer?

Testimony of Thomas Graham,
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Subcommittee on Federal Financial Management, Government Information, and International Security

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July 26, 2005

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Salutation

Mr. Chairman, thank you for this opportunity to appear before the Senate Subcommittee on Federal Financial Management, Government Information and International Security today to discuss the matter of interagency contracting fees, particularly those charged by the General Services Administration (GSA). My complete answer to your question is provided within this written version of my testimony. As the Prime Contractor of the Open Market Corridor (OMC), I believe that I can offer you a balanced and unique perspective on this issue. With me today is Mr. Matt Salmon, former U.S. Congressman from the state of Arizona, and Mr. Gary Green, my colleague at Networld Exchange.

Introduction

- *The (GSA) Schedules Program has produced exceptionally high earnings....*[1]
- *"The fee charged by the Schedules Program has consistently generated revenue well in excess of costs. From fiscal year 1999 to 2001, the revenue generated by fees exceeded program costs by 53.8 percent, or $151.3 million. Program customers are, in effect, being overcharged for the contract services they are buying. Nevertheless, program officials have not adjusted the fee."*[2]
- *Significant inappropriate contracting practices and misuse of federal funds...*[3]
- *Fifty-eight percent of contracting actions reviewed awarded without adequate competition.*[4]
- *GSA Inspector General's investigation shows $37 million worth of contracting abuses in the Bremerton, Wash., office of FTS.*[5]
- *Head of the GSA emphasizes that FTS is "still fulfilling a vital service to government", and that FTS purchased goods or services that agency customers "did need and want."*[6]
- *"An endemic and epidemic pattern of gross mismanagement, failed oversight, a flawed rewards system, and potential malfeasance by some FTS managers and staff."*[7]
- *Get It Right.*
- *Planned reorganization of GSA getting a strong push from Office of Management and Budget, and contractors want a voice in the effort.*[8]

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[1] Contract Management: Interagency Contract Program Fees Need More Oversight, GAO-02-734, United States General Accounting Office, Report to the Chairman and Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, July 2002, page 2
[2] GAO-02-734, page 11.
[3] "Contracting abuse, misuse of funds found at GSA unit", Shane Harris, GovExec.com, Aug. 11, 2003.
[4] "Compendium of Audits of the Federal Technology Service Regional Client Support Centers", US General Services Administration Office of the Inspector General, December 14, 2004, page 5
[5] "Private audit found contracting problems in D.C.-area GSA unit", Shane Harris, GovExec.com, Feb. 6, 2004
[6] "GSA chief defends Federal Technology Service", Shane Harris, GovExec.com, Dec. 2, 2003
[7] Letter dated Jan. 13, 2004 from Sen. Charles E. Grassley to GSA Administrator Stephen A. Perry
[8] "Contractors want voice in GSA restructuring", Roseanne Gerin and Jason Miller, Washington Technology, April 4, 2005,

Statements like these, possibly sensational and maybe alarmist, fairly well sum up the situation for GSA as an organization through the last five years and up to the present day—at least in the eyes of the public. Statements like these are not difficult to find when searching for references to GSA and the fees the agency charges.

Although GSA/FTS fees may need examination and realignment, and although GSA is clearly under the gun for contracting improprieties, I believe the root of the problem is outside of GSA control. GSA is simply trying to service its customers in the best manner possible, as does any business entity that survives on its ability to provide value.

In my address here today, I intend to discuss not only the problems at GSA, but the larger issues in Federal Government procurement that created the environment for GSA's failures. Also, I intend to point the way toward solutions industry can provide to make government procurement more efficient, effective and accountable.

In your invitation to speak, you asked me to address this question: "Are the taxpayers getting their money's worth from GSA?" Networld believes this question has roots that push deep into the soil of government contracting, and may be summarized another way: "Does interagency contracting provide value to the taxpayer?" We believe the answers to both questions is "Yes"—that GSA will weather the current storm, and that interagency contracting will increase both in the number of orders and the overall dollar volume of transactions in the years to come. I will provide reasons for this belief later in the body of my testimony.

There are several factors all converging in the "Perfect Storm" gathering for your inquiry today, including:

- The GSA is under increasing Federal Government scrutiny, as seen in the "Compendium of Audits" and reports produced by the U.S. General Accounting Office (GAO). Other auditing agencies, including the GSA's own Office of Inspector General have produced reports shedding more light on your question. Many of these reports I have researched and cited in this testimony.
- A result of these multiple points of scrutiny and largely negative reports is that Congressional forces are moving GSA to consolidate operations as we speak.[9]
- There is a diminishing government acquisition workforce at a time when government spending is increasing to support the Global War on Terrorism and other ongoing U.S. military commitments around the world.
- For several years there has been a shift in Federal Government spending toward Information Technology, combined with varying levels of domain expertise among the key decision-makers.
- There is a general need for business transformation in the Federal Government, and the Department of Defense (DOD) in particular.

[9] "The Davis Plan", Federal Computing Week, Jan. 24, 2005, http://www.fcw.com/article87848

Before I discuss these issues, however, I will take some time to address your primary question for me today.

GSA Fees

GAO, in a July 2002 report titled: *Contract Management: Interagency Contract Program Fees Need More Oversight*, stated that "the (GSA) Schedules program has produced exceptionally high earnings, with revenues exceeding costs by more than 53 percent—for a total of $151 million—during the 3-year period" between fiscal years 1999 and 2001.[10]

Later in the same report, GAO auditors state that "program customers are, in effect, being overcharged for the contract services they are buying. Nevertheless, program officials have not adjusted the fee.[11]

The GSA Inspector General (GSA IG) reported in an audit document released in March 2005 that for every dollar Federal Technology Service (FTS) collects from customers, 95.6 percent goes to vendors for services provided. The remaining 4.4 percent covers FTS administrative/overhead expenses and IT Fund contributions.[12]

Also in the same report, the GSA IG indicates that FTS overhead growth requires further study. "FTS Corporate Overhead is listed at $40.8, $48.8 and $66.3 million on its respective FY02, FY03, and FY04 Contribution Income Statements. This rapid growth is disproportionate with growth in business volume and should be assessed."[13]

Below is a table excerpted from the same GSA IG report, showing the fee structure for FTS. It should be noted here that the surcharges shown do not include the Industrial Funding Fee (IFF), which is a fee GSA charges each vendor for each transaction, and is equal to .75 of a percent. One should bear in mind that many vendors are likely passing this fee on to the Government customer, which would boost the actual final costs to the Government customer.

Table 1: GSA Fee Structure for FTS[14]

FEDERAL TECHNOLOGY SERVICE (FTS) FEE STRUCTURE			
	Regional IT Solutions	National IT Solutions	
Type of Service	IT Solutions	IT Solutions	IT Solutions
Rate Type	Surcharge	Hourly by Grade	Surcharge
Rate Base	% of Total Acquisition	Labor Hours Provided	% of Total Acquisition
Rate Range	Commodities: 2 % to 4 %	GS-15 - $166 GS-14 - $147	Commodities: 2 % to 4 %

[10] GAO-02-734, Contract Management, page 2
[11] GAO-02-734, Contract Management, page 11
[12] Audit of FTS Working Capital/Reserve Fund Levels Report Number A040132/T/A/Z05012, March 28, 2005, U.S. General Services Administration Office of Inspector General, page 2
[13] Audit of FTS Working Capital/Reserve Fund Levels, page 6
[14] Audit of FTS Working Capital/Reserve Fund Levels, page A-1

	Services: 3 % to 5 %	GS-13 - $140 GS-12 - $132 GS-11- $127 GS-09 - $114 GS-07 - $107 GS-03/06 - $99	Services: 3 % to 5 %

The next table shows GSA Actual Gross Margins for FY2003 and FY2004. It should be noted that of the 4 percent for FY2003 Actuals, $252 million, or 72.9 percent, represents salaries or paid compensation to GSA personnel or for contractor-provided support services at GSA.[15]

The conclusion one might draw from these numbers is that GSA is using the fees and steadily higher revenue stream it is generating from them to become a bigger and more highly compensated organization, rather than a more efficient or effective organization.

Table 2: GSA Actual Gross Margins FY03 and FY04

FY 2003 ACTUAL		FY 2004 ACTUAL	
Dollars	% Total Revenue	Dollars	% Total Revenue
$346 million	4	$374 million	4.4

In fairness, we should note that GSA is not the only government agency conducting interagency contracting, or charging fees for these services. This is largely the result of several legislative reforms in the 1990s, including the Clinger-Cohen Act[16] and the Government Management Reform Act of 1994.[17]

The Clinger-Cohen Act authorized creation of Government Wide Acquisition Contracts (GWACs), "which are typically multiple-award contracts for information technology that allow an indefinite quantity of goods or services...to be furnished within a fixed period, with deliveries scheduled through orders with the contractor. The providing agency awards the contract, and other agencies order from it."[18]

The Clinger-Cohen Act authorizes the Office of Management and Budget (OMB) to designate agency heads as executive agents for GWACs.[19]

"In recent years, federal agencies have been making a major shift in the way they procure many goods and services. Rather than spending a great deal of time and resources contracting for goods and services themselves, they are making greater use of existing contracts already awarded by other agencies. These contracts are designed to leverage the

[15] Audit of FTS Working Capital/Reserve Fund Levels, page A-2
[16] P.L. 104-106, Feb. 10, 1996
[17] P.L. 103-356, Sec. 403, Oct. 13, 1994
[18] GAO-02-734 Contract Management, page 4
[19] GAO-02-734 Contract Management, page 4

government's aggregate buying power and provide a much-needed simplified method for procuring commonly used goods and services."[20]

GSA has seen a nearly tenfold increase in interagency contract sales since 1992, pushing the total sales mark up to $32 billion. Other agencies, such as the Department of the Treasury and the National Institutes of Health, also sponsor interagency contracts.[21]

Most of GSA's other ID/IQ contract vehicles (e.g., ANSWER, Millenia, Millenia Lite, ACES, MOBIS) charge 1 percent.[22] Some other interagency contracts, and the agencies who manage them, are shown along with a range of fees in the following table:

Table 3: Non-GSA Interagency Contracts

AGENCY	CONTRACT	FEES
National Institutes of Health (NIH)[23]	CIO-SP2i	1%
NASA[24]	Scientific Engineering Workstation Procurement (SEWP) III	0% under $2500 65% over $2500 $5000 maximum
Department of Interior[25]	GovWorks	4%

In a recent news report summarizing the GAO High-Risk Series published in January 2005, it was stated that "several agencies need to improve their contract management programs to ensure that they are getting best value for their costs," including DOD, NASA and the Department of Energy (DOE).[26] "GAO officials singled out the Defense and Energy departments and NASA for special attention and contracting between agencies."

It would appear then, that GSA does not stand alone its challenges related to interagency contracting and contract management in general. In fact, the GAO first listed DOE and NASA Contract Management as "high-risk" areas in 1990 and they remain on this list today.[27]

By way of background, GAO's high-risk program "has increasingly focused on those major programs and operations that need urgent attention and transformation in order to ensure that our national government functions in the most economical, efficient, and effective manner possible."[28]

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[20] "High-Risk Series: An Update," United States Government Accountability Office, January 2005, GAO-05-207, page 24
[21] GAO-05-207, High-Risk Series Update, page 24
[22] http://www.treas.gov/offices/management/dcfo/procurement/training/gwacs_macs.pdf
[23] http://www.treas.gov/offices/management/dcfo/procurement/training/gwacs_macs.pdf
[24] http://www.treas.gov/offices/management/dcfo/procurement/training/gwacs_macs.pdf
[25] http://www.govworks.gov/client/faqs.asp, FAQ #19
[26] "GAO finds contract risks," Michael Hardy, Federal Computing Week, Jan. 27, 2005
[27] GAO-05-207, High-Risk Series Update, page 5
[28] GAO-05-207, High-Risk Series Update, page 1.

GSA Contracting Challenges

GSA FTS is currently implementing the "Get It Right" program, which was instituted in July 2004 mainly due to a series of investigations that found a multitude of contracting improprieties, including procurement of building services, marine equipment and even counseling services using technology contracts.[29]

Abuses were found in regional FTS offices in Bremerton, WA., Kansas City , MO., and Atlanta, suggesting that "improper activities" were widespread within FTS.[30]

Quoting from a January 2004 letter from Senate Finance Committee Chairman Charles Grassley to GSA Administrator Stephen Perry, the three regional offices examined gave "every appearance of having run virtually unchecked and amuck, and have committed almost every conceivable contracting irregularity. Incredibly, many of these violations were neither one-time, nor isolated to just a single office. Instead, they seem to reflect an endemic and epidemic pattern of gross mismanagement, failed oversight, a flawed rewards system, and potential malfeasance by some FTS managers and staff."[31]

Quoting now directly from GSA literature, the five major objectives of the "Get It Right" plan are to:[32]

- *Secure the best value for federal agencies and American taxpayers through an efficient and effective acquisition process, while ensuring full and open competition, and instilling integrity and transparency in the use of GSA contracting vehicles.*
- *Make acquisition policies, regulations and procedures clear and explicit.*
- *Improve education/training of the federal acquisition workforce on the proper use of GSA contracting vehicles and services.*
- *Ensure compliance with federal acquisition policies, regulations and procedures. Non-compliance is unacceptable!*
- *5. Communicate with the acquisition community, including agencies, industry partners, Office of Management and Budget (OMB), Congress, and other stakeholders, regarding the use of GSA contracting vehicles and services.*

Details of the abuses and failures that led to the "Get It Right" program are revealed in the "Compendium of Audits of the Federal Technology Service Regional Client Support Centers," dated Dec. 14, 2004.

