

**ACHIEVING THE PRESIDENT'S OBJECTIVES:
NEW OMB GUIDANCE TO COMBAT WASTE,
INEFFICIENCY, AND MISUSE IN FEDERAL
GOVERNMENT CONTRACTING**

HEARING

BEFORE THE

AD HOC SUBCOMMITTEE ON CONTRACTING
OVERSIGHT

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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WEDNESDAY, OCTOBER 28, 2009

U.S. SENATE,
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:37 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill, Bennett, Collins, and Coburn.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you for being here today, and I appreciate the other Committee Members who are here, particularly Ranking Member Senator Bennett, and it is always good to see Senator Coburn.

The purpose of today's hearing is to examine the future of government contracting in this Administration. On March 4 of this year, President Obama announced that he was going to try to reform the way government does business. The President said, "We will stop outsourcing services that should be performed by the government, open up the contracting process to small businesses. We will end unnecessary no-bid and cost-plus contracts that run up a bill that is paid for by the American people. And we will strengthen oversight to maximize transparency and accountability. Altogether, these reforms can save the American people up to \$40 billion each year."

The President directed the Office of Management and Budget and Federal agencies to work together to develop new guidelines to achieve these goals. Yesterday, OMB released guidance instructing agencies to bolster competition and improve the use of high-risk contract types like cost-plus and time and materials contracts. OMB also released guidance relating to the critical need to strengthen the acquisition workforce.

Let me say, I commend the President for his concern about contracting. I think it is well founded. And I want to congratulate your staff for all of the hard work they have done in preparing for this hearing today.

The guidance that was issued yesterday follows three previous memoranda issued by OMB in July of this year. First, OMB directed agencies to make a 7 percent reduction in overall contract spending by 2011 and a 10 percent reduction in dollars spent on non-competitive or cost-plus contracts by 2010.

Second, OMB told agencies to improve the management of multi-sector workforce, the blend of government employees and contractors who work for government agencies.

And finally, OMB told agencies how to improve how agencies collect, report, and use information about how contractors have performed on Federal contracts. Taken together, these actions are expected to amount to approximately \$40 billion in savings per year.

At today's hearing, we are going to assess OMB's new guidelines to find out whether they will meet the President's bold vision for reform.

I was proud to be standing with President Obama during his announcement in March and was encouraged by his commitment to eliminate the waste, fraud, and abuse in government contracts. Today, however, I have serious concerns. There are parts of OMB's guidance that make a lot of sense. OMB has called for agencies to develop long-term plans for the acquisition workforce. They have also directed agencies to develop procedures to collect and report past performance information and to create pilot programs to improve their management of contractor employees.

But also, there are some significant concerns. As we will hear today, OMB has tasked government agencies with developing their own plans for improving contracting, yet OMB has provided very little concrete guidance as to how to achieve these necessary reforms.

For example, OMB's guidance on increasing competition gives agencies guidelines with questions for agencies to address and a set of considerations for agencies to use in answering those questions. I accept that agencies have different needs and obligations, but it is important that OMB's guidance provide a clear way forward for these agencies.

Another serious problem may be the lack of accountability. OMB is committed to setting a few targets and reviewing agencies' progress towards these targets. But the guidance sets out only a handful of specific dates and deliverables. I think dates and deliverables are very important for accountability. And even the dates and deliverables that are in the guidance are vague. OMB has not said how it will review progress for agencies or what metrics and benchmarks the agency will use.

A third problem is OMB's failure to address other key problems with government contracting. For example, OMB's guidance does not address the need for improved planning for government contracts and OMB has announced that its guidance on service contracts and inherently governmental functions has been delayed indefinitely.

I am also concerned that the lack of an Administrator for the Office of Federal Procurement Policy (OFPP) was not announced until this month, several days after OMB's contracting guidance was already supposed to be completed. I once again commend the President on his nominee and look forward to his confirmation hearing

next month. However, in the absence of a confirmed OFPP Administrator, that may be an additional obstacle in the path of the President's plan for aggressive contracting reform.

Finally, OMB's lengthy delay in meeting the President's schedule for issuing this guidance is not a good omen for the future of contracting oversight. Government contracting is an enormous challenge. To achieve lasting reforms, we need definite goals and detailed plans on how to meet those goals. We need to be able to measure progress and hold agencies accountable every step of the way. And we need very strong leadership from OMB. Otherwise, government contracting is just going to be business as usual.

I look forward to the testimony of Jeffrey Zients, OMB's Deputy Director for Management and Chief Performance Officer and thank him for being here today.

Senator Bennett, do you have any statement you would like to make?

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. Thank you very much, Madam Chairman. I have a formal statement that I would like submitted for the record, but I would like to make a few more informal kinds of observations.

I am delighted, Mr. Zients, that you come out of the private sector. You worked with Bain and Company, which means you are a Mitt Romney guy at some point, even though you are not working for him as President of the United States, as some of us hoped might be the case somewhere along the way.

Senator MCCASKILL. We will have to agree to disagree. [Laughter.]

Senator BENNETT. I understand that, Madam Chairman.

To put it on the lowest possible personal level, when I served in the Army, I served on KP like every private E-1 did at one point or another, peeling potatoes and helping prepare meals and so on. When I go back to the Army now, I discover that all of that is being done by contractors and it strikes me as a really good idea. We urge people to join the military. We train them in military skills. And we should not dilute that training and their time in the military by having them peel potatoes when we can hire somebody else to do it, probably more cheaply and more efficiently than the military.

So the sergeant, the specialist, and the airman is focusing on the warfighting or the training connected with the warfighting mission and somebody else is peeling the potatoes. It is a good deal for the military. It is a good deal for the country. And it is a good deal for the contractor.

The world from which you and I both came prior to entering government, we would call that outsourcing instead of contracting, where people say, I am no longer going to have my employees sweep out the factory at the end of the day. I am going to hire a cleaning service to do it. And it maximizes the productivity you get out of the people performing the mission, and if you make the right buy, it is cheaper.

Now, I put it in that folksy kind of way because, in my view, that is basically your mission, to maximize the productivity of the Fed-

eral worker by releasing him and her from duties that can be outsourced more cheaply. But the challenge is to see that you make the right deal, when you do the outsourcing, you hire the right people, and you monitor how well they are doing.

And to repeat a theme I have been on before, but I have discovered since I have come to the Senate there is no such thing as repetition—every statement by a Senator is treated as if it is brand new—the thing I worry about more than waste, fraud, and abuse is inertia. The law of motion is not just Newton's law that applies to physics. It applies to agencies, and an agency set in motion tends to stay in motion in the same direction. And what was a good contracting decision 5 years ago then gets the benefit of inertia and becomes the same contracting decision now because that is the way we always did it.

We need to review the inertia as much as we do the waste, fraud, and abuse, because many times, inertia can lead us in the wrong direction more powerfully than somebody who is trying to rip us off and we end up wasting more money out of inertia than we do in other areas.

My colleague, Dr. Coburn, is an expert on this, because he keeps hammering on us on the Appropriations Committee, well, you are just doing this because you did it last year and that is not an acceptable reason to keep doing it. He has made a dent sometimes and he has not other times, but I am convinced that his inertia will keep him doing it and that is a healthy thing.

That is the challenge that you face and that is the focus that I would like to get out of this hearing. Again, how do we maximize the productivity of the employees of the Federal Government by outsourcing duties that could be done more cheaply and more efficiently with somebody else, and at the same time stay on top of that outsourcing function—I am deliberately using the language of private industry because that is where you come from and those are the people who have discovered how to do this, maybe better than we have—how do you make sure that the outsourcing that is done produces the best value and is the right place to go, or is there a new contractor or a new service that the old contractor hasn't offered you that you can turn to?

The biggest barrier to get there from here that I have observed is, again, the inertia of the process of screening contractors. We are so sure that anybody who comes to the Federal Government with something to offer is really going to try to rip the government off that we spend so much time putting up so many barriers, so many hoops that the contractor has to go through in order to get the job, that we see far too many contractors say, just forget it. I am not going to bid for government work even though I could do it better and I could do it cheaper than the contractor that they have got because the process of bidding is so impenetrable. I will just stay where I am. It is not worth it.

So that is my summary of the challenges we face and the kinds of things I am looking forward to out of this hearing. Thank you, Madam Chairman.

Senator McCASKILL. Thank you.

Since this is a one-witness hearing and we only have one of our other Members here, I would certainly use the Chairman's preroga-

tive to offer you the opportunity to make any kind of opening remarks you would like to, Senator Coburn.

Senator COBURN. Thank you, Madam Chairman. I will defer. Thank you.

Senator MCCASKILL. OK. Let me introduce our witness today. He is the Deputy Director of Management at the Office of Management and Budget. He is also the Chief Performance Officer for the Administration. He has 20 years of business experience as a CEO, management consultant, and entrepreneur. He most recently served as Managing Partner of Portfolio Logic, an investment firm focusing primarily on business and health care services companies.

Prior to founding Portfolio Logic, Mr. Zients served as CEO and Chairman of the Advisory Board Company and Chairman of the Corporate Executive Board. Mr. Zients began his career in management consulting at Bain and Company and Mercer Management Consulting, where he focused on developing strategies and improving operations of Fortune 1000 companies. He also cofounded the Urban Alliance Foundation, a nonprofit organization that partners with corporations to provide economically disadvantaged youth with year-round paid internships, adult mentors, and job training.

It is the custom of the Subcommittee to swear in all witnesses that appear before us, so if you don't mind, I would ask you to stand.

Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ZIENTS. I do.

Senator MCCASKILL. Mr. Zients, we welcome your testimony. Your written testimony will be printed in the record in its entirety. We would ask you to try to hold it to 10 minutes, although I don't think we are going to be too strict today. Mr. Zients.

**TESTIMONY OF JEFFREY D. ZIENTS,¹ DEPUTY DIRECTOR FOR
MANAGEMENT AND CHIEF PERFORMANCE OFFICER, U.S. OF-
FICE OF MANAGEMENT AND BUDGET**

Mr. ZIENTS. Thank you, and I will beat the 10-minute mark. Chairman McCaskill, Ranking Member Bennett, and Senator Coburn, I appreciate the opportunity to appear before you today to discuss OMB's implementation of the President's Memorandum on Government Contracting and our shared interest in improving Federal acquisition practices.

The President has charged the government with cutting waste and saving taxpayers' dollars. He has committed to putting the Nation on sound fiscal footing, investing in programs that work and fixing or ending those that don't. Addressing the chronic problems in government contracting is a key part of this effort.

OMB has developed a three-prong approach to improve the results of our acquisition process. First, we will meet the President's goal of saving \$40 billion annually through better acquisition practices.

¹The prepared statement of Mr. Zients appears in the Appendix on page 31.

Second, we will clarify the rules and practices to determine the proper roles of both the public and private sectors to best serve the American people.

Third, as recommended by this Subcommittee on a bipartisan basis, we will provide for a strong, well-equipped acquisition workforce to achieve the best long-term results from government contracting activities.

With respect to the first goal, saving \$40 billion, OMB has directed agencies to take two actions to achieve immediate results: Develop plans to save 7 percent of contracting spending by the end of fiscal year 2011 and to reduce high-risk contracts by 10 percent in fiscal year 2010.

