

NOMINATION OF DAVID H. SAFAVIAN

HEARING

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF DAVID H. SAFAVIAN, TO BE ADMINISTRATOR, OFFICE
OF FEDERAL PROCUREMENT POLICY

APRIL 29, 2004

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NOMINATION OF DAVID H. SAFAVIAN

THURSDAY, APRIL 29, 2004

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:45 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Akaka, Levin, Pryor, and Lautenberg.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will come to order.

Good morning. Today the Committee on Governmental Affairs is holding a hearing to consider the nomination of David Safavian to be the Administrator for Federal Procurement Policy at the Office of Management and Budget. The Office of Federal Procurement Policy, known as OFPP, provides overall direction of government-wide procurement which exceeded \$300 billion last year.

The new Administrator of the Office of Federal Procurement Policy will inherit a full range of controversies that reflect the dynamic nature of the Federal acquisition process. As the Federal Government tries to acquire more goods and services with a smaller acquisition workforce than we have had in the past, many innovative solutions are being proposed and pursued. Although some of them may have been successful in the private sector, we need to look carefully at whether or not they are appropriate in the public sector, as well. In short, we need to continue to integrate new acquisition tools that will maximize efficiency without losing sight of other important values that the acquisition system serves.

First, we must look at ways to make Federal contracting more accessible to small businesses. It is not merely for the sake of small businesses that I mention this. The continued growth of that sector is vital to our Nation's future. It is also in the Federal Government's best interest to ensure that a large pool of contractors exists for any given item or service in order to ensure robust competition.

Greater competition leads to lower prices and higher quality for the American taxpayer. Simply choosing the same proven contractors over and over again may be a good short-term strategy for a beleaguered contract officer but failing to take into account the impact of such a practice on the pool of businesses willing and capable of doing business with the Federal Government can lead to a smaller contractor base undisciplined by market forces.

I know that Mr. Safavian agrees with me that his office must also make it a priority to maintain a highly trained and motivated

Federal acquisition workforce. Those who purchase goods and services for the Federal Government have considerable power and responsibility. They are on the front lines of guarding against waste, fraud, and abuse when it comes to using the taxpayers' dollars. If we fail to take the necessary steps to ensure that this segment of the Federal workforce is properly trained and equipped, it will be the taxpayers who will pay the price.

The new Administrator will also have to wrestle with the conflicts that surround competitive sourcing. One such issue is whether Federal employees should have the right to protest adverse A-76 decisions. I believe that they should and plan shortly to introduce bipartisan legislation to grant Federal employees bid protest rights. I am very eager to hear the nominee's views on this important issue.

Although competitive sourcing can, when properly implemented, lead to greater productivity and considerable savings, it can also inflict stress on agencies by creating doubts among Federal employees about their future job security. At the same time, however, according to a Rand Corporation study, a well run contest in which the agency devotes adequate resources to competition can be beneficial for both the government and its employees.

Private sector experience indicates that competitions must be run in a manner that is clear, transparent, and fair. It is my hope that if the nominee is confirmed, he will work closely with all interested parties to ensure that agencies conduct future competitions in a manner that inspires trust among Federal employees.

We are very pleased today to be joined by two of our House colleagues. I am going to turn to my colleagues first for some opening statements but then I will call on our colleagues from the House to introduce our nominee.

Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Madam Chairman. I also would like to add my welcome to our colleagues from the other body, one of whom I served with for many years, Congressman Conyers, and Congressman Cannon. Welcome.

I would also like to thank our nominee for being with us this morning and also welcome your family and friends that are here.

Mr. Safavian, if confirmed, you will have a difficult task before you—and you know this, I am sure. The Administrator for Federal Procurement Policy serves as a gatekeeper for the government's contracts and is responsible for ensuring financial transparency and cost savings in procurement policies.

The position also requires an understanding and appreciation for the Federal employees who make up the acquisition workforce and their colleagues who compete against the private sector to retain work within the government.

As the Ranking Member of the Financial Management Subcommittee and the Armed Services Readiness Subcommittee, I know that without adequate management structures, management information, systems, and program review structures that government contracts will not realize savings for the American people.

The key to achieving success requires strengthening the Federal Government's acquisition of the contract management workforce. We must recognize that this corps of professionals make decisions every day affecting how hundreds of millions of Federal dollars are spent.

For a number of years now the acquisition workforce has been drastically downsized and many of those remaining are eligible to retire. We cannot afford to lose many of our most experienced personnel.

We must also ensure that when Federal jobs are subjected to competition that out-sourcing policies are fair to Federal employees who, without adequate training and resources, cannot compete effectively. Moreover, to be truly fair, Federal workers should be able to protest against agency out-sourcing decisions. It is a fundamental fairness issue.

I was disappointed that a February 2004 report by the General Accounting Office on competitive sourcing found that agencies have focussed more on following OMB guidelines on the number of positions to compete at the expense of achieving savings and improving performance. I was hopeful that when the administration moved away from contracting-out quotas to agency-specific plans, agencies and their employees would have a fairer system. Unfortunately, that has not been the case.

Mr. Safavian, if confirmed I hope you will undertake these challenges quickly and without prejudice.

Thank you very much, Madam Chairman.

Chairman COLLINS. Thank you, Senator. Senator Lautenberg.

OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you very much, Madam Chairman. I listened carefully and, as usual, you handled things, I think, with a fairness that is essential to any kind of bipartisan relationship and that is to talk about the ability to challenge whether or not an A-76 is commercially viable, and I appreciate that thought of yours.

We have a very good nominee, I think, Madam Chairman, but we may have a challenge on a policy here or there. When the nominee comes in with a fortification like John Conyers, you know that this is serious business and we are going to pay a lot of attention. You, too, Mr. Cannon, I think, you are very welcome, but I know John just a smidgen better.

I am concerned about one thing and that is a blind adherence to the administration's procurement policy called competitive sourcing. Now, since the President has taken office this ideology has moved along almost at a fevered pitch and I think without searching enough to find out the real costs and benefits of out-sourcing.

The premise behind competitive sourcing is that work currently performed by the Federal Government employees could be done more efficiently and more cheaply by contractors and I think that misses the point. There is some work that is too important to contract out and it has to be done by the Federal Government. As people here know, I think, I came with a long bit of service in the corporate world, some 30 years, and I can appreciate the fact that the Federal Government should operate in a more business-like fash-

ion, when possible. There are ways to make this happen but simply giving the private contractor a blank check is not one of them.

That is what I think is going on here. The zeal for competitive sourcing indicates to me a desire to ensure that contractors get the Federal fund opportunity. Whether the outcome is the best for the taxpayers or our country is not quite as clear. And that is not surprising, given the political support from and ties to government contractors. One of those that quickly comes to mind is Halliburton. They seem to have a special relationship with less surveillance of the diligence than we would expect when the work they do is so critical—saving lives—and they have paid an enormous price and we extend our sympathy to those who are working for KBR or Halliburton directly. They have paid a terrible price for their diligence to duty and we do not want to see anybody's life cut short or any injuries, but Halliburton took those contracts.

Perhaps we should have been better prepared to protect those people than we were but they did get a \$50 million no-bid contract principally; it was signed, to extinguish the Iraqi oil fires at the beginning of the war. The contract was not publicly disclosed in the beginning and I was one of those who wanted to raise a question and I did. Despite congressional and public outcry, this no-bid contract grew in scope and size until it became something over \$2 billion, involving all kinds of oilfield repair and support work.

Then we found out that subsidiary, the Halliburton subsidiary, KBR, was overcharging taxpayers some \$60 million to deliver fuel to Iraq. This is a charge made by the Pentagon. This is not something that Frank Lautenberg on his own made. KBR employees, the subcontractors who worked for a Kuwaiti firm, got kickbacks of several million dollars and then we learned that Halliburton was charging taxpayers for thousands of meals never served to our troops stationed in the Middle East. And again these are allegations made by others, including the Pentagon.

Yesterday the *Washington Post* reported that the General Accounting Office, the auditors there reviewing contracts for reconstruction of Iraq have discovered a situation that “exposes the Government to cost risks and reduces the chances for savings.”

And I hope that the nominee, Mr. Safavian, understands that job, if confirmed, is not simply to rubber-stamp anything and he should examine every request and if these are major size contracts, try to bring the Congress in, not to audit or review every contract that is coming up but those that are major in either policy or magnitude.

So I hope that Mr. Safavian understands the serious responsibility that this position entails and I look forward to hearing from him and our friendly witnesses.

Chairman COLLINS. It is now my great pleasure to call upon our two distinguished colleagues from the House side. It does speak very well for Mr. Safavian that two such distinguished Members of Congress have been willing to come over and vouch for him today.

I know that Representative Conyers is the senior member so I am going to call on him first, although my staff keeps telling me that I am to call on Representative Cannon first, so I will leave it to you to sort it out.

Mr. CONYERS. If it is all right, Madam Chairman, I would like my friend Chris Cannon to go first.

Chairman COLLINS. Thank you. Representative Cannon.

STATEMENT OF HON. CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. CANNON. I appreciate that. I appreciate my friend John Conyers and if any distinction can rub off on me today, I would be very appreciative of that, as well.

It is a pleasure to appear with Mr. Conyers, who is one of the great people in Congress. He is very clearly philosophical and what that means is that we can form right-left coalitions to get things done for the American people and that has been greatly enhanced by my former chief of staff, David Safavian, who I commend to you today for the position of Administrator of OMB's Office of Federal Procurement Policy.

In fact, Mr. Safavian was a remarkably helpful person in the process of bringing together my staff and that of Mr. Conyers and the minority staff on the Judiciary Committee to deal with issues of great importance to the American people, including telecom policy and helping to avoid the remonopolization of the Baby Bells. I think now with a couple of years of experience behind us and some of the really interesting things that are going on, including the debate today on the Internet Tax Freedom Act, or at least we call it that on our side—we hope you get a vote on that soon—I think in the context of that debate you see some of the dramatic changes that have been happening in telecom, in part because Mr. Safavian worked well not only with my staff but with Mr. Conyers's staff, as well.

We are hearing things today like from Qwest that the legacy systems are no longer the most important part of their future and the transformation that is happening among all of the former Baby Bells, the regional Bell operating companies, is dramatic and in large part, I think, a result of the work that Mr. Conyers and I did in the House to delay that process and David played a very important role in doing that.

I might just say that the term transparency has come up several times here in opening statements. This is an issue that David and I have talked about many times over the course of his service with me. He served as my chief of staff from January 2001 to June 2002 and we talked a lot about the philosophy of government and I can assure you that he believes fundamentally that a transparent governing policy is the best policy for the long term. It is not a matter of partisan gamesmanship but really a matter of how we can govern better in the short and the long term.

Let me just add a couple of comments about his character and capabilities. He is a person of forthrightness and honesty. We have even disagreed among ourselves and had pretty hard discussions. We have been forthright and we have come to conclusions that were brought forward.

Second, David is a person of great mental capacity. He understands the technology and the great issues of our time, is able to deal with those things in a fluid fashion. He is also a great advocate. When he takes a position I think he will do that trans-

parently but he will be very clear about what that position is and then push for what he believes is right.

He also understands Congress and our constitutional role and I think you will find that he is a person who will work in the administration in a way that your side and our side of the Capitol will appreciate long-term.

I want to just tell you that I have the greatest confidence in David Safavian and that I think he will do a great job for the American people in this job and I urge your support for his nomination. Thank you.

Chairman COLLINS. Thank you very much, Congressman. Congressman Conyers.

STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS, FROM THE STATE OF MICHIGAN

Mr. CONYERS. Thank you and good morning to this very distinguished Committee. To see you here, Madam Chairman, and my two good friends, Senator Akaka and, of course, Senator Lautenberg, is a real privilege. I was not sure which part of the Committee I would be meeting with today and I am happy that I am before all of you.

I would like to make it clear that we think that the nomination of David Safavian for Administrator of the Office of Federal Procurement Policy at the Office of Management and Budget would be an excellent one under any administration. We come to that conclusion because he has been on the Judiciary Committee staff and we had a chance to work together and I would like to second what Chris Cannon has said about the cooperation that not only exists between him and myself but between our staffs.

I am very pleased that I was able to bring over my chief of staff, Perry Apelbaum, and two other lawyers, Ted Kalo and Kanya Bennett. We are joined with his wife and his mom, as well as his family and friends, to underscore how fine a decision has been made for this appointment. We hope that the Senate will agree and get him to work as quickly as possible.

First of all, he has a lot of experience in the government. He worked on the same subject, Federal procurement policy, as a lawyer. He worked on this same subject with the Army Aviation Systems Command. And he is the person that I am willing to assure you will take into cognizance the understanding of how important small businesses are to the contracting system of the one place in America where there is more of it that goes on than anywhere else, our government. The Chairman lifted that subject up, and, to me it is very important.

First of all, there is the issue of fairness. It is so easy—I speak now from my experience as Chairman of the Government Operations Committee in the House of Representatives, in which we oversaw the entire government and frequently got into procurement issues probably more than any thing else. They were not all small, either. There were plenty of large ones and Senator Lautenberg referred to one of the more recent problems we have had. We know in our States and districts a small business with a good service or product trying to get before the Federal Government is a very difficult undertaking.

And I can say that I believe that David is going to bring a perspective to that position that will not let any of us down. We want to make contracts with the Federal Government more available. We want to make the procedure more simple. And no, we are not just giving away business contracts to every small businessman that can fill out a form. We want quality and service. We want something for the Federal tax dollar that will be spent.

But the important thing, and I have been working on this for a few years now, is trying to make the system as fair and apolitical as it can be. We want people coming in to do business with the Federal Government to run into the people that work under Mr. Safavian, if this goes through, who will be open and welcoming to what is really the crux of our economic systems; namely, small businesses. Small businesses are the ones that create more jobs now than anybody else. Small businesses are the ones that our communities and towns and cities depend on for the economic sustenance that is required.

And I see in this man, by the way that he has handled himself in the Judiciary Committee, a person that I would be happy to recommend here and any time that it is necessary. He has a lot of Michigan roots and we are proud of that. That does not hurt him a bit in our book. The Michigan delegation is strongly behind him in this regard.

So it seems to me that this is probably a very great morning, a very great day for our country, for his family. I am aware that he is from a background that makes him a small number of people that will be going into government service at this high level and I am proud of that. We are happy that this has come to pass and that I was invited with Congressman Cannon to join in this testimony in support of this very fine nominee.

I want to thank you very much for allowing me to be with you today.

Chairman COLLINS. Thank you.

Senator LAUTENBERG. Madam Chairman, if I might, I have to go but I do want to say that I think that David Safavian can be a good candidate in a tough job and hope that he will remember my admonition.

Mr. SAFAVIAN. Absolutely, sir.

Senator LAUTENBERG. Thank you very much.

Chairman COLLINS. I do not think there is any chance he will forget it, Senator.

I want to thank both of the Congressmen for being here. Congressman Cannon.

Mr. CANNON. Would you allow me just to associate myself with the comments from Mr. Conyers?

Chairman COLLINS. Certainly.

Mr. CANNON. Especially the point he was making about the fact that small businesses create most of the jobs in America and that the role that Mr. Safavian will be taking will be critical in the government's support of those small businesses and the creation of jobs that come from that.

So while there are a lot of judgments that are going to have to go into how we do out-sourcing, the fact is this could be a great

job engine for America, not just a loss of jobs in the Federal Government. Thank you.

Chairman COLLINS. Thank you.

Senator LEVIN. Madam Chairman, can I just thank Congressman Conyers for his remarks? I regret I missed them. I just caught the end of them on the monitor as I was coming in but they mean a great deal to me personally and I am sure to Mr. Safavian, as well.

Chairman COLLINS. I want to thank both of the Congressmen for taking the time to come over here today to introduce our nominee. It certainly speaks well of him to have such bipartisan support and I would be happy to excuse the two Congressmen now. I know they have very busy schedules. Thank you.

Mr. CONYERS. Thank you so much.

Chairman COLLINS. Mr. Safavian has filed the responses to a biographical and financial questionnaire, answered prehearing questions, and has had his financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.¹

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath, so Mr. Safavian, I would ask that you please stand and raise your right hand.

[Oath administered.]

Chairman COLLINS. Mr. Safavian, I understand that you do have some family members present and I would invite you to introduce them at this time.

Mr. SAFAVIAN. Thank you, Chairman. I have my mother, Karen Safavian, and my wife, Jennifer Safavian, here with me. My 10-month-old daughter—we decided we would spare the Committee the babble. I also have a lot of friends in the audience, too. Thank you.

Chairman COLLINS. We are very pleased to welcome your family members. Public service involves sacrifices at times by the entire family and we are pleased that they could join us today.

I would now call upon you to make any statement that you would like to present to the Committee.

TESTIMONY OF DAVID SAFAVIAN,² OF MICHIGAN, TO BE ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET

Mr. SAFAVIAN. Thank you, Chairman Collins. Members of the Committee, good morning. I am honored to sit here this morning as President Bush's nominee to head the Office of Federal Procurement Policy at OMB. I sit here before you this morning only because of the grace of God, the endless support of my family, the guidance of mentors and friends, such as Administrator Steve Perry, and without a doubt, the love of my wife, Jennifer, and my 10-month-old daughter Kathleen. I am truly blessed to be here today, and thank you for being here.

¹The biographical information appears in the Appendix on page 21.

²The prepared statement of Mr. Safavian appears in the Appendix on page 19.

Madam Chairman, I would also like to express my gratitude to you and other Members of the Committee for the consideration you have shown me during the nomination process. In particular, I would like to thank the Committee staff for their help and patience and I look forward to working with them on policy matters if I am fortunate enough to be confirmed for the position I am nominated for.

Finally, I would like to thank Congressmen Cannon and Conyers for their gracious introductions. I have greatly enjoyed working with both men and I hope to continue those relationships long into the future.

Chairman Collins, I believe procurement issues go to the heart of government and to the citizens' confidence in us to execute the laws. We all know that acquisition issues are not terribly sexy. When a contracting officer does her job well, government contracts that result are all but invisible to the general public. But when a contracting officer makes an error and orders a \$1,200 hammer or a \$900 toilet seat, the taxpayers lose confidence in our ability to deliver results. In short, ineffective contracting does long-term damage to the government's credibility with the governed and thus to our collective ability to lead.

Our acquisition workforce is actually very good at buying things from the private sector, and they should be. Every year we buy \$230 billion worth of goods and services that are consumed by the Federal Government. However, there is always room for improvement and with it, better results for the country. We must not only buy the right goods and services but we must buy them well, and that means getting the best value possible for the taxpayers and the money they entrust us with.