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[29] "Technology contract used to purchase interrogation work," Shane Harris, GovExec.com, May 20, 2004
[30] "GSA inspector general reports on improper contracting activities," Shane Harris, GovExec.com, Jan. 8, 2004
[31] Sen. Charles E. Grassley letter dated Jan. 13, 2004
[32] Federal Acquisition Excellence, "Get it Right: A Comprehensive, Governmentwide Approach," presentation available for download at:
http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17028&contentType=GSA_OVERVIEW

To summarize, the "Compendium of Audits" lists the following types (not a comprehensive list) of contracting improprieties in GSA's Client Support Centers (CSCs):[33]

- Inadequate Competition
- Misuse of Contract Vehicle
- Improper Contracting Actions
- Frequent Use of Time and Materials Task Orders
- Inadequate Support for Fair and Reasonable Pricing

The details vary by CSC, but overall statistics[34] are as follows:

- Fifty-eight percent of the contracting actions reviewed were awarded without adequate competition.
- Eight contracts went to companies that did none or very little of the actual work performed.
- In two cases, Small Business authority was used improperly.
- Twenty task orders were awarded for services, equipment or materials that were out of scope.
- Several regions made awards based on ineffective statements of work.
- Nineteen task orders were awarded for construction, services, lease or acquisition of real property.
- Overall, CSCs used time and materials (T&M) type of orders rather than firm-fixed price (FFP) orders. FFP is the type preferred by Federal Acquisition Regulations (FAR).
- Sixty-four percent of the orders had absent or insufficient documentation that pricing was fair and reasonable.

Shrinking Acquisition Workforce & Rise of Interagency Contracting

The Pentagon's acquisition workforce fell to about 135,000 in 2004 from more than 450,000 in 1990, according to a Pentagon report cited this month in *The Washington Post*.[35]

At the same time, nearly 40 percent of all federal workers will be eligible to retire this year, creating many new openings to fill across the Federal Government.[36]

"The Federal Government is facing several significant challenges when it comes to its acquisition workforce: the number of workers is declining, while the workload and the demand for more sophisticated technical, financial and management skills are increasing.

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[33] "Compendium of Audits", Dec. 14 2004, pages 5-8
[34] Compendium of Audits", Dec. 14 2004, pages 5-8
[35] "New Pentagon Panel Reviews Acquisition", Renae Merle, The Washington Post, Monday, July 18, 2005, page D01, http://www.washingtonpost.com/wp-dyn/content/article/2005/07/17/AR2005071700717.html
[36] "Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner", Executive Office of the President Office of Management and Budget, July 2003, page 2

DOD's contracting workload, for example, has increased by about 12 percent in recent years, but the workforce available to perform that workload has been reduced by about half over the same period. Meanwhile, the Federal Government is implementing various ways of contracting, such as performance-based contracting methods, commercial-based pricing approaches, and the use of purchase cards."[37]

One extrapolates that, along with this loss of personnel in the workforce comes a general loss of institutional memory and contracting expertise.

Because of this shrinking Federal Government acquisition workforce, the need for shared contracting resources and interagency contracting will likely grow.

"Interagency contracting is being used more with regard to purchases of services, which have increased significantly over the past several years and now represent over half of federal contract spending."[38]

"Interagency contracts can leverage the government's buying power and provide a simplified and expedited method of procurement. But several factors can pose risks, including rapid growth of dollars involved combined with the limited expertise of some agencies in using these contracts and recent problems related to their management."[39]

These contract vehicles offer the benefits of improved efficiency and timeliness; however they need to be effectively managed."[40] High-risk factors for interagency contracts include:

- Attracting rapid growth of taxpayer dollars
- Being administered and used by some agencies that have limited expertise with interagency contracting methods
- Contribute to a more complex contracting environment in which accountability is not always clearly established

"In particular, to facilitate effective purchasing through interagency contracts, and to help ensure the best value of goods and services, agencies must clarify roles and responsibilities and adopt clear, consistent, and enforceable policies and processes that balance the need for customer service with the requirements of contract regulations."[41]

Increases in Government Spending

Federal Government spending has increased from the year 2000 to 2005 approximately 30 percent. This is a figure we have calculated using public data provided through a website sponsored by TruthAndPolitics.org.[42] The data are from the *Public Budget*

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[37] "Acquisition Workforce: Status of Agency Efforts to Address Future Needs", United States General Accounting Office report GAO-03-55, page 3
[38] GAO-05-207, High-Risk Series Update, page 26
[39] GAO Highlights, "Highlights of GAO-05-207, a report to Congress on GAO's High-Risk Series."
[40] "High-Risk Series: An Update," United States Government Accountability Office, January 2005, GAO-05-207, page 25
[41] GAO-05-207, High-Risk Series Update, page 28
[42] http://www.truthandpolitics.org/budget-numbers-intro.php

Database, Budget of the United States Government, Fiscal Year 2005, a different website sponsored by the Office of Management and Budget (OMB). The spreadsheet we created to calculate this figure is included as Attachment A. Attachments B, C, and D are charts we have developed from the spreadsheet showing raw growth, annual growth in dollars and annual growth expressed as a percent.

Over the same period, inflation rates went from about 3.75 percent in 2000, dropped to a low of about 1.00 percent in 2002, then steadily climbed again for the next three years. Rates reached a high of about 3.50 percent in early 2005 and dropped again to their present rate of about 2.50 percent in July 2005.[43]

The DOD is the world's largest purchaser of goods and services, and year to year accounts for the largest share of the Federal Government budget.[44]

"In FY 2004 alone, DOD spent $254 billion on acquisition. On an average working day, DOD issues more than 25,000 contract actions, valued at $923 million, and makes more than 195,000 credit card transactions, valued at $43.9 million....Every acquisition dollar that is not prudently managed results in that dollar not being available to fund the Secretary of Defense's top priorities, such as the global war on terrorism and joint warfighting capabilities."[45]

The Department of Homeland Security (DHS) budget has hovered at approximately the $30 billion mark since 2002. Rounded numbers for budget authority are shown in the table below.[46]

Table 4: DHS Budget FY02-FY05

FISCAL YEAR	$ IN BILLIONS
2002	30.6
2003	30.8
2004	28.8
2005	31.4

The Homeland Security Act of 2002 authorized DHS to establish a pilot program for the use of acquisition agreements known as "other transactions."[47] "Because they are exempt from many of the requirements that apply to government contracts, other transactions can be useful in acquiring cutting-edge technologies from entities that traditionally have declined to do business with the government."[48]

[43] http://inflationdata.com/inflation/images/charts/air20050714.gif
[44] Inspector General, United States Department of Defense, Semiannual Report for Transmission to Congress, October 1, 2004-March 31, 2005, page 12
[45] DOD Inspector General Semiannual Report Oct. 1, 2004-March 31, 2005, page 12
[46] http://www.truthandpolitics.org/budget-numbers-intro.php
[47] "Highlights of GAO-05-136", a report to the Senate Committee on Governmental Affairs and the House Committee on Government Reform
[48] Highlights of GAO-05-136

"DHS is expected to spend billions of dollars annually to acquire a broad range of products, technologies and services from private-sector entities." Other transactions authority is one of the acquisition tools--in addition to standard Federal Acquisition Regulations (FAR) contracts, grants, and cooperative agreements—available to DHS to help support its mission.[49]

The DHS Science & Technology (S&T) Directorate "plans an increasing number of mission programs that could use its other transactions authority, but DHS's current contracting workforce may not be sufficient to manage this workload. DHS has relied on a small number of key S&T program practitioners, to develop or approve solicitations."[50]

Information Technology spending in the Federal Government has been on the increase for several years. Even during the economic downturn that began in approximately the year 2000, *Washington Technology* reported that "the federal market has been a bright star in this otherwise slow economy over the past two years. The significant growth and the addition of supplemental budgets given to federal agencies have been needed lifts to the technology sector." Where traditional growth would have been measured at 2 to 4 percent, federal technology spending increased even in an otherwise down economy by 8 to 12 percent.[51]

Forrester Research Group estimates that federal government agencies will spend nearly $60 billion on IT for FY 2005.[52]

It is commonly reported that the Federal Government spends more money now on IT than on ships and aircraft, and that IT is the fastest growing segment of the Federal Government budget.

Many of these IT systems are standalone, "stovepiped" or legacy systems that worked well when implemented, but are now in need of replacement, technology refreshment, or continual integration to newer systems. Traditional contracting cycles and subsequent development can take so long that frequently this technology is old the first time the "On" switch is thrown. These older systems may also become responsible for consuming inordinate amounts of appropriated funds to keep them running.

Need for Business Transformation

"DOD spends billions of dollars to sustain key business operations intended to support the warfighter, including systems and processes related to the management of contracts, finances, the supply chain, infrastructure, and weapons systems acquisition.

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[49] "Homeland Security: Further Action Needed to Promote Successful Use of Special DHS Acquisition Authority", United States Government Accountability Office report GAO-05-136, page 4
[50] GAO-05-136, Homeland Security, page 21
[51] "Across the Digital Nation: Fed Government—Rising tide meets two possible dams", Washington Technology, Rishi Sood, Feb. 4, 2004, http://www.washingtontechnology.com/news/18_3/digitalnation/20705-1.html
[52] http://www.forrester.com/ForrTel/Previous/Overview/0,5158,1010,00.html

"GAO has reported on inefficiencies in DOD's business operations, such as the lack of sustained leadership, the lack of a strategic and integrated business transformation plan, and inadequate incentives.
"Moreover, the lack of adequate transparency and accountability across DOD's major business areas results in billions of dollars wasted resources annually at a time of increasing military operations and growing fiscal constraints.

"The Secretary of Defense estimates that improving business operations could save 5 percent of DOD's annual budget. Based on DOD's reported fiscal year 2004 budget, this would represent a savings of about $22 billion a year."[53]

"An October 5, 2004 DOD OIG assessment provided to OMB in response to the requirements of the Federal Information Security Management Act concluded that DOD does not currently have a comprehensive, enterprise-wide inventory of major information systems. As has been reported in numerous DOD OIG and Government Accountability Office reports, issuances and testimonies since at least 1997, the DOD cannot accurately respond to congressional and OMB data calls regarding the status of its IT enterprise, to include the security of that enterprise, without this basic tool."[54]

"GAO has reported on inefficiencies and inadequate transparency and accountability across DOD's major business areas, resulting in billions of dollars of wasted resources. Senior leaders have shown commitment to business transformation through individual initiatives in acquisition reform, business modernization, and financial management, among others, but little tangible evidence of actual improvement has been seen in DOD's business operations to date."[55]

"Since the 1990's, DOD has spent billions of dollars each year attempting to leverage the vast power of modern technology to replace outdated ways of doing business. However, the Department has had limited success in modernizing its information technology environment, and (GAO has) designated DOD's systems modernization as high risk since 1995. A major reason for this designation is DOD's inconsistent use of best practices for acquiring IT systems."[56]

The best practices DOD should be using are cited in "Sourcing and Acquisition: Challenges Facing the Department of Defense" (GAO-03-574T) as follows:

- Acquisition of systems in accordance with mature processes
- Use of an enterprise architecture to guide and constrain system acquisitions
- Acquiring systems in a series of economically justified incremental builds

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[53] GAO Highlights: High-Risk Series, Department of Defense Approach to Business Transformation, January 2005.
[54] DODIG Semiannual Report for Transmission to Congress, October 1, 2004-March 31, 2005, pages 9-10
[55] GAO Highlights, "Highlights of GAO-05-207, a report to Congress on GAO's High-Risk Series."
[56] "Sourcing and Acquisition: Challenges Facing the Department of Defense", United States General Accounting Office report GAO-03-574T, March 19 2003, Page 8

Business Transformation Case-Study

Since 2002, the Navy has been testing a business transformation approach in four similar pilot projects.[57] NAVAIR's pilot project focuses on the acquisition of weapons systems, program management, financial management, and asset tracking-configuration management, using the E-2C Hawkeye program as a test bed.

NAVAIR also is teaming with the Naval Supply Systems Command (NAVSUP) on a pilot project dealing with aviation supply-chain and maintenance management. The E-2C and the LM2500 engine are the test beds for that project.

In yet another project, the Space and Naval Warfare Systems Command (SPAWAR) is concentrating on the financial-management process used at SPAWAR Systems Center San Diego to manage the Navy Working Capital Fund.

Finally, the Naval Sea Systems Command (NAVSEA) and the staff of the U.S. Atlantic Fleet are teaming on a pilot program dealing with regional ship maintenance and work force management--starting at Ships Intermediate Maintenance Activity (SIMA) Norfolk, but with the possibility of later phasing in the Norfolk Naval Shipyard.

Program managers for each of the four pilot projects, working independently, adopted similar approaches. All four selected the same Enterprise Resource Planning (ERP) software package. To keep the results compatible and ensure they are applicable across the Navy, the four pilot efforts are being coordinated by an executive steering group and an integrated control board.

Tying it all Together

As I move toward the conclusion of my testimony, Mr. Chairman, I would like to be very clear on the following point: Although GSA/FTS fees may need examination and realignment, and although GSA is clearly at fault for the contracting improprieties in its own CSCs, the root of the problem is outside of GSA control. GSA is simply trying to service its customers in the best manner possible, as does any business entity that lives or dies on its ability to provide value in the marketplace. I am not alone in this assessment.