There are many ways in which agencies will address the 7 percent cost savings goal. For example, an agency may end contracts that do not meet goals or support for projects that are no longer needed. An agency may transition from a cost reimbursement contract to a fixed-price contract, where the incentive to perform in a cost effective manner is greatest. An agency may switch from a stand-alone contract to a strategically sourced contract that uses the government's collective purchasing power to get lower prices. These agency savings plans are due November 2, and they must lay out the specific steps that each agency is taking to achieve the 7 percent minimum.

In addition to the 7 percent cost savings, we have targeted a minimum of 10 percent reduction in non-competitive cost reimbursement and time and materials contracts because each of these high-risk authorities carries the potential risk of overspending taxpayer resources.

Earlier this week, OMB issued guidelines for the ongoing review of high-risk contracting. The guidelines pose three key questions. First, how is the agency maximizing the effective use of competition in choosing the best contract type for the acquisition? Second, how is the agency mitigating risk when non-competitive cost reimbursement or time and material contracts are used? Third, how are agencies creating the opportunities to transition away from these high-risk contracting vehicles to better contracting vehicles?

The guidelines lay out a number of considerations agencies should use for addressing these questions. We will work with agencies to do a mid-year and end-of-year review of their progress in reducing the reliance on these authorities by a minimum of 10 percent, and those agencies which are experiencing challenges or not meeting the goals will take appropriate corrective actions to improve these results.

Regulatory actions are also addressing the use of high-risk contracting. Earlier this month, the Federal Acquisition Regulation (FAR) was amended to prohibit the use of rollover and award fee contracting. This practice, which actually allowed contractors to earn fees in subsequent performance periods after having failed to earn them initially, has repeatedly been cited as contributing to the waste of taxpayer dollars. This waste has been stopped.

This summer, FAR changes were made to require the use of past contractor performance in source evaluations. This motivates contractors to perform well and reduces the likelihood that taxpayer resources will go to waste. The FAR now requires agencies to sub-

mit electronic records of contractor performance into a single government-wide repository, and OMB will conduct compliance assessments and quality reviews beginning in February to make sure that this database works.

With respect to management of the multi-sector workforce, we are taking a number of steps to improve rules and practices and to provide agencies with useful tools. As one step, each major agency identified one of its organizations where it has concerns about a potential over-reliance on contractors. This will be the subject of a pilot. Using cross-functional teams with human capital, acquisition, and program officials, each agency is developing a plan that determines the best mix of skills and workforce size for the organization. These plans, combined with assessments of how the organizations are performing, could lead to in-sourcing, adding resources to contract management, or hiring new employees. Agencies will apply the insights from these initial pilots to other organizations with similar needs.

We have also developed guidance to help agencies implement new statutory requirements concerning in-sourcing. These provisions require agencies to give special consideration to in-sourcing work where there is either a particular risk that prior practices have resulted in an over-reliance on contractors or performance of the work by Federal employees could be more cost effective. This guidance will help agencies to strengthen their sourcing decisions and fix situations where they are too reliant on contractors and establish sufficient internal capacity to maintain control of their operations.

Additional OMB guidance is under development to address the ongoing confusion in how the boundaries are drawn between the Federal and private sectors. We must reconcile differences in the definition of “inherently governmental” and clarify the meaning of different terms used in connection with non-inherently governmental functions, such as “critical functions.” These issues will be addressed over the next several months and we will seek public comment before the rules are promulgated.

This brings us to our third and final goal, to strengthen the acquisition workforce, the backbone of our system. We are committed to a sustained management focus on growing both their capacity and their capability to improve acquisition outcomes and agency performance.

This week, OFPP released an Acquisition Workforce Development Strategic Plan to help civilian agencies align their workforce needs with their acquisition profiles to determine capacity and capability needs over the next 5 years. OFPP concluded that an increase in the acquisition workforce of 5 percent is needed at most, if not all, civilian agencies. The plan calls for agencies to take immediate steps to increase their contracting workforce and establishes an annual process led by OFPP to focus on long-term planning that addresses the growth and development needs of the broader acquisition workforce, including program managers and contracting officer technical representatives.

Across all of our efforts, we are focused on achieving tangible results. Agencies are identifying savings of 7 percent and have already begun saving money through better sourcing decisions. Agen-

cies have initiated pilots to determine their multi-sector workforce needs so they can make reasoned choices to rebuild a critical capacity and potentially save money. Agencies are building workforce capacity and capabilities to support and sustain better acquisition outcomes. Regulations have been enacted to prohibit rollovers and to require collection of data on contractor past performance.

Overall, while we have made progress across the last several months, much work remains to be done. We have a lot of work to do. Agencies must implement changes and achieve results. OFPP needs to issue further guidance and provide implementation assistance and strengthen its oversight of agency progress and performance. We look forward to hearing your feedback and working with the Committee to build a stronger acquisition system to better deliver results to our taxpayers at a lower cost.

I am happy to answer any questions you have. Thank you.

Senator McCASKILL. Thank you.

Let me just start with this observation. I have a quote here from a GAO report in 2000 commenting on the acquisition workforce. "The Government's hiring, training, and retention practices have not been oriented towards maintaining a balanced, stable workforce and ensuring adequate emphasis on career development, training, and orderly succession planning." That is one quote we picked out, and frankly, we had volumes of them that we could have picked out from so many different IG, GAO reports over the years, particularly a great number of them in the aftermath of the contingency in Iraq and even in Bosnia dealing with the contracting issues and problems as it related to contingency contracting.

I have got to tell you, I smell the sincerity, I sense it, but what is it about the way you are going to do this—what are you bringing to the table that is going to actually bring about the pressure for results? I mean, if you had to identify how you are going—I mean, this is a mammoth organization to reform on every topic you have talked about, whether it is the blending of contracting employees with government employees in ways that sometimes is appropriate, that sometimes is not; whether it is figuring out how we make contracts more competitive and how we make contractors perform well and reward good behavior and punish bad behavior. Any one of those is huge.

What are your strategies that you can tell us today that when we come back and talk about this a year from now and 2 years from now and 3 years from now, that you will look back on your testimony and say, see, I told you so. We have an idea. We have tools that we are going to put in place that are going to require that we move this giant battleship in this ocean of contracting problems.

Mr. ZIENTS. Yes. I agree it is mammoth, so it is a big challenge, and it is not something that is going to be resolved in 6 months. It is a multi-year effort. I believe we have done a good job of getting going, of jump-starting the effort, and I think putting the stake in the ground that we are going to save \$40 billion is very clarifying. So we are starting with the major result first.

And by asking every agency to find their share of the \$40 billion by November 2, and then reviewing those plans and tracking those

plans to ensure that they are real, that they have the appropriate detail, and that agencies are making progress against those plans, and will achieve it by the end of fiscal year 2011, is, I think, the major step to initiate these efforts. It is not the only step, but it is the major one.

The second one is to recognize that there is a category of contracts—cost reimbursement contracts, non-competitive contracts—that are disproportionately risky for the government. They are disproportionately likely to lead to bad outcomes in terms of fraud and abuse and waste. So we have said, in a similar fashion, you need to reduce it by 10 percent. You need to do it in fiscal year 2010, and we are going to track your progress against it. We are going to look at it mid-year, and we are going to look at it at the end of the year.

Based on those results, based on what we learn, we will set future targets for further reductions to ensure that we are reducing our reliance on cost reimbursement contracts, and that we are increasing competition and optimizing competition across the government.

Third is the workforce itself. There has actually been decent progress on building the size of the workforce, which I think is only one part of the equation. People tend to focus on the size. I think it is important. It probably does need to increase. But it has actually increased at about 6.5 percent the last couple of years. We believe there is some growth in fiscal year 2010. We don't know that yet because we just entered fiscal year 2010. And you couple that with our very strong guidance that there be a minimum increase of 5 percent in fiscal year 2011 and you have an acquisition workforce that has grown by 20-plus percent in fiscal year 2011 versus the prior 3 years benchmark, if you will.

That is only half of the equation. We have to build their capabilities. We have to figure out what competencies they don't have, and we need to figure out how to train them and certify in those competencies. And we need to consider that we have the challenge of some of our most experienced, best people being likely to retire relatively soon, so we have to do appropriate succession planning there, too.

So I think we have jump-started efforts. I think we are headed in the right direction. I think we are going to have tangible management results. I think we have a lot more to do. We have made some policy changes through the FAR. There is more policy work to be done. We have not yet done guidance explicitly on "inherently governmental." That is an unbelievably complex terrain, and we will have guidance out by the end of the year. But that is a terrain that I would imagine we will have to take several shots at. We are not going to do it all at once, but we are going to start making progress on it.

So there is a lot of work to be done. A lot of what you talked about in your opening statement, I agree with. We are not where we want to be ultimately. I think we are in a pretty good spot 6 months in, post-March 4, but we have a lot of work ahead; and I look forward to getting your feedback on what that work should entail.

Senator McCASKILL. Well, you have got some low-hanging fruit, that you can do quickly. I think the hard work is something that you are going to have to really stay on.

Let me ask you about the \$40 billion number. Is there going to be another number for the following year? I mean, is there a plan, that there will continue to be an actual number goal of savings for these agencies throughout the 4 years of the Administration?

Mr. ZIENTS. As you have seen in each one of these activities, I am a big believer in putting a stake in the ground and driving results to that number, or hopefully beating that number. So I think we will learn a lot from the \$40 billion exercise, and I think we will then be in a very good position to determine what the next stake in the ground is.

Senator McCASKILL. Yes, and I can't—I think it is really important that we have measurables. You know this well, because in the private sector, there is the ultimate measure: Is the company making money? For government, that is much harder, because there is no bottom line. It is about performance, and it is about effectiveness and efficiencies.

I think from this Subcommittee's standpoint, I am confident that the more stakes in the ground that you can plant, the more measurables and deliverables that we can measure you against in terms of progress you are making, I think the more responsive these massive agencies are going to be to your direction.

Mr. ZIENTS. I agree 100 percent. The President, with you at his side, put a \$40 billion stake in the ground. That is very clarifying. And I believe we need to make sure each agency contributes its share. On high-risk contracting, the first stake in the ground, a 10 percent reduction. There will be additional stakes in the ground. Acquisition workforce, we need to grow it. We are. There is a stake in the ground as to a minimum there.

So I think that the basic philosophy here is a management philosophy of setting a goal and driving organizations through monitoring against those goals, sharing best practices, coming up with corrective action plans, where appropriate, to get us there. But we are going to learn a lot through this process—

Senator McCASKILL. Yes.

Mr. ZIENTS [continuing]. As to regulatory changes and other things that we need to contemplate.

Senator McCASKILL. There are not probably very many people in Washington that are looking forward to November 2. I am. I want to see these plans. I want to see what these agencies say. I want to see—now, are they going to be available to the public, what they submit in terms of their November 2 plans for the \$40 billion?

Mr. ZIENTS. I believe that on November 2, we will be seeing them for the first time, too, in that form. We have been working along the way. I think we need to have a period of time where we have a deliberative process and work with the agencies as to the agency's areas that they are going to address, their progress and how they do. That, we will make transparent and public.