My hope is that if I am confirmed I can work with each of you and your staffs to develop policies that improve our acquisition system. By doing so, we can ensure that taxpayers continue to have confidence in the ways we spend their money. And it is in that light that I would like to very briefly outline the priorities that I would undertake if I am fortunate enough to be confirmed for your consideration.

First and foremost, the strategic management of human capital that makes up our acquisition workforce has to be the No. 1 priority. With 40 percent of our procurement professionals eligible to retire in the next 5 years, the acquisition corps faces a potential human capital crisis. Unfortunately, these positions are scattered around the agencies and as a result, the scope and dangers of the situation are easily overlooked by Federal managers. Training must be enhanced, recruiting and retention must be addressed, and a career development path for acquisition professionals in the civilian workforce must be established.

As you know, the Defense Acquisition University and the Federal Acquisition Institute are responsible for the respective training of DOD and civilian agency procurement personnel. If I am confirmed I intend to strengthen the alliance between these two organizations and to leverage the knowledge and lessons learned by DAU on behalf of the civilian agencies.

Second, I hope to make competitive sourcing policy even more open and transparent and effective. If confirmed, I intend to put

into place an operational database for competitive sourcing data so that we can get past anecdotes and understand the real impact of competitive sourcing on agencies, employees, Congress, and the taxpayers. I hope this database will be a useful tool for Federal managers and for you all to use, as well, to assess the performance of this initiative.

My third area of emphasis if I am confirmed will be to continue the progress made under President Bush's Small Business Agenda. Having worked for many a summer at my grandfather's small auto parts manufacturing business, Trenton Forging, I can tell you I understand how important small business is and I can tell you that if I am confirmed, there will be no stronger advocate for small business interests than me.

I intend to work hard to open Federal contracting for more disadvantaged businesses and I also intend to pay closer attention to opportunities for the service-disabled vets. Those who have made such a sacrifice deserve to have that, at the very least.

And tied to this effort will be the full deployment of the Federal procurement data system so that we have timely and accurate information. We need to know what we buy and from whom we buy it.

Finally, I believe we need to review the rules, regulations and policies, quite frankly, concerning suspension and debarment. I know that has been an issue of interest to you, Chairman Collins. We must ensure that the government only deals with presently responsible contractors and that agencies do so in a fair, open, transparent and consistent manner.

I believe these improvements would result in enhanced public confidence in our ability to manage government. Again they are not the sexiest of issues but they are of significant consequence nonetheless. If I am fortunate enough to earn your trust and get confirmed, I intend to make progress and generate results from our focus on each of these areas, as well as in the overall operation of the Office of Federal Procurement Policy.

With that broad overview, Madam Chairman, I would be happy to take the Committee's questions.

Chairman COLLINS. Thank you very much.

I am going to start my questioning with the standard questions we ask of all nominees and then we will go into 6-minute rounds.

Is there anything you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. SAFAVIAN. No, ma'am.

Chairman COLLINS. Second, do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. SAFAVIAN. No, ma'am.

Chairman COLLINS. And third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. SAFAVIAN. Absolutely.

Chairman COLLINS. Mr. Safavian, I was very pleased to hear you in your opening statement emphasize the need for greater involve-

ment by small businesses in the contracting process. Right now many small companies just give up on the idea of doing business with the Federal Government, despite having quality goods and services to offer, because they find the procurement system too daunting and too complex for them.

Another problem is, to simplify their workloads, agency procurement officers often bundle contract requirements into one large contract that is too big for a small business to bid on, yet if that contract were broken into separate contracts there would be opportunities for smaller companies. To address the problem of bundling, Senator Talent of Missouri and I last year authored legislation that was included in the Defense Department authorization bill to try to put some restrictions on bundling.

The Small Business Administration's Office of Advocacy has noted that the share of smaller contracts, those under \$25,000, that small businesses are winning, has actually fallen from 51 percent in 1995 to around 42 percent in 2001 and the SBA speculated in its report that some of the changes to our Federal procurement laws in the 1990's may have contributed to a decline in contracting for small businesses.

I have touched on a lot of different issues in that first topic but I would like to know from you what steps you would take as the head of OFPP to expand access to Federal contracting opportunities by small businesses.

Mr. SAFAVIAN. Sure. I think you raise an absolutely critical issue, Chairman. My experience, having worked at GSA and in my current job as Counsel to the Deputy Director of Management at OMB, I see small businesses throwing their hands up in the air going, "How do we get through this paperwork?" Procurement tends to be viewed as a black box where small business applications go in and sometimes they come out and sometimes they do not and our No. 1 task, after the training of acquisition workforce, needs to be to address those issues.

Let me give you just a quick snapshot of what we did at GSA to help address some of those issues. Under the administrator's leadership and following the President's Small Business Initiative, GSA upgraded its website so that there was more information in a more readily understandable packet for small businesses to review. GSA then held monthly training seminars in Washington, DC, for small and disadvantaged businesses so that the actual companies could come in and learn how to do this, rather than hire what I would call a beltway bandit to charge abhorrent rates in order to do what should be done as a matter of process.

We held seminars all over the country and invited small businesses and disadvantaged businesses to participate and learn how to do business with GSA and the Department of Homeland Security. We joined forces with local Chambers of Commerce to create somewhat of a national town hall. We had satellite uplinks with about 50 or so Chambers of Commerce all around the country where we held basically a Q&A seminar for folks to learn how to do business with us.

These are great first steps but at the end of the day if the acquisition officer is not sensitive to small business targets and goals,

we are not going to see the government meet those targets and goals.

I thought it was interesting when I first moved to GSA that one of the things that Administrator Steve Perry did was mandate quarterly performance reviews. Part of the process actually had a performance metric for how the regional administrators were doing in small business purchasing.

I know we are short on time. What I would say just as a broad response, Chairman, is that we must make sure that the contracting officers are sensitive to the small business needs and that the line managers are sensitive to how their contracting officers are functioning in making their source selections.

Chairman COLLINS. A second important issue that I want to bring up with you this morning is the General Accounting Office's recent interpretation of the Federal procurement law, the Competition in Contracting Act. The GAO has concluded that the law prohibits Federal employees from protesting adverse contracting-out decisions under OMB Circular A-76. I am concerned that that interpretation leads to an unfair situation where one side can protest the decision but the other side cannot.

What is your position on allowing Federal employees or some entity representing Federal employees to protest an adverse A-76 decision?

Mr. SAFAVIAN. I think we need to have parallel mechanisms for appeal. If the private sector has the ability to protest GAO, so should the affected employees. How we implement that is difficult. The devil is always in the details. We want to be careful to not encourage multiple appeals of the same issue.

There was an issue, I believe, in last year's Treasury appropriations language that was raised in terms of who gets to select the actual appellant. Is it the GAO selecting between the agency tender official or the employee representative or what is the prioritization?

But I think broadly speaking, if I am confirmed I would be supportive of some sort of mechanism of appeal rights.

Chairman COLLINS. Thank you. Senator Akaka.

Senator AKAKA. Thank you very much, Madam Chairman.

Mr. Safavian, OMB Director Bolten said in response to a question I raised at his nomination hearing, "If confirmed, I will ask the administrator for Federal procurement policy to recommend ways to improve opportunities for Federal employees to compete for new work and for work currently performed by contractors."

I was delighted to hear in your statement that your No. 1 priority is strategic management of the human capital and the acquisition workforce. I want to bear down on the workforce part of this. Chairman Collins and our Committee really has been bearing down on human capital.

What steps will you take to ensure that Federal employees have the training and resources necessary to compete with the private contractors?

Mr. SAFAVIAN. Senator Akaka, I think it is critical that where the rubber meets the road, if we are going to match our rhetoric with reality in these competitions, that the Federal workers, the MEOs, have the necessary skill sets and access to experts in order to help them craft their positions in the competitions.

I know that was strongly encouraged by my hopefully future past predecessor of the Office of Federal Procurement, Angela Stiles. It is absolutely incumbent upon good, strong managers that they empower their workers to be able to compete in that regard. It will take some dollars, quite frankly, but it is money that is also spent on the management side when they start their competitions, as well. Again going back to Senator Collins's question, you have to have parallel rights and parallel responsibilities there.

Senator AKAKA. Also I want to say that I was glad to see your emphasis on training, recruitment and retention.

Over the past several years the Armed Services Committee has adopted a series of legislative provisions designed to address problems in DOD's services contracting in several ways—by requiring the Department to design an improved management structure for service contracting, also to improve the collection and use of data on services contracts, also to increase its use of performance-based services contracting and ensure that its procurement officials comply with existing competition requirements.

It is important to remember that the problems this legislation is designed to address are not unique to the Department of Defense and we here who also serve on the Armed Services Committee have been looking at this part of the Department.

My question to you is do you think that it would be advisable to implement a new management structure and improve the internal controls for services contracting on a government-wide basis, rather than limiting these reforms to the Department of Defense?

I would also appreciate your review of Sections 801 and 803 of the National Defense Authorization Act for fiscal year 2002 to determine whether they can and should be applied to government-wide.

Mr. SAFAVIAN. Sure. I think your first question, Senator, was should we apply some of these requirements on an enterprise-wide basis. While I have not dove deep into that issue as of yet and I promise I will if I am fortunate enough to be confirmed, my knee-jerk, my gut reaction is that I do not think we can apply these standards on an enterprise-wide basis because I think many of our agencies have unique missions and have different sets of responsibilities.

Now granted, we all have a fiduciary responsibility to the taxpayer to make sure that we are generating the best value in our acquisitions, but I am not so sure that we can craft a one-size-fits-all solution that does not sacrifice some of the efficiencies that have been put into place that while some will argue that the pendulum has gone a little bit too far in that regard, but I think we can more narrowly address some of the issues that we have seen to date, rather than apply an enterprise-wide solution.

And as for applying Section 801 or 803, before I give you a bad response I would rather give you a good response and respond back to you a little bit later, if I may.

Senator AKAKA. Thank you very much for your responses.

My time has expired, Madam Chairman.

Chairman COLLINS. Thank you. Senator Pryor.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Thank you, Madam Chairman.

I wanted to ask, if I may, in your written questions you said one of your highest priorities will be to address the human capital needs to the government acquisition professionals. Could you elaborate on this further?

Mr. SAFAVIAN. Senator, right now some of the internal numbers that I have read indicate that about 40 percent, if not more, of our senior-level acquisition workforce—not our senior managers but the contracting officers—are eligible to retire in the next 5 years. And it is a difficult area for recruiting. It is also a difficult area for retention, particularly with the demands from the private sector.

Senator PRYOR. Why is it difficult?

Mr. SAFAVIAN. On the recruiting or the retention?

Senator PRYOR. Either one.

Mr. SAFAVIAN. I will start with the recruiting. Imagine a job where you are reviewing a lot of fine print and a lot of very technical information, having to make a fundamental decision at the end of the day, and regardless of the decision you make, somebody is going to yell at you. One of the losing parties is going to file a protest.

Senator PRYOR. That sounds like our job, does it not?

Chairman COLLINS. It does.

Mr. SAFAVIAN. It is a difficult task. It is one that requires technical expertise, as well as the patience of Job. And we have a good, solid, hard-core cadre of acquisition professionals. Unfortunately, those folks are approaching retirement and I am not sure we have a succession plan in place government-wide.

That goes to the retention issue, as well. We seem to be losing more folks than we are bringing in right now and that is a grave concern.

Senator PRYOR. In fact, the Comptroller General back in June of last year testified to the House. I am not going to read you his entire testimony on the subject but basically what he says is in his view, the agencies currently lack the capacity, the human capital, to perform some of this oversight that may be very important. Is that your thought? Do you agree with that?

Mr. SAFAVIAN. Oversight over the acquisition workforce?

Senator PRYOR. Yes.

Mr. SAFAVIAN. I think that is going to vary on an agency-by-agency basis. The General Accounting Office named a couple of agencies that they consider high risk with regard to—

Senator PRYOR. That is the context of his comment, right?

Mr. SAFAVIAN. I am not sure that you can say that across the government. We have some very good senior procurement executives, outstanding professionals.

Senator PRYOR. But here again, are they going to retire soon? Are there people in the pipeline that can step up and help them long-term?

Mr. SAFAVIAN. I cannot say that I know that in every instance but what I can tell you is whether it is fair or not, replacement planning or succession planning tends to take place far more actively at the senior management level than it does at your GS-12 or GS-13 level. So when there is a senior procurement individual

ready to retire, people are already thinking in advance about who to replace that person with. I am not sure that takes place at the line level.

Senator PRYOR. You know, one thing that we have discussed in this Committee and in the Senate generally is competitive sourcing criteria and obviously OMB is very involved in that. I would like to hear your thoughts on competitive sourcing.

Mr. SAFAVIAN. Let me start with a very brief anecdote. I can remember growing up and working for my grandfather at Trenton Forging, as I mentioned earlier, and it was during the time that U.S. automakers were really taking a beating from the Japanese. If you guys can recall, people were saying if you have a foreign car, you cannot park here and all that.

Senator PRYOR. Yes.

Mr. SAFAVIAN. I can remember my grandfather talking about how this competition was tough on the business, but I can also remember him talking about how the competition ultimately will make the business stronger. And my grandfather's prediction has panned out. They are stronger than ever. They employ 65 people right in downtown Trenton.

I really do believe that competition improves the way operations are run in the government. I think the system we have in place is a good, solid foundational system. I think we will need to continue to make tweaks along the way, as Senator Collins pointed out, with appeal rights. I think that is an important issue.

But I think at the end of the day, using competition as a tool to determine how the taxpayers can get the best quality services and the best value makes great sense. It is a Presidential initiative that if I am fortunate enough to be confirmed I will pursue with zeal.

Senator PRYOR. I love the concept of it. But I just want to make sure that we set it up the right way and that it is done fairly and evenhandedly.

A few moments ago, Senator Akaka mentioned the armed services. We have seen in that context, from time to time, where outsourcing or the competitive process seems to make a lot of sense on the front end but after you get into something a few years, it can be much more expensive and you start to create dynamics that actually, in the end, you did not anticipate creating and may not be healthy.

So I guess I just want to add a word of caution there to think about long-term, not just the immediate consequences. I know, for example, some of the things that the government does, we may emphasize something like diversity. Just true dollars and cents, that may not make a lot of sense but for our society we have made the decision that that does make sense and it is a good thing.

So I hope you will look at this from a broader perspective than just purely a philosophical agenda.

Mr. SAFAVIAN. Absolutely, sir.

Senator PRYOR. That is all I have. Thank you.

Chairman COLLINS. Thank you. Senator Levin.

Senator LEVIN. Thank you, Madam Chairman. And let me add my welcome to you, Mr. Safavian.

Mr. SAFAVIAN. Thank you.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. There is a pending bill called the Bioshield Bill which would exempt a wide range of contracts from the Competition in Contracting Act. One section of this bill would exempt from competition any procurement up to \$25 million for performing, administering or supporting research and development activities that respond to what is called pressing needs. A second provision would exempt from competition without dollar limitation any procurement of a specific countermeasure for which there is a pressing need.

We have a lot of pressing needs in the Federal Government and we have a lot of pressing needs in the Department of Defense. We have pressing needs for new fighter aircraft, body armor for our soldiers and a lot of other items and yet we require the Department of Defense to live within the requirements of the Competition in Contracting Act and they do so effectively.

Now there are obviously exemptions, emergency exemptions. You can designate certain items that do not have to be purchased competitively if there is an emergency or an essential need for it, to somehow or other omit the competition delay, but basically my question of you is this—do you support the Competition in Contracting Act and the principles that lie beneath it?

Mr. SAFAVIAN. As a broad measure, absolutely.

Senator LEVIN. Do you believe that the bioshield requirement—are you familiar at all with the bioshield requirements?

Mr. SAFAVIAN. No, sir.

Senator LEVIN. I would ask that you take a look at the requirements in that bill and give us an answer for the record and tell us whether or not you believe that the requirements for a bioshield against a biological attack are more pressing than the other Defense Department needs.

Are you familiar with the urgent and compelling exemption to the Competition in Contracting Act? There is an exemption for—

Mr. SAFAVIAN. Emergencies.

Senator LEVIN. Yes. Are you familiar with that exemption? Have you had any dealings with it?

Mr. SAFAVIAN. I will not paint myself as an expert on it.

Senator LEVIN. Have you had any dealings with it at all?

Mr. SAFAVIAN. Some.

Senator LEVIN. Has it worked, as far as you know, for the various Federal agencies? Has that provided enough flexibility where there is some real reason why you cannot compete something?

Mr. SAFAVIAN. From my workings with it, and I will say it has been very superficial so far, that it has been fully and well used by many—

Senator LEVIN. Excessively used?

Mr. SAFAVIAN. No. I think that sometimes that exception can be used for the sake of facility rather than exigency. I would rather see more checks and balances.

Senator LEVIN. So you would be leery about expanding that definition or its use. You feel it ought to be used perhaps with greater caution?

Mr. SAFAVIAN. From my framework and how I look at contracting, I would be leery.

Senator LEVIN. OK. When we met in my office last month we discussed a number of issues and I want to just revisit a few of them with you very briefly now.

I raised an issue with you about Federal Prison Industries. This is an issue which goes right to the heart of the question of both small businesses and competition, whether we are going to allow small businesses to compete for Federal contracts or whether we are going to allow the Federal Prison Industries to designate contracts as ones which can only be filled by the prison work and prohibiting competition from the private sector for those contracts.

It sounds bizarre when I tell some of my colleagues that Prison Industries is able to designate contracts for which small businesses or other businesses cannot even compete. They are not allowed to bid, enough though they might be able to provide an item cheaper or a better item at the same price.

We actually allow the Federal Prison Industries to put off-limits items so that they have the exclusive right to supply it to agencies and prohibit bids from the private sector. Some of my colleagues are absolutely—they feel that it cannot be. How can possibly a small business compete, given the differential in the cost of labor, with an item which is produced by Prison Industries? The answer is OK, then let competition sort that out but at least let small businesses bid if they want to. That has been my position.

We were able to succeed after a very heated debate on the Senate floor to make that possible for the Department of Defense and the issue is now whether or not we are going to allow contracts that other agencies want to let for items be bid upon by businesses in this country or whether we are going to continue to allow that monopoly by Federal Prison Industries.

Will you work with us to ensure that private companies have an opportunity to compete against Federal Prison Industries for Federal agency contracts?

Mr. SAFAVIAN. Senator, my understanding of the administration's position is that they are firmly neutral on the role of Federal Prison Industries. As we had discussed, my own personal view is that it is difficult to say competition works in one segment of Federal operations and not in another and I would be happy to work with you to try to address Federal Prison Industries.

Senator LEVIN. Thank you.