"GSA is not that badly run when you compare it with other agencies," says Congressman Tom Davis, (R-VA), chairman of the House Government Reform Committee. "But GSA needs to be setting the example and leading the way."[58]

"In some of the GSA issues that have come before us, people were trying to think outside the box to get things done. They might have bent the rules, but I don't think there has been any money lost or anything like that. We need to change rules and regulations in those cases to allow people to do things."[59]

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[57] "NAVAIR Set to Apply Network-Centric Warfare Tools to Management Process", Otto Kreisher, Navy League of the United States, April 2002, http://www.navyleague.org/sea_power/april_02_19.php
[58] "The Davis Plan"
[59] "The Davis Plan"

"You need more officers and auditors and everything else, if you do it (procurement reform) the right way. But we've got to make sure that we are a mission-oriented government, not a regulation-driven government where, whatever the regulations say, that's the outcome. That's not the way any business would operate. That's not the way you want to operate in your life. We have missions to accomplish out there."[60]

Another point Davis makes is that the Internet and the speed of communications now has probably eliminated the need for so many regional centers in GSA. A third point is that Federal Supply Service (FSS) and FTS are probably competing with each other now and may need to be combined.[61]

As was stated earlier, one source of these challenges is that the Federal Government needs global solutions, but continues to procure based on local requirements. GSA may have broken the rules, but was doing so simply to fulfill the requirements brought by its government customer base. Now that GSA is under the "Get It Right" program, many of its government customers are unhappy with the service levels, efficiency and effectiveness of GSA. The real challenge is for the Federal Government to resolve its procurement issues, especially in regard to IT. And to accomplish that, the Federal Government needs to establish a blueprint for change. One solution we have so far presented is for the Federal Government to take a big-picture view of the problem.

Solution: Partnership

Another solution we are presenting today is for the Federal Government to pursue a partnership model in procurement. This model "encourages partnerships and teamwork rather than stovepipes and adversarial relationships."[62]

According to "The Procurement Partnership Model" a whitepaper sponsored by the IBM Endowment of the Business of Government, "Contracting became increasingly complex as government began to contract for solutions and knowledge rather than for specific material goods or standardized services."

> *"As government downsized the number of employees and began to rely more on contractors to accomplish work, it found that the old procurement model was not achieving the results it needed.*
>
> *"The traditional model took too long, was not flexible enough, and discouraged the kind of communication needed to find solutions to problems.*
>
> *"Accountability was more important than ever, but the old approaches that relied on accounting standards, audits, penalties, and arm's-length relationships could*

[60] "The Davis Plan"
[61] "The Davis Plan"
[62] "The Procurement Partnership Model: Moving to a Team-Based Approach", Kathryn G. Denhardt, School of Urban Affairs and Public Policy and Institute for Public Administration, University of Delaware, February 2003, page 4

ensure only that the rules were adhered to, not that the contract accomplished what was needed.

"New approaches to accountability emphasize outcomes and continual communication in order to solve problems as they emerge, as well as performance measures and incentives.

"The emerging partnership model of procurement is characterized by team-based approaches, new contracting vehicles, an outcomes orientation, and increased emphasis on open communication and due diligence."[63]

Open Market Corridor

As we discuss matters such as the partnership model, procurement reform and use of interagency contracts, we would be remiss if we did not mention Open Market Corridor (OMC), the automated MAC ID/IQ contract developed and operated by Networld Exchange, as the result of a Cooperative Research and development Agreement (CRADA) with Naval Postgraduate School (NPS), based in Monterrey CA. The OMC contract is administered by the Department of Interior/National Business Center based in Fort Huachuca, AZ.

OMC was developed as a result of a "think-tank"-like atmosphere at NPS, where military line officers working on their master's theses brought together their best thinking and collective field experience to make government contracting faster and more efficient, while implementing the Paperwork Reduction Act, the Federal Acquisition Streamlining Act and general use of the Internet for government contracting.

OMC was developed with zero up-front development costs, assigning to Prime contractor Networld Exchange all risk for successful implementation and operation of the system and the contract it automates. There was never any risk for the taxpayer in the development of this system, which automates our contract.

OMC charges a flat 2 percent transaction fee. The intent of OMC is to demonstrate a web-based procurement execution and administration system compliant with the FAR, particularly FAR Part 12, which describes commercial buying practices for the Federal Government.

The web-based system is being developed incrementally, taking in suggestions from users based on their own experiences using OMC and other applications. Because of this approach, it will never be a legacy system.

OMC is an effective and efficient contracting tool because it automates contracting paperwork and activities, thereby cutting down the time and effort required to complete contracting activities. OMC also eliminates duplicate data entry which saves time and errors.

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[63] "The Procurement Partnership Model", page 4

Using OMC, the shrinking procurement workforce can become a more efficient organization. OMC archives all data in real time, and eliminates the possibility for overpayments or improper payments. OMC is an Internet-based system allowing people to work anytime, anywhere they have Internet access. OMC automates all of the applicable FAR, cutting down on the knowledge base and skill set needed to use the system effectively. OMC has a customizable workflow to ensure full accountability within each organization, according to each organizational structure or hierarchy.

OMC provides complete control and oversight over bidding, ordering, invoicing and funding activity. OMC tracks funding in real time to the project, task and penny. OMC allows the program managers, budget offices and contracting personnel to work collaboratively, bringing together the knowledge base and skill set of each in a synergistic way.

I close my point with this statement: "To effectively implement best practices and properly manage the goods and services it purchases each year requires that DOD have the right skills and capabilities in its acquisition workforce. This is a challenge given decreased staffing levels, increased workloads, and the need for new skill sets. Procurement reforms and the ongoing technological revolution have placed unprecedented demands on the workforce, and contracting personnel are now expected to have a much greater knowledge of market conditions, industry trends, and technical details of the commodities and services they procure."[64]

Although this passage specifically references DOD, I would argue that the point extends equally well to all Federal agencies, including DHS.

Conclusion

GAO's high-risk program has increasingly focused on those major programs and operations that need urgent attention and transformation in order to ensure that our national government functions in the most economical, efficient, and effective manner possible.[65]

A review of GAO-05-207 shows of 25 areas designated as "high-risk" in 2005, eight of them that have bearing on government contracting. By extension these also have bearing on GSA, interagency contracting and OMC.

Three of these high-risk areas have been on the GAO list since 1990. Six of them have been on the list since 1995 or earlier. None of the eight have been removed from this list. Two areas (DOD Approach to Business Transformation and Management of Interagency Contracting) were added to the list this year.[66] Our conclusion is that problems related to government contracting are increasing, or at least are being made public more often.

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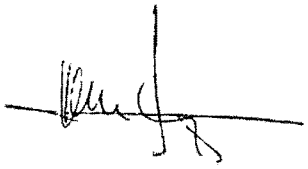
[64] GAO-03-574T, March 19 2003, Page 13
[65] GAO-05-207, High-Risk Series Update, page 1
[66] GAO-05-207, High-Risk Series Update, pages 5-6

GSA may not the best deal in the Federal Government right now in terms of interagency contracting fees, and GSA is certainly facing some difficult organizational challenges, but GSA is certainly not what we would consider a bad deal for the taxpayer.
The larger issue is for the Federal Government right now to do a more effective job of managing interagency contracting in light of its growing necessity and value to the taxpayer, and to implement global business transformation.

As developer of OMC, Networld Exchange is a firm with the domain expertise needed to help government move skillfully into a new era of interagency contracting and business transformation.

We look forward to updating the committee on a quarterly basis as we work with other Federal agencies to introduce added effectiveness and cost savings to the Federal Government. Mr. Chairman, this concludes my remarks and testimony for today. I will be happy to answer any questions from the committee. Thank you.

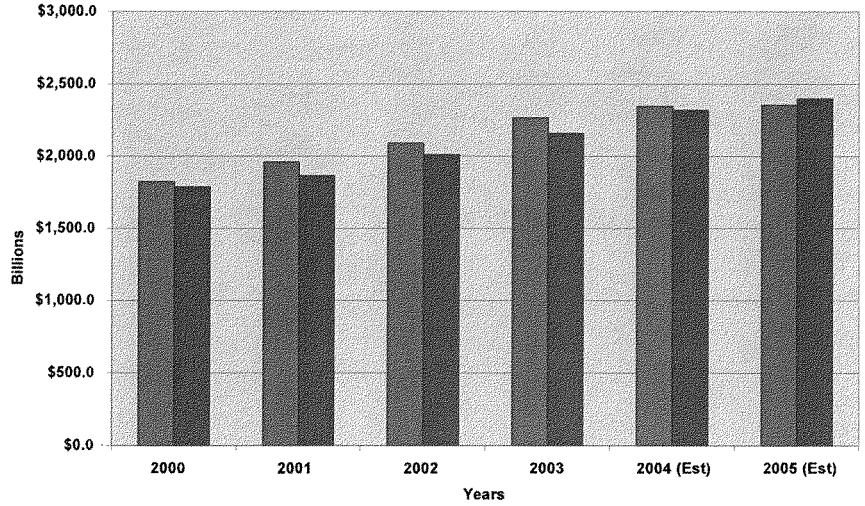


Thomas Graham
Chief Operating Officer
Networld Exchange
Carlsbad, CA
July 26, 2005

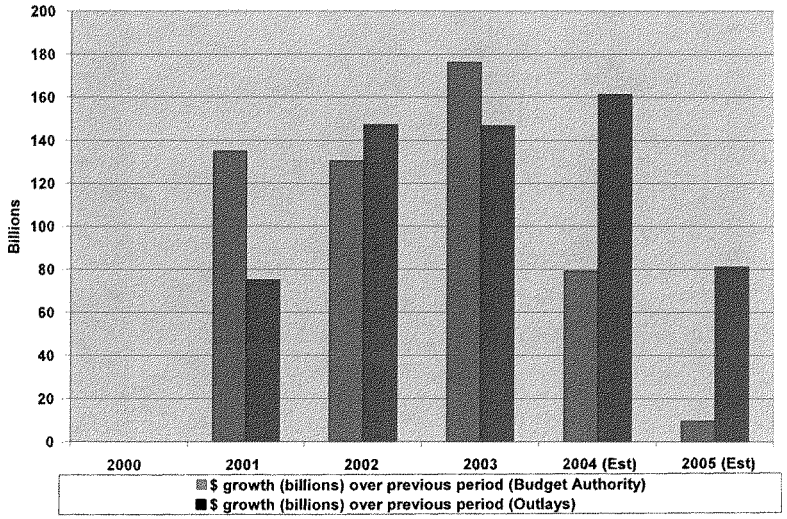
Attachment A

Year	Total Budget Authority (billions)	Total Outlays (billions)	$ growth (billions) over previous period (Budget Authority)	$ growth (billions) over previous period (Outlays)	% growth over previous period (Budget Authority)	% growth over previous period (Outlays)
2000	$1,824.8	$1,788.7				
2001	$1,959.7	$1,863.7	$134.9	$75.0	7.39%	4.19%
2002	$2,090.0	$2,010.9	$130.3	$147.2	6.65%	7.90%
2003	$2,266.1	$2,157.6	$176.1	$146.7	8.43%	7.30%
2004 (Est)	$2,345.2	$2,318.8	$79.1	$161.2	3.48%	7.47%
2005 (Est)	$2,354.7	$2,399.8	$9.5	$81.0	0.41%	3.49%
	Total Five-year $ growth		$529.9	$611.1		
			Total Five-year Growth Percentage		29.04%	34.16%

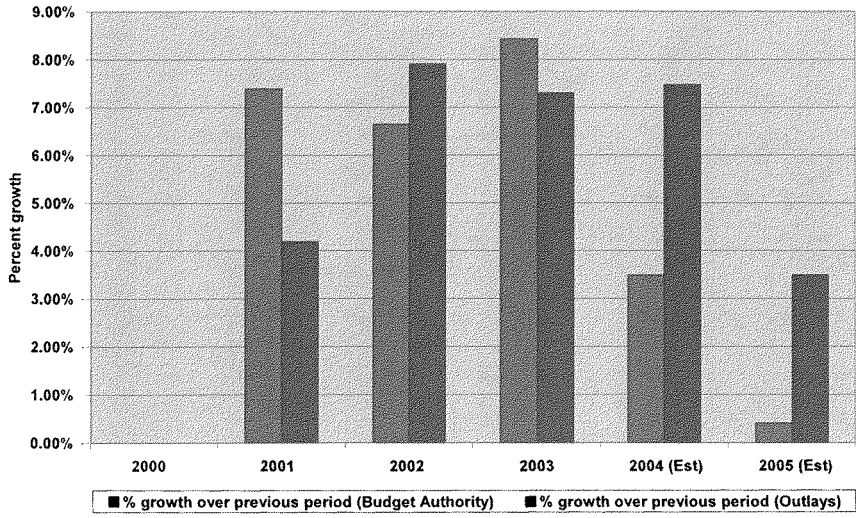
Attachment B



Attachment C



Attachment D



Questions and Responses for the Record from
David E. Cooper, Director, Acquisition and Sourcing Management, GAO

GAO Responses to Questions from Senator Coburn, Chairman, Subcommittee on Federal Financial Management, Government Information, and International Security; Committee on Homeland Security and Governmental Affairs

1. **What accounts for the significant increase in the use of GSA multiple award schedules?**

We reported in April 2003 that Federal agencies were increasingly using contracts and acquisition services offered by other agencies, a fact that was most notably demonstrated in the growth of sales associated with GSA's multiple award schedules. Agency officials we contacted attributed the growth to increased purchases of information technology and professional, administrative, and management support services. Of the nearly $32.5 billion fiscal year 2004 multiple award schedule sales, about 60 percent was for services.

a. **Is the current system promoting or avoiding competition?**

Over the years, we have issued several reports that found competition lacking when agencies made purchases from GSA's multiple award schedules. In July 2004, for example, we reported (see GAO-04-874) that DOD, the largest user of the schedules, waived competition requirements for nearly half (34 of 74) of the schedule orders we reviewed. Often, DOD contracting officers waived competition based on requests from DOD program offices to retain the services of contractors that were already performing the work. This situation was generally a repeat of what we had previously found. In November 2000, we reported (see GAO-01-125) that DOD contracting officers were not following GSA's established procedures to ensure fair and reasonable prices were obtained when using the schedules—17 of 22 orders we reviewed, valued at $60.5 million, were placed without seeking competitive quotes from multiple contractors. And, in March 2000, we reported (see NSIAD-00-56) that DOD obtained few competing proposals for large information technology orders placed on the schedules. Of 22 orders valued at $553 million, only 6 involved competing proposals. The remaining 16 orders, valued at $443 million, involved a single proposal by the incumbent contractor.