Senator McCASKILL. OK. Well, just as quickly as it can be transparent and public, the happier I know that the Members of this Subcommittee will be, and I think it is important that we remain mindful of the President's commitment to transparency, that there

is a new era of everybody seeing how the government is doing and we want to be able to look over your shoulder. As painful as that is sometimes, I think it is important—

Mr. ZIENTS. I think you have the combination of the \$40 billion, which is a commitment from our President, and transparency, so the combination will lead to the result that you are hoping for.

Senator McCASKILL. Senator Bennett.

Senator BENNETT. Thank you, Madam Chairman.

Where did the \$40 billion number come from?

Mr. ZIENTS. It is seen as based on some of the research that was done prior to my arrival as a realistic goal for a couple-year period of time. I think that—as the Senator asked—we will learn from this. I hope we can beat \$40 billion in this round, and based on what we learn, if it really is truly low-hanging fruit, then we will have a \$40 billion or greater goal in the next round. If we are more efficient and there aren't as many low-hanging fruit, then the goal will be determined based on what we learn through this. So it was seen as a goal that was a worthy goal, i.e., it will require a lot of hard work, a lot of focus, and at the same time, if we do have good execution, or arguably great execution, it is a goal that we believe we can achieve or exceed.

Senator BENNETT. So you make reference to research that was available to you that was done previous to your coming in. Help me understand it a little more. What went into the decision that, OK, \$40 billion is really the number? Was there an analysis of excess fat that you think you found in various agencies?

Mr. ZIENTS. Yes, I think there was—again—

Senator BENNETT. You can see where I am going. I want to avoid a completely arbitrary number.

Mr. ZIENTS. Understood. And I think that given that it was set out relatively early in the Administration, it is not as rigorous in terms of its analytics as it will be going forward, when we are deeper in. That said, it was based on talking to industry experts, talking to contracting officers across government, across the whole acquisition terrain, looking at GAO reports on waste and other contracting insights. So it was triangulated, but it was not based off of benchmarks. The way we would have done it in the private sector, clearly, would have been to benchmark it—

Senator BENNETT. Right.

Mr. ZIENTS [continuing]. And we would have looked at other competitors and understood how they are doing. Unfortunately, there aren't those types of competitive metrics. There was some internal benchmarking.

I feel good about the number. It is a number that, as I have gotten deeper in, feels like it is not a pipe dream, because I think if you set a number that is unrealistic, people do not rally behind it. At the same time, if you set a number too low, you don't push yourself. You don't find the incremental creative idea.

So I think it is set at that level that is going to require a lot of hard work, some sleepless nights, and at the same time, it is a number that we can achieve.

Senator BENNETT. OK. Now, the 7 percent of baseline spending, is that tied to the \$40 billion? Is there a connection there?

Mr. ZIENTS. That is what it is. That is the math of the \$500 billion plus—

Senator BENNETT. I see. You did the baseline spending and the \$40 billion popped up?

Mr. ZIENTS. The baseline spending was—the analysis we did was based on what were we spending, going back to your previous question. The \$40 billion is 7 percent of the roughly \$530 billion that we were spending in fiscal year 2008.

Senator BENNETT. Yes. OK.

Mr. ZIENTS. The baseline part of it is to adjust for certain one-time events and to create more of a baseline, so to take off one-time events.

Senator BENNETT. All right. I am the Secretary of Interior. I get this directive from you. What do I do?

Mr. ZIENTS. You pull together a cross-functional team, as I think we have addressed contracting too many times in a stovepipe. And the contracting officer is responsible for the procurement, but is not responsible, or solely responsible for developing the requirements or ensuring the implementation of the contract. So you pull together your senior team. You say, we have a goal. We have a goal that is probably multi-billion dollars, given the size of Interior. We need to pull together how we are going to do this.

Where are we contracting out services that we are not getting a good return for? To your point earlier, where have we been sitting on a contract for 5 years and just renewing it the sixth year? Where do we need to compete because the marketplace has changed? Where can we pool our purchasing power with the purchasing power over at Agriculture and really, truly leverage the government's purchasing power and get a better price?

Senator BENNETT. That sounds wonderful, but I don't see the Secretary of Interior and the Secretary of Agriculture talking about that unless they get a little nudge from you.

Mr. ZIENTS. Well, the nudge has come. I think it is actually the deputies that are the point people here.

Senator BENNETT. OK.

Mr. ZIENTS. They are my colleagues through government. I chair the President's Management Council, which meets monthly. The Secretaries, as all of you know, have forward or external—

Senator BENNETT. So you chair a council that consists of all of the deputies?

Mr. ZIENTS. All the deputies across.

Senator BENNETT. Good.

Mr. ZIENTS. But I think you are right. I would hope the Secretaries are cognizant and aware and are supporting their deputies in this. But the deputies own this, and it is being driven down in the organization through cross-functional teams.

Senator BENNETT. All right. Now, I discover something that, in order to meet your goals, I would cut out or make a change and everything will be wonderful, except that I become convinced from a management point of view that we shouldn't be cutting that, that we are, in fact, getting the value that I spoke of where it is. Do I have an avenue for an appeal on this one. And say, look, in my department—and now I am no longer Secretary of Interior—but whatever mythical department I am Secretary of, I say, we have

a different circumstance, and we think that 7 percent, in fact, will end up creating problems that will end up costing money. Do I have the right to appeal from the 7 percent?

Mr. ZIENTS. Well, I guess my going in is given how much money we spend, how fast it is growing—

Senator BENNETT. You are just saying that won't exist?

Mr. ZIENTS. No. I mean, I am skeptical—

Senator BENNETT. I think you may well be right—

Mr. ZIENTS. Well, I am skeptical, given that we have doubled our contracting across the 8 years, given, as you pointed out, we don't leverage the government's purchasing power very effectively, given that we have an acquisition workforce that is over-stretched and under-trained, that people can't do 7 percent better. So I am extremely skeptical, and I think I would push back and say, go do it again.

Bring forward the best possible way to get there. If it is a genuine exercise and going from 6 to 7 percent really requires cutting to the bone, I guess we have to reevaluate. I come into it with a lot of skepticism that we can't be 7 percent—

Senator BENNETT. Yes, and I would, too, and I think that is a healthy attitude on your part. But there are differences between departments. There are departments where outsourcing or contracting makes more sense than others, and I guess by taking 7 percent, you say, well, you start wherever you are. But there may well be a circumstance where, as I get into this, I discover and say, wait a minute, here is an area where we probably should be contracting more that we have just discovered that we didn't realize.

Mr. ZIENTS. Well, presumably that would have an offset to your private sector example. You would be saving money relative to the sweeping of the factory floors.

Senator BENNETT. Yes. I see.

Mr. ZIENTS. That has an offset.

Senator BENNETT. OK. Yes.

Mr. ZIENTS. But just to clarify, there is, the business expression, a real 80/20 here.

Senator BENNETT. Yes.

Mr. ZIENTS. I mean, there is a handful of agencies—DOD is two-thirds—

Senator BENNETT. Right.

Mr. ZIENTS [continuing]. Or maybe closer to 70 percent. You add about six more agencies on—

Senator BENNETT. A target—

Mr. ZIENTS [continuing]. We are at 90 percent. So this is not a 150-agency-equal exercise. This is a handful of agencies—everyone is doing it. There are 23 CFO Act agencies that matter most here.

Senator BENNETT. I see. I think you are right on that. Thank you, Madam Chairman.

Senator McCASKILL. Senator Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Thank you, Mr. Zients, for your service. I am really very happy where you are. I have sat up here for 5 years working on these issues and been, quite frankly, very frustrated during the Bush Administration that much was not accomplished.

I would like for you to talk a little bit more. The problem I see in contracting—there is no question, you have a shortage of contract officers and——

Mr. ZIENTS. Yes.

Senator COBURN [continuing]. Procurement officers. But the biggest problem is you have a shortage of experienced contract officers and procurement officers. What are the plans to train them up to the level where they can actually run the projects, be responsible for the contract, look at not just cost and performance, but also accomplishment? In other words, there has to be a plan with this.

Mr. ZIENTS. Yes.

Senator COBURN. We have spun the wheels for the last 7 years and not accomplished that.

Mr. ZIENTS. I agree, and I think in the last 7 years, it has gotten a lot worse because I think if you were experienced in the contracting sector, you probably weren't that happy coming to work each day, and you had plenty of opportunities to jump to the private sector. So I think it is a bad situation. It is why I believe that it is not just the number of contract officers.

Senator COBURN. Right.

Mr. ZIENTS. It is really the capabilities and the experience. So there has been a successful program, an internship-type program, to bring people in at the entry level. We are now repeating that mid-career. So there is an opportunity, I believe, given how interested people are in serving and the state of this economy, to bring in people who are more experienced. That will help. It is not the majority of the strategy, but I think it is a significant contributor.

The majority has got to be better training, and we have done competency surveys to figure out what the most important competencies are. We have to get much more targeted in our training and our certification, and I think we just need to invest more money in it to ensure that we have the seniority and the set of capabilities that we need. Further, we have to make sure we retain those that we have, and do the right succession planning.

But you are right. There is a huge return on our investment. How do we get to 7 percent? How do we get to numbers beyond 7 percent? We get great people doing this, and it is not just the contract officers. It is the project managers. It is the technical representatives. They have to work as a team, and we have training needs across the whole spectrum.

Senator COBURN. I was very impressed to see past contractor performance used in evaluating future contracts. As you know, the Defense Department, just out of stimulus money, \$30 or \$40 million to contractors who were under investigation for fraud, and yet we gave them contracts. So you have put into place something that should cure that illness, and I am glad to see that is there.

One other question that I had deals with competitive bidding. According to the Government Executive Order on October 20, \$7.8 billion of the more than \$16 billion in Federal contracts awarded under the stimulus had not been competitively bid or fixed price. What is the guidance to the agencies on when to make that decision?

Mr. ZIENTS. Well, I think on the \$7.8 billion you reference, the majority of that is not your first category of competition. It is your

second category of cost reimbursement and disproportionately. That is DOE, unfortunately, not because of what they do, what they do is very important, but given the nature of their work, it leads to more cost reimbursement-like contracts.

Senator COBURN. Right.

Mr. ZIENTS. So the competition overall on recovery benchmarks favorably versus our normal baseline spend.

Senator COBURN. OK.

Mr. ZIENTS. That said, do I believe we need more competition in all of what we do? Absolutely.

Senator COBURN. Yes.

Mr. ZIENTS. So recovery is actually doing a little better, not a little worse. You have to dig a little deeper to see what is going on. But competition across the government needs to be enhanced.

Senator COBURN. Are you working specifically any with extra guidance to GSA? I would just note that your staff might want to go back to past hearings that we have had over the last 4 years on GSA. We are the biggest purchaser in the world of everything. The testimony that this full Committee has had before us, specifically the Federal Financial Management Subcommittee, is that GSA doesn't get the best prices, and that even the best price for the same quality, agencies aren't forced to use, so they will buy something higher. There is a tremendous amount of money that is bought through GSA that could be received and could be a source for saving you money. I would recommend to you looking at that.