We also discussed the proliferation of Government-wide contracts and multi-agency contracts. You indicated that you share the concern about the need to rationalize those contracts and to ensure that they are not used as a method of avoiding competition requirements and performance-based contracting requirements. Do you have a comment on that issue?

Mr. SAFAVIAN. I think as the executive designations come up for agencies with regard to their government-wide contracts, we should make sure that they have a game plan for how they intend to use those contracts. I think that there continue to be concerns about abuse of certain types of schedules, again merely for the sake of facility rather than for some strategic reason.

Senator LEVIN. You have been asked this morning about the fact that Government now spends more money on contracts for services than we do on contracts for products, and yet when it comes to

managing those contracts, we spend less on service contracts than we do on contracts for products.

In your response to the Committee's prehearing policy questions you said that spend analyses can be a useful tool for agencies to determine how to most effectively spend their procurement dollars. And your response to Senator Lieberman's prehearing question, however, you said that you are "not convinced that the benefit of developing a comprehensive inventory of work performed by contractors would be worth the significant cost."

My question is this. Is not a spend analysis the same thing as a comprehensive inventory of the work performed by contractors?

Mr. SAFAVIAN. I guess the way I view it, Senator Levin, is that you need to have the inventory in order to conduct the spend analysis. I see the point you are making.

I guess I struggle with putting together the comprehensive inventory because I am not sure how you build it, or with what dollars you build it. And what I have seen, having worked in one of the agencies, is how many hoops the agency managers are jumping through for verifiable and right reasons. I am very sensitive to overloading some of the agency managers with those types of activities.

Senator LEVIN. Well, should not the government, like private sector companies, look at all of the services that it acquires, whether they are performed in-house or contracted out, as the basis for decisions as to how to acquire them in the future? Do you not have to make that assessment?

Mr. SAFAVIAN. Yes, but I question why we would not do that on an agency-by-agency basis, since agencies have individual and unique core missions.

Senator LEVIN. So that each agency should be doing that instead of—

Mr. SAFAVIAN. Each agency should know where—

Senator LEVIN. But Government-wide you do not see a need to do that?

Mr. SAFAVIAN. If we are starting from scratch I would have questions about it. If we could amalgamate the spending patterns of agencies on a component basis, sure.

Senator LEVIN. Thank you. Thank you, Madam Chairman.

Chairman COLLINS. Thank you.

Mr. Safavian, I have a few additional questions but in the interest of time I am going to submit them for the record.

I would like to thank you for your appearance before the Committee today. Without objection, the record will be kept open until 5 p.m. tomorrow for the submission of any additional written questions, the answers to the questions that you promised to Senator Levin, and any other statements for the record.

Senator LEVIN. I wonder, also, if you would tell your daughter when she is old enough to know that we missed her being here this morning.

Mr. SAFAVIAN. Thank you, sir. I will do so.

Chairman COLLINS. With that, this hearing is now adjourned. [Whereupon, at 11:52 a.m., the Committee was adjourned.]

A P P E N D I X

STATEMENT OF DAVID H. SAFAVIAN
NOMINATED FOR THE POSITION OF
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
BEFORE THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE
APRIL 29, 2004

Chairman Collins, Ranking Member Lieberman, Members of the Committee. Good morning.

I am honored to sit here today as President Bush's nominee to head the Office of Federal Procurement Policy (OFPP) at OMB. I sit here before you *only* because of the grace of God, the endless support of my family, the guidance of mentors and friends, and without a doubt, the love of my wife Jennifer and my 10 month old daughter, Kathleen. I am truly blessed.

Madame Chairman, I would also like to express my gratitude to you and other Members of the Committee for the consideration you have shown to me during the nomination process. In particular, I would like to thank the Committee staff for their help and patience. I look forward to working with them on policy matters, if I am fortunate enough to be confirmed. Finally, I would like to thank Congressmen Cannon and Conyers for their introductions. I have greatly enjoyed working with both men, and hope to continue those relationships long into the future.

I believe procurement issues go to the heart of government, and the citizens' confidence in us to execute the laws. We all know that acquisition issues are not terribly sexy. When contracting officers do their jobs well, government contracts are all but invisible to the general public. But when a contracting officer makes an error and orders a \$1,200 hammer or a \$900 toilet seat, the taxpayers lose confidence in our ability to deliver results. In short, ineffective contracting does long-term damage to the government's credibility with the governed, and thus, to our collective ability to lead.

Our acquisition workforce is actually very good at buying from the private sector. And they should be. We spend roughly \$230 billion each year for goods and services consumed by the Federal Government. However, there is always room for improvement, and with it, better results for the country. We must not only buy the right goods and services, we must also buy them *well*. And that means getting the best value possible for the taxpayers.

My hope is that if I am confirmed, I can work with each of you and your staffs to develop policies that improve our acquisition system. By doing so, we can ensure that the taxpayers continue to have confidence in the ways we spend their money. It is in that light that I would like to lay out for you my priorities for your consideration.

The strategic management of the human capital that makes up our acquisition workforce will be my number one priority. With 40% of our procurement professionals eligible to retire in the next five years, the acquisition corps faces a potential human capital crisis. Unfortunately, because these positions are scattered around the agencies, the scope and dangers of this situation are easily

overlooked. Training must be enhanced. Recruiting and retention must be addressed. And a career development path for acquisition professionals must be established.

As you know, the Defense Acquisition University and the Federal Acquisition Institute are responsible for the respective training of Defense Department and civilian agency procurement personnel. If I am confirmed, I intend to strengthen the alliance between these two organizations, and to leverage the knowledge and lessons learned by DAU on behalf of the civilian agencies.

Second, I hope to make competitive sourcing policy even more open, transparent and effective. If confirmed, I intend to put in place an operational database for competitive sourcing data, so that we can get past anecdotes and understand the impact competitive sourcing has on agencies, employees, and the taxpayers. This database will be a useful tool for Federal managers, Congress, and the public as a whole to assess performance of this initiative.

My third area of emphasis, if confirmed, will be to continue the progress made under President Bush's small business initiative. I hope to open Federal contracting for more disadvantaged businesses, paying particular attention to opportunities for service-disabled veterans. Tied to this effort will be full deployment of the next generation Federal Procurement Data System so that we have timely, accurate and reliable data on what we buy, and from whom we buy it.

Finally, I believe we need to review the present rules, regulations, laws, and policies concerning suspension and debarment. We must ensure that the government only deals with presently responsible contractors, and that agencies do so in a fair, open, and consistent manner.

I believe improvements in these four areas will result in enhanced public confidence in our ability to manage government. Again, not the sexiest of issues, but of significant consequence nonetheless.

If I am fortunate enough to earn your trust and get confirmed, I intend to make progress and generate results from our focus on each of these areas, as well as in the overall operation of the Office of Federal Procurement Policy.

With that broad overview, Madame Chairman, I would be happy to take the Committee's questions.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.) David H. Safavian
2. **Position to which nominated:** Administrator, Office of Federal Procurement Policy
3. **Date of nomination:** January 22, 2004
4. **Address:** (List current place of residence and office addresses.)
 - Home:
 - Office: 273 ½ Eisenhower Executive Office Building, Washington, D.C. 20500
5. **Date and place of birth:** August 04, 1967, Pontiac, Michigan
6. **Marital status:** (Include maiden name of wife or husband's name.)
 - Married to Jennifer M. Safavian
(née Jennifer Anne McLaughlin)
7. **Names and ages of children:**
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.
 - Gabriel Richard High School, 1981-1985, Academic Diploma, June 1985
 - St. Louis University, 1985-1988, B.A., Political Science, June 1988
 - Detroit College of Law, 1990-1993, Juris Doctorate magna cum laude, January 1993
 - Georgetown University Law Center, 1993-1994, Masters of Law in Taxation, August 1994
9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)
 - Intern, Office of Congressman Robert Davis (MI), Washington, D.C. 1989
 - Legislative Assistant, Office of Congressman Bill Schuette (MI), Washington, D.C. 1989
 - Field Director, Bill Schuette for Senate, Livonia, Michigan, 1989
 - Intern, McDonnell-Douglas Corporation, St. Louis, Missouri, 1991
 - Intern, The Hon. David McDonnell, U.S. Magistrate Judge, St. Louis, Mo., 1991
 - Intern/Paralegal Specialist, U.S. Army Aviation and Troop Support Command, St. Louis, Missouri, 1992
 - Law Clerk, The Hon. Paul Komives, U.S. Magistrate Judge, Detroit, Michigan, 1993
 - Senior Tax Analyst, KPMG Peat Marwick, Washington, D.C. 1993-1995
 - Associate Attorney, Preston, Gates & Ellis, Washington, D.C. 1995-1997
 - Principal, Janus-Merritt Strategies (formerly, The Merritt Group), Washington, D.C. 1997-2001
 - Chief of Staff, Office of Congressman Chris Cannon (UT), Washington, D.C. 2001-2002
 - Chief of Staff, U.S. General Services Administration, Washington, D.C. 2002-2004
 - Counselor to the Deputy Director of Management, Office of Management and Budget, Washington, D.C. 2004 - Present

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

Informal advisor to Department of Interior transition, 2000-01, Intern, St. Louis Public Defender 1987.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Principal, Janus-Merritt Strategies, L.L.C. (former)
 Principal, The Merritt Group, Ltd. (former)
 Principal, David H. Safavian, Attorney-at-Law, P.L.L.C. (inactive)
 Member of the Board of Directors, The Islamic Institute (former)
 Consultant, Microsoft (former)
 Consultant, American President Lines (former)
 Consultant, Ogden Marine Inc. (former)
 Consultant, Mexican Tuna Chamber (former)
 Consultant, Cemex Corp. (and subsidiaries) (former)
 Consultant, Soyuz-Contract, Inc. (former)
 Consultant, Mexican Sugar Chamber (former)
 Consultant, Embassy of Pakistan (former)
 Consultant, Business Software Alliance (former)
 Consultant, Bannorte Bank (former)
 Consultant, Fannie Mae (former)
 Consultant, Commonwealth of the Northern Marianas Islands (former)
 Consultant, Choctaw Indian Tribe (former)
 Consultant, American Business for Legal Immigration (former)
 Consultant, Scribe Communications (former)
 Consultant, Zenith Enterprises (former)
 Consultant, Government of Montenegro (former)
 Consultant, Bell South (former)
 Consultant, Jos. E. Seagram & Sons, Inc. (former)
 Consultant, Distilled Spirits Council (former)
 Consultant, Interactive Gaming Council (former)
 Consultant, National Indian Gaming Association (former)
 Consultant, Viejas Band of Kumeyaay Indians (former)
 Consultant, Covad Communications (former)
 Consultant, Islamic Institute (former)
 Consultant, DSL Access Telecommunications Association (former)
 Consultant, American Immigration Lawyers Association (former)
 Consultant, Quiet Heart Enterprises, Inc. (former)

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

State Bar of Michigan, State Bar of Missouri, District of Columbia Bar Association, United States Tax Court Bar, Supreme Court Bar, Bar of the Sixth Circuit Federal Court of Appeals, Capitol Hill Club, The Islamic Institute, Springfield Golf and Country Club, American Bar Association, Republican National Committee, RAMS (House Republican Chiefs of Staff Club), House Administrative Assistants Association, American Automobile Association, Phi Kappa Theta fraternity.

13. Political affiliations and activities:

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

- Field director, Schuette for Senate Campaign, 1989
- Volunteer, Jim DeSana for Congress Campaign, 1996
- Team leader (Marshals Program), Republican National Committee, 2000
- Volunteer, Republican National Committee 72-Hour Campaign, 2002

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

See attachment.

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognition for outstanding service or achievements.

- Graduated magna cum laude, Detroit College of Law (now Michigan State University)
- Member, Detroit College of Law Review
- Note and Comment Editor, Detroit College of Law Review
- Law review scholarship, Detroit College of Law
- Semi-finalist, Detroit College of Law All-School Moot Court Competition
- Theresa Oehmke Book Award, Property Law
- Teaching assistant, Legal Research, Writing and Advocacy I & II, Detroit College of Law
- Teaching assistant, Property Law I & II, Detroit College of Law
- Certificate of Merit, United States Army Aviation and Troop Support Command

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

- Quarterly Reports on Real Property, American Bar Association, 1991
- Retaking the Fifth Amendment: Property Rights Revisited, Detroit College of Law Review, 1993
- The Case for Indexing Capital Gains, Detroit College of Law Review, 1994
- Al Gore & Racial Profiling, The Washington Times, 2000

16. Speeches: Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

I have not made any formal speeches in the last five years.

17. Selection:

- (a) Do you know why you were chosen for this nomination by the President?

I believe a number of factors led the President to choose me for this role. In particular, my education, background, and experience provide me with unique skills and problem-

solving abilities to further the mission of the Office of Federal Procurement Policy.

As the chief of staff at the General Services Administration, I have had to master the procurement process. From the operations level, I understand the both the benefits and dangers of centralized procurement and issues surrounding non-compliance with the Federal Acquisition Regulations as well as applicable laws and policies. I hope to bring that operational perspective to the Office of Federal Procurement Policy, if I am confirmed by the Senate.

Coming from GSA, I also recognize the need for resources to be devoted to managing the human capital that is our acquisition workforce. At GSA, we began the process of strategically managing human capital, and made significant progress in doing so. It is that record that was taken into account during the selection process. It should be noted that if I am confirmed, one of my highest priorities will be to address the human capital needs of the government's acquisition professionals – including recruiting, training, and retention of high performing contracting officers.

As the GSA representative to the Federal Acquisition Council, I demonstrated motivation, energy, and focus necessary to drive the changes necessary for the government to make efficient and effective procurements – a more difficult task as information technology and telecommunications systems become more complex and expensive. Again, I hope to bring these skills to OFPP if I am fortunate enough to be confirmed by the Senate.

I believe the managerial improvements made at GSA that are reflected in the President's Management Agenda scorecard demonstrated that I can work in a team environment to drive change. Of course, I do not take the credit for GSA's significant managerial improvements during the past two years. I can only say that I have contributed to the success driven by GSA Administrator Stephen Perry.

Finally, I am confident that my legal training and the subsequent use of my education as an advocate for various legislative causes made me stand out from others who sought the position. It is this combination of substantive procurement knowledge, demonstrated managerial skills, and legal and legislative experience that are what made me a strong candidate for the position to which I have been nominated.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

First and foremost, my operational experience with the acquisition process is (and should be) a critical prerequisite. Whether it's full and open competition, emergency procurement processes, schedules use, or other acquisition avenues, my time at GSA gave me significant exposure to procurement in action.

Similarly, as GSA's chief of staff during a transformational time under Administrator Stephen Perry's leadership, I worked as part of the senior management team to address managerial and operational issues of consequence to the Committees charged with oversight of the procurement process. This experience not only validates my procurement knowledge, I believe it reflects management skills I have honed during my years both in and out of government. Like any large organization, GSA has encountered troubles along the way. But how we responded to such issues, as well as the improvements to performance at that agency brought about by the Administrator and his senior management team, are accomplishments I can be proud of as well.

My time as chief of staff to Congressman Chris Cannon (R-UT), I believe, is also an indicator of how I will perform if I am favorably recommended by the Committee and confirmed by the Senate. Working for Congressman Cannon, I built bipartisan relationships with members and staffs of the most polarized Committee of the House of Representatives – the Judiciary Committee. Yet, despite the ideological divide at that Committee, I was able to work across the political aisle. For example, Congressman Cannon and I worked closely with Ranking Member John Conyers (D-MI) on antitrust and telecom issues. We worked in concert with Congressmen Delahunt and Berman and their respective staffs on immigration matters. And we worked closely with Congressman Jim Matheson (D-UT) on Utah issues. It is this bipartisan approach that I hope to bring to the position if I am fortunate enough to be confirmed.

Similarly, my experience as a lawyer and legislative advocate provide me with the skills, talents, and abilities to understand how important Congress' role is, and the need to be responsive and candid in addressing Members and staff. Particularly in the areas of procurement and competitive sourcing, I believe the need for collaboration between the Legislative and Executive branches is of paramount importance.

Finally, I hope my education demonstrates a commitment to academic excellence. As noted earlier, I graduated from law school magna cum laude (fifth in my class), and was a law review editor and teaching fellow for Legal Research and Property law. Interestingly, during my time in law school, I worked for the United States Army Aviation and Troop Support Command, where I got my first taste of procurement matters dealing with the acquisition of rotary aircraft. I also worked on a number of acquisition issues as an associate attorney at Preston, Gates & Ellis.

In short, my background, education, experience, and track record of success affirmatively qualify me for the position of Administrator of the Office of Federal Procurement Policy.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
Yes.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.
No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?
No.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?
No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

My wife is the chief counsel for oversight and investigations for the House Committee on Government Reform. One newspaper editorial has made the charge that because Jennifer is in charge of investigating (among other issues) acquisitions by Executive Branch agencies as well as the Office of Management and Budget, a potential conflict of interest may exist. In the interest of addressing even the appearance of conflict, my wife has entered into a recusal agreement with the Committee, a copy of which was provided to the Office of Government Ethics, and is attached.

As noted above, I held an interest in a legislative consulting and lobbying practice that represented a number of clients, some of whom have an interest in participating in government procurements. In particular, former clients Microsoft and Covad sell their goods and services to the federal government. In the case of Microsoft, I have not represented that firm since 1997. I have not represented Covad since 2001.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

As noted above, I held an interest in a legislative consulting and lobbying practice that represented a number of clients seeking either the enactment or defeat of legislation, or modification of federal regulations. Those clients are listed in my answer to question A11.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

I have never been arrested, charged or convicted of any violation of law outside of minor traffic violations.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

David H. Safavian being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 5th day of February, 2004
"District of Columbia" [Signature]
Notary Public
My Commission Expires AUG. 31, 2006

Nomination Questionnaire of David H. Safavian
Political Contributions

(Source: Federal Election Commission, www.fec.gov)

BUSH, GEORGE W

VIA BUSH FOR PRESIDENT INC.