With respect to competition to get on a GSA multiple award schedule(s), vendors do not compete against other vendors seeking to sell the same or similar goods or services. In negotiating multiple award schedule contracts, GSA seeks to obtain price discounts from each vendor that are equal to those that the vendor offers its most favored customer. Competition is achieved only when the buyer (federal agency) compares prices offered by various vendors and/or negotiates lower prices than the vendor offers on its schedule contract. As noted above, this type of competition often does not occur.

b. Are the GSA schedules or catalogs structured to find best prices? What are their weaknesses?

GAO did not address this issue in its recent work. Our objective was to determine if GSA had addressed shortcomings in contract price negotiations as had been previously reported by GAO and the GSA IG.

c. Could you provide some examples that illustrate the government paid more for products than it should have?

Although our recent review did not include an analysis of prices paid for products under the multiple award schedules, we reported that prior GSA Inspector General reports found that the government paid significantly more for products and services than it should have. For example, in August 2001, the GSA Inspector General reported that a photocopier vendor offered state and local governments a price that was $5,582 less than its price to GSA for the same type of copier. The Inspector General estimated that the higher price paid by GSA customers could cost them nearly $ 4 million more in just one year. Also, the Inspector General found that a major distributor of information technology products sold its top 10 computer models to commercial customers at average prices that were 6 percent less than the prices offered under the multiple award schedules. The Inspector General projected than over the contract term, GSA customers would pay nearly $40 million more for these products than they should. More recently, in July 2005, GSA notified 14 government technology resellers that within 30 days, products available from a major computer hardware company would no longer be authorized for reselling to federal customers using the schedule contracts. A routine IG audit found that the company was granting deeper price discounts to commercial customers than to the government. In August 2005, GSA gave the company a reprieve from cancellation when negotiations resulted in the vendor agreeing to drop some of its prices.

2. Why has GSA completed so few pre-award audits?

Generally, contracting officers must request the GSA Inspector General to do a pre-award audit. Based on our recent work, the decline in pre-award audits was largely due to an organizational culture that stressed making awards quickly and because pre-award audits were not emphasized institutionally in GSA. For example, we found that the performance goal for negotiating and awarding multiple award schedules contracts for the Office Supply and Administrative Services Acquisition Center was about 79 days—a goal that would be difficult to meet if pre-award audits—which take on average 90 days to complete, were conducted.

3. Is GSA now taking sufficient actions to correct the continual decline in pre-award audits?

While GSA has taken actions to address the decline in pre-award audits, it is not yet clear if the actions will be sufficient to give needed coverage to the schedules program. In a June 2005 letter to GAO responding to our recent report, the GSA Administrator stated that GSA management and the GSA Office of the Inspector General would continue to work together to increase and improve the number of pre-award audits. As we noted in our report, the number of pre-award audits to be conducted by the Inspector General in fiscal year 2005 was 70. Although 70 audits is an increase over prior years, it is still below the number of audits conducted in the past. In addition, the audits were expected to focus on contract extensions rather than new offers. We believe pre-award audits are an important tool for evaluating new offers as well as extensions.

4. Are multiple award schedules program fees sufficient to cover the cost of pre-award audits?

In July 2002, we reported (Contract Management: Interagency Contract Program Fees Need More Oversight, GAO-02-734) that the fee charged by the Schedules program—then 1 percent—had consistently generated revenue well in excess of costs. The fee revenue generated from in the 5-year period from fiscal year 1997 through 2001 exceeded program costs by 53.8 percent, or $151.3 million. In our July 2002 report, we recommended that GSA adjust its Schedules program fee. In 2004, GSA adjusted its fee to 0.75 percent of sales. At this new rate, the $32.5 billion in fiscal year 2004 MAS sales would generate revenues of nearly $244 million. We believe the fee is sufficient to cover the cost of pre-award audits. In fact, in 2005 the MAS program management provided the Inspector General $2 million to hire more auditors to conduct pre-award audits.

5. Can fees charged customers off the multiple award schedules program be used to cover the cost of pre-award audits?

The fee charged schedules program customers was established in 1995 at 1 percent of the sales amount but was recently lowered to 0.75 percent of sales. The fee is intended to recover program costs including contract administration and program support. GSA management officials decide how to use the fee revenues. In the past, GSA management has chosen to use fee revenue to cover the cost of the schedules program as well as to support other programs. For example, of the more than $210 million in revenue earned in the 5-years from fiscal year 1997 through 2001, GSA used $192 million to support other programs, primarily the vehicle fleet and stock programs. So, it can be argued that the program is producing enough fees to cover the cost of pre-award audits.

6. Are the problems in Table 1: Contract Documentation Weaknesses of MAS Contracts by Acquisition Center, page 7 of your statement, just documentation problems?

We believe that documentation problems, as shown in Table 1, indicate that the longstanding and often documented multiple award schedules pricing problems

continue today. The problems are not just related to inadequate documentation of the price negotiation process, as GSA suggests. In fact, the problems indicate that GSA management cannot state with confidence that its contracting officers are obtaining the most favored customer prices for government buyers. Further, the table indicates the seriousness of the problems, the need for immediate management attention, and the need for pre-award audits to verify the accuracy and completeness of vendor-supplied pricing information.

7. Does the Get It Right program have any bearing on the price negotiation issues discussed in your testimony?

No, the *Get It Right* program has no element that addresses the adequacy of GSA's price negotiations. The program was initiated before we issued our report and is aimed at resolving the widespread misuse of the schedules program by various agencies. The *Get It Right* program focuses mostly on ensuring that buying agencies, particularly the Department of Defense, properly use GSA contracts.

8. Why does it take so long for a vendor to negotiate a contract and get on the schedule?

We do not agree with the assertion that it takes a vendor a long time to get on the schedules. While we did not evaluate the time it takes for a vendor to get on a multiple award schedule, we did note in our report that GSA's organizational culture stressed making awards quickly. In fact, GSA has established a performance goal for negotiating and awarding schedule contracts for each acquisition center. The time goals for the four centers that we visited ranged from 59 days for the National Furniture Center to 84 days for the Services Acquisition Center. Our concern was that the established cycle times essentially precluded pre-award audits from being conducted because the audit time, on average, exceeded the centers' performance goal.

a. During your review of the MAS contracts did you find the same problems in each center that you visited or were there different problems in each acquisition center?

Although we found similar problems at most of the centers we visited, the degree of the problem varied. For example, all 10 contracts reviewed at the Management Services Center did not meet pricing documentation requirements and 9 of the 10 had inadequate price analyses. On the other extreme, only 1 of the 10 contracts reviewed at the Services Acquisition Center did not meet pricing documentation requirements and none had inadequate price analyses.

b. What was your standard for measuring performance? Best price or some other goal?

In measuring performance, our standard was based on the criteria in the regulations GSA uses for its Acquisition Quality Measurement and Improvement Program, which is modeled on sound contracting practices. The regulations require that contract file documentation clearly establish that (a) vendor-supplied pricing information is accurate, complete, and current; (b) vendor information is relied upon during the negotiations; (c) reasonable negotiation objectives are established; (d) adequate price analysis is conducted; (e) the government's total requirements are considered in negotiating prices; and (f) the prices awarded are determined to be fair and reasonable.

9. In its 2005 Report on Contract Management GAO made four recommendations to the GSA to help ensure that prices are effectively negotiated. Please tell us what those four recommendations were and if you have followed up with GSA to find out whether or not they have begun implementing these recommendations?

Our report, *Contract Management: Opportunities to Improve Pricing of GSA Multiple Award Schedules Contracts*, (GAO-05-229), recommended that the Administrator of the General Services Administration

- ensure that pre-award audits are conducted when the threshold is met for both new contract offers and contract extensions,
- develop guidance to help contracting officers determine when postaward audits are needed,
- direct GSA program management to revise the Acquisition Quality Measurement and Improvement Program to measure and report on the performance of the prenegotiation clearance panels, and
- direct GSA program management to revise the Acquisition Quality Measurement and Improvement Program to broaden the scope of quality review initiative to (1) determine the underlying causes for contract price deficiencies and (2) develop appropriate plans to implement corrective actions.

On June 10, 2005, the GSA Administrator wrote to GAO stating that the report was a useful tool in the pursuit of continuous improvements to its contracting operations. The Administrator told GAO that actions were underway to address our recommendations. First, GSA management and the Office of the Inspector General would continue to work together to increase and improve the number of pre-award audits. Second, GSA had published an advance notice in the Federal Register on March 11, 2005, requesting government and industry comments on whether postaward audit provisions should be included in MAS contracts; after GSA evaluates the public comments, it will issue guidance to contracting officers on when postaward audits are needed. Third, GSA revised and implemented program operating procedures to require reports on pre-negotiation clearance panels. And finally, GSA agreed in principle to broaden the scope of the Acquisition Quality Measurement and Improvement Program as we recommended. Actions would identify the underlying causes for any weaknesses in the price negotiation process.

10. The Clinger-Cohen Act authorized the creation of Government Wide Acquisition Contracts, which are designed to improve the acquisition of information technology. In your opinion, does Clinger-Cohen prohibit the use of postaward audits?

This issue has surfaced numerous times since the Clinger-Cohen Act became law. The short answer is "no," the Act does not prohibit the use of postaward audits. The following discussion highlights the issue and provides the Office of Federal Procurement Policy's (OFPP) position on the issue—a position that GAO supports. In June 1999, the Government Electronics & Information Technology Association (GEIA) petitioned the Administrator of the Office of Federal Procurement Policy to review GSA's MAS pricing regulation. Specifically, the GEIA challenged the GSA regulation (GSAR) that allowed incorporation of a clause into MAS contracts providing for verification for up to two years after contract award the data vendors submit to demonstrate that their prices are fair and reasonable. In other words, the GEIA challenged GSA's postaward audit authority. The GEIA asserted that the Examination of Records clause (GSAR 552.215-71) and the Price Adjustment – Failure to Provide Accurate Information clause (GSAR 552.215-72) were not used commercially and, therefore, were inconsistent with the Federal Acquisition Streamlining Act, the Clinger-Cohen Act, and Federal Acquisition Regulation (FAR) requirements. The GEIA believed that contracts for the acquisition of commercial items, to the maximum extent practicable, should include only clauses consistent with customary commercial practices. The GEIA requested that OFPP direct GSA to rescind the regulations immediately and remove the clauses from existing contracts. On October 12, 1999, OFPP responded to the GEIA petition. In its response, OFPP stated that,

> "In FASA, Congress specifically authorized audits for up to two years after contract award for accuracy of information submitted to support commercial item prices and books and records directly related to such information. However, less than two years later, in section 4201 of the Clinger-Cohen Act, Congress removed the express FASA postaward audit authority. As a result of this action, the statutory situation is essentially the same as it was prior to FASA—there is no express statutory right to conduct postaward defective pricing audits in commercial item contracts, but such audits may be based on the agencies' general contracting authorities. In this regard, it should be noted that Congress in the Clinger-Cohen Act did not prohibit such audits."

OFPP concluded that GSA's use of postaward audits is consistent with the FAR. The GAO supports OFPP's position.

We would also note that the Department of Veteran's Affairs (VA) has included a postaward audit provision it its contracts for many years. The VA Inspector General has conducted numerous postaward audits, which have proved to be a useful tool for ensuring that the VA obtains best prices. For example, during fiscal years 1999-2003, the VA recovered over $89 million from vendors through the use of postaward audits.

Questions and Responses for the Record from David E. Cooper, Director, Acquisition and Sourcing Management, GAO

GAO Responses to Questions from Senator Frank Lautenberg, Subcommittee on Federal Financial Management, Government Information, and International Security; Committee on Homeland Security and Governmental Affairs

"GSA – Is the Taxpayer Getting the Best Deal?"

1. **What is the reason for the decline in pre-award audits conducted on contracts?**

Generally, contracting officers must request the GSA Inspector General to do a pre-award audit. Based on our recent work, the decline in pre-award audits was largely due to an organizational culture that stressed making awards quickly and because pre-award audits were not emphasized institutionally in GSA. We asked contact negotiators why they did not request pre-award audits on new contract offers. They told us that the performance goal for awarding a new contract did not allow enough time for pre-award audits. For example, we found that the performance goal for negotiating and awarding multiple award schedules contracts for the Office Supply and Administrative Services Acquisition Center was about 79 days—a goal that would be difficult to meet if pre-award audits—which take on average 90 days to complete, were conducted.