Mr. ZIENTS. Having been in the private sector at medium-sized firms, trying to flex our muscles on purchasing power, it is lovely to be here as the world's largest purchaser—

Senator COBURN. Nobody should be able to buy cheaper than this government.

Mr. ZIENTS. For example—and it is good we did this—but overnight delivery, which is the ultimate commodity, we consolidated in the private sector a decade or two, because it is the same thing to have FedEx or its competitors. You go to one and get the economies of scale. We just turned to that in the U.S. Government in 2005. Better late than never, but just in 2005. And we still, to your point, haven't fully consolidated.

How many of those opportunities exist across government, to leverage our position as the world's largest purchaser and get better prices and better service? I think that is tremendously exciting. Is that baked into some of the 7 percent? Of course. But across the next several years, we have got to position ourselves consistent with that purchasing power.

Senator COBURN. Use that leverage, yes.

I want to go to one other point and then I will finish up. Senator Bennett talked about an agency where there was a, maybe we don't need to, but let us say it is just a blank, and that we are getting a good value now. We assess we are getting a good value. There is great value in competitively bidding that again anyway, because it makes the person who has the contract want to keep the contract, which it gives you a great way to lower the cost. Even if you don't think you are going to get a lower price, you are going to get a lower price.

Mr. ZIENTS. When I think about what we did in the private sector 5 years ago and how technology and other advances have driven productivity, we can do it for a lot less money——

Senator COBURN. Right.

Mr. ZIENTS [continuing]. Whatever it might be, and we can do it better for a lot less money. So the idea of sitting on a contract for 5 or 6 years, and being content with it, given all the advances in those contractor communities, doesn't make any sense.

Senator COBURN. Right. I agree. Thank you, Madam Chairman.

Senator MCCASKILL. Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Madam Chairman.

First of all, let me ask unanimous consent that my opening statement be inserted in the record.¹

Senator MCCASKILL. Without objection.

Senator COLLINS. Thank you, and thank you for calling this hearing. I think this kind of oversight is so important.

I worked with many Members of this Subcommittee to author legislation that required OFPP to produce an Acquisition Workforce Development Strategic Plan. The law specifically requires the plan to have an actionable, specific 5-year implementation plan to increase the size of the acquisition workforce and to operate a government-wide acquisition internship program.

Similarly, the President's March memorandum identifies the development of the acquisition workforce as a pillar for strengthening procurement practices. After all, we can pass all the laws and reforms in the world. You can issue through OFPP and through OMB directly all of the guidance. But if we don't have a well-trained and sufficiently-sized workforce, our efforts are not going to succeed.

And with that background, I have to tell you that I am very disappointed in the report that OFPP and OMB put out yesterday on the acquisition workforce. This is pursuant to the law that we wrote and pursuant to the President's memorandum, and it lacks adequate analysis and substance, in my view. It really is boilerplate. It is standard materials. It reiterates a list of general human capital planning guidelines. It creates various interagency working groups. I am tired of studies. I am tired of working groups. I want to see action, and in my view, this plan simply delegates to each agency what the law required OFPP to do itself.

So I know that is not a happy note to start on. I know you are working hard and there is a lot that is good that is coming out of your effort. But if we don't solve the workforce issues, it is not going to matter that we have good guidance. There is not going to be anyone to do the oversight, to better define the requirements—go ahead.

Mr. ZIENTS. I agree 100 percent, and we talked about it, I think, before you came in, that central to all of this is the acquisition workforce. Without it, none of this is going to happen.

Let me take what I think are the two pieces. One is the size of the workforce, and the second is the capability. On the size, the 25 percent number that was recommended——

¹ The prepared statement of Senator Collins appears in the Appendix on page 25.

Senator COLLINS. By us.

Mr. ZIENTS. I am a little wary, and this is going to be part of—this might be a philosophical difference or a different approach—too many efforts being across the whole government, sort of a sense of one-size-fits-all because each agency is so different in terms of what it does day to day on the contracting front, what is the current status of its acquisition workforce, what the gaps are between what it is today and what it should be. So that is part of the philosophy of making sure that this planning is primarily done at the agency level rather than at the macro government level.

That said, on the 25 percent, that 25 percent was articulated before we understood the growth in 2008. The growth in fiscal year 2008 was 6.5 percent. The growth in fiscal year 2009 looks like it is going to be about the same: 6.5 percent. So we are up to 13 percent increase. We think there will be growth in fiscal year 2010. We are asking for a minimum growth of 5 percent in fiscal year 2011 as part of that guidance. We are somewhere north of 20 percent growth since that 25 percent stake in the ground.

So, again, I am wary of whether each agency needs 20 percent, but overall, the government will have grown its acquisition workforce, if this math is correct, by about 20 percent by fiscal year 2011. That is a good increase.

I believe that on the capability side—I am coming back to Senator Coburn's question—we have a lot to do. We need to bring people in not just at the entry level, we need to bring people in mid-career. We need to retain individuals who are experienced for longer and have them not retire or go to the private sector. And then we have to train. And we have been doing competency studies to figure out where our gaps are. We have created functional advisory boards to figure out what the most targeted, most important training is.

So I think we are doing a lot. We are not there. We have a lot more to do. I would be interested in getting more of your feedback on where you feel like we really haven't done enough. But I think it is fair to say the train has left the station. I think it is moving pretty fast. But trust me, I am going to have the pedal to the metal and try to move it even faster to get more done.

Senator COLLINS. Your point that a one-size-fits-all approach should not be taken is a good one. However, I would note that in your report, you say the analysis led us to conclude that an increase in the acquisition workforce of at least 5 percent, except in unusual circumstances where analysis shows that it is not to be required, is needed at all civilian agencies——

Mr. ZIENTS. Agreed. But then the main planning exercise of what level of people we need, and how many we need, we believe is done at the agency level; that it is not an academic exercise. It is a modeling exercise if you try to do it across the board. It becomes real, it needs to be tied to budgets; and it needs to be implemented, and that I believe needs to be done at the agency level.

Senator COLLINS. I agree with you that there are some agencies, DOD is an example, where there has been such a diminution of the acquisition workforce that probably more than 5 percent——

Mr. ZIENTS. Yes.

Senator COLLINS [continuing]. Is needed, given the huge increase in contract dollars and contract actions. So I am not arguing for one-size-fits-all, but I believe that you need to understand that there will be resistance to this in some agencies despite their evident need because they are going to want to spend the money on other things.

Mr. ZIENTS. Just to clarify, this guidance that you are referring to only applies to the civilian agencies.

Senator COLLINS. Right.

Mr. ZIENTS. So DOD has its own workforce plan, as you know—

Senator COLLINS. I do know that.

Mr. ZIENTS [continuing]. And they are massively ramping up in terms of number of people and training, and they have a very good training facility right now. So we are talking about the 30 percent.

I am sorry, I missed the second part of—

Senator COLLINS. Well, I have been at this a long time and I have been on this issue for a long time, and I know for a fact that it is not a priority in many agencies to build up the acquisition workforce.

Mr. ZIENTS. Agreed.

Senator COLLINS. It is far more fun and interesting and press-worthy to put the dollars into program people, or to launch some new initiative.

Mr. ZIENTS. It is similar to training across the board. It is the favorite thing to cut, because you don't see the instant return. We are receiving the first piece of the acquisition workforce plan November 2 with the 7 percent savings plan. We will incorporate that into the budget process for fiscal year 2011, which is ongoing at OMB right now. In the future, acquisition workforce plans, the annual plan of how many people do you need, will be completed in March or early April, and that will then dovetail with the following year fiscal year budget planning process. And so we at OMB will make sure that it is front and center and part of agencies' budgets the President recommends to Congress.

Senator COLLINS. I appreciate that commitment and I can assure you we are going to hold you to it because it is important.

Senator McCASKILL. I am going to do one more round, so if you—

Senator COLLINS. OK.

Senator McCASKILL [continuing]. If you want to hold and we will do another round.

Senator COLLINS. Sure.

Senator McCASKILL. OK. Great. A couple of things I wanted to bring to your attention. First, will we at least know on November 2 who has submitted on time and who still hasn't submitted? Is there any kind of public accountability of who is going to make the mark of November 2? Have you made that decision?

Mr. ZIENTS. I don't think we have made a formal decision on that, but my bias would be that we tell you, or give people a little bit of a grace period, not long, and we report who has reported. I would anticipate everybody will be in. I would be disappointed if we don't have everybody in.

Senator McCASKILL. As an old auditor, the more people know when someone is not doing it——

Mr. ZIENTS. Yes.

Senator McCASKILL [continuing]. The more likely you are they are going to do it the next time. So even if you want internal time to look at what they have submitted before we have a chance to look at it, I certainly would hope that we would know quickly if we have any agencies that are lagging behind in terms of making this a priority in terms of planning.

Mr. ZIENTS. Will do.

Senator McCASKILL. There are a couple of things that are really irritating to me about the way agencies behave. One is the rush to spend money by the end of the fiscal year. That means that sometimes contracting officers are really pushed by management at these agencies to put through contracts very quickly at the end of the year to buy stuff because there is an existing contract that they can pull off of.

Do you have anything in the works to plan for identifying this when it happens? It seems to me with today's technology, you ought to be able to pull up a report near the end of the fiscal year and see the rush that all Federal agencies have to spend their money, because they don't want any of us to think they don't need every dime they have gotten because that means we might not give them as much next year. And so there is this whole thing, spend what you get, because if you don't, you won't get as much the next time, and it really brings about so many bad decisions in purchasing and contracting in the last 90 days of the fiscal year.

Mr. ZIENTS. Yes. I think the things that we have talked about here to increase competition and reduce high-risk contracting is important. We have not done a special focus, and I think it is a good idea, on how do you ensure that, given that mad rush, you don't have lack of competition or higher-risk contracts as a result. So I think paying special attention there makes a lot of sense. It is not something we have yet addressed, but we will.

Senator McCASKILL. I have worked in a lot of government buildings in my career and I always know when it is the end of the fiscal year, not by the change in weather and not by the month on the calendar, but rather by glancing around the building to see all of the boxes that start arriving. It is as certain as the sun coming up that this happens, and it is in the category of low-hanging fruit.

Mr. ZIENTS. I think it is a very good point, because if you take a stretched workforce and then try to have them work even harder in a compressed period of time, inevitably, you are not going to be as rigorous. So I think that is an area that we should pay special attention to.

Senator McCASKILL. And in some ways, I know the contracting workforce doesn't have to be separated out from these agencies. But in some ways, they should begin to get some kind of IG-like protection around them. And by that I mean I would hope you would look at ways to catch them being good.

Contracting personnel that are doing the right thing, despite a pressure from their agencies to do other things, to me, you should seek out those contracting people that are trying to hold the line and say, no, we are not going to do that because we don't have

enough time to really bid the contract appropriately. Or, no, we are not going to renew that contract just because we can and just because it is easier and just because it has always been done that way. I don't know what you have got out there to reward that kind of professionalism and that willingness to kind of show some independence as it relates to contracting processes.