06/10/2003	250.00
12/01/2001	1,000.00

HAYWORTH, JD

VIA JD HAYWORTH FOR CONGRESS

05/13/1998	783.00
06/08/1998	200.00
12/23/1999	250.00

REILLY, CHRISTOPHER B

VIA REILLY FOR CONGRESS

03/13/2000	250.00
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YOUNG, DON E

VIA ALASKANS FOR DON YOUNG

03/08/2000	250.00
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CHABOT, STEVE

VIA STEVE CHABOT FOR CONGRESS

03/03/2000	250.00
03/06/2000	250.00
03/10/2000	-250.00
03/31/2000	250.00
06/26/2000	250.00

GOVERNOR ENGLER LEADERSHIP FUND

01/07/2000	300.00
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ROGERS, MICHAEL J

VIA ROGERS FOR CONGRESS

09/26/2000	1000.00
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WILSON, HEATHER A

VIA HEATHER WILSON FOR CONGRESS

07/24/2000	500.00
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KEEP OUR MAJORITY PAC

08/16/2000	5000.00
10/07/2000	1000.00

PAPPAS, MICHAEL

VIA MIKE PAPPAS FOR CONGRESS

ROGERS, MICHAEL J

VIA ROGERS FOR CONGRESS

03/20/2000	500.00
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ENSIGN, JOHN ERIC

VIA ENSIGN FOR SENATE

02/12/1998	1000.00
03/29/1998	-824.00
03/29/1998	824.00
10/07/1999	250.00

11/16/1999	750.00
<u>HULSHOF, KENNY CHARLES</u>	
<u>VIA HULSHOF FOR CONGRESS</u>	
06/30/1998	300.00
06/30/1998	300.00
<u>CHRISTENSEN, JON LYNN</u>	
<u>VIA JON CHRISTENSEN FOR CONGRESS COMMITTEE</u>	
02/26/1997	269.00
<u>ENSIGN, JOHN ERIC</u>	
<u>VIA ENSIGN FOR SENATE</u>	
05/21/1997	224.00
10/24/1997	500.00
<u>PAXON PAC (FKA PAXON FOR CONGRESS)</u>	
10/23/1997	250.00
<u>NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE CONTRIBUTIONS</u>	
03/01/2000	250.00
<u>EMERSON, MARK</u>	
<u>VIA EMERSON FOR CONGRESS</u>	
04/25/2000	-500.00
<u>CANNON, CHRISTOPHER B</u>	
<u>VIA CANNON FOR CONGRESS</u>	
06/24/1999	500.00
11/05/1999	500.00
08/02/2000	500.00
<u>BOEHNER, JOHN A</u>	
<u>VIA FRIENDS OF JOHN BOEHNER</u>	
06/07/2000	250.00
<u>BURNS, CONRAD</u>	
<u>VIA FRIENDS OF CONRAD BURNS - 2000</u>	
06/10/1999	500.00
<u>SUNUNU, JOHN E</u>	
<u>VIA TEAM SUNUNU</u>	
09/21/1999	250.00
<u>CAMP, DAVID LEE</u>	
<u>VIA DAVE CAMP FOR CONGRESS 2004</u>	
03/15/1999	500.00
<u>CANTOR, ERIC</u>	
<u>VIA CANTOR FOR CONGRESS</u>	
05/24/2000	250.00
06/08/2000	250.00
<u>CONTINUING A MAJORITY PARTY ACTION COMMITTEE (CAMPAC)</u>	
02/28/2000	500.00
<u>CONYERS, JOHN JR</u>	
<u>VIA FRIENDS OF JOHN CONYERS</u>	
10/18/2000	250.00
<u>SMITH, DEREK W</u>	
<u>VIA SMITH FOR CONGRESS</u>	
09/30/2000	200.00
09/30/2000	306.00
<u>BUILDING OUR BASES (BOBS) PAC</u>	

08/29/1998	250.00
<u>EMERSON, MARK</u>	
<u>VIA EMERSON FOR CONGRESS</u>	
02/28/2000	500.00
<u>WATTS, JULIUS CEASER JR. (JC)</u>	
<u>VIA WATTS FOR CONGRESS</u>	
05/21/1999	500.00
<u>SWEENEY, JOHN E</u>	
<u>VIA SWEENEY FOR CONGRESS</u>	
12/04/1998	250.00
<u>BUSH, GEORGE W</u>	
<u>VIA BUSH FOR PRESIDENT INC.</u>	
09/09/1999	250.00
<u>CAMP, DAVID LEE</u>	
<u>VIA DAVE CAMP FOR CONGRESS '98</u>	
03/24/1998	500.00
<u>ROGAN, JAMES E</u>	
<u>VIA ROGAN FOR CONGRESS COMMITTEE</u>	
03/26/1998	300.00
<u>KOLBE, JAMES T</u>	
<u>VIA KOLBE FOR CONGRESS</u>	
10/10/1998	250.00
<u>CANNON, CHRISTOPHER B</u>	
<u>VIA CANNON FOR CONGRESS</u>	
10/11/2002	500.00
<u>BUSH, GEORGE W</u>	
<u>VIA BUSH FOR PRESIDENT INC.</u>	
05/22/2000	-250.00
<u>BUSH, GEORGE W</u>	
<u>VIA BUSH FOR PRESIDENT INC.</u>	
11/26/1999	500.00
03/24/2000	300.00

February 16, 2004

The Honorable Susan Collins
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Collins:

As you may know, I have been nominated for the position of Administrator, Office of Federal Procurement Policy, Office of Management and Budget. On February 9, 2004, I submitted my personal history questionnaire to the Committee. The purpose of this letter is to augment and clarify my answer to Question 11 (Business Relationships) of the Personal History Questionnaire, which states:

List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

In my original answer to Question 11, I listed those clients I recalled having personally and actively represented either as an attorney or as a consultant. However, I did not list clients represented by my employers on behalf of whom I was not actively engaged. I have reviewed the Lobby Disclosure Act filings available online, and based on that information, would like to supplement my answer to Question 11. Thus, in addition to those entities listed in my original submission, the following organizations should be included in Question 11 of the February 9, 2004 response:

Afin Securities (former)¹
Bluestar Communications (former)²
Corporacion Valenciana de Cementos Portland, SACA (former)³
Corporacion Venezolana de Cementos (former)⁴
Darik Enterprises⁵

¹ It should be noted that Afin Securities is a subsidiary of Bannorte Bank of Mexico, which was listed in my February 9, 2004 submission.

² Bluestar Communications (which is no longer in business) was a member of the coalition of DSL providers known as DSL Access Telecommunications Association ("DATA"). DATA was listed in my February 9, 2004 submission.

³ Corporacion Valenciana de Cementos Portland, SACA is a subsidiary of CEMEX Cement, which was listed in my submission of February 9, 2004.

⁴ Corporacion Venezolana de Cementos is a subsidiary of CEMEX Cement, which was listed in my submission of February 9, 2004.

⁵ Darik Enterprises was listed by its affiliate name (Zenith Enterprises) in my submission of February 9, 2004.

Letter to the Honorable Susan Collins
 Chairman
 Senate Committee on Government Affairs
 February 16, 2004
 Page 2

HarvardNet, Inc. (former)⁶
 Northpoint Communications (former)⁷
 Houston Shell and Concrete (former)⁸
 Dr. Jamal alBarzinji (former)
 Pacific Coast Cement Corporation (former)⁹
 Rythms Net Connections, Inc. (former)¹⁰
 Secured Access Portals, Inc. (former)¹¹
 Sunbelt Corp. (former)¹²
 Vits Networks, Inc. (former)¹³
 Arctic Storm (former)¹⁴
 Bode & Beckman (former)
 BP America, Inc. (former)
 Camara Nacional de Las Industrias Azucarera y Alco (former)¹⁵
 Camara Nacional de la Industria Pasquera (former)¹⁶
 CDM Fantasy Sports (former)
 Echostar Communications (Former)
 First Amendment Coalition for Expression¹⁷
 FOP/U.S. Park Police Labor Committee

⁶ HarvardNet (which is no longer in business) was a member of the coalition of DSL providers known as DSL Access Telecommunications Association ("DATA"). DATA was listed in my February 9, 2004 submission.

⁷ Northpoint Communications (which is no longer in business) was a member of the coalition of DSL providers known as DSL Access Telecommunications Association ("DATA"). DATA was listed in my February 9, 2004 submission.

⁸ Houston Shell and Concrete is a subsidiary of CEMEX Cement, which was listed in my submission of February 9, 2004.

⁹ Pacific Coast Cement is a subsidiary of CEMEX Cement, which was listed in my submission of February 9, 2004.

¹⁰ Rythms Net Connections, Inc. (which is no longer in business) was a member of the coalition of DSL providers known as DSL Access Telecommunications Association ("DATA"). DATA was listed in my February 9, 2004 submission.

¹¹ Secured Access Portals was a client of my prior firm, Janus-Merritt. Janus-Merritt's policy was to register all lobbyists for all clients, regardless of the volume of work to be done by any individual member. I did not do any substantive work for Secured Access Portals.

¹² Sunbelt Corp. is a subsidiary of CEMEX Cement, which was listed in my submission of February 9, 2004.

¹³ Vits Networks, Inc. (which is no longer in business) was a member of the coalition of DSL providers known as DSL Access Telecommunications Association ("DATA"). DATA was listed in my February 9, 2004 submission.

¹⁴ Arctic Storm was a client of my prior firm, Janus-Merritt. Janus-Merritt's policy was to register all lobbyists for all clients, regardless of the volume of work to be done by any individual member. I did not do any substantive work for Arctic Storm.

¹⁵ Camara Nacional de las Industrias Azucara y Alco was listed in my submission of February 9, 2004 as the Mexican Sugar Chamber.

¹⁶ Camara Nacional de la Industria Pasquera was listed in my submission of February 9, 2004 as the Mexican Tuna Chamber.

¹⁷ This entity was a subsidiary of the Interactive Gaming Council, which was listed on my submission of February 9, 2004.

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Inland Entertainment
 Jones Act Reform Coalition
 Interactive Services Association (former)¹⁸
 American Classic Voyages Co. (former)
 Brown Forman Corporation (former)
 Burlington-Northern Santa Fe Corporation (former)
 Dredging Contractors of America¹⁹
 H.D. Vest Financial Services (former)
 Metris Cos.
 Mississippi Band of Choctaw Indians (former)²⁰
 Port of Seattle (former)
 Tate & Lyle North American Sugars²¹
 Transportation Institute²²
 USFHP Conference Group²³
 Edison Electric Institute (former)
 Pascua Yaqui Indian Tribe (former)²⁴
 Alleghany Corp.²⁵
 Court TV (former)
 Grant County Public Utility District
 OMI Corporation (former)²⁶
 Shaw Environmental & Infrastructure²⁷
 Simpson Investment Co.²⁸

¹⁸ Interactive Services Association was the parent organization of the Interactive Gaming Council, which was listed in my February 9, 2004 submission.

¹⁹ Dredging Contractors of America was a client of my former law firm, Preston Gates & Ellis. I was unaware I had been listed as having provided services to this entity.

²⁰ Mississippi Band of Choctaw Indians was listed in my submission of February 9, 2004 as the Choctaw Indian Tribe.

²¹ Tate & Lyle was a client of my former law firm, Preston Gates & Ellis. I was unaware I had been listed as having provided services to this entity.

²² Transportation Institute was a client of my former law firm, Preston Gates & Ellis. I was unaware I had been listed as having provided services to this entity.

²³ USFHP Conference Group was a client of my former law firm, Preston Gates & Ellis. Prior to seeing this entity listed on the LDA web site, I had never heard of it before.

²⁴ The Pascua Yaqui tribe was a client of my former consulting firm, Janus-Merritt. It was the firm's policy to register all lobbyists for all clients, regardless of the volume of work to be done by any individual member. I did not do any substantive work for the tribe.

²⁵ Alleghany Corporation was a client of my former law firm, Preston Gates & Ellis. I was unaware I had been named as ever providing services to this company.

²⁶ OMI Corporation was listed in my February 9, 2004 submission as Ogden Marine, Inc.

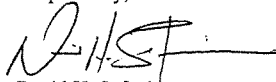
²⁷ Shaw Environmental & Infrastructure was a client of my former law firm, Preston Gates & Ellis. I was unaware I had been named as ever providing services to this company.

²⁸ Simpson Investment was a client of my former law firm, Preston Gates & Ellis. I was unaware I had been listed as ever providing services to this company.

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Chairman
Senate Committee on Government Affairs
February 16, 2004
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I regret if my February 9, 2004 questionnaire has caused any confusion, and appreciate the opportunity to clarify my earlier submission. Should you or your staff have any questions regarding this matter, please feel free to contact me at: (202) 395-3816.

Respectfully,



David H. Safavian

Cc: The Honorable Joseph Lieberman
Ranking Member

February 24, 2004

The Honorable Susan Collins
 Chairman
 Committee on Governmental Affairs
 United States Senate
 Washington, D.C. 20510

Dear Chairman Collins:

As you may know, I have been nominated by the President for the position of Administrator of the Office of Federal Procurement Policy. Following the submission of my personal history questionnaire on February 9, 2004, I have received a request from staff to clarify my answer to Question C2 (Potential Conflicts of Interest).

Question C2 of the February 9th personal history questionnaire states:

Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

My answer of February 9th was:

As noted above, I held an interest in a legislative consulting and lobbying practice that represented a number of clients seeking either the enactment or defeat of legislation, or modification of federal regulations. Those clients are listed in my answer to question A11.

Committee staff have requested more details on specific legislation I worked on to determine whether such activity could create a conflict of interest. It should be noted that I last represented clients in the private sector in January, 2001.

As a threshold matter, none of my prior law or lobbying clients retained my services to work on legislation directly impacting the Office of Federal Procurement Policy (e.g., the Clinger-Cohen Act, the Federal Acquisition Streamlining Act, etc.) or issues related to the President's Management Agenda. Accordingly, the nature of work performed for private sector clients poses no direct conflict of interest. In order to provide complete disclosure, I have listed below each client I personally represented while in the private sector, and have provided a brief description of the issue(s) for which I was retained.

- Microsoft - Federal lobbying disclosure laws and foreign tax issues (reauthorization of favorable tax treatment of foreign sales corporations)
- American President Lines - Tax (amendments to Subpart F of the Internal Revenue Code) and transportation (Jones Act) issues
- Ogden Marine Inc. (aka "OMI") - Environmental issues (Oil Pollution Act amendments)
- Mexican Tuna Chamber - Trade & fisheries issues (Tuna-Dolphin legislation)
- Cemex Corp. (and subsidiaries) - Trade issues (sunsetting of tariffs on imported cement products)

Letter to the Susan Collins
 Chairman
 Senate Committee on Government Affairs
 February 24, 2004
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- Soyuz-Contract, Inc. – USDA loan guarantees for poultry exports to Russia
- Mexican Sugar Chamber – Trade issues (restrictions on Mexican sugar imports and domestic price supports)
- Embassy of Pakistan – Foreign military sales
- Business Software Alliance – Federal lobbying disclosure laws
- Bannorte Bank – Trade & foreign banking issues
- Fannie Mae – Regulation of government sponsored mortgage entities
- Commonwealth of the Northern Marianas Islands – Legislation seeking to apply minimum wage and immigration provisions to the Commonwealth
- Choctaw Indian Tribe – Tax and tribal sovereignty issues related to Indian business operations
- American Business for Legal Immigration – Renewal of section 245(i) of the Immigration Reform Act.
- Scribe Communications – Legislation to reduce criminal sentences for inadvertent failure to report cash transactions in excess of \$10,000.
- Zenith Enterprises (a.k.a. “Dark Enterprises”)– Generic press and media relations services
- Government of Montenegro – Efforts to lift trade sanctions
- Bell South – Legislation to ease federal and state excise taxes on telecom companies
- Jos. E. Seagram & Sons, Inc. – Advertising regulation and legislation to reduce excise taxes on distilled spirits
- Distilled Spirits Council – Advertising regulation and legislation to reduce excise taxes on distilled spirits
- Interactive Gaming Council – Internet Gambling Prohibition Act
- National Indian Gaming Association – Tax treatment of Indian tribal governments and miscellaneous tribal sovereignty issues (e.g., Internet Gambling Prohibition Act)
- Viejas Band of Kumeyaay Indians – Indian health care issues
- Covad Communications – Tauzin-Dingell broadband legislation
- Islamic Institute – Creation of a commemorative USPS stamp for Ramadan
- DSL Access Telecommunications Association – Tauzin-Dingell broadband legislation
- American Immigration Lawyers Association – Renewal of section 245(i) of the Immigration Reform Act.
- Quiet Heart Enterprises, Inc. – Jones Act waiver
- Afín Securities – Miscellaneous trade and banking issues
- Bluestar Communications – Tauzin-Dingell broadband legislation
- Corporacion Valenciana de Cementos Portland, SACA – Trade issues (sunsetting of tariffs on imported cement products)
- Corporacion Venezolana de Cementos - Trade issues (sunsetting of tariffs on imported cement products)
- HarvardNet, Inc. – Tauzin-Dingell broadband legislation
- Northpoint Communications – Tauzin-Dingell broadband legislation
- Houston Shell and Concrete – Trade issues (sunsetting of tariffs on imported cement products)
- Dr. Jamal alBarzinji – Human rights issues relating to political prisoners in Malaysia
- Pacific Coast Cement Corporation – Trade issues (sunsetting of tariffs on imported cement products)
- Rythms Net Connections, Inc. – Tauzin-Dingell broadband legislation
- Sunbelt Corp. – Trade issues (sunsetting of tariffs on imported cement products)
- Vitts Networks, Inc. – Tauzin-Dingell broadband legislation

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Page 3

- Arctic Storm – Magnusson Act amendments
- Bode & Beckman – Taxation of internet transactions
- BP America, Inc. – General taxation and environmental matters
- Camara Nacional de Las Industrias Azucarera y Alco – Elimination of restrictions on Mexican sugar imports and domestic price supports
- Camara Nacional de la Industria Pasquera – Tuna-Dolphin legislation
- CDM Fantasy Sports – Internet Gambling Prohibition Act
- EchoStar Communications – Satellite Home Viewer Act
- First Amendment Coalition for Expression – Internet Gambling Prohibition Act
- FOP/U.S. Park Police Labor Committee – Legislation to increase pay of U.S. Park Police officers
- Inland Entertainment – Internet Gambling Prohibition Act
- Jones Act Reform Coalition – Transportation legislation (Jones Act)
- Interactive Services Association – Internet Gambling Prohibition Act
- American Classic Voyages Co. – Department of Transportation Title XI financing matters
- Brown Forman Corporation – Excise tax rates on distilled spirits
- Burlington-Northern Santa Fe Corporation – Excise tax rates on diesel fuel
- H.D. Vest Financial Services – Tax legislation relating to independent contractors
- Metris Cos. – Banking-regulation (Fair Credit Reporting Act amendments)
- Port of Seattle – General appropriations issues
- Edison Electric Institute – Federal taxation of municipal/non-profit power companies
- Pascua Yaqui Indian Tribe – Appropriations to pay for tribal health care operations
- Court TV – Legislation to authorize cameras in Federal courts

It should be noted that some of my past clients currently conduct business with the Federal government. It is my intention to maintain the highest standards of ethical conduct in my personal and professional lives, and as such, will avoid even the appearance of a conflict of interest. Any potential conflicts will be handled through the recusal process. If necessary, I would remove myself from the decision-making process and refer all activity to the responsible official within the Office of Federal Procurement Policy or the Office of Management and Budget. I have notified the Designated Agency Ethics Official within OMB of those clients whose legal or lobbying matters I handled while in private practice. I will address former clients and former private sector employers in accordance with 5 C.F.R. sec. 2635.502.