2. **What incentives do contracting officers have to make sure they get the best price?**

Our review found that contracting officers had little, if any; organizational incentive to make sure that got the best price when negotiating multiple award schedule contracts. The organizational culture stressed making contract awards quickly, increasing the number of contracts available and the amount of sales. Performance measures included increasing the federal agency use of the multiple award schedules program (increase sales), reducing the GSA operating cost (timeliness of processing), and improving contracting officer training. Achievement of the "best price" was not a performance measurement.

3. **What progress is GSA making towards implementing the recommendations GAO made in February to improve compliance?**

Our report, *Contract Management: Opportunities to Improve Pricing of GSA Multiple Award Schedules* Contracts, (GAO-05-229), recommended that the Administrator of the General Services Administration

- ensure that pre-award audits are conducted when the threshold is met for both new contract offers and contract extensions,
- develop guidance to help contracting officers determine when postaward audits are needed,

- direct GSA program management to revise the Acquisition Quality Measurement and Improvement Program to measure and report on the performance of the prenegotiation clearance panels, and
- direct GSA program management to revise the Acquisition Quality Measurement and Improvement Program to broaden the scope of quality review initiative to (1) determine the underlying causes for contract price deficiencies and (2) develop appropriate plans to implement corrective actions.

On June 10, 2005, the GSA Administrator wrote to GAO stating that the report was a useful tool in the pursuit of continuous improvements to its contracting operations. The Administrator told GAO that actions were underway to address our recommendations. First, GSA program management officials and the Office of the Inspector General will continue to work together to increase and improve the number of pre-award audits. Second, GSA published advance notice in the Federal Register on March 11, 2005, requesting government and industry comments on whether postaward audit provisions should be included in MAS contracts; after GSA evaluates the public comments, it will issue guidance to contracting officers on when postaward audits are needed. Third, GSA revised and implemented the program operating procedures to require reports on pre-negotiation clearance panels. And finally, GSA agreed in principle to broaden the scope of the Acquisition Quality Measurement and Improvement Program as recommended. Actions would identify the underlying causes for any weaknesses in the price negotiation process.

Questions and Responses for the Record from
Emily Murphy, Chief Acquisition Officer,
U.S. General Services Administration

Question 1. How do GSA contracting officers negotiate prices under multiple award schedule contracts? What is the negotiation or pricing objective?

Answer 1. When responding to Multiple Award Schedule (MAS) solicitations, offerors are instructed to submit their commercial sales pricing practices and policies. See the General Services Acquisition Manual (GSAM) 515.408. The information requested includes information regarding the discounts from established catalog and market prices that the offeror provides its customers (e.g. What type of discounts or concessions does an offeror provide its various categories of customers such national accounts, dealers, distributors, and state and local governments?). The MAS contracting officer's objective is to obtain the offeror's best price (i.e. the best price given to the most favored customer). However, it is recognized that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not received. See GSAM 538.270.

GSA contracting officers are responsible for reviewing the commercial pricing practices and policies, establishing negotiation objectives and determining price reasonableness. When establishing the negotiation objectives GSA contracting officers may consider among other things, the aggregate volume of anticipated purchases, the pattern of historic purchases, the combination of discounts and concessions offered to commercial customers, the length of contract period, any warranties, training and/or maintenance included in the purchase price or provided at additional cost to the purchase price, ordering and delivery practices, and any other differences including differences between the MAS solicitation and commercial terms and conditions. See GSAM 538.270(c). If the contracting officer seeks to make an award in a case where the proposed award pricing is less favorable than the best price offered to any commercial customer for similar purchases, the contracting officer must make a determination that the prices offered are fair and reasonable, even though comparable discounts were not negotiated and award is otherwise in the best interest of the Government. See GSAM 515.270(d).

GSA has established a set of training courses addressing the negotiation and award of schedule contracts as well as issuing Procurement Information Bulletins (PIB) containing supplemental guidance on pricing issues relating to the goal of obtaining most favored customer prices. This training and guidance are tools the contracting officers can use to refine their understanding and skills relating to price negotiation issues. In addition, the Office of Inspector General provides audit support to contracting officers. Finally, it is the procuring agency's responsibility to negotiate additional discounts on bulk acquisitions. The negotiated MAS price is intended to reflect the potential buying power of the federal government; however, procuring agencies are encouraged, and in certain cases required, to seek additional price reductions through price competition among MAS vendors and by seeking volume discounts whenever possible.

Question 2. Why does GSA require vendors to provide their pricing information? Why can't contracting officers do research to determine commercial marketplace pricing? Why can't contracting officers use competition to get marketplace pricing?

Answer 2 The procedures established under the MAS program are competitive procedures, pursuant to the Competition in Contracting Act of 1984 (CICA). Through GSA's implementing regulations, e-tools and program management and oversight, the agency provides an integrated, best value solution to both our customer agencies and the taxpayer. The MAS program is a streamlined acquisition tool that agencies can use to acquire commercial products and services. When establishing MAS Schedules, GSA is responsible for complying with all applicable statutory and regulatory requirements. As part of its compliance with acquisition planning mandates, GSA conducts appropriate market research. GSA awards MAS contracts focusing on price negotiations, responsibility determinations, and vetting the offerors through numerous unique government contracting requirements. GSA's negotiation and award of MAS contracts allows agencies using the program to focus on their needs and seeking competition consistent with the ordering procedures found in the Federal Acquisition Regulation (FAR) and in the ordering agency's supplemental regulations. GSA bases its contract negotiations on the commercial pricing practices and policies of each offeror so that multiple contracts can be awarded for similar products. At the order level, agencies have the opportunity to compare and contrast commercial products and services from a host of commercial vendors, make a best value determination and then place an order with the winning MAS contractor. The program seeks to leverage the Government's buying power at the contract level to ensure fair and reasonable pricing but then gives agencies and contractors the opportunity to transact business and obtain even lower prices/best value at the order level. This allows agencies the opportunity to take advantage of the commercial marketplace within the context of an existing government-wide contracting program rather than conducting repetitive open market procurements. In contrast, an all or none award would tie the government to a single contractor regardless of the market forces at play and would reduce competition in the long run. Given our many responsibilities and limited acquisition personnel resources, it is necessary for industry to share part of the burden of determining most favored customer pricing. By requiring and auditing honest disclosure of pricing information, GSA creates a disincentive for dishonest companies to seek business with the federal government

Question 3. Does GSA offer the best prices for government consumers?

Answer: Overall, we believe that GSA offers best value to our government customers. As it relates to the MAS program, GSA provides a streamlined acquisition process that allows agencies and contractor to focus on meeting program needs/requirements rather than the time consuming paperwork requirements typically associate with government procurements. GSA's negotiates the fair and reasonable prices with the goal of obtaining most favored customer pricing. GSA uses the commercial pricing practices and polices to seek to negotiate the best price possible given the government's terms and conditions when compared to commercial terms and conditions. The measuring stick is the most favored customer price. Although a government agency may find a

lower price on some items, often the lower price is based on delivery terms, warranties or quantities that differ from those offered by GSA. It is for this reason the regulations allow, and GSA encourages, ordering agencies to seek additional price reductions from the MAS prices. For example, if a contracting officer is aware that a particular market item is at the end of a production cycle and as a result prices are being cut to reduce inventory, contracting officers should use that information to seek additional price reductions from the MAS contractors.

The MAS program is a flexible, integrated system that provides agencies with the opportunity to obtain the best pricing possible depending on the ordering agency's requirement and circumstances of each procurement. In many cases the best price may be the price negotiated at the contract level, while in others it may be as a result of price reductions sought and obtained in accordance with the MAS ordering procedures. What is unique about the MAS program is that it provides choice and timeliness. The Schedules provide the benefits of competition by maximizing choice, since there are a limitless number of vendors within each product or service category. At the same time, the Schedules provide a simplified, streamlined process that allows for quick and easy purchases at fair prices. For more complex purchases an agency can expeditiously negotiate more favorable terms and/or pricing. In addition, agencies may use the Schedules to create Blanket Purchase Agreements, which have many of the benefits of stand-alone contracts, but require much less time and effort to establish.

- How do you respond to GAO's audit findings that this is not the case?

Answer: GSA is always striving for additional improvement, as demonstrated by the increase in the Agency's use of audits and price review panels. GAO's February 2005 Audit does not state that GSA does not provide the best prices to its customers. It does state that based on weaknesses found, it was GAO's opinion that GSA could not be assured that fair and reasonable prices were negotiated. However, neither GSA nor GAO turned up evidence to suggest that the weaknesses in documentation resulted in prices that were unreasonable. It is important to note that GAO's findings in large part were based on the results of a GSA initiated program, the Acquisition Quality Measurement and Improvement Program (ACQMIP). ACQMIP was established by GSA as part of our efforts to continually improve our contracts and programs. This effort was self initiated by GSA and the results of GSA's reviews were used by GAO. In response to our findings regarding the documentation of contract files and the quality of those files, GSA went back and reexamined each case where weaknesses were identified in the contract file. Our internal review of the 62 contracts identified during the ACQMIP reviews and subsequently cited by GAO disclosed that, in 93 percent of the cases, GSA had negotiated discounts that were equal to or better than the vendor's most favored customer. In the four cases where the contracting officer did not achieve discounts that were equal to or better than the vendor's most favored customer, the discounts that were received were considered fair and reasonable when delivery terms and other price related factors were considered.

- Can you explain what Government-Wide acquisition contracts (GWACS) are?

Answer: Government-wide Acquisition Contracts (GWACs) are task order or delivery order contracts for information technology (IT) established by one agency for government-wide use. Each GWAC is operated by an executive agent designated by the Office of Management and Budget (OMB) pursuant to section 5112(e) of the Clinger-Cohen Act. The Economy Act does not apply when placing orders under GWACs. To use GWACs, agencies must receive training and obtain a delegation of authority from the appropriate GSA GWAC Program Office.

- How are GWACS distinct from the regular GSA process?

Answer: Beyond the differences in authorities, a significant distinction is that, unlike IT services that are available under Federal Supply Schedules, service under GWACs need not meet the definition of commercial services. Task orders can be on a cost-reimbursement basis, time and material basis or firm-fixed price. The MAS program does not include cost reimbursement type work since it is limited to commercial items. GWACs are competitively awarded to a limited number of offerors for Government defined requirements. The schedules program is open to all responsible vendors that offer reasonable prices and whose offerings meet the broad requirements of the schedule. Additionally, as stated earlier, agencies placing orders under a GWAC must receive training and obtain a delegation of authority from the GWAC Program Office. In contrast, MAS contracts are open to all warranted contracting officers within a federal agency authorized to place orders under the MAS program.

- Why would a GWAC be favored by an agency?

Answer: An agency may choose to use a GWAC or schedule for a variety of reasons. If the commercial terms and conditions of schedule do not meet a unique agency requirement the agency may choose a GWAC. Agencies may choose to compete requirements under those GWAC in order to meet socio-economic goals. For example, GSA has two GWACs limited to 8(a) small businesses and Service Disabled Veteran Owned Small Businesses. Agencies may be doing enterprise development on a cost reimbursement basis and therefore choose the Millennia GWAC, which includes contractors that excel at major systems development. Generally, the Schedules are best suited for meeting an individual acquisition requirement and GWACs are preferred when an agency is looking to meet an end-to-end IT requirement.

Question 4. Why would GSA need to establish its own GWACs; thereby, bypassing its own process?

Answer 4. As stated above, GWACS do not compete with schedule contracts; therefore acquiring services under a GWAC does not bypass GSA's processes. In FY03, GSA initiated the realignment of certain functional areas of GSA operations relating to Information Technology (IT), and the expansion of assisted procurement services into

other GSA products and services beyond IT. One of the first items in the implementation phase of the realignment called for the establishment of a Contract Vehicle Review Board (CVRB) to ensure that GSA's IT contract vehicles are appropriately coordinated and rationalized. Essentially, the goal of the CVRB is to maintain the appropriate level of vehicle choice for customer agencies, while avoiding unnecessary duplication and fractionalization of combined agency buying power.

The CVRB limited its initial review to the effectiveness of each of the contract vehicles as rated against specific evaluation criteria (e.g. scope, socioeconomics, period of performance). Contract vehicles were then reviewed to determine how best to transition overlapping or ineffective vehicles as part of a phase out process. For those vehicles considered effective a comparison was done to identify significant overlaps and make recommendations for addressing such overlaps. The review did not address nor assess the value of the respective GSA Program Offices placing orders against the contract vehicles on behalf of customer agencies. However, the CVRB did note that it is apparent that GSA's Program Offices provide important services to their federal customers and the taxpayer, all contributing to the President's Management Agenda and many supporting the President's electronic government (e-Gov) initiatives. The CVRB's review was limited to the actual contracting vehicles the Program Offices and Client agencies use to fulfill their requirements.

The CVRB concluded its work and made certain recommendations that established the framework for creating an optimal blend of contract vehicles for meeting customer needs without undue burden on industry partners or GSA. These vehicles will offer excellent customer service and satisfaction, will strengthen partnerships with industry, and will enable continued growth of business opportunities for GSA.

Question 5. OMB's 2004 Part Assessment of the Multiple Award Schedules program found that there are redundancies in the areas of IT, sales, marketing and contract offerings. How is GSA addressing these identified problems?

Answer 5. By combining the Federal Supply Service and the Federal Technology Service into the Federal Acquisition Service, and through the on-going reviews that will be conducted by the CVRB, GSA expects that the redundancies found in the OMB 2004 Program Assessment Rating Tool will be eliminated.

Question 6. Will GSA issue a Proposed Rule on its advance Notice of Proposed Rulemaking issued on April 12, 2005?