Mr. ZIENTS. I think there are some recognition vehicles or awards today. There are not enough. This is a group that, I think, has not been—has not enjoyed a glory period of time in the last 8 years and I think we need to help lift them up and celebrate their victories, and I think some of those victories will be around driving acquisition savings, to your point. Some of it will be on holding the line. So I think recognition is very important here and it is something that we have jump-started some efforts on already.

Senator McCASKILL. One of the guidances is a requirement that government agencies select the candidate organization for pilot programs to analyze whether the agency has relied on contractors too much. Have these agencies made these candidate selections and can you give us any information about how these selections are—have they reported what the selections are?

Mr. ZIENTS. They have. To your earlier question about November 2, with an, I believe, October deadline; everybody has selected. I think it is very important here that we maintain some confidentiality during the deliberative process because you don't want to open up to the world what is being examined for potential insourcing or change—

Senator McCASKILL. Right. That would not be good although we might get a lot of lower contract prices.

Mr. ZIENTS. It is interesting, though, in that IT tends to be an area where a lot of people are focused right now. About a third were in the IT terrain. And a significant number were actually in the acquisition workforce itself, so people having contracted out help for acquisition and thinking, that is—

Senator McCASKILL. Contractors watching contractors.

Mr. ZIENTS. Absolutely. Well, actually, contractors helping to make—

Senator McCASKILL. Contract decisions. Right. Both.

Mr. ZIENTS. So you can see how that would fall in the category of potential over-reliance and something that should be looked at carefully.

Senator McCASKILL. And finally, another discovery I made when I got here that I still shake my head about, and I would hope that you would work this into the reforms that you are doing in contracting and with these acquisition workforces, is this phenomena we have in the Federal Government that you can buy stuff from other agencies and the other agencies make money on it. I mean, I was shocked when I found out in a very early oversight hearing I attended that they were actually advertising. One agency was advertising, buy your stuff here, to another Federal agency because they were getting a cut because of the contract they had. Well, there is something very wrong about that—

Mr. ZIENTS. Right.

Senator McCASKILL [continuing]. Just fundamentally wrong, that somebody had the time to try to advertise to another part of the

government that you should be buying your stuff from another part of the government because then they got money from that that they added to their budget.

Wherever there is a good price, everybody in government ought to access it. This is—it was bizarre. And to my knowledge, nothing has been done about it, that it is still happening.

Mr. ZIENTS. Well, it is bizarre and it should not be happening. Strategic sourcing, leveraging the government's purchasing power, should be happening. So agencies should be purchasing together where there are opportunities to do it—

Senator McCASKILL. Yes, but one agency shouldn't be making a cut off of—

Mr. ZIENTS. I completely agree.

Senator McCASKILL. Yes.

Mr. ZIENTS. And I think that is an area that GAO and others have reported on. I think it is an area, and I don't have the details here today, where OFPP has spent some time, and with the new Administrator it will spend more time. I agree with you. It is bizarre—at best, bizarre.

Senator McCASKILL. I want to warn you that it won't be soon, but I am sure that we will have another hearing that we will actually look at not the buying of contractors for doing government work or the securing of contractors to build things for the government, but rather just buying stuff—

Mr. ZIENTS. Yes.

Senator McCASKILL [continuing]. How that is occurring and what the positives and negatives are about that. And I would hope by the time we have that hearing, probably sometime next year, that you would have somebody begin to look at this issue of are we leveraging the volume that we have in the Federal Government to drive price.

Mr. ZIENTS. Oh, I think it is our biggest opportunity, so we will have a big effort behind it and I look forward to the hearing.

Senator McCASKILL. Great. Senator Bennett.

Senator BENNETT. Thank you. Senator Collins had to leave and left behind a question that is in the same area as the ones you are asking about, the blanket purchase agreements (BPAs). She is quoting a September 2009 GAO report that says the Federal agencies obligated as much as \$7.9 billion under schedule blanket purchasing agreements, and in about half of the sample BPAs reviewed, they found no evidence that an agency sought discounts when establishing these blanket purchasing agreements and suggests that such opportunities were missed when the estimated amount was in the hundreds of millions of dollars.

Then the heart of her question, I understand the competition guidance issued yesterday did not specifically address BPAs. Would you consider taking actions to ensure this contracting tool is not misused? Or, I would add my own comment, not ignored, because apparently that is the bigger problem.

Mr. ZIENTS. That is a significant problem. I think we believe the GAO report is correct and it is something that we will address.

Senator BENNETT. All right. Fine. Thank you, Madam Chairman.

Senator McCASKILL. Thank you.

Senator BENNETT. I have nothing further.

Senator McCASKILL. I think the President has made a wise selection when he selected you to do this job. I think you have got the right combination of experience in the private sector and a really weird passion for this stuff. [Laughter.]

Mr. ZIENTS. Very strange.

Senator McCASKILL. It is strange. I completely relate to it.

Mr. ZIENTS. Maybe bizarre.

Senator McCASKILL. Yes, maybe bizarre. I think you are excited about making this government more efficient and effective and more cost conscious, and I think you know how badly we need that kind of passion. Let me just tell you, I will not predict success unless you hold on to that passion because this is a really big monster to move. It is going to take you being cheerfully enthusiastic every single day and giving all the people that work with you almost a zeal, a missionary zeal for the kind of reforms that are necessary.

There is a lot of low-hanging fruit and it is not going to take a huge effort to do a little bit better than we have been doing. But it will take a lot of effort to make the kind of reforms that I know that you see as possibilities because of the massive problems that you face.

So I am glad you are there. We are going to continue to look over your shoulder.

Mr. ZIENTS. Please.

Senator McCASKILL. It is important that we ask tough questions. This may be the easiest hearing you have in front of this Subcommittee over the next 4 years, because we will be looking to see if these benchmarks have been met and if enough deliverables and hard, fast goals are being set for these agencies and that you are staying on them, and we will continue to press to make sure that all the information that is out there is available to the public as quickly and as efficiently as possible.

I thank you very much, and I want to once again thank your staff. I know that there was around-the-clock work. There is good news and bad news about that. The good news is, the staff was willing to work around the clock to get ready for this hearing. The bad news is they had to. And hopefully, as time goes on and you have been there longer and the staff can prepare a little bit more ahead of time so we have a little more time—

Mr. ZIENTS. Yes.

Senator McCASKILL [continuing]. Prior to the hearing to be able to digest the materials that we want to go over. But I appreciate how hard everyone worked and I certainly appreciate your time here today.

Mr. ZIENTS. I appreciate your support, and your staff has been great.

Senator McCASKILL. Great. OK. Thank you very much.

This hearing is adjourned.

[Whereupon, at 3:45 p.m., the Subcommittee was adjourned.]

A P P E N D I X

ACHIEVING THE PRESIDENT'S OBJECTIVES: NEW OMB GUIDANCE TO COMBAT WASTE, INEFFICIENCY, AND MISUSE IN FEDERAL GOVERNMENT CONTRACTING

October 28, 2009

Opening Statement for Chairman Claire McCaskill

The purpose of today's hearing is to examine the future of government contracting.

On March 4, 2009, President Obama announced that he was going to fundamentally reform the way the government does business. The President said, and I quote:

"We will stop outsourcing services that should be performed by the government, and open up the contracting process to small businesses. We will end unnecessary no-bid and cost-plus contracts that run up a bill that is paid by the American people. And we will strengthen oversight to maximize transparency and accountability. Altogether, these reforms can save the American people up to \$40 billion each year."

The President directed the Office of Management and Budget and federal agencies to work together to develop new guidelines to achieve these goals. Yesterday, OMB released guidance instructing agencies to bolster competition and improve the use of high-risk contract types, like cost-plus and time-and-materials contracts. OMB also released guidance relating to the critical need to strengthen the acquisition workforce.

This guidance follows three previous memoranda issued by OMB in July of this year. First, OMB directed agencies to make a 7% reduction in overall contract spending by 2011 and a 10% reduction in dollars spent on noncompetitive or cost-plus contracts by 2010. Second, OMB told agencies to improve the management of the "multi-sector workforce," the blend of government employees and contractors who work for government agencies. And finally, OMB told agencies how to improve how agencies collect, report, and use information about how contractors have performed on federal contracts. Taken together, these actions are expected to amount to approximately \$40 billion in savings per year.

At today's hearing, we are going to assess OMB's new guidelines to find out whether they will meet the President's bold vision for reform. I was proud to be standing with the President during his announcement this March, and I was encouraged by his commitment to eliminate the waste, fraud, and abuse in government contracts.

Today, however, I have serious concerns.

There are parts of OMB's guidance that make a lot of sense. OMB has called for agencies to develop long-term plans for the acquisition workforce. OMB has also directed agencies to develop procedures to collect and report past performance information, and to create pilot programs to improve their management of contractor employees.

But, unfortunately, there are also some significant problems. As we will hear today, OMB has tasked government agencies with developing their own plans for improving

contracting. Yet OMB has provided very little concrete guidance as to how to achieve necessary reforms.

For example, OMB's guidance on increasing competition gives agencies "guidelines" with "questions" for agencies to address, and a set of "considerations" for agencies to use in answering those questions. I accept that agencies have different needs and obligations. But OMB's guidance doesn't provide a clear way forward for any of them.

Another serious problem is the lack of accountability. OMB has committed to setting a few targets and reviewing agencies' progress toward those targets. But the guidance sets out only a handful of specific dates and deliverables. And even these are vague. OMB has not said how it will review progress for agencies, or what metrics or benchmarks the agency will use.

A third problem is OMB's failure to address other key problems with government contracting. For example, OMB's guidance does not address the need for improved planning for government contracts. And OMB has announced that its guidance on service contracts and inherently governmental functions has been delayed indefinitely.

I am also concerned that the nominee for the Administrator for the Office of Federal Procurement Policy was not announced until this month – several days after OMB's contracting guidance was already supposed to be completed. I commend the President on his nominee and look forward to his confirmation hearing next month. However, the absence of a confirmed OFPP Administrator may be an additional obstacle in the path of the President's plans for contracting reform.

Finally, OMB's lengthy delay in meeting the President's schedule for issuing this guidance is not a good omen for the agency responsible for management. Government contracting is an enormous challenge. To achieve lasting reforms, we need definite goals and detailed plans about how to meet those goals. We need to be able to measure progress and hold agencies accountable every step of the way. And we need strong leadership from OMB.

Otherwise, government contracting is just going to be business as usual. I look forward to the testimony of Jeffrey Zients, OMB's Deputy Director for Management and the Chief Performance Officer, and thank him for being here today.

Opening Statement of
Senator Susan M. Collins

**Achieving the President's Objectives: New OMB Guidance
to Combat Waste, Inefficiency, and Misuse in Federal
Government Contracting**

Subcommittee on Contracting Oversight
Committee on Homeland Security & Government Affairs
October 28, 2009



In government procurement, ensuring the best value for the American taxpayer is important under the best of circumstances, but it is crucial when our nation is at war and our fellow citizens are serving in harm's way in Iraq, Afghanistan, and in other overseas locations. In the last fiscal year alone, the federal government's contract spending totaled nearly \$525 billion.

Therefore, it was most appropriate that one of the first actions the President took earlier this year was to direct the Office of Management and Budget (OMB) to provide comprehensive guidance to assist agencies in reviewing existing contracting practices, setting competition and savings goals, and rebuilding the acquisition workforce. Thus far, OMB has issued two sets of guidance, in July and earlier this week.