Should you or your staff have any questions regarding this or any other matter, please feel free to contact me at (202) 395-3816.

Respectfully,



David H. Safavian

Cc: The Hon. Joseph Lieberman

U.S. Senate Governmental Affairs Committee
Pre-Hearing Policy Questions for the Nomination
Of David Safavian to be
Administrator for Federal Procurement Policy

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Administrator for Federal Procurement Policy?

I believe the President chose me for this nomination because of my experience working as the chief of staff for the General Services Administration, as well as my prior experiences working in government and the private sector.

2. In September of 2000, your firm, Janus-Merritt Strategies, registered as a lobbying client Abdurahman Alamoudi. The disclosure form filed with the Senate listed you, among others, as an individual who has acted or is expected to act as a lobbyist for the client. Your firm subsequently filed lobbying reports in February and August of 2001, listing Mr. Alamoudi as a client. The reports indicate that the firm had received an estimated \$20,000 from the client during each of two six-month periods. The subject of the representation listed on the form was a House resolution that called on the Malaysian government to respect human rights.

In late October of 2000, Mr. Alamoudi made widely publicized remarks at an anti-Israel rally in Washington, D.C., that he supported both Hamas and Hezbollah. (New York Times, 11/1/2000, p. A1; New York Times, 11/4/2000, p. A1) Mr. Alamoudi later apologized for the remarks. Reports of those comments resurfaced in the media in October of 2001, in the wake of the September 11, 2001 terrorist attacks. On September 29, 2003, he was charged with making illegal trips to Libya and with accepting money from the Libyan government. Federal prosecutors have also accused Mr. Alamoudi of having financial links to Al Qaeda, Hamas, and other terrorist groups.

You left Janus-Merritt to work for Rep. Chris Cannon in January of 2001. Janus-Merritt apparently terminated its representation on October 17, 2001. On December 17, 2001, the firm's Managing Partner wrote to the Secretary of the Senate, informing that office that the firm had incorrectly listed Mr. Alamoudi as the contact, and that Jamal Al Barzinji should have been listed as the contact. In fact, the earlier forms had listed Mr. Alamoudi as the client, not the contact. The letter said that "all correspondence regarding our activities with respect to foreign relations and Malaysia was done solely with Dr. al Barzinji." The Managing Partner noted that the representation had been terminated two months earlier, and it included a lobbying report with the new name to reflect the termination had occurred.

*Senate Committee on Governmental Affairs
 Policy Questionnaire of David H. Safavian
 Nominated by President Bush To Be
 Administrator, Office of Federal Procurement Policy
 April 16, 2004
 Page 2*

In March of 2002, federal agents named Jamal Al Barzinji as one of the leaders of a group suspected of aiding terrorists. The information was contained in an affidavit used to obtain a search warrant for the businesses and homes of the group's leaders.

In the biographical and financial information you initially provided to this Committee, you listed neither Mr. Alamoudi nor Dr. al Barzinji as clients for whom you had done lobbying work. In response to a request from Committee staff for more information, you acknowledged having done work on behalf of Dr. al Barzinji regarding Malaysian human rights.

- a. Did you or Janus-Merritt Strategies ever do work for Mr. Alamoudi? If so, describe with as much detail as possible all the work that you or Janus-Merritt did for Mr. Alamoudi. Include in your answer any contacts you had with Mr. Alamoudi as part of your work at Janus-Merritt. If not, please explain your understanding of why he was listed three times as a client in the firm's lobbying disclosure forms.

To my knowledge, neither I nor Janus-Merritt did any work for Mr. Alamoudi. Dr. Jamal al Barzinji should have been listed as the client retaining the firm for work related to Malaysian political prisoner Anwar Ibrahim. I do not know why Mr. Alamoudi was erroneously listed in the client's lobby disclosure forms.

- b. Please describe your knowledge of why the representation was terminated.

It is my understanding that the representation was terminated in October, 2001. As I was not at the firm at the time the decision was made (I had left ten months prior), I was not involved in the decision to terminate the representation. I do not know the specifics as to why the representation was terminated.

- c. Describe your knowledge of the reasons Janus Merritt changed the name of the client listed on the lobbying disclosure form, including your knowledge of why this occurred after the representation was terminated. Did you play any role in, or have any discussions about, the firm's decision to change the name listed on the disclosure form?

I was not at the firm at the time the decision was made (I had left the firm ten months before), and therefore, lack any first hand knowledge of the circumstances regarding Lobby Disclosure Act filings post January 2001, when I left the firm. Based on the facts outlined in the question posed, I can surmise that the Lobby Disclosure Act filing was amended to reflect the fact that Dr. Jamal al Barzinji was the client, rather than Mr. Alamoudi.

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I did not play any role in the firm's decision to change the name in the filing or terminate the representation, as I had left Janus-Merritt ten months prior.

- d. When did you become aware of the remarks Mr. Alamoudi reportedly made in October of 2000, to the effect that he supported both Hamas and Hezbollah?

I became aware of the remarks in October of 2000, when I read press accounts highlighting the return of political contributions made by Mr. Alamoudi to several members of Congress following his pro-Hamas remarks.

- e. Why did you not list work performed for Mr. Alamoudi in the biographical and financial information you submitted to the Committee?

I did not disclose any work for Mr. Alamoudi because I did not represent Mr. Alamoudi in a legal, lobbying, or any other capacity. I was not aware that he was listed as a client of the firm.

- f. Describe with as much detail as possible all the work that you or Janus-Merritt Strategies did for Dr. Jamal Al Barzinji in the time that you were at the firm.

Dr. Al Barzinji retained the firm to raise the profile of a Malaysian political prisoner, Mr. Anwar Ibrahim, on Capitol Hill and with the Clinton Administration, with the hope of pressuring the regime of Malaysian President Mahathir to either release Mr. Ibrahim or lighten his sentence. To the best of my recollection, the extent of my work for this client was limited to two initial, pre-hiring meetings with the potential client. After Dr. Al-Barzinji retained the firm, I did not actually participate in any meetings to lobby on behalf of this client. This can be confirmed by speaking to Mr. Mark Robertson, managing director, Williams-Mullen Strategies (the successor to Janus-Merritt), at 202-293-8144.

Mr. Scott Hoffman, a principal of the firm at the time, worked with Members and staff of the International Relations committees to move a "Sense of Congress" resolution addressing Mr. Ibrahim's plight. I believe Mr. Hoffman also worked with State Department staff on this issue as well. In addition, Mr. Hoffman met with media outlets in an attempt to highlight the human rights abuses of Malaysian Prime Minister Mahathir Mohammed and his abhorrent treatment of his former deputy, Anwar Ibrahim.

- g. List separately all amounts of money Janus Merritt received for representing Mr. Alamoudi and/or Dr. Barzinji, and who paid the money to Janus-Merritt.

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I do not believe Janus-Merritt received any funds from Mr. Alamoudi. Any funding received from Dr. Al Barzinji would be reflected in the firm's Lobbying Disclosure Act filings.

3. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

4. What specific background and experience affirmatively qualifies you to be Administrator of Federal Procurement Policy?

First and foremost, my operational experience with the acquisition process is (and should be) a critical prerequisite. Whether it's full and open competition, emergency procurement processes, schedules use, or other acquisition avenues, my time at GSA, as well as working procurement issues while at Preston, Gates & Ellis and the United States Army's Aviation and Troop Support Command gave me significant exposure to procurement in action.

Similarly, as GSA's chief of staff during a transformational time under Administrator Stephen Perry's leadership, I worked as part of the senior management team to address managerial and operational issues of consequence to the Committees charged with oversight of the procurement process. This experience not only validates my procurement knowledge, I believe it reflects management skills I have honed during my years both in and out of government. The improvements to performance at GSA brought about by actions of Administrator Perry and his senior management team are accomplishments I am proud of.

My work as chief of staff to Congressman Chris Cannon (R-UT) is also an indicator of how I will perform if I am favorably recommended by the Committee and confirmed by the Senate. Staffing for Congressman Cannon, I built bipartisan relationships with members and Judiciary Committee staff, and was able to work successfully across the political aisle to deliver results. For example, Congressman Cannon and I worked closely with Ranking Member John Conyers (D-MI) on antitrust and telecommunications issues. We worked in concert with Congressmen Delahunt and Berman and their respective staffs on immigration matters. We worked closely with Congressman Jim Mattheson (D-UT) on Utah issues. It is this bipartisan approach that I hope to bring to the position, if I am fortunate enough to be confirmed.

Similarly, my experience as a lawyer and legislative advocate has provided me with the skills, talents, and abilities to understand how important Congress' role is, and the need

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to be responsive and candid in addressing Members and staff. Particularly in the areas of procurement and competitive sourcing, I believe the need for bipartisan collaboration between the Congress and the Administration is of paramount importance.

Finally, I hope my education demonstrates a commitment to academic excellence. As noted earlier, I graduated from law school magna cum laude (fifth in my class), and was a law review editor and teaching fellow for Legal Research and Property law. During my time in law school, I worked for the United States Army Aviation and Troop Support Command, where I got my first taste of procurement matters dealing with the acquisition of rotary aircraft.

In short, my background, education, and experience affirmatively qualify me for the position of Administrator of the Office of Federal Procurement Policy.

5. Please describe how your experience at GSA and on Capitol Hill will help you fulfill your duties as the head of OFPP.

Having been in the position of serving the public in both the legislative and administrative branches, I have had the opportunity to experience first-hand how well our government can work when all of its agencies and branches work well together. Without an ongoing and productive dialogue between the branches, it can be all too easy to lose sight of goals such as ensuring that citizens receive the best value for their tax dollars via the procurement process.

During my time on Capitol Hill, I worked hard to build legislative coalitions across party lines with the common goal to implement legislation that was ultimately good for the American people. I hope to bring that same sensibility to the job of Administrator of OFPP.

As the former chief of staff at GSA, I bring an operational understanding of Federal acquisition activities. I also have a realistic view of the challenges facing the government at a time when everyone from the private sector to the public sector is being asked to do more with less.

In each of the positions I have held in government, I have made it a priority to continually improve my management and leadership skills. While the OFPP position requires technical knowledge, it also requires strong leadership. Learning how to motivate employees is a challenge I have enjoyed, and succeeded at, over the course of my career.

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If I am confirmed, I hope to use my talents and experience, and continue the work of my predecessors to improve the Federal acquisition process. Ultimately, I hope to make lasting changes that maximize the efficiency of tax dollars by increasing competition and decreasing barriers to entry, where appropriate.

6. Have you made any commitments with respect to the policies and principles you will attempt to implement as Administrator for Federal Procurement Policy? If so, what are they and to whom have the commitments been made?

I have made no such commitments, other than to execute my duties fully and faithfully.

7. Please describe with specificity all the experience and training you have in federal procurement policy and government contracting.

My most recent experience has been my tenure as GSA's chief of staff. In that role, I was an active member of the GSA management team, working as the chief operating officer for Administrator Stephen Perry in his role as CEO. In this role, I was provided with in-depth exposure to nearly all facets of procurement, from assisted acquisition services to multiple awards schedules, to government-wide policy. During this time, we also implemented performance metrics, as well as a realignment of the Federal Supply Service and the Federal Technology Service. I was directly responsible for conducting performance reviews of Regional Operations, thus, seeing operational issues as they unfolded from outside the beltway.

As chief of staff to a Member of Congress on the Government Reform Committee, I was responsible for advising the Congressman on policy determinations with regard to substantive procurement legislation and various appropriations riders impacting issues before the Office of Federal Procurement Policy.

As an associate attorney at Preston Gates and Ellis, I spent part of nearly two years working for firm partner William Shook, conducting research in the acquisition and procurement field.

My first exposure to acquisition issues dates back to the early 1990s, when I worked as a paralegal specialist for the United States Army, Aviation and Troop Support Command (now Army Material Command).

8. In the biographical and financial information you submitted to the Committee, you indicated that you had formerly been a consultant for the Government of Montenegro. You listed as the subject of your work, "Efforts to lift trade sanctions." In an article dated August 14, 1995, Legal Times reported that while at Preston Gates, you were retained to

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assist Montenegro in having assets unfrozen and sold. Although trade sanctions then in effect would have prevented lobbying on behalf of Montenegro, the article reported that the Treasury Department granted a license to your firm to perform the work. The article raised questions as to whether funds from such work would end up in Serbia; at the time, both countries were part of the Federal Republic of Yugoslavia.

- a. Please describe in detail the work you did for the government of Montenegro. Did you or your firm make any effort to ensure that unfrozen assets did not end up in Serbia?

A number of Preston Gates professionals were listed as being registered to represent the Government of Montenegro. At the time, I was a junior tax associate. As such, the extent of my work was to review regulations issued by the Treasury Department's Office of Foreign Assets Control related to implementation of the sanctions.

I do not have any information as to what efforts the firm undertook to monitor the ultimate disposition of foreign assets. I, personally, did not undertake take such efforts.

- b. Committee staff were unable to find records showing that you had listed the Montenegro representation under either the Foreign Agents Registration Act or in a lobbying disclosure report with Congress. Did you disclose the client through either reporting mechanism? If not, why not?

I am listed as having registered to lobby on behalf of the Montenegrin government with the Department of Justice in October 1995. However, information from that period is not available online. Hard copies of the relevant FARA filings may be obtained from the Department of Justice - Foreign Agents Registration Act Office at 1400 New York Avenue, N.W., 1st Floor, Washington, D.C.

9. You listed each of the following as clients you personally represented on legislative or policy matters: Microsoft; American President Lines; Soyuz-Contract, Inc.; Commonwealth of the Northern Mariana Islands; Bell South; and Quiet Heart Enterprises, Inc. Committee staff were unable to find records showing that you had registered as a lobbyist for any of the clients.

Please indicate whether you registered as a lobbyist for each client listed, and if not, why not.

Timely filed copies of the respective Lobby Disclosure Act reports for Microsoft, Soyuz-Contract, American President Lines, the Commonwealth of the Northern Mariana

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Islands, Quiet Heart Enterprises are attached. Work undertaken by Janus-Merritt for Bell South in 1997 did not trigger disclosure requirements.

10. You registered as a foreign agent for Pascal Lissouba, from Congo, and for the President of Gabon. Neither client was described in your submissions to the Committee. For both clients, please describe the work that you performed, and explain why the information was not provided to the Committee.

In the initial request for a list of all past clients submitted by the Committee as part of the ~~Personal History Questionnaire~~, I erroneously overlooked these clients. In ~~correspondence to the Committee dated March 12, 2004~~, I corrected that error.

11. In 2002, Congress reaffirmed the importance of competition by enacting Section 803 of the National Defense Authorization Act (Public Law 107-107). This provision requires ~~agencies to obtain a minimum of three offers for Department of Defense orders for professional services expected to exceed \$100,000 that are placed under multiple award contracts, including GSA Federal Supply Service schedules.~~

- a. What is your opinion about this provision of law?

I believe Section 803 was a prudent measure to ensure that competitive forces were applied to significant acquisitions of services. Despite claims made at the time of passage that Section 803 would interfere with procurement processes and could possibly slow down acquisitions, those concerns do not seem to have materialized. In fact, Section 803 appears to have been accepted by acquisition professionals as a useful tool to obtain competitive pricing in the services industry, which is critical given the inherent difficulty in assessing best value when evaluating service providers.

- b. What was your involvement in efforts to prevent this provision from being enacted?

Public Law 107-107 was enacted on December 28, 2001. At that time, I was chief of staff to Congressman Chris Cannon (R-UT). I did not have any involvement in efforts to defeat this specific measure.

12. In August 2001, the GSA Inspector General released a report entitled "MAS Price Practice: Is FSS Observing Regulatory Provisions Regarding Pricing?" The report detailed over \$500 million in overpricing issues specifically attributable to GSA contracting practices. Following the release of this report, were you involved in any

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actions GSA took to ensure that federal agencies were not overcharged by GSA contractors? If so, describe such actions.

I joined the General Services Administration in May of 2002. I was not involved in GSA's response to the 2001 report *per se*. However, as the chief of staff, I worked closely with the Federal Supply Service (as well as the Federal Technology Service) in developing initiatives to ensure taxpayers receive best value when the government acquires goods and services. For example, during my tenure, GSA worked closely with then OFPP Administrator Angela Styles on implementing Sec. 803 processes to ensure that DOD acquisitions from the multiple awards schedules of professional services (in excess of \$100,000) were competitive in nature. Similarly, we began the process of addressing the use of time and materials pricing, and looking for ways to increase the government's use of firm fixed pricing instead.

Probably the most significant efforts made were in the wake of various Inspector General reports concerning acquisitions made by the Federal Technology Service in regions 4, 6, 9, and 10. Following the discovery of poor contracting practices, GSA required multiple levels of oversight, including legal review of major acquisitions, Senior Procurement Executive review of acquisition plans, and peer review of contracts. Additionally, we began the process of instituting post-award review of contracts to ensure that not only are acquisitions legally sufficient, but are also drafted in a manner to generate the best return for taxpayer dollars.

13. Please describe with as much specificity as possible your involvement, while an employee at GSA or OMB, concerning the proposed or actual suspension, debarment, and re-instatement of WorldCom, Inc., also known as MCI and MCI/WorldCom, from Federal contracting programs (including contracts awarded and/or administered by GSA).

All deliberations and decisions regarding the present responsibility of MCI/Worldcom were made by the GSA Office of Government-wide Policy's Acquisition Policy Branch. Specifically, those deliberations and decisions were made by Mr. Joseph Neurauter and his staff. Mr. Neurauter is the GSA Agency Suspension/Debarment Officer, and is a career employee.

As the agency's chief of staff, the extent of my involvement in MCI/Worldcom issues was limited to receiving status reports and post decisional briefings.

14. Please describe with as much specificity as possible the work you have performed at OMB. Include a description of the issues you have worked on, and which staff at OMB you interact with most in the course of your work.

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Presently, I am the Counselor to Mr. Clay Johnson, the OMB Deputy Director for Management. In that capacity, I have been assisting Mr. Johnson with regard to advancing all aspects the President's Management Agenda in Congress, in the media, and among Federal employees.

Additionally, I continue to work on issues where the interest of OMB and GSA intersect, including both budget matters and policy.