Answer 6. GSA is still reviewing the necessity of issuing a proposed rule. As GAO acknowledged, contracting officers already have the authority to modify existing clauses to allow for post award audits. The purpose of the Advance Notice of Proposed Rulemaking (ANPRM) was to seek information regarding the need for additional guidance on the use of post-award audit provisions for pre-award pricing information used in contract award negotiations. We are currently reviewing the responses to the to

the ANPR in an effort to determine if we should move forward with a proposed rule providing additional guidance on the use of post-award audit provisions for pre-award pricing information used in contract award negotiations.

Question 7. What is GSA doing to overcome the problems with Multiple Award Schedules pricing and how do these actions differ from those taken in the past?

Answer 7. As I pointed out in my testimony neither FSS nor GAO, turned up evidence to suggest that the weaknesses in documentation resulted in prices that were unreasonable. It is important to note that FSS encourages agencies to seek better prices on known quantities, when a contractor can take advantage of savings on shipping costs and production runs.

In addition, GSA took the following actions:

a. As recommended in the GAO report, GSA revised and implemented the program operating procedure to require reports on pre-negotiation clearance panels. This focuses management attention on obtaining most favored customer pricing.

b. GSA updated and re-issued guidance to contracting officers (COs) on required information for strengthening documentation in a contract file.

c. We updated and re-issued guidance and instructions to COs in requesting audit assistance from GSA Office of the Inspector General when adding Special Item Numbers and exercising options to extend of a contract.

d. We issued a four-part series of guidance, "Achieving Fair and Reasonable Pricing in MAS Negotiations," as it relates to the direction in the GSAM of negotiating Most Favored Customer Pricing. The four parts addressed the following:

i) Most Favored Customer/GSA as Volume Purchaser;
ii) Combination of Discounts and concessions;
iii) Length of contract period; Warranties, training, and/or maintenance; and Ordering and delivery practices.
iv) Other relevant information: such as dealers, distributors, resellers, etc.

e. We developed a classroom training course, "Building on Acquisition Excellence," to remind the acquisition workforce the significance of proper documentation. The first class was conducted August 2-3, 2005. The classes will continue throughout FY 2006. Through practical exercises, participants establish and use documentation and a filing system based upon GSA's Contract Tab Advisory Guide. Some of the other objectives are as follows:

- Screen a contractor proposal for accuracy and completeness;
- Determine responsibility of a potential contractor using the responsibility assessment as set forth in the Federal Acquisition Regulations;
- Prepare pre/price negotiation memoranda for a negotiated agreement;

- Review audit actions used in the screening of a contractor proposal through the negotiation of the contract; and
- Discuss the legal, ethical, and practical considerations for a CO or Contract Specialist in processing a contractor proposal/processing orders under an existing Schedule contract.
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f. Based on preliminary findings of contract quality reviews conducted in FY04 under the Acquisition Quality Measurement and Improvement Program, GSA developed and launched a new on-line training course on negotiation of most favored customer pricing in October 2004. The training course, "GSA Schedules Contracting Pricing," is only for contracting personnel. This self-paced course is comprised of seven lessons designed to assist the Contracting Officers with the requirements for evaluating and documenting the reasonableness of proposed/negotiated contract prices. This course examines the Schedule pricing process from planning to documenting contract pricing. It also includes content on the information required to support effective contract pricing, price analysis based on most favored customer pricing, and other contract pricing concerns. This course provides information on GSA Schedule contract negotiation; it is based upon applicable Federal Acquisition Regulation (FAR) and General Services Administration Acquisition Regulation (GSAR).

g. GSA required the acquisition activities submit action plans in response to the findings of the FSS FY04 Acquisition Quality Measurement and Improvement Program report. The action plans focused on targeted training of contracting associates and continuous process improvement in documentation and business practices.

Question 8. Why has GSA failed to emphasize the use of pre-award audits to ensure the accuracy and completeness of vendor supplied pricing information?

Answer 8. As the GAO report indicated, contracting officers were relying on increased competition through GSA Advantage, E-Buy and other electronic media to ensure that vendors would offer GSA the prices available to their best customers. This did not always happen. Consequently, GSA is increasing the number of pre-award audits performed each year. From 1998 to 2003, the average number of pre-award audits conducted annually was 18 to 20. In Fiscal Year 04, the total number of pre-award audits was 38. In Fiscal Year 05 to date the number completed is 48 and the IG is on track to complete the 70 audits identified for the year. For Fiscal Year 06, the goal is to conduct over 100 pre-award audits.

Question 9. Has GSA considered using funding received from its fee on Multiple Award Schedules sales to ensure that adequate resources are available to complete needed pre-award audits?

Answer 9. Yes. As the GAO report stated, FSS and FTS have provided the GSA IG $2 million each above their normal allocation to hire more auditors to conduct pre-award audits.

Question 10. What type of quality improvement measures has GSA taken to respond to the problems identified in the February 2005 GAO report?

Answer 10. In response to the GAO report, GSA took the following actions:

- Directed the Office of Acquisition Management in Federal Supply Service to provide additional acquisition management guidance and training. In response FSS:
    - Updated and re-issued guidance to contracting officers (COs) on required information for strengthening documentation in a contract file.
    - Updated and re-issued guidance and instructions to COs in requesting audit assistance from GSA Office of the Inspector General when adding Special Item Numbers and exercising options to extend of a contract.
    - Developed a classroom training course, "Building on Acquisition Excellence," to remind the acquisition workforce the significance of proper documentation. The first class was conducted August 2-3, 2005. The classes will continue throughout FY 2006.

- Expanded the Acquisition Quality Measurement and Improvement Program
    - GSA revised its program operating procedures to require reports on pre-negotiation clearance panels. The reports will then be used to assess progress in the effectiveness of negotiations and will be an opportunity to share best practices.
    - Increased the number of contract quality reviews conducted
    - Required the submission of action plans that include, as appropriate, additional training and guidance for contracting associates as well as focused implementation plans to address any issues at the operational level with particular emphasis on contract documentation.
- Increased Pre and Post Award audits
    - Increased the number of audits (FY 2005 goal is 70 audits)
    - Committed $2 million to IG for audit support in FY 2005

One of the key objectives of GSA's on-going "Get It Right" initiative is to ensure compliance with Federal acquisition laws, regulations, and procedures. Non-compliance is unacceptable. To this end, many of the ongoing actions to improve the quality of the MAS program are consistent with the recommendations in the GAO report. For example, we have—

- Initiated the development of a negotiation quality measurement and improvement process (11/2001);
- Established an OIG Working Group to facilitate pre-award audits (12/2001);

- Established a nationwide program to regularly document and evaluate contractor performance across over 25 specific contractor requirements (10/2002);
- Established the Office of Acquisition Management in GSA's Federal Supply Service (FSS) (3/2003);
- Established the Acquisition Quality Measurement and Improvement Program (3/2003);
- Developed on-line and classroom training courses and modules for FSS contracting professionals via the FSS Center for Acquisition Excellence (3/2003);
- Conducted customer compliance surveys (8/2003, 9/2004);
- Published an update to Federal Acquisition Regulation (FAR) Subpart 8.4 incorporating ordering procedures for services and guidance on sole-source orders (7/2004);
- Established a pricing division in the IT Acquisition Center to oversee the review and negotiation of pricing (10/2004);
- Implemented a contract quality measure in the individual performance plan for each contracting associate (11/2004);
- Linked senior manager performance plans to remediation of concerns identified (11/2004);
- Significantly increased the number of contracting associates (2001-2004); and
- Initiated agency-wide Procurement Management Reviews (2004).

GSA is proud of the best value acquisition services we provide to Federal agencies to enable them to better serve the American people. In our quest for progress and continuous improvement, we will use the GAO report as a useful tool for improving our contracting operations and promoting a culture of acquisition excellence throughout GSA.

Question 11. Will GSA eliminate any of its regional offices or Client Service Centers (CSCs)?

Answer 11. GSA is examining all of its options, but currently has no plans to eliminate any of its regional offices or CSC's at this time.

Question 12. How will you allow industry to participate or have a voice in GSA restructuring, if at all?

Answer 12. GSA conducted a number of "Industry Days" during which industry was allowed to voice its concerns about the restructuring. Those concerns were considered in determining the structure of FAS.

Question 13. Will GSA merge its IT Fund with its General Fund?

Answer 13. GSA would like to merge the two funds, but a statutory change likely is needed to accomplish this merger. The Administration is supporting Senate passage of H.R. 2066, which would establish the Federal Acquisition Service and merge the two current funds. This bill was passed by the House on May 23, 2005.

Question 14. Some have suggested that there is no longer a need for FTS as a separate service now that technology procurement is such a large part of the government's annual budget. Is this the impetus for structuring or is restructuring more of a response to the audit reports?

Answer 14. The restructuring of GSA recognizes the role of technology in today's office environment. Given its widespread and common use, it no longer makes sense to treat technology as separate and distinct from other kinds of supplies and services.

Question 15. Please comment on how GSA plans to implement a merge of FTS with FSS?

Answer 15. Please see the attached detailed organization design.

Question 16. Will the GSA reorganization integrating the Federal Supply Service with the Federal Technology Service resolve pricing problems of schedules contracts?

Answer 16. GSA continues to believe that prices available on Federal Supply Schedules are fair and reasonable and represent the best value to the customer agency when all factors, such as delivery terms, warranties, and quantities purchased, are considered.

Question 17. Do you anticipate any staff reductions as a result of restructuring or reorganization?

Answer 17. In her update to GSA associates, Barbara L. Shelton, the Acting Commissioner of the Federal Acquisition Service, wrote, "Organizational redesign usually results in changes to the current associate skill mix and in some cases, elimination of positions. It is too early in the process to say what will happen. But if this should result, GSA will do everything possible to make sure associates are provided access to our Employee Assistance offering." The reorganization will permit the elimination of certain redundant positions, particularly in support activities that were present in each of the two separate Services, e.g., the CFO, CIO, and internal administrative organizations. However, the reorganization will also be creating or expanding certain functions, such as customer accounts and research and acquisition management, and we are still determining our staffing needs in these areas. Finally, staff reductions and other savings in the new FAS CFO organization are totally dependent on the passage of legislation which will merge the two funds.

Question 18. What metrics is GSA using to ensure that GSA is, indeed, getting it right? Are the reports you are getting back now indicating success? If so, what areas are showing the greatest progress?

See Attached. GSA is continually reviewing these metrics and the achieved results. New guidance is developed and issued, along with appropriate metrics, when new issues are identified.

Question 19. What if the GSA "Get it Right" plan fails to get it right? What is GSA's next course of action?

Answer 19. The Administrator has made it clear that failure to follow the Get It Right Plan is not an option.

Question 20. What internal follow-up reporting or auditing measures is GSA conducting on a continuing basis to ensure GSA is getting it right?

GSA has been working closely with the Office of the Inspector General (IG) since the inception of the "Get It Right" campaign.

The Chief Acquisition Officer's Procurement Management Review (PMR) division conducts yearly reviews of random acquisition samples. These review teams discuss their findings with each region or contracting activity and make suggestions on how the acquisition process can be improved. The results will also be used to create a best practices guide for use by procurement personnel. In FY 2005, the PMR group reviewed 10 of GSA's 11 regions. One region was rescheduled because of Hurricane Katrina.

Question 21. In your opinion, what is the Number 1 challenge at GSA right now?

Ensuring GSA continues to provide the tax payer and GSA's customer agencies with the best value in their acquisitions.

RESPONSE TO QUESTIONS FROM SENATOR LAUTENBERG

Question 1. What is the reason for the decline in pre-award audits conducted on contracts?

Answer 1. Because of the advent of reverse auctions, GSA Advantage, and E-Buy, competition among schedule holders is more robust than at any time in the past. Under current policies and contract terms, schedule holders can reduce their pricing even further for definite requirements without triggering the price reduction clause. Also, because services now make up the majority of our schedule sales, awarding a task order to a firm that can deliver "best value" is often more important than awarding a task order at the lowest price.

Further, GSA is increasing the number of pre-award audits performed each year. From 1998 to 2003, the average number of pre-award audits conducted annually was 18 to 20. In Fiscal Year 04, the total number of pre-award audits was 38. In Fiscal Year 05 to date the number completed is 48 and the IG is on track to complete the 70 audits identified for the year. For Fiscal Year 06, the goal is to conduct over 100 pre-award audits.

Question 2. Does GSA agree that it needs to do more pre- and post-award audits? What specific steps are you taking to ensure that these audits take place?

Answer 2. Because timely and accurate audits are crucial to the success of the MAS Program, the Federal Supply Service and Federal Technology Service each provided GSA's Office of Inspector General $2 million dollars to hire additional auditors. We will also provide contracting officers with additional guidance on when to modify existing clauses to allow for post award audits.

Question 3. What incentives do contracting officers have to make sure they get the best price?

Answer 3. Acquisition professionals understand that they represent the Government interest in negotiating contracts with industry, and that their work is critical to the success of the Government to meet its objective at reasonable pricing. Normal supervision, supplemented by the intra-activity and the GSA wide contract review process will provide a factual basis for measuring contracting officials' performance. Contracting officers know that, given tight budgets, agencies will go elsewhere if GSA cannot deliver the best prices. If that were to happen and the MAS Program were to shrink, GSA could no longer afford to maintain the same size workforce. However, as the increase in the volume of sales readily shows, agencies are relying more and more on the MAS Program to provide the best pricing available.

Question 4. What progress is GSA making towards implementing the recommendations GAO made in February to improve compliance?