As a long time advocate for stronger competition, accountability, and transparency in government contracting, I applaud the steps the Administration has taken to bring additional rigor and competition to federal contracting. For example, the requirement that each agency

reduce its high-risk contracts by 10 percent is a meaningful attempt to ensure that contracts are awarded in a transparent and competitive manner.

Many of the initiatives outlined in OMB's guidance were mandated by legislation I co-authored with Senator Lieberman during the last Congress. Our legislation:

- mandates greater competition for "task or delivery orders," under Indefinite Delivery/Indefinite Quantity contracts;
- limits certain noncompetitive contracts to one year;
- requires OFPP to clarify regulations governing the proper use of cost-reimbursement and sole-source contracts – contracting vehicles that expose the government to increased financial risk; and
- improves the linkage between award and incentive fees to acquisition outcomes so that fees are not awarded to contractors for poor work.

The OMB guidance also emphasizes the importance of proper acquisition planning and requirements development. This is a critical element of government contracting reform, but it is an element dependent on an effective acquisition workforce.

Unfortunately, on this critical issue, OMB's efforts fall short. When Congress mandated that OFPP produce an Acquisition Workforce Development Strategic Plan, the plan was to provide a specific and actionable five-year implementation plan to increase the size of the

acquisition workforce and to operate a government-wide acquisition intern program. The plan released by OFPP yesterday lacks adequate analysis or substance.

Rather than gathering requisite data, analyzing it, and coming up with a coherent implementation plan with specific details as required by the law, the Administration's plan essentially repeats known information, provides a list of general human capital planning guidelines, and creates various interagency working groups without clear direction or vision. This plan simply delegates to each agency what the law required OFPP to do itself.

The President's March memorandum identifies acquisition workforce development as a pillar for strengthened agency acquisition practices. We can pass laws and issue guidance all day, every day, but without a well-trained and sufficient acquisition workforce, our federal contracting efforts will not improve. It is disappointing to ask OMB to go back to the drawing board on this crucial component of contracting reform, but the plan provided is, quite simply, deficient.

An appropriate plan must carefully project what and how much the federal government, as a whole, is likely to purchase in the next five years. It must clearly define and account for the current and future size and composition of the acquisition workforce, particularly with the upcoming wave of massive acquisition workforce retirements. This is obviously a difficult task, requiring complex modeling and reasoned prediction. Nonetheless, I consider this a crucial missing piece in the Administration's acquisition reform initiatives, and without it, the Administration will fail to meet its objectives.

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Opening Statement of
Senator Robert F. Bennett

**Achieving the President's Objectives: New OMB Guidance to Combat Waste,
Inefficiency, and Misuse in Federal Government Contracting**

Subcommittee on Contracting Oversight
Committee on Homeland Security & Government Affairs
October 28, 2009

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A central debate in Washington is the size and scope of the Federal Government - what it should do and how those missions should be accomplished. Although we in this committee may not agree on exactly where that balance is, I would venture that it is a universal sentiment that for every tax dollar the government spends, we must strive to gain at least as much value for the American taxpayer. This is our duty, and although the accomplishment of the federal mission is paramount, it is equally important to ensure that every taxpayer dollar is well spent.

As a former businessman, I cannot help but see these two sentiments as inextricably linked. Good government spends wisely. Like a successful business, government's success relies on a good plan, measurable results, a capable workforce, and informed leadership. I am pleased to see that the President and the Office of Management and Budget (OMB) recognize the importance of planning as they develop contracting directives that are rooted in the measured and comprehensive legislation on contracting reform passed by Congress in 2007 and 2008. Since the beginning of this month, when OMB committed to releasing their new directives, I have been hopeful to find initiatives rooted in the other two components of success - a capable workforce and leadership. Unfortunately, I could not find either in these new directives.

The central themes of these directives are good, but they are not new. In the past several years, the Government Accountability Office (GAO), numerous reports of Inspectors General and auditors across the federal government, the President's Council on Integrity and Efficiency and, in 2007, the Acquisition Advisory Panel, have all produced an extensive body of work that identified the same challenges for the federal government in acquisition management. They have all identified a shortage of trained acquisition personnel; the absence of effective competition, the lack of transparency in many acquisitions, poor planning and oversight of contracts by agencies, and the frequent inability, or unwillingness, of agencies to hold contractors accountable for poor acquisition outcomes.

The recent OMB guidelines identify the same problems, but I am concerned that several years after we found consensus on where our acquisitions capabilities needed to be, we seem to be no closer to action. Reform has never been more urgent. Last fiscal year,

according to Federal Procurement Data System (FPDS), \$525 billion was spent on contractors who support the federal government's efforts to serve the American public. Many have pointed out more than half of the acquisition workforce will be eligible to retire within next several years. Currently, our acquisition workforce distribution looks like an hourglass – heavy on either end but light on people with 10-15 year experience. From a business standpoint, this is not a healthy organization. Unless immediate and drastic action is taken now, our capacity to do acquisitions in a comprehensive, business-like manner will suffer over the next several decades.

After years of extensive analysis, I am eager to witness actual results. Effective action begins with leadership, and I hope I find OMB taking the lead during this hearing when addressing some of the questions I have, such as;

- Why, in a unique moment of broad consensus on this topic over the past several years, has effecting real change in acquisitions been so difficult?
- How does OMB, through the Office for Procurement Policy (OFPP), plan to produce and manage the guidance and metrics required by Congress and the President timely and effectively?
- The various contracting policy directive's requirement that each agency increase competition and reduce its high-risk contracts is a step toward transparency and competition. This initiative will rely on careful, informed analysis by all components of the acquisition workforce. Workforce development is a pillar for strengthened acquisition practices and improved performance. Without a well trained and capable acquisition workforce, our federal contracting efforts will not improve. Will the new OMB plan provide the needed vision and blueprint to turn this around?

Integrity in the acquisition process is based on competition and transparency. This is easy to say, but in the face of bureaucratic inertia, quite a challenge to produce. It relies on a trained, professional, and appropriately sized acquisition workforce that is able to make informed market-based decisions to bring best value to the federal government. It also depends on strategic thinking at every federal agency, where clarity of mission, accountability, and an emphasis on results can guide informed acquisition decisions.

I am encouraged by the broader emphasis on competition and the acquisition workforce that these new directives carry. In government, however, it is too easy to deliberate in working groups and believe that meaningful work was done. We should all be mindful, when we speak of acquisitions policy, that every improvement we gain benefits the soldier in the field, the law enforcement officer keeping us safe, or the public servants safeguarding our health and wealth throughout the country. With them in mind, it is time for us to take action and seek real improvement in contracting.

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STATEMENT OF SEN. PAUL G. KIRK, JR.
Ad Hoc Subcommittee on Contracting Oversight of the U.S. Senate
Committee on Homeland Security and Governmental Affairs
Achieving the President's Objectives: New OMB Guidance to Combat Waste,
Inefficiency, and Misuse in Federal Government Contracting
Wednesday, October 28, 2009

Chairman McCaskill, I commend you for holding this hearing today on abuses in federal government contracting. The issue goes to the heart of the public's faith in their government's willingness and ability to spend tax dollars wisely.

President Obama has called for reforms of the current process, including greater accountability to see that federal contracts are bid appropriately.

We know that in numerous cases in the previous Administration, contractors repeatedly failed to meet their obligations, yet they continued to be awarded large federal contracts.

I look forward to today's hearing on the specific steps the Administration is taking to achieve greater fairness and competitiveness in such contracts, including its efforts to open federal contracting opportunities to small and medium-sized businesses.

In many cases, large contracts can be won only by large companies, but it's essential that small and medium-sized businesses have a fair opportunity on contracts that fit their scale.

Small businesses in Massachusetts tell me of the difficulty they face in becoming prime contractors, either because of trouble getting on the GSA Schedule or being limited to subcontracting from major corporations.

Most small businesses don't have the resources to deal with unnecessary red tape, so they're reluctant to waste time, energy and capital when the odds are stacked against them. One leader in the Massachusetts small business community tells me that "the record has been pretty dismal" when it comes to accessing federal contracts for such firms.

I'm also interested in hearing about the guidance the Administration is providing to agencies on the need for a clear distinction in the mixed federal and contractor workforce between roles that are inherently governmental and those which may be outsourced. A particular issue here is how the new guidance will respect the privacy rights of Americans whose personal information is held by federal agencies.

People deserve assurance that their private information will be protected, and that such protection will be a primary consideration in decisions on whether work must be done by the federal workforce or private contractors.

Again, I commend the Chair for holding this hearing, and I look forward to the testimony of our witness.

STATEMENT OF
THE HONORABLE JEFFREY D. ZIENTS
DEPUTY DIRECTOR FOR MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

October 28, 2009

Chairman McCaskill, Ranking Member Bennett, and members of the Subcommittee, I appreciate the opportunity to appear before you to discuss the President's Memorandum on Government Contracting and our shared interest in improving our Federal acquisition practices. On March 4, 2009, the President directed agencies, in clear and unambiguous terms, to give greater management attention to contracting activities so that we may achieve the best results possible from the more than \$500 billion in taxpayer dollars that are spent annually for contracted goods and services. The current fiscal challenge underscores the urgency of the President's direction.

My focus as the Deputy Director for Management is on creating a culture that is focused on implementation and achieving results. For acquisition, our efforts are focused on three goals. First, we will find annual savings of \$40 billion through better acquisition program practices. We will work with agencies to improve their processes and practices to identify where the most significant inefficiencies are and take immediate action to achieve real and sustainable improvement. Second, we will take the steps necessary to achieve the best mix of public and private labor resources to serve the American people. Our rules and practices must recognize the proper role for each sector and draw on their skills to help optimize government performance. Third, we will support a strong and well-equipped acquisition workforce. The quality of their

skills is inextricably tied to how we will achieve the best long term results from our contracting activities.

This afternoon, I would like to highlight the key actions to create an acquisition system that better serves the needs of our taxpayer by delivering our services more efficiently and effectively.

Acquisition savings

To achieve immediate results, OMB directed agencies to take two actions: first, develop acquisition savings plans; and, second, reduce use of high risk contracting authorities for new contract actions. These directions are laid out in OMB Memorandum M-09-25, *Improving Government Acquisitions* which was issued on July 29, 2009.

Savings plans. OMB's guidance calls on agencies to save 7 percent of baseline contract spending by the end of FY 2011. This approach is built on the premise that every agency can and must immediately operate in a more cost-effective manner and reduce inefficiencies and waste from their practices and programs. At the same time, this approach recognizes that each agency has different missions and acquisition requirements, as well as strengths and weaknesses, and therefore needs to tailor actions that best serve their specific circumstances.

There are many ways in which an agency will achieve savings from their acquisition activities. For example, agencies may:

- end contracts that do not meet program goals or that support projects that are no longer needed;
- migrate work from a T&M contract, where incentives to control cost are weak, to a fixed-price contract where the risk is on the contractor to perform efficiently;

- forego exercise of an option to extend a non-competitive contract in favor of a competition made possible after contracting and requirements officials identified new solutions to meet the agency's needs that could be met by two or more sources;
- switch from their own stand-alone contracts to contracts that were strategically sourced using the government's aggregate buying leverage to lower the prices agencies individually pay for contracted goods.