People with whom I interact the most are as follows: Mr. Clay Johnson III, Deputy Director for Management; Mr. Robert Shea, Counselor to the Deputy Director; Ms. Linda Springer, OMB Controller; Ms. Karen Evans, Administrator for E-Government; Mr. Robert Burton, Associate Administration, Office of Federal Procurement Policy; Ms. Elizabeth Rossman, Acting Associate Director, OMB Legislative Affairs; Ms. Carrie Simmons, Congressional Affairs Officer; Ms. Lauren Lobrano, Congressional Affairs Officer; Mr. Mathew Blum, Policy Analyst, Office of Federal Procurement Policy; Mr. Chad Kolten, OMB Office of Communications; Mr. J.T. Taylor, OMB Office of Communications; Ms. Garrette Silverman, OMB Office of Communications; Mr. Steve McMillin, OMB Principal Assistant Director (general government issues); Ms. Jennifer Newstead, OMB General Counsel; Ms. Eileen Stephens, White House Fellow, Office of Management and Budget; Ms. Emily House, Assistant to the Deputy Director for Management; and Ms. Yvette Dennis, Office of Management and Budget, SBA Branch.

15. Please list all the individuals, with their titles, who have assisted you in preparing answers to the Committee's questions.

Ms. Jennifer Safavian, House Committee on Government Reform
Mr. Karl Reichelt, GSA Chief of Staff
Mr. Robert Burton, Associate Administrator, OFPP
Mr. Mathew Blum, Analyst, OFPP
Ms. Lesley Field, Analyst, OFPP
Ms. Susan Alesi, Analyst, OFPP
Mr. Michael Gerich, Analyst, OFPP
Ms. Dana Vader, Analyst, OFPP
Mr. Robert Shea, Counselor to the Deputy Director for Management, OMB
Mr. Clay Johnson III, Deputy Director for Management, OMB
Ms. Jennifer Newstead, OMB General Counsel
Mr. Mac Reed, OMB Assistant General Counsel
Mr. Steve Aiken, OMB Assistant General Counsel
Mr. James Carroll, Associate White House Counsel
Ms. Carrie Simmons, OMB Legislative Affairs

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II. Role and Responsibilities of the Administrator

16. How do you view the role of the Administrator for Federal Procurement Policy?

The role of the OFPP Administrator is multifaceted. In my view, the leadership responsibilities are: (a) the execution of OFPP's statutory mandates; (b) the provision of leadership to the procurement communities; and (c) the fulfillment of the President's Management Agenda where it intersects with acquisition issues. However, the position is also one of being a line manager, responsible for motivating OFPP staff and fostering an environment that rewards performance and results.

17. What challenges do you believe the Office for Federal Procurement Policy will face in the coming years? How will you as Administrator address these challenges and what will be your top priorities?

One of the greatest challenges facing the OFPP is the impending human capital crisis in the Federal Government. It is my understanding that in the next five years, nearly 40% of the workforce is retirement eligible. We risk losing a considerable part of our acquisition workforce, yet we face significant issues relating to the recruiting, training, and retention of our contracting officers. Equally troubling is the fact that civilian agencies lack a consistent career development track for acquisition specialists. It is this situation that I would like to address if I am fortunate enough to be confirmed. Without an experienced, motivated, and properly trained acquisition corps, the Federal Government risks unnecessarily inflated costs resulting from acquisitions. In short, we might not get the 'best value for the taxpayers' money, thus undermining public confidence.

A second challenge relates to the entrenchment of positions concerning competitive sourcing. To date, the debate about competitive sourcing has been a battle of anecdotes. The challenge is to move away from anecdotes to actual hard data that documents the value competitive sourcing may bring to government operations. I hope that launching the competitive sourcing database will aid in that effort.

Finally, one of the issues pointed out by my predecessor during her confirmation remains a significant challenge. I believe the acquisition community is being whipsawed between the need for efficient and streamlined procurement procedures and the need to ensure that taxpayers are receiving the absolute best value in procurements. While these two propositions are not mutually exclusive *per se*, the challenge is to ensure that more efficient acquisition processes (and the obvious benefits therein) remains consistent with basic notions of accountability, openness, competition, and transparency.

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18. How do you plan to communicate to the staff in the Office for Federal Procurement Policy (OFPP) on efforts to address relevant issues?

I will make it a priority to have open lines of communication with the OFPP staff if I am confirmed. I intend to be in nearly constant communication with them – utilizing telephones, email, faxes – and most importantly, regular and numerous meetings on both team and individual bases.

III. Policy Issues

General

19. During your tenure as the head of OFPP what key performance goals do you want to accomplish, and how will this committee know whether you have accomplished them?

If I am fortunate enough to be confirmed, I intend to focus significantly on acquisition workforce issues. We have a strong cadre of acquisition professionals both in the civilian and defense sectors. However, it is clear that we are facing a human capital crisis in the out years. Recruiting, retention, training, and career development must all be addressed if we are to maintain a strong contracting corps. Our contracting officers must do more than merely comply with the applicable laws and regulations. The taxpayers expect that when the government buys goods and services, it obtains the best value possible. But without sufficiently trained and motivated acquisition professionals, driving value becomes the exception, rather than the rule.

Benchmarks for success in this area will include:

1. Strengthening training by leveraging the progress made by the Defense Acquisition University to improve the Federal Acquisition Institute.
2. Establishing a common training curriculum for contracting officers working in civilian and defense agencies.
3. Revising certification requirements for our contracting workforce.
4. Instituting a "continuous learning environment" where acquisition professionals can use the Internet and other assets to stay current and learn about best practices.
5. Creating a more formalized career development path for civilian acquisition professionals.

I intend to continue to work to foster greater transparency, integrity, efficiency and openness with regard to the President's competitive sourcing initiative. As part of that effort, I pledge to work with the Congress to address concerns Members may have.

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Benchmarks for success in the competitive sourcing area will include:

1. Establishing and populating a competitive sourcing database so that we can move away from anecdotes, and base our debate on actual results of competitions.
2. Delivering accurate and timely reports to Congress and the public as to the status of the competitive sourcing initiative.
3. Identifying core competencies necessary for competitive sourcing officials and acquisition professionals to properly implement the initiative.
4. ~~When necessary, revising OMB Circular A-76 in a timely and consensus-driven manner.~~
5. Addressing Congressional concerns about the initiative in a responsive and constructive way.

Another priority will be to continue the progress made by the Administration on increasing contracting opportunities for small and disadvantaged businesses. Tied to this effort will be to fully deploy and improve the Federal Procurement Data System – Next Generation to ensure that we have timely and accurate data with which to measure performance. One performance goal will be our success in increasing both the percentage of dollars awarded and the number of firms receiving awards in all of these categories. We hope to achieve not only the statutory small business goals, but also assist agencies in attaining their annual goals negotiated with the Small Business Administration. Another performance goal will be to ensure that agencies implement the bundling guidelines issued by OFPP in 2003. These guidelines require agencies to maximize small business contracting opportunities when deciding to combine similar requirements.

Contract Management

20. GAO has identified contracting as a high-risk area in three agencies—the Departments of Defense, Energy, and NASA. It also noted that across the government, downsizing, increasing workload and the need for new skill sets have placed unprecedented demands on the acquisition workforce. Do you think agencies are effectively managing their contracting and acquisition activities?

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Although I have not evaluated specific practices other than those at GSA, I understand that some agencies are experiencing difficulty in managing their acquisition functions. As a community, we must draw on our collective strength to overcome today's challenges, and look toward improving our systems to meet the needs of the future. While the agencies identified by GAO and others work to improve their processes, the leadership of both civilian and defense agencies must take synchronized, affirmative steps toward assessing and meeting the needs of the next generation acquisition environment. This environment will require an agile, highly-skilled, and more integrated workforce, and will require information technology systems that support our common functions. By providing a quality workforce with the appropriate tools, we can reduce high-risk contracting activities in the future.

- a. Does the government have the right people, with the right skills to successfully meet the increasing complex demands expected in the future? If not, what steps will OFPP take to correct this condition?

I believe there is always room for improvement. The development of an agile and highly-skilled workforce will be my top priority, if confirmed. The acquisition workforce extends far beyond traditional contracting operations to include the many supporting functions that play key roles in the acquisition process. Acquisition professionals must be actively recruited, properly trained, and continually refreshed. As a community, we must make workforce planning a priority at the agencies, but more important, we must take a broader, government-wide, long-term approach to workforce planning – we must plan for the next 20 years, not just the next five. If confirmed, I intend to conduct a skills gap analysis to determine short and long term development needs, and I will ask the Federal Acquisition Institute (FAI) and the Defense Acquisition University (DAU) to explore the feasibility of developing a single strategic plan for ensuring that our workforce recruitment, retention, development, and performance is world class.

Additionally, if confirmed as OFPP Administrator, one of my responsibilities will be to oversee the Board of Directors of the FAI. In that role I will support the development of a common curriculum and common career management program for the defense and civilian acquisition workforce. Only through the development of a common curriculum and terminology will we be able to leverage our strengths as a community to ensure that our acquisition workforce is prepared to meet our future needs.

- c. Do you think agencies are properly resourced to effectively oversee their contracting and acquisition activities?

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I am not familiar enough with most of the agencies' acquisition operating budgets to make well informed judgments on this matter. However, I believe that the acquisition community must leverage its collective knowledge, talents, and supporting systems to more effectively manage our operations. If confirmed, I will aggressively seek to improve access to and reduce the cost of acquisition information and data by supporting the Integrated Acquisition Environment (IAE). This data will help us better manage our acquisition activities.

E-government, which includes the IAE, is a top priority for this administration and for OFPP. I understand that the Acquisition Committee for E-Government (ACE), a sub-committee under the current Federal Acquisition Council, is being chartered to provide government-wide strategic direction for the IAE. By approaching the IAE from an enterprise-wide, acquisition-focused perspective, we will achieve economies, improve communication among agencies, and be better stewards of taxpayer resources.

- d. Is federal contracting, in your view, a government-wide high-risk area?

With the possibility of as much as 40% of our acquisition workforce retirement eligible in the next five years, I believe – broadly speaking – that acquisition activities have the potential to become high-risk. The government has focused much of its attention in previous years on the pre-award process. While we should continue to seek effective acquisition methodologies and emphasize the competition process, we must now prioritize contract-administration to reduce high-risk practices. If confirmed, I will push agencies to identify and evaluate discrete contractor performance requirements, to emphasize quality assurance planning and assessment, and to ensure that mission needs are met throughout the life of the contract, not just at award.

21. In May 2003, the IG community, in "A Progress Report to the President" stated: "The IG community, through its audit and investigative work ... has noted that generally, the Federal Government has been lax in its contractor oversight."

- a. Do you agree with this assessment?

I have not independently assessed government-wide oversight practices. However, I understand that contract administration continues to be a challenge for many agencies. Through continued emphasis on results-oriented practices

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and performance-based contracting, I will expect agencies to devote more attention to contractor oversight and contract management.

- b. As administrator of OFPP, what would you do to improve agencies' oversight of contractors?

If confirmed, I will ask the acquisition community to target key areas for improvement. I will review the training and competency requirements for the acquisition workforce to ensure that the community is developing a disciplined approach to contract administration. If confirmed, I will leverage my leadership role on the Federal Acquisition Council to focus on contract administration and training, encourage the sharing the lessons learned from high-risk contracting agencies, and implement systems that support strong contract administration.

22. Over the past decade, Congress and the Administration have made a concerted effort to simplify procurement regulations and encourage agency officials to use more business judgment. However, we are well aware of the debate in the procurement community on whether we have gone too far and reduced accountability and oversight in federal contracting, or whether even more flexibility is needed.

- a. In your view, where do we stand in the continuum?

I think there remains a justifiable need for the increased flexibilities that our acquisition workforce has been given over the past decade. Between information technologies that may change rapidly and other technologies that may be in high demand at short notice to fight the war on terrorism, agency-buyers need a system that is responsive and results-based. At the same time, my sense is that we are sometimes slow to identify weaknesses in and unintended consequences of current operations.

- b. Where do we need to go from here?

We must be more responsive in taking corrective actions where results are falling short of expectations -- either because processes are being used incorrectly or because current authorities do not adequately accommodate agency needs. We must first look behind a given problem to determine its cause and then figure out an appropriate solution. In some cases, improved regulatory guidance may be in order. For example, virtually all members of the acquisition community acknowledge that the Federal Acquisition Regulation (FAR) needs to be amended to address the acquisition of services under the Multiple Award Schedules (MAS) Program. In many cases, however, I expect that practical advice may be more effective in

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improving results. For example, I expect our contracting officers are well aware that there is a preference for performance-based contracting, but may need practical assistance in developing performance-based statements of work.

c. What role will OFPP take in this regard?

As the organization responsible for the overall direction of procurement policy in the Federal Government, OFPP must be an active leader in shaping policies, engaging agencies, and working with Congress and industry to make sure our system is efficient and results-oriented. I am committed to developing an ongoing dialogue with the acquisition community. I appreciate that in recent years, OFPP has focused heavily on competitive sourcing issues. While competitive sourcing will remain a high priority, other pressing matters will receive the attention they deserve. In particular, OFPP will: (1) give greater attention to the training of our acquisition workforce, (2) make better use of incentive contracting, (3) increase the emphasis on good contract administration, (4) work to improve inter-agency contracting practices, (5) continue efforts to ensure small businesses have effective access to the federal marketplace, and (6) further the integration of the acquisition environment through the use of e-procurement tools and strategies. I am particularly looking forward to working with the advisory panel that will be established under section 1423 of SARA and intend to carefully review their recommendations for improving our acquisition processes, including our use of commercial buying practices.

d. With the drawdown of the federal acquisition workforce over the last several years and the corresponding increase in the Federal Government's reliance on contractors to perform functions that were traditionally performed in-house, what is your position on the government's reliance on contractors to oversee/manage other contractors?

While there is certainly a role contractors may play in helping the government to manage its contracts, federal agencies need to maintain a core in-house capability to handle contract administration. Federal employees will often have the best perspective on how their agency operates and can bring a historical perspective that a support contractor would not have. In addition, certain contract management activities are inherently governmental and are not appropriate for performance by a contractor. (See response to subpart e., below).

e. Are there, in your opinion, contract management activities that should never be turned over to a contractor?

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Certain contract management activities are inherently governmental and must be performed by federal employees. These include activities such as ordering contract changes, accepting or rejecting contractor products or services, terminating contracts, and determining whether contract costs are reasonable, allocable, and allowable.

Contract bundling

23. OFPP has reported that substantially fewer small businesses are receiving federal contracts and the Federal Government is suffering from a reduced supplier base. Last year Senator Collins and others sponsored an amendment that that would set limits on contract bundling at the Defense Department. That language was passed in the fiscal year 2004 Defense Authorization Act. Later in the year, the FAR set forth new rules that require federal agencies to take certain actions with respect to "substantial bundling." The rule establishes three dollar thresholds for substantial bundling: \$7 million for the Defense Department, \$5 million for NASA, and \$2 million for all other agencies.¹

- a. As the Administrator of the Office of Federal Procurement Policy, what are your views on the significance of contract bundling and contract consolidation?

Having grown up working in my family's small auto parts business, there will be no one at OFPP with a greater focus on small business issues than me. I truly believe that small business is the backbone of the economy, and as such, we must ensure that there is full, fair, and open access to federal contracts for the small business community. The challenge, however, is to maintain and expand access, while working to ensure that the taxpayers receive the best value for the money that they have entrusted to us. I do not believe these two concepts are mutually exclusive.

The concepts of contract bundling and consolidation are significant because they are at the crux of three equally important overall objectives in government procurement – efficiency, opportunity, and fairness. Taxpayers deserve a procurement system that provides all three. We must maintain these objectives and continually strive to improve the process. As part of his Small Business Agenda, the President asked the Office of Management and Budget to develop a strategy for addressing contract

¹ The dollar thresholds trigger requirements for: specific actions to maximize small business participation as subcontractors under the contract, a specific determination that the anticipated benefits of the proposed bundling justify its use, and identification of alternative strategies that would minimize the scope of the bundling and the rationale for not choosing those alternatives.

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bundling. OMB's corresponding report to the President stated that "we cannot afford to revert back to the paperwork and labor-intensive system of the past. Nor can we pursue operational efficiencies at the expense of reducing small business opportunities." I strongly agree with those statements. If I am confirmed as Administrator of the Office of Federal Procurement Policy, I will continue to look for ways that we can improve the overall system, while maintaining an appropriate balance between these three objectives.

We must continue to ensure that small businesses have meaningful access to the wide range of opportunities that federal procurement provides. If I am fortunate enough to be confirmed, I will work to ensure that opportunities for small businesses are maintained, and if possible, increased.

- b. Do you believe further actions are needed to ensure that small businesses are provided an opportunity to receive federal contracts? If so, what actions do you believe are needed?

OMB's report to the President on contract bundling outlined a nine step strategy for increasing federal contracting opportunities for small business. Several of those steps rely upon the issuance of regulations. OFPP chaired an interagency team that developed and issued implementing regulations, which were published last October. Also, as you point out, the fiscal year 2004 Defense Authorization Act contains provisions that address concerns that we share.

I believe the steps OMB is taking are beginning to bear fruit. I understand that for the most recent statistics available, the Federal Government exceeded the requirement that 23% of all prime contracts be awarded to small businesses as mandated by law.

We need to be concerned that substantially fewer small businesses are receiving federal contracts and, as a consequence, the Federal Government is suffering from a reduced supplier base. We need to implement the relevant provisions in the fiscal year 2004 Defense Authorization Act cited by the Committee.

If confirmed, one of my first priorities will be to work with the Defense Department to help them issue implementing regulations as soon as possible. We also need to follow through on further actions to implement the President's strategy on contract bundling. For example, OFPP must work more closely with the Small Business Administration (SBA) to develop and issue regulations to increase small business access to federal subcontracting opportunities. We will also continue to coordinate with SBA and procuring agencies to identify and

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disseminate best practices for maximizing small business contracting and subcontracting opportunities and to incorporate these best practices into training courses and materials.

Finally, I believe OFPP – along with SBA – can play a greater role in encouraging prime contractors to subcontract more with small businesses. Such matchmaking can help teach smaller and/or less experienced vendors best practices, which ideally, will help them become prime contractors themselves.

Buy America

24. The Buy America Act gives US manufacturers, in some instances, a competitive advantage. Other laws such as the “Berry Amendment” restrict the purchases of some goods to only US manufacturers.

To what extent should we encourage the use of US manufacturers by giving them an advantage in government contracting?