Answer 4. In response to the GAO report, GSA took the following actions:

- Established the Office of Acquisition Management in FSS to
  - Provide acquisition management guidance and training;
  - Improve acquisition systems
  - Improve contract administration and management practices
- Reorganized the FSS IT Acquisition Center to
  - Establish a special division dedicated to pricing issues
- Expanded the Acquisition Quality Measurement and Improvement Program
  - Pre-negotiation clearance panels
  - Contract quality review
  - Training development
- Increased Pre and Post Award audits
  - Established contractor performance scorecard
  - Increased the number of audits (FY 2005 goal is 70 audits)
  - Committed $2 million to IG for audit support in FY 2005.

Questions and Responses for the Record from
David H. Safavian, Administrator,
Office of Federal Procurement Policy, OMB

OMB RESPONSE TO QUESTIONS FOR THE RECORD REGARDING THE JULY 26, 2005 HEARING BEFORE THE UNITED STATES SENATE FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION AND INTERNATIONAL SECURITY SUBCOMMITTEE OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS

- Do you think the GSA fee structure needs adjustment? If so, how would you recommend adjusting the fees?

OMB consistently works with GSA to help ensure that fees for GSA's services are aligned with costs for providing those services. When GSA began planning the reorganization of the Federal Supply Service and Federal Technology Service into the new Federal Acquisition Service (FAS), it began to look at the fees it had been charging and the costs of the business activities supported by those fees. GSA has indicated that the reorganization should save money by eliminating certain redundant overhead functions, but that some of these savings might be offset by the need to fund new or enhanced capabilities, e.g., in customer relations and acquisition support. OMB will work closely with GSA as it reviews its fee policies and the impact of the reorganization on its operating costs.

- What is the basis for setting the fees at their set percentage rates?

The GSA Administrator is responsible for setting fee percentage rates and is only permitted to charge fees that recover GSA's costs. GSA fee-for-service components project their cost by taking into account the recent actual numbers and projecting future business volume and program costs.

GSA will be able to provide more detailed information on how specific fees are set.

- What is the basis for charging vendors the Industrial Funding Fee (IFF)? Why was that fee first set at 1 percent, and why was it then lowered to .75 of a percent?

GSA is in the best position to provide information on why it initially set the Industrial Funding Fee at 1 percent. Several years ago, the GSA Inspector General reviewed the Multiple Award Schedules program, compared the program costs to the IFF revenues, and learned that these revenues were twice as high as the corresponding costs. The profitability of the schedules program and the significant growth projected in this program offered GSA a clear opportunity to reduce the fee to 0.75 percent and to consider further reductions.

- Has GSA or OMB ever considered eliminating the Industrial Funding Fee completely?

GSA established the Industrial Funding Fee over 20 years ago to recover its costs in operating the Multiple Award Schedules (MAS) program and eliminate the need to continue paying for these costs from appropriated funds. OMB has supported this self-funding approach.

- Can you explain why GSA fees can range as high as 8, 10, even 15 percent?

GSA is in a better position than OMB to provide information on how its individual fees are set.

As a general matter, fees will vary depending on the level of service required by the customer. If the customer makes a purchase directly from another agency's contractor (e.g., the customer makes a purchase directly from GSA's MAS schedules), the customer will pay a fee that reflects costs incurred by the servicing agency to establish and maintain the vehicle. If the customer requires assistance to plan, carry out, and administer the transaction (e.g., the customer requires help from the Federal Acquisition Service to develop a statement of work and evaluate quotes from schedule contractors), they will pay an additional "assisted acquisition" fee commensurate with the amount of help required.

- Please explain how it is that employees at agencies are negotiating prices that are lower than prices on the GSA schedules?

GSA's schedules contracts seek to maximize customer choice by giving agencies access to a large number of commercial contractors and commercial items. Contractors are not required to compete against one another ("head-to-head") to receive contracts. Instead, contracts are negotiated with all contractors who meet the qualification standards for a given schedule. GSA makes no volume purchase guarantees that could lead vendors to offer their lowest prices. Instead, agencies are expected to seek price reductions when making individual purchases of a sizable quantity reflective of their buying power.

GSA will be able to provide additional information and insight as may be needed.

- Please quantify what percentage of purchases is made at schedule prices and what percentage is made at lower prices?

OMB does not collect these data from GSA or other agencies. Furthermore, the PART analysis that OMB conducted of GSA's Multiple Awards Schedules program also revealed that GSA lacked this information. One of the follow-up actions

recommended in the PART review is for GSA to collect data on the actual costs that agencies pay when using the schedules program.

- Please tell us about OMB's Acquisition Scorecard initiative and what performance metrics are being used to measure outcomes? Is OMB offering any guidance on training of personnel, specifically in the area of contracting officers?

We do not have immediate plans to develop an acquisition scorecard. However, we continually work with agencies to develop appropriate mechanisms to track results, especially for high priority initiatives. For example, we recently worked with agencies to develop stewardship plans to ensure effective oversight of acquisitions conducted to meet recovery and reconstruction needs related to Hurricane Katrina.

With respect to training, in April 2005, OFPP issued Policy Letter 05-01, Developing and Managing the Acquisition Workforce, which specifically addresses the training requirements for contracting officers and other acquisition professionals. This Policy Letter broadens the definition of the acquisition workforce to include others who play significant roles in the acquisition process, such as program and project managers, and aligns the civilian agency acquisition workforce training requirements with those required by the Department of Defense (DoD) for its acquisition workforce. By following the DoD model, civilian agencies will provide their workforces with training and development opportunities that are consistent with those of their defense counterparts, thus improving workforce competencies and increasing mobility among agencies. The Policy Letter also doubles the requirements for continuous learning and requires elective courses, which provides agencies the opportunity to deliver additional training, such as instruction on interagency contracting, ethics, or other areas of interest.
GSA also provides internal and external training on the interagency contracting vehicles they offer, such as the Schedules. GSA can provide additional information on these training activities.

Questions and Responses for the Record from
Kathleen S. Tighe, Counsel to the Inspector General,
U.S. General Services Administration

General Services Administration, Office of Inspector General
Answers to Posthearing Questions -- "GSA -- Is the Taxpayer Getting the Best Deal?"

- **Do you think GSA is doing a good job of negotiating pricing under the Multiple Award Schedules program? Do you think COs are achieving good pricing? Where are the problem areas in terms of schedules or industries?**

We believe current pricing achieved under the Multiple Award Schedule (MAS) program is mixed. Our Office issued a 2001 Special Pricing Report that examined pricing achieved for a limited number of contracts under three commodities schedules (copiers, information technology (IT), and office furniture). For the copier contracts, the report concluded that most-favored customer (MFC) pricing was achieved in only one of 11 negotiations; for the IT contracts, the report found MFC pricing was achieved in less than half of the negotiations. As to the office furniture contracts, the report reflected that MFC pricing was negotiated in all the contracts examined other than one. Our Office has not performed a more recent review of pricing across the MAS program. As noted by the recent GAO report, FSS is instituting an Acquisition Quality Measurement effort, consisting of both Contract Quality Reviews and Prenegotiation Clearance panels, in an effort to emphasize good pricing, among other things, in MAS contract negotiations. Because these efforts have not been fully implemented, we have not yet had an opportunity to review them and their conclusions about MAS contract pricing. We are also aware that as a follow-up to the recent GAO report, which had identified certain contracts as lacking sufficient documentation needed to establish that the contracts were effectively negotiated, GSA reviewed the contracts identified by GAO and determined that in 93% of them prices equal to or better than MFC were negotiated. Neither this office nor GAO has reviewed GSA's methodology in making this determination.

Since the 2001 Special Pricing Report, however, our Office has developed concerns about MAS pricing for ***services*** *priced on an hourly rate basis. Our audits have indicated that it is very difficult to find comparable commercial hourly rates for these services since the commercial sector tends to buy the services on a fixed-price basis (one overall price with an expected performance result), whereas the Government tends to buy the same services on a labor-hour basis. As a result, we believe negotiations for MAS services may not be vigorous and resulting prices may be somewhat high. This information is based on individual audits; our Office has not yet taken a comprehensive look at this issue.*

We also note that many GSA Contracting Officers rely on the accuracy of pricing disclosures made by MAS vendors when negotiating; COs do not have the means -- other than through an audit -- to verify vendor-supplied information independently. When

pricing information is false or defective, therefore, even a vigorous and thorough negotiation by an experienced GSA contracting officer may result in overpricing.

- **How--in general terms--are Multiple Award Schedule vendors selected for preaward audits? How are vendors selected for postawards?**

For preaward audits, FSS and the OIG work collaboratively every year to develop a list of MAS contracts to be audited. The main factor driving selection is typically the size of the contract (estimated sales over the next five year period). Also, COs may request that a particular vendor be audited based on particular concerns they have raised. As for postawards, the OIG initiates these based on the size of a contract and whether a vendor has had a history of problems.

- **Why aren't compliance postaward audits sufficient to ensure no overpricing exists on Multiple Award Schedule contracts?**

The OIG generally does not have access to pricing information provided during negotiations in compliance audits. Generally, compliance audits examine nonprice-related areas including overbillings, and industrial funding fee (IFF) reporting and remittance. To the extent compliance audits deal with pricing, they only check compliance with the Price Reductions clause, a contract provision that has to do with maintaining negotiated pricing during the contract's term (rather than before award). Such audits would not extend to the time period prior to award of the contract.

- **How many compliance postawards does your Office perform? Do they indicate that overbillings are a problem on Multiple Award Schedule contracts?**

Our Office performed 15 compliance audits of MAS contracts in fiscal year 2004 and 7 compliance audits so far in fiscal year 2005. Also, although we do not track these amounts specifically, our general sense is that overbillings findings in dollars terms are not significant as compared to findings having to do with Price Reduction clause violations and Industrial Funding Fee clause violations.

- **What quality standards apply to the OIG's performance of Multiple Award Schedule audits? What do these standards address? Is there a review of your Office's compliance with applicable standards?**

The Inspector General Act of 1978 mandates that OIG-performed audits comply with the Government Auditing Standards (the Yellowbook) issued by the Government Accountability Office. The Yellowbook also incorporates the standards of the American Institute of Certified Public Accountants. The Yellowbook governs the quality of audits, as well as auditor independence and objectivity. The OIG Office of Audits undergoes a peer review every three years that examines all the major categories of audits performed.

The last review occurred in 2004 and the OIG Office of Audits received an unqualified opinion regarding its work.

- **Explain the financial impact of Multiple Award Schedule preaward and postaward audits. Historically, how much in actual savings have resulted from MAS preaward audits? How much in actual recoveries have resulted from defective pricing postaward audits?**

MAS preaward audits generate financial impact by recommending pricing improvements to Contracting Officers who negotiate better MAS prices (actual savings). The 40 preaward audits conducted in 2004 resulted in actual savings of $75.4 million; the 50 preawards conducted so far this fiscal year have resulted in actual savings of $87.9 million. MAS postaward audits generate recoveries by having the CO seek monetary refunds according to the audit findings. In addition, these audits also can be used by COs to negotiate better prices for the remaining term of the contract. In cases where fraud indicia are present, the Department of Justice (DOJ) is tasked with seeking recoveries and is empowered to recover a refund along with penalties. DOJ achieved fraud recoveries of $110 million in the 8 years prior to the 1997 elimination of the OIG's defective pricing audit authority.

- **Industry associations have complained that Multiple Award Schedule contract audits are too burdensome, including in terms of the amount of information requested by the OIG auditors. Can you address the types of burdens that exist in Multiple Award Schedule audits, and your views on this topic?**

The OIG Office of Audits has always taken steps to minimize burdens on a company by tailoring the audit process to accommodate a company's recordkeeping system, keeping on-site fieldwork to reasonable timeframes, and relying where possible on electronic audit techniques. It is also important to remember that the essence of auditing is to independently check a vendor's assertions, and that auditors are required to exercise their judgment in this regard.

- **Do you have a sense of whether and to what extent defective pricing problems exists today at GSA in Multiple Award Schedule contracts?**

We believe that defective pricing problems exist at GSA because we have had a number of hotline calls and qui tam suits under the civil False Claims Act alleging defective pricing in recent years that have resulted in findings and settlements. Recently, for example, in one case brought to our attention through a qui tam action, Humanscale, Inc., a company that supplies the Government with office chairs and ergonomic equipment through several MAS contracts, paid the Government $9 million to settle allegations that it provided false pricing information to the Government during negotiations. In addition, the preaward audits we have conducted in the past several years show significant problems with pricing information supplied by vendors to GSA in negotiations.

- **GSA has initiated a rulemaking that solicited comments regarding reinstating defective pricing audit rights. Do you know what will come out of this rulemaking?**

The Advance Notice of Proposed Rulemaking was published in March 2005. If GSA intends to make any changes, the next step would be that GSA publishes the text of a proposed rule for public comment. We are providing input to the agency as part of this process. We hope GSA will reinstate defective pricing audit authority in MAS contracts.

- **Can you explain the process for modifying GSA regulations to activate the defective pricing audits rights? Has this ever been done at GSA?**

A determination has to be made, on a schedule-wide basis, that a likelihood of significant harm to the Government exists absent such audit rights. The determination has to then be approved by the senior procurement executive. This has never been done at GSA. Part of the difficulty in triggering the clause is that, in addition to high-level approvals, no one CO is in a position to make such a determination across an entire schedule that may be comprised of thousands of individual contracts.