Savings plans are due to OMB by November 2, 2009, and will lay out the specific steps an agency will take along with projected savings for each identified step. To establish projected savings, agencies will explain the difference between what would have been spent in the absence of the savings initiative and what the agency expects to spend as a result of pursuing the initiative. The plan will serve as a baseline for agency action and OMB will periodically review progress on the plans.

High risk reduction targets. Noncompetitive and cost-reimbursement contracting carry potential risk of overspending taxpayer resources. Noncompetitive contracts place agencies in the position of having to negotiate contracts without the benefit of a direct market mechanism to help establish reasonable pricing. Cost-reimbursement contracts, as well as time-and-materials and labor-hour (T&M/LH) contracts, provide limited incentive to control costs.

OMB's guidance requires agencies to establish reduction targets for high risk contracting. Specifically, the guidance instructs agencies to reduce by at least 10 percent (using FY 2008 as the baseline) the combined share of dollars obligated through new contracts that are noncompetitive, cost-reimbursement, or T&M/LH.

To help agencies meet their risk reduction targets and achieve sustained improvement in their acquisition practices, OMB's Office of Federal Procurement Policy (OFPP) has established initial guidelines to help Chief Acquisition Officers (CAOs) and Senior Procurement Executives

(SPEs) as they think about ways to reduce high risk contracting. The guidelines are framed by the following three key questions:

- (1) How is the agency maximizing the effective use of competition and choosing the best contract type for the acquisition?
- (2) How is the agency mitigating risk when noncompetitive, cost-reimbursement, or T&M/LH contracts are used?
- (3) How is the agency creating opportunities to transition to more competitive and lower risk contracts?

The guidelines also include a set of considerations that OPPP developed for CAOs and SPEs to identify opportunities for improvement. For example, the guidelines encourage agencies to:

- Consider “hybrid” contracts for larger-scale projects that allow the agency to choose between a fixed-price, cost-reimbursement, or T&M/LH basis for payment based on the nature of the requirement (e.g., the level of uncertainty, complexity, pricing history).
- Analyze the comparative benefits of awarding a new contract using full and open competition as opposed to placing an order under an existing contract -- what some would refer to as “prequalified” or “limited competition.” At a minimum, agencies should evaluate their requirements against each competition strategy to determine which one optimizes their ability to get the best results from the marketplace.
- Use contract review boards and/or peer reviews to challenge plans for meeting requirements through high-risk authorities and move the agency to lower risk contracting and smarter strategies to produce better results.

OFPP will review progress against the 10 percent reduction targets on a semiannual basis in FY 2010. The best practices and strategies of successful agencies will be shared with those who experience challenges so they may take appropriate corrective actions to improve results. OFPP will then set new targets for FY 2011 and beyond. Through this focused and structured effort, I am confident we will reduce our reliance on high-risk contracting authorities.

These efforts are being complemented by the expansion and further clarification of existing government-wide rules on the use of high-risk contracting authorities. Earlier this month, for example, the Federal Acquisition Regulation (FAR) was amended to address long-standing weaknesses in award fee contracting practices, including the practice of roll over. Roll over allowed contractors a second chance to earn fees in a subsequent performance period that were not earned initially and was cited repeatedly in GAO and other management reports as contributing to waste of taxpayer dollars. The FAR now prohibits this practice.

This past summer, the FAR was amended to strengthen the use of contractor performance information in source selection evaluations. An agency's regular evaluation of contractor performance for consideration in future awards motivates contractors to perform well and reduces the likelihood that taxpayer resources will go to waste. Unfortunately, collection methodologies have been fragmented (e.g., some agencies have used paper processes while others have used internal databases that are inaccessible to other agencies) and agency records often contain insufficient information to appropriately inform subsequent contracting decisions. The FAR has remedied these problems. It now requires agencies to submit electronic records of contractor performance into a single, web-based government-wide repository -- the Past Performance Information Retrieval System (PPIRS) -- and identify agency officials responsible for preparing evaluations. Beginning in February 2010, OFPP will conduct regular compliance assessments and quality reviews to ensure agencies are submitting to PPIRS timely performance evaluations. Statistics on agency compliance will be made public so taxpayers can see how well agencies are meeting their responsibilities for good stewardship.

Management of the multi-sector workforce

In order for the government's "multi-sector" workforce of federal employees and contract employees to operate at its best, we must have clear rules and effective management practices that recognize the proper role of each sector's labor force. In July, OMB initiated steps to develop and implement policies, practices, and tools for managing the multi-sector workforce. As our first three steps, we: (1) established a new framework for managing the multi-sector workforce, (2) kicked off a workforce planning pilot, and (3) provided guidance to help agencies manage in-sourcing when the results of reasoned planning establish the need for such action. These steps are discussed in OMB Memorandum M-09-26, *Managing the Multi-Sector Workforce*, which was issued on July 29, 2009.

A new framework for managing the multi-sector workforce. We have provided agencies with a new framework of guiding principles for considering how best to manage the multi-sector workforce. Too often, assessments of the multi-sector workforce are driven by a desired outcome, rather than by a reasoned consideration of an organization's true needs as determined by an analysis of its goals and priorities. The new framework asks agencies to conduct strategic human capital planning to identify the functions that are needed by the organization. From this starting point, agencies can more effectively determine a desired skill mix, total labor requirement, and the sector to fill each identified position. Equally important, the framework emphasizes that management is a shared responsibility, requiring continuous and timely collaboration between the program, human capital, acquisition, and budget and finance offices. Each has a role to play in helping the agency achieve a high-performing workforce with a strong internal core of federal employees supported by the expertise of contractors.

Multi-sector workforce pilot. Few, if any, tools currently exist to perform the type of holistic assessment described in the framework. We tend to think about each sector and its development separately: human capital specialists focus on attracting, retaining, and developing federal talent; acquisition professionals focus on buying professional, technical, and other services from contractors. The multi-sector workforce pilot gives each agency the opportunity to create the tools and internal collaborations that are needed to plan and develop the workforce as a whole. Specifically, agencies will complete a pilot by the end of next April under which they perform a multi-sector human capital analysis of at least one organization where there are concerns about the extent of reliance on contractors and take appropriate steps to address any identified weaknesses. The pilot will provide agencies with an opportunity to develop processes and practices -- from mapping the organization in its current and "to be" state to identifying appropriate remedies to improve the organization's performance.

We have more than 20 pilot participants, each of whom has selected at least one pilot project. OMB is partnering with the Office of Personnel Management to support a cross-functional team of human capital, acquisition, and finance specialists to provide technical support to agencies and to capture lessons and best practices. Together, we will build a community of knowledge, including step-by-step practices and tools that may be replicated and used to inform development of additional guidance. These tools and techniques will be used to drive better government performance, which will be achieved in various ways, such as hiring new employees or retraining existing employees, in-sourcing, or adding resources to contract management.

Criteria on in-sourcing. OMB has developed criteria to facilitate the sound application of in-sourcing, so that agencies will be able to consider and successfully use this tool where such remedy is appropriate. The criteria are built around requirements laid out in the FY 2009 Omnibus Appropriations Act, which established a set of parameters for the consideration of in-sourcing.

In the pilots, in-sourcing may be an appropriate remedy where an agency's human capital analysis shows that an agency lacks sufficient internal expertise to maintain control of its mission and operations. At the same time, in-sourcing is just one of a number of tools to be considered in addressing the multi-sector workforce. For example, if an organization's performance problems stem from inadequate management of contracted activities, the best remedy may be allocate additional resources to contract management.

Next steps on multi-sector workforce management. The initial steps I have just described lay the foundation for important progress, but we must also address ongoing confusion in how the boundaries are drawn between federal and private sector performance. For example, we must reconcile differences in the definition of "inherently governmental" function and clarify the meaning of different terms used in connection with non-inherently governmental function, such as "critical function." These issues will be addressed over the next several months and we will seek public comment before new rules are promulgated or existing rules are changed.

A stronger acquisition workforce

A strong workforce is the backbone of our acquisition system. The quality of their skills and judgment is inextricably tied to whether we achieve the best results for our contract dollar. To achieve sustained improvements in competition, we must have the capabilities and capacity

within our contracting and program workforce to understand the marketplace and develop appropriate types of informative requirements. Similarly, to effectively manage the risk associated with cost-reimbursement contracts, we must have the broader range of skills these contracts demand – including finance, accounting, cost and price analysis, and program management.

This summer, I shared with the Committee our vision for strengthening the acquisition workforce and preparing them for the challenges ahead. Our vision is built on three pillars: (1) rigorous strategic workforce planning, (2) improved training and development, and (3) increased recruitment and retention.

As to strategic workforce planning, OFPP has developed an Acquisition Workforce Development Strategic Plan. This Plan will help civilian agencies align their workforce needs with their acquisition profiles to determine the capacity and capability they need over the next five years. The Plan calls for agencies to take immediate steps to increase their contracting workforce and establishes an annual planning process, led by OFPP, to focus specifically on long-term planning that addresses the growth and development needs of the broader acquisition workforce that also includes program managers and contracting officer technical representatives. Equally important, we actively engaged our acquisition and human capital leaders for the express purpose of helping us shape an actionable approach that agencies could easily adopt to immediately begin addressing the development needs of the acquisition workforce at the entry, mid, and senior levels. The civilian agency acquisition workforce grew by 6.5% in FY 2008 and we expect a similar increase in FY 2009. In the guidance we issued this week, we concluded that an increase in the acquisition workforce of 5 percent is needed at most if not all civilian agencies.

Agencies' first human capital plan for acquisition will be due by March 31, 2010, and annually thereafter, and will serve as the basis for budget preparation. We are committed to a sustained management focus on growing both the capability and capacity of this important workforce so that we can improve acquisition outcomes and agency performance.

Moving forward

The Administration is fully committed to improving our acquisition system and providing agencies with the tools and resources they need to get the job done right. Our goals are results-oriented: find \$40 billion per year in savings, strengthen the government's ability to manage the multi-sector workforce, and provide for a strong acquisition workforce. Our approach for working with the agencies is equally focused on getting to the bottom line. For each initiative I have outlined today – i.e., implementing an acquisition savings plan, meeting high risk reduction targets, conducting a workforce planning pilot, and developing a strategic human capital plan for the acquisition workforce – the agency will have the responsibility of coming up with approaches that solve their individual challenges and produce real results. OMB will have the responsibility to make sure agencies have the tools and resources they need to break down the barriers that have stymied progress for too long. We will review progress and hold agencies accountable for results.

Agencies are identifying savings of 7% and have already begun saving money through better sourcing decisions; they have started pilot efforts to study their multi-sector workforce so they can make reasoned choices to rebuild a critical capacity or to save money; they have grown the acquisition workforce over the past several years and we are working with them to provide for additional growth in FY 2011 to support better acquisition outcomes. We are making good

progress on each of these fronts, but this is just the beginning. OMB is committed to ensuring that agencies achieve their goals through a dedicated focus on implementation, regular progress reviews with agencies, and engagement with senior agency leadership.