We need to balance the need of the government to obtain the best value in the procurement of supplies and services with the need to protect certain facets of the domestic industrial base. I continue to believe that the best way to achieve value for the government is through competition, and frankly, the integrated global market cannot be ignored. It is my view that the current iteration of the Buy American Act and the various domestic source restrictions now in place adequately offer agencies the ability to balance the competing needs of taxpayer value and national security.

Performance Based Services Contracting

25. One of the key initiatives being pursued by the Administration is to increase the use of performance-based contracting approaches. This year, the Office of Management and Budget established a goal that 20 percent of all eligible service contracts would be performance-based. However, it was recently reported that at least 6 agencies failed to meet that goal and some have questioned whether the agencies that did were actually awarding truly performance-based contracts.

a. Do you believe agency personnel have a firm understanding of how a good performance-based contract should be structured?

I believe that full understanding of performance-based contracts varies agency-by-agency – and accordingly, there is significant room for improvement. Performance-

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based contracting, or performance-based service acquisition (PBSA), continues to be a challenge for agencies, and will continue to be a high priority for the Office of Federal Procurement Policy if I am confirmed. PBSA is critical to developing a results-oriented government. Agencies continue to gain experience with PBSA, but OFPP should take additional steps to provide agencies the tools and incentives to implement PBSA consistently and effectively.

- b. What steps do you intend to take to increase the use of performance-based contracting approaches?

If confirmed, I will work with the acquisition community to focus our collective talents on implementing PBSA consistently and effectively. I understand that, as a result of the work of an interagency task force, OFPP is preparing to implement a number of recommendations to improve and increase the use of PBSA. OFPP is working with its agency partners, such as GSA and DOD, to implement changes to the Federal Acquisition Regulation, update guidance, and streamline reporting requirements to improve and increase the use of PBSA. These changes should improve its quality and increase its use.

I also understand that OFPP plans to rescind its 1998 guidance on PBSA, and will provide more current guidance through an improved website. Additionally, OFPP plans to modify reporting requirements to encourage the use of PBSA. For example, OFPP intends to reduce from 80% to 50% the portion of a contract or order that is considered PBSA for reporting purposes. The previous threshold discouraged application of PBSA on hybrid contracts, which are more prevalent in today's acquisition environment. These changes should improve the quality and increase the use of PBSA.

Additionally, I understand that OFPP intends to ask agencies to apply PBSA to 40% of their eligible service contracts for fiscal year 2005. This reflects the community's confidence that, given the proper guidance and tools, agencies will have increased success in applying the principles of PBSA.

Competition

26. Over the past year, a number of concerns have arisen pertaining to the adequacy of competition for government contracts. Agencies often find that they have but only one or two sources for key services.

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- a. In your view, do we have enough robust competition in federal contracting?

I dare say, from the government's perspective, there can never be too much competition. As for the present situation, there is room for improvement. For example, on contracts with pre-qualified contractors, such as multiple award contracts and schedules, agencies are not always consistent in considering multiple contract holders and making awards on a competitive basis.

- b. Is our industrial base sufficient to promote competition, particularly in the defense industry where industry consolidations have placed enormous industrial power in the hands of a few large companies?

In many cases, competition exists; we just need to be vigilant in minimizing barriers to entry and using competition more consistently. By keeping open access to federal contracting opportunities, we can help guard against a reduction of our industrial base. Rules addressing contract bundling, for example, should help to ensure that more small businesses have an opportunity to participate in Federal Government contracts. In some cases, especially in the defense industry, competition may be limited as a result of industry consolidation.

- c. If competition is lacking, what actions do you believe are needed to increase its level?

For situations where the market offers competition, we must take advantage of it. I am especially anxious to see coverage added to the FAR addressing the acquisition of services from the GSA schedules -- including clear requirements to provide performance-based statements of work to multiple contract holders. These steps should help to ensure more consistent and more effective use of competition. For situations where the number of market participants is limited, we should look to see if we are taking all appropriate means to encourage new entrants. If competition simply cannot be achieved, we must look to alternative means of ensuring prices are fair and reasonable.

27. Congress has appropriated more than \$20 billion to support Iraq reconstruction efforts. Given the need to award the initial round of contracts as quickly as possible, federal agencies often made the awards using sole-source or limited competition contracts and, by many accounts, encountered difficulties in administering the contracts due to resource constraints and the lack of clearly defined roles and responsibilities.
- a. What lessons should we learn from the procurement and contract administration approaches initially employed in Iraq?

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From reading press reports, it appears that Department of Defense (DOD) oversight of contracts in Iraq has uncovered a number of problems. I understand that in response, DOD has taken action to reject unsupported proposal costs, reduce billed costs for potentially unreasonable expenditures, or refer findings to the DOD Inspector General for possible legal action against contractors. From press reports, it appears that contractor performance in Iraq has neither been perfect nor terrible.

Iraq presents a difficult security environment. I understand that a number of contractors who have successfully performed for the Department of Defense domestically and in Europe have had difficulties in adjusting to the unique environment in Iraq.

The lesson we learn is that no matter how sound our contracting approaches, working in an embattled environment hampers our ability to fully execute our policies.

- b. If so, how should these lessons be incorporated into the current round of contracts being awarded?

Notwithstanding the difficult working environment, DOD has uncovered a number of problems with cost estimating that must be addressed. We must make certain that we create opportunities for true price competition, maximize the use of multiple award contracts wherever possible, increase the use of fixed price type contracts where appropriate, and make certain that we have adequate and well-trained staff in Iraq to award and administer contracts.

- c. Do these lessons indicate a need for additional training or guidance to DOD program or procurement personnel?

By all accounts, our contracting personnel on the ground in Iraq are competent, courageous individuals who are working in a difficult environment. In my opinion, they are doing a phenomenal job under very tough, dangerous conditions.

I believe that no matter how strong the acquisition team in Iraq may be, additional training will always increase the likelihood that the taxpayers receive the best value for the money spent. Additional guidance can be helpful as well, so long as it does not limit the flexibilities that may be needed in hostile working environments such as Iraq.

I understand that the General Accounting Office (GAO), in response to a request from Congress, is reviewing certain contracts to confirm that the proper procedures have been followed and that DOD is working closely with GAO auditors to ensure

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that they have all the information they need to complete their work. I look forward to the results of the GAO study.

28. Even when there is competition, the contracts for the reconstruction of Iraq have not generally been awarded using multiple award task orders or fixed price contracts. Instead, the contracts generally were awarded using single award task orders and cost-type contracts. Do you believe this contracting strategy was the best means to achieve the U.S.' reconstruction goals in Iraq? Do you believe this choice of contracting vehicles is efficient and provides the maximum cost-savings possible? Please explain your answer.

I believe that the initial contracting efforts in Iraq were appropriate under the circumstances. Timing is key to all military operations. Support must be provided within compressed time lines due to operational realities and exigencies. Contracts must be designed to permit the rapid placement of orders to support evolving, dynamic operations and to provide critical and essential life support to our forces in harsh environments. Contracts must be priced to fairly allocate risk between the contractor and the government.

Current law and regulations create a preference for awarding multiple task and delivery order contracts, as opposed to making award to one contractor that would receive all work as tasks are issued. However, the law and regulations recognize that use of multiple award contracts may not always be in the best interest of the government. A single award may be appropriate in certain circumstances. When determining the number of contracts to be awarded, contracting officers are directed by the regulations to consider the scope and complexity of the contract requirements; the expected duration and frequency of orders; the mix of resources a contractor must have to perform expected order requirements; and the ability to maintain competition among the awardees throughout the contracts' period of performance.

Orders may be priced under the contract as fixed-price or cost-type contracts. Cost type orders are appropriate for contingency operations in which the performance parameters of the contract, such as size, location and field conditions of the supported force, are not known with precision and/or are subject to change, as has been the case here.

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Special Programs

29. What are your views on the ongoing dispute as to whether DOD cafeterias should be allowed to continue to acquire some services through the Javits-Wagner-O'Day program, or whether they should be required to acquire such services exclusively under the Randolph-Shepard Act?

The Jacobs-Wagner-O'Day Act [sic] (JWOD) program is a mandatory source of supplies and services for agencies from agencies comprised of individuals who are blind and severely handicapped. The Randolph-Sheppard Act (RS Act) requires agencies to give a preference to blind persons licensed by a state agency in the operation of vending facilities on Federal property. Both have claimed that they have priority to the operation of cafeterias on Federal property. I understand that to date all court decisions have ruled in favor of the priority established under the RS Act. However, the debate appears to continue. I would not be opposed to a legislative clarification.

Competitive Sourcing Issues

30. What is your vision for this Administration's Competitive Sourcing program?

I view competitive sourcing as one of a number of tools that agency managers can use to improve mission performance and decrease costs for taxpayers. What makes competitive sourcing stand out is its demonstrated ability to generate savings when applied in appropriate circumstances and in a considered manner. My intention is to build on the momentum begun over the last three years that has seen this initiative grow from one primarily used only by DOD to one that is now being used by an increasing number of civilian agencies.

I intend to work closely with agencies to ensure long-range plans apply competition in a tailored and reasoned manner. I also will monitor recent changes to the Circular to ensure that they are being properly implemented. A number of these changes should create more opportunities for our federal employees to compete in public-private competitions. In addition, I will ensure that agencies routinely report on their competitive sourcing activities in a consistent and timely manner. I will use this data to evaluate strengths and areas where improvements are needed. Finally, I will ask that agencies take steps necessary to ensure that their workforce has the skills needed to pursue competition a strategic manner.

31. The Comptroller General testified, on June 26, 2003, before the House Government Reform Committee (GAO-03-943T), "Conducting competitions as fairly, effectively and

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efficiently as possible requires sufficient agency capacity—that is, a skilled workforce and adequate infrastructure and funding. Agencies will need to build and maintain capacity to manage competitions, to prepare the in-house MEO, and to oversee the work—regardless of whether the private sector or the MEO is selected. An additional challenge facing agencies in managing this effort will be doing so while addressing high-risk areas, such as human capital and contract management.”

- a. How will you ensure that agencies have adequate resources, including a skilled workforce, to implement the competitive sourcing program effectively?

As a general matter, agencies should be able to fund competitive sourcing efforts with existing resources used to support management efforts. Of course, each agency is different and faces its own set of challenges. I intend to work individually with agencies and their resource management offices in OMB to understand if there are any special resource needs in light of the complexity and pace of competitions planned by the agency and its demonstrated ability to conduct competitions.

I expect to give attention, in particular, to agency workforce needs. Our workforce must have the business acumen to effectively identify activities that are suitable for competition, run a fair and transparent selection process, and properly manage the resulting contract or letter of obligation. I was pleased to hear that the Federal Acquisition Council (FAC) has been inventorying agency resources, skill sets and training needs. I will work closely with the Council and ask senior managers in the agencies to give priority attention to developing plans that address identified skills gaps. I will also ask the Defense Acquisition University and Federal Acquisition Institute to play a lead role in providing training materials geared to skills such as market analysis, cost analysis, and contract administration that are key to the successful application of public-private competition.

- b. Do you feel there is a need for additional resources to assist agencies in contract management?

As a general matter, agencies must have sufficient resources to effectively oversee contract awards and letters of obligation to ensure the sources who perform work for our taxpayers – whether from the public sector or the private sector – make good on their promises.

At least one agency – the Veterans Administration – is prohibited from using any appropriated funds to conduct competitions in the Veterans Health Administration. In discussing this matter with VA officials, I have come to learn that approximately 52,000 commercial positions (e.g., lawn care, laundry, cafeteria, building

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maintenance, janitorial services, etc.) have been fenced off from any competitive sourcing studies whatsoever. The VA conservatively estimates that by allowing the use of funds to conduct competitions and develop Most Efficient Organizations, the Department stands to save approximately \$1.3 billion over five years, or enough money to provide healthcare for as many as 50,000 additional veterans each year.

- c. To what extent to you believe that agencies should hire contract consultants to help conduct competitions?

I would encourage agencies to seek out contract consultants to support their competitive sourcing efforts. My sense is there are many capable consultants who can provide technical expertise and insight to support the development of business cases and performance work statements, training, and other tasks that are integral to the strategic use of competitive sourcing. Consultants may be especially helpful to agencies that have little experience with competitive sourcing. Of course, contractors could not be used to perform inherently governmental functions, such as making source selection decisions to decide the outcome of a competition. In addition, I would expect agencies to follow the FAR's general prohibition against allowing contractors who assist in developing performance work statements to compete to perform the requirement.

32. In a testimony delivered in July of this year, Comptroller General David Walker emphasized that competitive sourcing is not an end in and of itself. Rather, he said, it is a tool to be used in a strategic manner to improve efficiency and effectiveness and must be balanced with the desire to attract and retain a high-quality and high-performing workforce.

How will you ensure that competitive sourcing—as a strategic tool—is integrated with effective human capital planning?

At a minimum, I expect agencies through their competition plans to demonstrate how human capital needs are being taken into account in identifying and prioritizing activities for competition. For example, I would generally expect an agency to give increased consideration to activities where there are skill imbalances, a high number of projected retirements, a high rate of attrition, or problems recruiting qualified staff.

33. In July 2003, OMB withdrew the government wide numerical targets of competing 50 percent of all commercial positions. OMB indicated government wide targets would be replaced with agency-specific plans, developed in consultation with OMB, that reflect the mission and workforce mix of individual agencies.

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What will you do to ensure new plans developed by agencies are based on their missions and include positions identified for competition that can lead to reduced costs or improved performance?

I will ask my staff to work closely with OMB's Resource Management Offices (RMOs) in reviewing plans to ensure there is overall consistency with their human capital plans for the types of activities selected for competition in light of that agency's mission, program priorities, and workforce mix. For example, a plan might identify activities that are draining resources away from the agency's core mission, activities in need of restructuring, or activities where there has been a relatively high turnover rate. We will look for cross-functional participation in decision-making, as this is a good safeguard for ensuring selections reflect the overall interest of the agency. Equally important, we will look to see that the agency is taking a strategic approach to competition that is likely to maximize the return on investment, such as by grouping related activities, where appropriate, to stimulate private sector interest and routinely restructure in-house operations as part of the competition process. Any agency-unique constraints will also be considered in determining whether a plan is reasonable and appropriate for the agency.

34. A key goal of the competitive sourcing program is to produce cost savings, yet agencies have been challenged in accurately capturing savings estimates from their competitive sourcing activities. One challenge in assessing savings has been a lack of good cost accounting systems. Some agencies such as the Bureau of Land Management have begun moving toward an activity based costing system (ABC), which could assist agencies to more fully capture costs and select appropriate positions to compete.

a. Would you like to see other agencies use this system?

During my tenure as the GSA chief of staff, my former agency moved to activity based costing as a way to better manage our financial performance and advance the President's initiative regarding sound financial management. I fully support moving toward activity based costing on a government-wide basis.

b. What plans do you have to assist other agencies in developing such activity based costing systems?

I would need to confer with the Office of Federal Financial Management before developing such plans.

35. Another challenge in determining accurate savings estimates has been incomplete cost data.

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- a. How will you ensure that agencies accurately capture the full costs of implementing competitive sourcing programs, including study and implementation costs?

I understand that OMB is working to develop a competitive sourcing database that agencies will populate on a continuous basis so that Congress, managers, employees, vendors and taxpayers can assess the effectiveness of competitive sourcing as a management tool. I would expect this database to track not only the incremental "out-of-pocket" expenses associated with conducting individual competitions, but also fixed costs, such as the salary and related fringe benefits of staff assigned to the office that provides central direction and oversight and associated operating expenses.

This database poses two challenges: (1) ensuring that agencies have a means to actually track such costs on a unit basis; and (2) identifying standardized parameters of measurement so that we can benchmark good and bad performance and leverage enterprise-wide knowledge to reduce costs and adopt best practices.

- b. What guidance and assistance will you provide to agencies as they attempt to capture this data?

In late February, OMB issued guidance to assist agencies in identifying incremental costs. I would envision additional guidance to describe the fixed costs that agencies should track. I would expect that this information will be provided as part of the unveiling of the competitive sourcing database as we need to make sure that reporting is consistent across agencies and that those analyzing the data understand what it represents.

36. DOD has been encouraging its components to distinguish between core and non-core functions and to consider alternatives to A-76 studies in making sourcing decisions for non-core functions. Such alternatives could range from public-private partnering, employee stock ownership, quasi-governmental organizations, or in-house reengineering.

- a. What is your perspective on DOD's approach, particularly the use of alternatives to A-76?

I am not sufficiently familiar with DOD's use of alternatives to A-76 to comment, but plan to review their efforts.

- b. To what extent would you support the use of in-house reengineering or "high performing organizations" a term used by the Commercial Activities Panel, in

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selected instances as an alternative to A-76 or to address functions that would never be studied under A-76?

I would carefully consider agency requests for deviations to pursue alternatives to A-76 public-private competitions where justified and appropriate. Where an activity is not suited for study under A-76, I would strongly encourage pursuit of alternatives to improve performance of that activity. Where an activity might otherwise be suitable for study under A-76, I would expect an agency to develop a business case explaining why the alternative is likely to produce better returns than that historically experienced under public-private competition. If approved, I would expect the agency to track performance to ensure the alternative approach delivered anticipated results.

37. The President's competitive sourcing initiative has generated great interest and concern among federal employees.

a. As the head of the OFPP, what efforts will you take to ensure that such competitions do not negatively affect employee morale?

We must continue to educate our workforce on the purpose of competitive sourcing so they understand that the goal is improved performance and not the displacement of public servants. Employees can clearly benefit from the process. Competition gives federal organizations the opportunity to become more efficient and emerge from the process stronger than when they started. A winning MEO will not only save money for the taxpayer but also bring stability and respect to the organization. Statistics to date suggest that Federal employees have reason to be optimistic, as they have a very good track record in winning competitions. This notwithstanding, agency competitive sourcing personnel need to engage their human resource offices and take steps to minimize the personnel impacts of implementing the performance decision no matter who wins.

b. What steps will you take to reach out to federal employees and ensure that they are treated fairly under the A-76 process?

Communication is critical. I am surprised by the level of misunderstanding associated with this initiative. I will ask agencies to ensure that their affected employees understand the purpose of competitive sourcing and are continually kept apprised of the status of a competition. I also intend to monitor implementation of the Circular, including new provisions that expand federal employees' opportunity to demonstrate their capabilities to serve the taxpayer. For example, the Circular requires agencies to

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give their in-house providers access to available resources necessary to develop competitive agency tenders.

Most importantly, I hope to open a dialogue with employee advocates and build relationships based on mutual respect and trust. Having open lines of communication with public sector unions, as well as members of Congress, will help me to identify where the Circular may need additional refinement. While I cannot promise to make all of the changes that may be presented, I can guarantee that I will review them all in a fair and unbiased manner and provide substantive and meaningful feedback.