- **Can you address industry's argument that simple errors found through defective pricing audits are improperly elevated by your Office to DOJ and handled as fraud cases? Do you have any formal evaluation or screening mechanisms for making such decisions?**

The OIG has a formal evaluation process to screen contracts that are the subject of audits for fraud indicia. The Counsel's office works with the Audits office to determine whether audits should be referred to DOJ. We do not refer matters to DOJ that are based on simple mistakes but only where fraud indicia are present. In the last period of time we have to measure, the 1994-1996 time period, only 15 percent of the over 70 postaward audits with defective pricing findings issued by the OIG were referred to DOJ.

- **What would your Office's recommendation be regarding reinstating audit rights? Would you like to see them reinstated on every GSA contract or only on certain schedules or contracts?**

We believe defective pricing audit rights should be reinstated on all MAS contracts, so that such audits can be performed in individual cases where appropriate. Part of the value of audit rights is that they act as a deterrent to vendors who would otherwise provide false pricing information. If defective pricing audit rights were reinstated, though, likely only high dollar contracts or vendors/contracts with risk factors would be targeted for a defective pricing audit.

September 6, 2005

General Services Administration, Office of Inspector General
Answers to Posthearing Questions -- "GSA -- Is the Taxpayer Getting the Best Deal?"

Senator Lautenberg's Question:

- **GAO reports that the inspector general found one case where the federal government was charged more than $5,500 more for each copying machine it bought than state and local governments were. Is this a typical example? If not, what are more typical examples of overcharging?**

It is difficult for us to state that this example of overpricing is typical. The example is from a report that our Office issued in August 2001 that found pricing under the MAS program was mixed. The 2001 report examined pricing achieved for a limited number of contracts under three commodities schedules (copiers, information technology (IT), and office furniture). For the copier contracts, the report concluded that most-favored customer (MFC) pricing was achieved in only one of 11 negotiations; for the IT contracts, the report found MFC pricing was achieved in less than half of the negotiations. As to the office furniture contracts, the report reflected that MFC pricing was negotiated in all the contracts examined other than one. The report concluded that the financial impact of GSA not achieving MFC pricing was significant. For the one copier system noted in the question, the Government would have paid $3.896 million dollars more than the favored state customer in just one year. Had the Contracting Officers on all the copier contract negotiations succeeded in negotiating MFC pricing, better pricing would have resulted in $199 million in costs saved.

Since the 2001 Special Report, FSS has taken a number of steps to improve pricing, including seeking more preaward audits; issuing guidance to COs regarding negotiations and the MFC pricing objective; and developing and implementing the Acquisition Quality Improvement program. We believe the performance of more preaward audits and the issuance of clearer negotiations guidance to COs can only improve MAS pricing. As for FSS' Acquisition Quality Improvement Program, it is in its initial stages and we have not yet had an opportunity to review it and any conclusions about MAS contract pricing.

We are also aware that as a follow-up to the recent GAO report, which had identified certain contracts as lacking sufficient documentation needed to establish that the contracts were effectively negotiated, GSA reviewed the contracts identified by GAO and determined that in 93% of them prices equal to or better than MFC were negotiated. Neither this office nor GAO has reviewed GSA's methodology in making this determination.

Since the 2001 Special Pricing Report, however, our Office has developed concerns about MAS pricing for ***services*** *priced on an hourly rate basis. Our audits have indicated that it is very difficult to find comparable commercial hourly rates for these services since the commercial sector tends to buy the services on a fixed-price basis whereas the Government tends to buy the same services on a labor-hour basis. As a result, we believe negotiations for MAS services may not be vigorous and resulting prices may be somewhat high. This information is based on individual audits; our Office has not yet taken a comprehensive look at this issue.*

We also note that many GSA Contracting Officers rely on the accuracy of pricing disclosures made by MAS vendors when negotiating; COs do not have the means -- other than through auditing -- to verify this information independently. When pricing information is false or defective, therefore, even a vigorous and thorough negotiation by an experienced GSA contracting officer may result in overpricing.

Questions and Responses for the Record from John Ames,
Director, Contract Review and Evaluation Division,
Office of Inspector General,
U.S. Department of Veterans' Affairs

Question 1: In your testimony, you stated that 107 of the 238 post-award audits were conducted in response to voluntary disclosures, in which Federal Supply Schedule (FSS) vendors offered $37.5 million but these post-award audits resulted in the recovery of $113 million. In your opinion, would eliminating or further restricting post-award audits have any ~~affect~~ effect on voluntary disclosures and why? Why was VA able to collect ~~$76.5~~ $75.5 million more than offered by FSS vendors?

Response: In my opinion, eliminating or further restricting post-award audits would have a negative impact on voluntary disclosures. Our experience has shown that the authority to conduct post-award audits has a deterrent effect on industry. If post-award audits were prohibited or further limited, there would be no incentive for industry to come forward with voluntary disclosures. In FY 1993, after the Contract Review and Evaluation Division began conducting these audits, VA started receiving voluntary disclosures. Since that time, the number of disclosures has increased steadily. Based on discussions with GSA OIG, it is our understanding that the number of voluntary disclosures to GSA decreased since GSA stopped conducting post-award audits. In comparison, VA's voluntary disclosure program has thrived.

VA was able to collect $75.5 million more than offered by vendors submitting voluntary disclosures because the post-award audits that we conducted showed that the reviews conducted by vendors were flawed. For example, vendors often inappropriately excluded discounts and other incentives to commercial customers that resulted in lower net prices.

Question 2: Would additional resources to conduct pre-award audits eliminate the need to conduct post-award audits?

Response: No, additional resources would not eliminate the need to conduct post-award audits. The resources needed to conduct pre-awards on all FSS contracts and all modifications would be cost prohibitive. It is more effective and efficient to conduct pre-awards on proposals for high-dollar contracts and use post-award audits selectively for contracts that did not have a pre-award audit and for contract modifications. As noted in the testimony, post-award audits of compliance with the Price Reductions Clause, accurate reporting of sales, and compliance with other contract terms and conditions will still need to be conducted. Our experience shows that sometimes a contract will start out small and end up being a high-dollar contract because of increased unanticipated sales or modifications adding products. It is a more cost-effective and efficient use of resources to include the review of Commercial Sales Practices (CSP) information provided with a proposal or modification as part of post-award audits. Also, retaining post-award audit authority provides a means to audit price reasonableness on those contracts that were not subject to a pre-award because of the dollar threshold.

Question 3: What effect would prohibiting or further limiting post-award audits on information provided during negotiations or in support of a modification to add items have on VA's FSS schedules?

Response: Eliminating or further limiting post-award audits would result in higher prices to the Government. Our audits have shown that vendors often do not provide CSP data that is accurate, current, and complete. We find this to be true even when the vendor knows that the proposal will undergo a pre-award audit. If a vendor knows that the estimated value of a contract is below the pre-award threshold and that the CSP information relied on by VA in awarding the contract or modification will never be subject to verification, there is no incentive to provide accurate information or to offer the Government prices that are equal to or better than Most Favored Customer. As a result, the Government pays more than similarly situated commercial customers.

Question 4: Industry has objected to post-award audits of commercial sales practice information provided during contract negotiations and in support of modifications because it is overly burdensome and significantly disrupts business activities. Do you agree with this statement? What is the length of time it takes your office to conduct a pre-award audit and a post-award audit? Do the audits have a different impact on small businesses?

Response: We do not agree with this statement. As noted in our testimony, we have taken a number of actions to streamline the process and be less intrusive and disruptive of a vendor's business. By obtaining sales transaction and other data in electronic format, we have eliminated the need to spend days or weeks on-site at a vendor's place of business. If a site visit is determined to be needed to complete the audit, we are usually on-site 2 days or less. By utilizing electronic records, we have been able to conduct the audit in a more timely and efficient manner. For example, the ability to sort and review hundreds of thousands of sales records electronically saves considerable time and makes it easier for the vendor to verify our findings. As a result, the amount of time needed to conduct the audit is significantly decreased. If a vendor provides the information requested for the audit in a timely manner, a pre-award audit will be completed in 90 calendar days and a post-award within 6 months, but the amount of time spent with the vendor is minimal. It has been our experience that the impact on a small business is no different from that of a large business. The availability of electronic records is a key factor in conducting these audits in a timely and efficient manner. We have found that, like large businesses, small businesses maintain electronic sales transaction records.

Question 5: How have your pre-award and post-award audits affected your relationship with industry?

Response: We believe that the audit process has improved the relationship with industry. For example, as the result of post-award audits, vendors have established internal compliance programs to improve their compliance with providing CSP information and contract administration. Such actions maintain the integrity of the FSS program. Our experience shows that vendors who conduct their business with integrity don't mind being held accountable. One of VA's largest suppliers did an internal review of all of its

26 divisions and submitted voluntary disclosures. The vendor also developed an internal corporate integrity program to prevent similar problems in subsequent contracts.

Question 6: What would be the advantage to having the 11 Federal Supply Schedules currently managed by VA, transferred to VA? Would there be any impact on GSA?

Response: We believe that transferring the schedules to VA would be in the best interest of the Government. At this time, VA is entirely responsible for the solicitation, negotiation, award, and administration of these contracts. Transferring the schedules to VA would allow VA to promulgate regulations that are specifically tailored to the health care products and services offered on our schedules. Our audits have shown that there are wide-ranging disparities in commercial practices among the various industries and among vendors within each industry. FSS schedules cover a wide variety of products and services. Regulations and regulatory clauses that apply to one industry do not always apply to every industry under the schedules. We do not believe that transferring the schedules to VA would have any impact on GSA because GSA is not involved in any aspect of VA's FSS program. GSA is not involved in the solicitation, negotiation, award or administration of the schedules and does not receive any fees or other payments from sales generated through VA's schedules. The only effect, if any, is that VA, not GSA, would be responsible for rulemaking for the 11 schedules.

Question 7: What is the rationale behind the FSS being a multiple award schedule program – doesn't providing more choices lead to paying higher prices than if you had winner-take-all contracts?

Response: If properly managed, the FSS program will result in lower prices to the Federal Government because it allows the Government to use its aggregate purchasing power to negotiate lower prices. In our experience, commercial customers who buy in larger quantities often receive better prices. While a winner-take-all contract may produce better prices compared to FSS, we believe that the FSS is designed to provide informed choices plus best price with low procurement costs, which lead to best value.

GSA established the FSS program in 1949 to facilitate federal agencies acquisition of products and services from commercial suppliers through schedule contracts. The FSS Multiple Award Schedule (MAS) program provides customer agencies with a simplified process to purchase small quantities of commonly-used commercial products and services at prices associated with volume buying with the objective of receiving the vendor's most favored customers' (MFC) prices. The FSS program saves the Government costs associated with contract award and administration. The intent of receiving MFC pricing is to harness the entire Government's volume purchasing power to negotiate lower prices, rather than leaving to numerous agencies, who purchase in small quantities, the task of negotiating individual deals. Awarded items on FSS MAS contracts are considered "like or similar" and thus provide health care professionals with choice. Under the FSS MAS program, there is no need to develop product specifications, conduct a competitive acquisition, or do a sole-source acquisition.

Another important attribute distinguishing a schedule contract from a competitive single award is the FSS schedule contract contains a Price Reductions Clause designed to provide price protection to the customer agencies for the duration of the contract.

Schedule contracts also accommodate small businesses in large numbers. The FSS program is advantageous to small businesses because they do not have to compete with large businesses to obtain a Government contract. According to VA National Acquisition Center (NAC) personnel, for the past 8 years, 68 to 72 percent of the NAC's FSS contractors have been small businesses. Lastly, the FSS program accommodates high-technology vendors with cutting-edge products who wish to sell to the Government but may not be able to compete against other vendors on price alone.

OMC/GSA Comparison Table

	Small (less than $100K)		Vendor price
	OMC	GSA	
Order #	1482		
Agency	Ft. Hood, CTSF		
Description	Printer Cartridges		
Cost Comparison	12,973 38	$13,254.25	$12,713.91
Competition Summary	Request was sent to 5 vendors; 2 calendar days	14 calendar days	
	Medium ($100K to $499K)		
	OMC	GSA	
Order #	1510		
Agency	CDC		
Description	Mozambique Counseling and Testing Position		
Cost Comparison	235,529.79	$240,629.01	$230,819.19
Competition Summary	Request was sent to 3 vendors; 5 calendar days	14 calendar days	
	Large (more than $500K)		
	OMC	GSA	
Order #	1496		
Agency	Army Manpower & Reserve Affairs		
Description	Army Freedom Team Salute		
Cost Comparison	$3,675,984.82	$3,755,569.89	$3,602,465.12
Competition Summary	Request was sent to 3 vendors; 14 calendar days	14 calendar days	

Small (less than $100K)			
Order #	OMC	GSA	Vendor price
Agency	1512		
Description	Ft. Hood, CTSF		
Cost Comparison	Design, Deliver, Install, Demonstrate, Provide Documentation and Operator Lever Training of VTC System with a minimum of 1 year warranty. See attached requirements.		
Competition Summary	$66,616.20	$68,058.44	$65,283.88
	Request was sent to 7 vendors; 5 calendar days	14 calendar days	
	Medium ($100K to $499K)		
	OMC	GSA	
Order #	1499		
Agency	Navy PWC		
Description	B-794 Heating units		
Cost Comparison	207,928.02	$212,429.66	$203,769.46
Competition Summary	Request was sent to 4 vendors; 11 calendar days	14 calendar days	
	Large (more than $500K)		
	OMC	GSA	
Order #	1494		
Agency	NSWG One		
Description	Imagery Equipment Enhancement		
Cost Comparison	506,009.50	$516,964.61	$495,889.31
Competition Summary	Request was sent to 2 vendors; 11 calendar days	14 calendar days	