The challenges facing our acquisition community require strong and responsible leadership. Earlier this month, the President nominated Daniel Gordon as the Administrator of OFPP. Dan's many years as a career contracting expert and senior official at the Government Accountability Office have given him a strong understanding of the fundamental principles on which our acquisition system is built and a keen appreciation of the keys to good management in the federal sector. I look forward to welcoming Dan to the management team at OMB and hope the Senate will act swiftly to confirm him as OFPP's next Administrator. I am confident he will provide the type of leadership our acquisition community needs to get the most out of every contract dollar we spend.

We look forward to working with this Committee and your Congressional colleagues in building an acquisition system that delivers the service our country needs and our taxpayers deserve. This concludes my remarks. I am happy to answer any questions you may have.

**Post-Hearing Questions for the Record
Submitted to the Honorable Jeffrey D. Zients
From Senator McCaskill**

**“ACHIEVING THE PRESIDENT’S OBJECTIVES: NEW OMB GUIDANCE TO COMBAT WASTE,
INEFFICIENCY, AND MISUSE IN FEDERAL GOVERNMENT CONTRACTING”**

**Wednesday, October 28, 2009, 2:30 P.M.
United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs**

During the hearing, you discussed OMB’s directive to agencies that they must achieve a 7% reduction in overall baseline contract spending by the end of FY 2011 and a 10% reduction in the share of dollars obligated for high-risk contracts by FY 2010 to meet the President’s goal of saving taxpayers \$40 billion next year. Agency plans for these reductions are due by November 2, 2009.

You testified at the hearing that to meet these goals, agencies may take one or more of the following steps: (1) end contracts that do not meet program goals; (2) migrate work from risk based noncompetitive contracts to more competitive forms of contracts; and (3) decline to extend noncompetitive contracts that can be competed to better meet agency needs.

Q. What new authority, if any, has OMB provided with these sets of guidance for agencies to end, migrate, or declined to extend noncompetitive contracts?

OMB’s guidance provides management focus on identifying contracts that do not meet the government’s needs, moving toward less risky contract vehicles as new agreements are awarded, and increasing competition generally. This focus includes specific goals that agencies must meet, and the Federal Acquisition Regulation (FAR) provides a variety of authorities to help agencies improve their acquisition practices to meet these goals.

Q. Will agencies have additional authorities to terminate inefficient contracts? If so, what will those authorities be?

In accordance with the FAR, contracting officers can use a variety of existing authorities to unilaterally terminate a contract. For example, a contract can be terminated for default if the contractor is not performing and attempts to correct performance are not successful. Additionally, the government always retains the right to terminate a contract for convenience. Finally, the government may choose not to exercise an option on an existing contract.

Q. What existing resources or legal authority allows agencies to end, migrate, or declined to extend noncompetitive contracts?

Two of the more likely ways to achieve these ends would be by choosing not to exercise an option or terminating a contract for the convenience of the government.

Q. How will disputes between agencies and OMB and between agencies and vendors be resolved?

Through regular and focused discussions, the new Administrator for Federal Procurement Policy, Dan Gordon, and I will personally be engaged in measuring agency progress on meeting their goals and will resolve any issues that might arise as we manage this effort. As with all federal contracts, vendors have recourse to the contracting officer, the relevant board of contract appeals, and the Court of Federal Claims to settle contract disputes.

Q. Please list the names of each agency that will be required to meet the 7 and 10 percent reduction requirements.

OMB has asked the agencies subject to the CFO Act (31 USC Sec. 901 dated 1-8-2008) to meet these goals. These agencies are as follows:

1. The Department of Agriculture
2. The Department of Commerce
3. The Department of Defense
4. The Department of Education
5. The Department of Energy
6. The Department of Health and Human Services
7. The Department of Homeland Security
8. The Department of Housing and Urban Development
9. The Department of the Interior
10. The Department of Justice
11. The Department of Labor
12. The Department of State
13. The Department of Transportation
14. The Department of the Treasury
15. The Department of Veterans Affairs
16. The Environmental Protection Agency
17. The National Aeronautics and Space Administration
18. The Agency for International Development
19. The General Services Administration
20. The National Science Foundation
21. The Nuclear Regulatory Commission
22. The Office of Personnel Management
23. The Small Business Administration
24. The Social Security Administration

**Post-Hearing Questions for the Record
Submitted to the Honorable Jeffrey D. Zients
From Senator Tom Coburn**

**“Achieving the President’s Objectives: New OMB Guidance to Combat Waste,
Inefficiency, and Misuse in Federal Government Contracting”
October 28, 2009**

Questions for Jeffrey Zients

- 1) Part of the OMB guidance will focus on reductions in high-risk contracts (noncompetitive and cost-plus contracts). Under the new guidance, Federal agencies are required to reduce these contracts by 10 percent this fiscal year. What will OMB do if agencies do not meet this goal? How much will this save the American taxpayer if this goal is met?**

The new Administrator for Federal Procurement Policy, Dan Gordon, and I will personally be engaged in measuring agency progress on reducing high-risk contracting vehicles. The President has provided unequivocal direction that agencies must take affirmative steps toward improving their acquisition practices and we will be sure agencies are taking that challenge seriously. Appropriately reducing the use of these contracts will introduce more competitive pressures and reduce the risk inherent in cost-reimbursement contracts – two dynamics which generally result in better prices. As agencies gain experience with reducing their high-risk contracts, additional steps to identify specific savings may be taken.

- 2) Are there any circumstances when a contract shouldn’t be subject to competition?**

Competition lowers cost, produces more favorable terms and conditions, curbs fraud, and stimulates innovation. Through our high-risk reduction initiative, which specifically targets non-competitive contracts, we have challenged agencies to use all available tools in applying competition to the broadest range of requirements possible. At the same time, there will be instances where an agency has a requirement for which they will be unable to obtain competition for one of a number of legitimate and statutorily recognized reasons, such as the availability of only one responsible source, exigency, national security, or international agreement. Exceptions to competition must be merit-based -- justified and approved by appropriate agency officials.

- 3) Should the federal government continue to allow for cost-plus contracts? How much money does the federal government waste annually in cost-plus contracts?**

Cost-reimbursement contracts are appropriate when there is uncertainty about how to achieve the government’s objectives. This uncertainty may be due to lack of knowledge regarding the effort needed to meet a defined requirement, or lack of knowledge about what is possible or practical, as might be the case with research or leading-edge innovation. In these cases, a cost reimbursement contract would allow the government to

absorb a greater portion of the risk and avoid expensive contingency costs that contractors would charge the government if forced to perform using fixed-price contracts. To help agencies mitigate risk when managing cost-reimbursement contracts, FAR changes are in process to address: (1) when and under what circumstances cost-reimbursement contracts are appropriate, (2) the acquisition plan findings necessary to support a decision to use cost-reimbursement contracts, and (3) the acquisition workforce resources necessary to award and manage cost-reimbursement contracts.

OMB's guidance on improving government acquisition recognizes that there has been a general overuse of high-risk contracting, including cost-reimbursement contracting. The guidance further recognizes that the government risks waste when using cost-type contracts and asks agencies to take affirmative steps to reduce this waste, which may be difficult to quantify.

4) When do the President and OMB believe outsourcing to be appropriate?

Outsourcing may be appropriately considered for functions that (1) are not inherently governmental, (2) do not otherwise need to be reserved for performance by federal employees, for example, to maintain control over the performance of the agency's mission and operations, and (3) can be performed more cost-effectively by the private sector. The President's Memorandum on Government Contracting acknowledges the benefits that taxpayers receive from contractor performance in these circumstances – benefits that are enhanced with sound contract management.

5) The March 4 memo reads, "...the Federal Government must ensure that those functions that are inherently governmental in nature are performed by executive agencies and are not outsourced." Should the Federal Government ensure that those functions that are commercial in nature be performed by the private sector and thus outsourced?

Some functions, while not inherently governmental in nature, may still need to be reserved for performance by federal employees in order to ensure the government can maintain control of its mission and operations and carry out its fiduciary duty to our taxpayers. In other cases, where private sector performance is more cost-effective, agencies should take full and effective advantage of the marketplace to meet taxpayer needs.

6) Under the most recent FAIR Act inventories, how many current Federal employees are involved in commercial activities?

Based on the most recent data available, approximately 1.06 million full-time-equivalent employees were performing commercial activities.

- 7) **Given the high unemployment rate (nearing 10%), and the private sector having lost 4,000,000 jobs since the Stimulus bill (ARRA) was enacted, does the President & OMB believe that taxpayer money should be spent to acquire and build-up in-house government capability (equipment, supplies and other resources) to compete with the private sector, and thus increase the likelihood that small business and other components of the private sector will either lay off more employees or close down entirely?**

In order for the government to operate at its best, both sectors must be strong. Contractors provide vital expertise to the government and agencies must continue to strengthen their acquisition practices so they can take efficient and effective advantage of the marketplace to meet taxpayer needs. We must also ensure that agencies have the internal capacity they need to manage their operations and perform their missions successfully.

Post-Hearing Questions for the Record
Submitted to the Honorable Jeffrey D. Zients
From Senator Kirk

“Achieving the President’s Objectives: New OMB Guidance to Combat Waste, Inefficiency, and Misuse in Federal Government Contracting”
Wednesday, October 28, 2009, 2:30 P.M.

United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs

1. Oversight of Contractors

One of the potential consequences of contracting-out inherently federal functions is the risk that Americans’ personal information may be mishandled or made public.

Our people deserve reliable assurance that the security of their personal information will not be secondary to cost-cutting measures and any possible savings from out-sourcing. *Does OMB plan to provide additional guidance on this issue to agencies that handle personal information?*

When the government relies on contractors – which should only be for functions that are not inherently governmental – appropriate steps must be taken to prevent the mishandling of personal information about our citizens. OMB’s Office of Federal Procurement Policy is conferring with other members of the Federal Acquisition Regulatory Council to evaluate the adequacy of current policies and contract clauses in protecting personal information. For example, they are reviewing practices related to the use of non-disclosure agreements and information sharing among contractors, and remedies for improper disclosure. One amendment to the Federal Acquisition Regulation that is already under way will remove the requirement for an employer to submit complete social security numbers and home addresses of individual workers in weekly payroll submissions under federal construction contracts.

2. Small Businesses

I commend the Administration for its efforts to root out waste in federal contracts. We saw the consequences of the abuse of no-bid contracts during the last Administration, so it’s refreshing to hear your words today about reform of the contracting process.

One concern I have about no-bid contracts is that they prevent many well-qualified small businesses from competing on a level playing field. Too often, the small business community is ignored by the federal acquisition process. *Will OMB’s periodic review of “high risk contracts” highlight the savings on re-bid contracts that are won by small businesses?*

This Administration is very committed to increasing federal contracting opportunities for small businesses. The efforts that agencies are undertaking to improve competition will result in a better, more transparent acquisition system that will provide more opportunities for small businesses to perform federal contracts. This increased competition will also benefit the taxpayer by promoting better prices and more innovation. As part of OMB’s management efforts to improve contracting, we will highlight, on a regular basis, best practices and success stories, including those associated with improved small business participation, to encourage further improvements.