- c. Do you envision working with the Office of Personnel Management to offer more flexible policies to provide a "soft landing" for employees displaced by competitive sourcing?

Yes. I plan to work with OPM to consider how buyout and early out authorities, and other "soft landing" policies can be made more readily available to agencies for consideration as they plan and implement competitions.

I would note, however, that in-house teams are winning a vast majority of the competitions. Even when they don't, I understand that involuntary separations are a rare occurrence.

- d. Have you identified any "lessons learned" from your predecessor's implementation of competitive sourcing that you intend to bring to your office? If so, please describe them.

My predecessor's efforts focused, in large part, on getting senior managers to commit to competitive sourcing and revising Circular A-76 to provide for more efficient and effective processes. These were important steps for establishing momentum. However, as we move further into the implementation phase of this initiative, other steps will need greater attention. First, we must improve reporting so we can rely on hard data, rather than anecdotes, to demonstrate results. Second, we must ensure our workforce has the skills it needs to plan and carry out competitions effectively. Finally, we must make new efforts to reach out to Congress, agencies, vendors and other interested stakeholders so we can ensure our policies are well-informed and in the best interest of our taxpayers.

38. Given the existing concerns with contractor oversight, how will you ensure adequate oversight of the cost and performance of both the government and of private sector companies that have won competitive sourcing competitions?

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Initially, I would point out that contractor oversight issues go beyond just competitive sourcing. I believe by working to increase and improve training opportunities and do better to establish career development tracks for our acquisition workforce, OFPP can make a real difference in how we oversee the performance of contractors.

With specific regard to overseeing costs and performance following competitive sourcing competitions, I would require agencies to track performance using a government-wide competitive sourcing database – by both winning contractors and agency providers on an ongoing basis. The hard data captured by the database can be used to perform trend analysis that would replace anecdotes to demonstrate the value of competition and to guide corrective action when weaknesses are identified.

39. An important issue resulting from the publication of the new Circular A-76 is the right of in-house competitors to appeal sourcing decisions in favor of the private sector. While both the public and private sectors previously had the right to appeal to agency appeal boards under the earlier Circular, only the private sector had the right to file a bid protest at GAO or in court. The Commercial Activities Panel identified one way to level the playing field by allowing in-house entities to file a protest at GAO, as private-sector competitors have been allowed to do.

- a. Should in-house groups be allowed to file protests with GAO?

As a general proposition, I support the ability of those employees directly affected by competitive sourcing studies to appeal at GAO. How such an appeals process would work in practice is worthy of careful consideration. I would want to review the matter in much greater detail before making any commitments to change the Circular or commenting on specific legislation.

- b. Do you believe that the official representative of in-house employees—known as the Agency Tender Official (ATO)—could adequately represent the interests of in-house employees in appeals to GAO?

As the individual who is responsible for developing, certifying, and representing the agency tender, the ATO is particularly well suited to deciding whether to challenge an agency's decision. However, I don't necessarily think that the ATO is the only person who could adequately represent in-house employees in GAO appeals.

40. For many years, Circular A-76 public-private competitions were not conducted on architect and engineering (A&E) services due to a conflict between the Brooks Act—which precludes cost competition in favor of a qualifications-based selection (QBS) system—and the Circular. The new A-76 includes a FAR-based process for public-

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private competition, but it does not provide specifics regarding how this would apply to A&E competitions.

a. Should A&E services be competed using A-76?

I believe that the concept of competition – broadly speaking – ultimately benefits not only those who receive services, but also those who pay for them, namely, the taxpayers. I believe agencies should be allowed to conduct a public-private competition for commercial A&E services where the agency has identified the service as suitable for competition. A&E activities should not automatically be precluded from consideration for competition. However, A&E competitions must be conducted in a manner that does not conflict with applicable law – namely, the Brooks A&E Act.

b. How exactly would this be done?:

I would want to give further (and deeper) consideration before I could recommend processes to apply principles of competition to A&E services. Because the Circular has not traditionally addressed this issue, I would be inclined to recommend a small agency pilot so that the effectiveness of any selected process could be analyzed before being adopted for use across government.

41. As you know, the new Circular A-76 requires that in-house teams that win competitions generally will have five years before the next competition. Many in Congress disagree with this requirement. Do you support the 5-year re-competition requirement? Do you have any concerns regarding this policy?

I support the concept of periodically subjecting work to competition. The history of public-private competition demonstrates that, when used correctly, competition creates a powerful incentive to improve performance. However, I would not object to removing the five-year recompetition provision from the Circular and relying on agencies to determine appropriate performance periods based on the nature and risk associated with the services to be provided.

42. The FY2004 Omnibus Appropriations Act requires the development of a most efficient organization plan as well as consideration of the 10 percent or \$10 million conversion differential for streamlined competitions at certain agencies. Do you believe the conversion differential should be applied to some or all streamlined competitions?

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I think the application of a conversion differential to smaller activities -- e.g., activities performed by more than 10 but less than 65 FTEs -- makes good sense as a general proposition. However, the caveat I would add is that agencies must retain the ability to apply best value criteria when conducting public-private competitions.

43. In March 2003, two months before the revised A-76 was finalized, the Department of Defense (DOD) Inspector General (IG) concluded that the 12% overhead rate imposed on all in-house bids is "unsupportable," and that "[u]nless DOD develops a supportable rate or an alternative method to calculate a fair and reasonable rate, the results of future competition will be questionable." ("Public/Private Competition for the Defense, Finance and Accounting Service Military Retired and Annuitant Pay Functions," (D-2003-056) March 21, 2003, p. 24).

In a 2000 study, RAND, a think-tank whose work on privatization [sic] is relied on heavily by the Office of Management and Budget (OMB), noted GAO's concern that "the overhead rate of 12% of direct labor costs specified in Circular A-76 lacks an analytic basis." ("Personnel Savings in Competitively Sourced DOD Activities: Are They Real? Will They Last?", Susan M. Gates, Albert A. Robbert, 1999/2000, p. 105) Rand weighed the evidence and concluded, "[a]s a result, we believe it likely that MEO costs were substantially overstated in competitions we examined. If true, this overstatement resulted in inflated costs for the MEO's and inflated savings estimates (relative to the MEO) for those activities that were outsourced." (at p. 106).

- a. Do you accept the conclusions of the DOD IG and RAND reports? If so, are you concerned that the 12% overhead rate may leave the A-76 process with a bias against in-house bids? Please explain your answers.

I am not sufficiently familiar with these reports and will need to review them. The results of recent competitions -- which have largely been won by the incumbent in-house provider-- does not suggest a bias against in-house bids. Costing methodologies, like any other aspect of the Circular, need to reasonably reflect the actual cost to the taxpayer of government performance of a particular activity. I will work to ensure that this is the case.

- b. If confirmed, will you take steps to change the 12% overhead rate? Please explain.

I will first need to determine if the basis for the 12% rate is reasonable or not. If it is not, I will work with agencies and other stakeholders to determine what steps should be taken to improve the Circular's costing methodologies.

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44. OMB contends that it is no longer imposing government-wide numerical privatization [sic] quotas on agencies. However, OMB has acknowledged that some agencies will be held to privatization [sic] arrangements that were made when OMB was imposing numerical quotas. As a result, those agencies are carrying out competitive sourcing reviews that were initiated when agencies were striving to meet OMB's numerical quotas.

Now that the numerical quotas have been eliminated, would you allow agencies to reconsider decisions made while the quotas were in effect, both with respect to the designation of activities as commercial, as well as the determination of which commercial activities are to be reviewed for privatization [sic]? Please explain.

No agency should be pursuing competitive sourcing simply for the sake of competition and I would support efforts agencies make to ensure competition is being used strategically to improve performance and reap cost savings. The development of long-range competition plans gives all agencies an opportunity to identify where adjustments may be needed.

In terms of classifying activities on inventories, agencies have an ongoing responsibility under the Federal Activities Inventory Reform (FAIR) Act and Circular A-76 to review their inventories and I would expect agencies to remain vigilant in ensuring that no inherently governmental activities are categorized as commercial.

45. Section 647 of the FY'03 Omnibus Appropriations Bill (P.L. 108-7), enacted on February 20, 2003, prohibited any agency from establishing any "numerical goal target, or quota for subjecting the employees of the executive agency to public-private competitions . . . unless the goal, target, or quota is based on considered research and sound analysis of past activities and is consistent with the stated mission of the executive agency." The conference report also provided that "[i]f any goals, targets, or quotas are established following 'considered research and sound analysis' under the terms of this provision, the conferees direct the Office of Management and Budget to provide a report to the Committees on Appropriations no later than 30 days following the announcement of those goals, targets, or quotas, specifically detailing the research and sound analysis that was used in reaching the decision." During the consideration of his nomination to be OMB Director, Joshua Bolten acknowledged that no report had been prepared, although he claimed that agency competitive sourcing plans were already being based on "considered research and sound analysis." He committed to provide the legally required reports if confirmed. OMB has prepared two reports related to its privatization [sic] effort, the first one in July and the second one in September. Both reports discuss generally factors that OMB is directing agencies to consider and jobs that agencies will review for privatization [sic]. However, the reports do not appear to specifically detail the

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“considered research and sound analysis” used in developing each agency’s competitive sourcing plan.

- a. Do you believe OMB’s two reports specifically detailed the “considered research and sound analysis” used in developing each agency’s competitive sourcing plan, as required by Congress? Please explain your answer, with specific references to the relevant portions of the reports. Please provide the Committee with any additional research and analysis needed to comply with the requirements of PL 108-7.

While I was not part of the Office of Management and Budget at the time, and therefore, had no role in the preparation of the reports in question, I have no reason to doubt the conclusion that these reports – like all OMB products – are based on considered research, sound analysis, and otherwise satisfy the requirements of Section 647 of P.L. 108-7. It should be noted that since OMB eliminated government-wide goals, additional reporting of this type under section 647 of the 2004 Omnibus would not appear to be required unless individual agencies established their own goals, targets, or quotas.

- b. Are the “research and analysis” used to develop the agency’s plans updated with lessons learned from relevant competition and contract administration experiences? Should they be?

I am a strong proponent of learning from experience and will encourage agencies to tailor their future actions, as may be necessary, based on lessons learned. I commend the FAC for facilitating the sharing of best practices and will push for these efforts to continue. I also applaud agencies for establishing a forum where operational level personnel can routinely share their experiences and insights with one another.

- c. Will you commit to provide the Committee with updated versions of these reports reflecting new information? If so, how often? If not, why not?

I am committed to ensuring the competitive sourcing initiative is carried out in a fair and transparent manner and would be happy to work with agencies and provide Congress with the information it needs to ensure public resources are spent effectively. In this regard, the reports prepared in compliance with section 647(b) of the FY 2004 Consolidated Appropriations Act should provide a useful vehicle for keeping Congress informed about competitive sourcing efforts. I also will work to ensure agencies routinely provide information to the competitive sourcing database once it becomes operational so that hard data and trend analysis can replace anecdotes.

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46. In his responses to the Committee's pre-hearing questions, then-nominee Joshua Bolten acknowledged that the Administration's competitive sourcing initiative's "focus [on reviewing work performed by federal employees] should not obscure the importance of promoting competition in other areas," i.e., for new work as well as work performed by contractors. In response to a post-hearing question, Mr. Bolten made an explicit commitment on this issue: "If confirmed, I will ask the Administrator for Federal Procurement to recommend ways to improve opportunities for federal employees to compete for new work and for work currently performed by contractors."

- a. Please describe what steps have been undertaken by OMB to allow federal employees to compete for new work as well as work performed by contractors.

As I have not been confirmed and am not acting in the capacity of OFPP Administrator, I am unfamiliar with the specific details regarding this issue. However, I am advised by OFPP staff that they are considering what recommendations would be appropriate with regard to "insourcing" of work presently being performed by the private sector.

- b. If confirmed, will you ensure that federal employees have fair opportunities to compete for new work and contractor work? If so, please explain how you will implement this policy.

My intention is for OFPP and OMB's resource management offices to work with agencies as they develop long-term competition plans to consider if there are opportunities for applying public-private competition to new work or activities currently performed by contractors. Before any work is brought in house, I would expect an agency to undertake the same considered analysis that we require for work being considered for conversion from public to private sector performance. For example, it probably would not make sense to consider in-sourcing work where the agency has had difficulties recruiting qualified staff in the past. The cost of establishing an infrastructure to support bringing work in-house also would have to be considered.

47. A GAO report released in February (GAO-04-367) concluded that OMB's competitive sourcing initiative was not appropriately focused on improving government's performance or achieving savings: "The ultimate goal of the competitive sourcing initiative is to improve government performance and efficiency. To date, however, OMB's competitive sourcing guidance to federal agencies has focused more on targets and milestones for conducting competitions than on the outcomes the competitions are

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designed to produce: savings, innovation, and performance improvements.” (at p. 13) The report adds, “Neither OMB’s initial FTE-based goals nor its revised competitive sourcing goals and traffic light evaluation system calls for agencies to assess how their plans for competitive sourcing could achieve the broader improvements envisioned by the President’s Management Agenda or the Commercial Activities Panel . . . OMB’s revised goals continue to emphasize process milestones such as competitions completed more than enhancing value through performance improvements and efficiencies.” (at p. 15)

a. Do you agree with GAO’s conclusions? Please explain your answer.

I agree with the GAO that we must keep our focus on results rather than process. The key is for all agencies to think strategically when using competition -- e.g., identifying broader functional areas for competition, as appropriate, and focusing on activities in need of improved results. To the extent strategic thinking is not yet occurring on a consistent basis, I would agree with the GAO that there is room for improvement.

b. Should OMB revise its guidance to put greater emphasis on savings, innovation, and performance improvements, as the GAO suggests?

I will want to review OMB’s guidance in light of GAO’s report but am of the general impression that it leaves considerable room for agencies to develop results-based plans. I will not hesitate to consider further guidance if agencies have difficulty applying competitive sourcing in a strategic manner.

48. Officials at several agencies, including the Department of Veteran Affairs, the Department of Transportation, and the National Park Service, have expressed concern about the disproportionate impact of the OMB privatization [sic] initiative on the diversity of the federal workforce. For example, the official comments of the Department of Veteran Affairs on the proposed revisions to A-76 noted that any effort to outsource many of the jobs listed as commercial “will have huge diversity implications.” However, workforce diversity is not addressed by OMB’s “competitive sourcing” scorecard.

a. Of the federal employees who have been subjected to privatization [sic] reviews, what percentages are women, minorities, and veterans?

I do not have this information.

b. If confirmed, will you provide this Committee with information about the impact of the OMB privatization [sic] initiative on the employment, both government-wide and for individual agencies, of women, minorities, and veterans?

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I will be happy to discuss the impact of competitive sourcing with the agencies and provide available information to the Committee. My understanding is that this type of information is not currently collected by agencies (or OMB) since competitive sourcing efforts focus purely on activities and not the individuals performing the activities.

- c. Do you believe diversity in the federal workforce should be taken into account in formulating policies on competitive sourcing? Please explain. What steps would you take, if any, to ensure that the competitive sourcing score card reflects the need to maintain a diverse federal workforce?

Competitive sourcing officials and human resource officials must work together to ensure that agencies maintain a diverse federal workforce. I will need to consider this important issue more carefully, but my initial sense is that agencies should be able to find ways to proceed with their competitive sourcing initiatives while maintaining their commitment to addressing under-representation with proper planning and good communication between the human resources and competitive sourcing personnel. I base this conclusion, in part, on the fact that a significant portion of the workforce will be eligible to retire over the coming years and the fact that roughly three-quarters of our workforce will never be subjected to competition, either because the work is inherently governmental or because it is commercial but not suitable for competition.

49. The new OMB Circular A-76 imposes automatic public-private competition requirements in order for federal employees to acquire new work and to retain existing work after the expiration of performance agreements. In contrast, the new A-76 imposes no such automatic public-private competition requirements on contractors seeking to acquire new work or retain existing work after expiration of contracts.

- a. Do you believe this different treatment is fair and justified? Please explain your answer.

I can understand the basis for the current rules from the perspective of wanting to ensure that all commercial activities suitable for competition are exposed to some degree of competition. Independent of the Circular, statute and regulation have required private sector contractors to compete to perform work for the government. However, but for the Circular, commercial work performed by the government would not be subject to competition.

As noted above, I will work with agencies as they develop competition plans to determine if there might be appropriate opportunities to conduct public-private

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competitions for new work or work currently performed by the private sector. See response to question no. 46.

- b. Some defenders of this different treatment argue that the Federal Acquisition Regulation (FAR) automatically requires competitions between contractors in such circumstances. Do you agree? Please explain your answer with reference to the FAR, if appropriate.

As a general matter, services that are already being performed for the government by the private sector would be subject to periodic recompetition, generally no less than once every 5 years. See FAR 17.204 for a discussion on contract length.

50. The new OMB Circular A-76 has deleted reference to so-called "direct conversions," i.e., the authority for agencies to contract out work performed by federal employees without public-private competition. Some are concerned, however, that direct conversions may still occur, perhaps under OMB-approved waivers. Please provide a list of the instances in which OMB provided direct conversion authority to agencies after the May 29 implementation of the new A-76 circular. For each such case, if any, please provide the name of the agency involved, how many full-time equivalent positions were impacted, the work that was being performed, and the rationale used to justify the direct conversion. Will you periodically provide updated information about direct conversions to the Committee?"

I do not have the specific information you seek, but will be happy to work with OFPP to obtain this information. My understanding is that OMB has not approved any deviations for agencies to pursue direct conversions under the revised Circular. OMB has allowed agencies to award contracts where the agency made a management decision as of the date the revised Circular became effective to directly convert an activity to private sector performance, but this would cover a finite number of actions and only be a matter associated with transition activities.

Debarment

51. Over the past year, federal agencies took steps to suspend or debar several large government contractors or subsidiaries, such as MCI, due to unethical or illegal activities. Nevertheless, we understand that the firms are continuing to win contracts.
- a. Is this a reflection of a dwindling supplier base, a lack of competition, or simply poor planning on part of the agencies?

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Any of these factors may exist in a given situation. However, they do not reflect a significant reason why awards continue to be made. Notwithstanding its severe impact upon a contractor, debarment is not intended to punish bad actors – that task falls to the Justice Department. Rather, suspension and debarment are intended to protect the interests of the government by precluding contracting with parties that are not presently responsible.

The government needs to be assured that it is dealing with responsible contractors who will fulfill the terms of the contract. After reviewing the facts of a given situation, agencies frequently enter in administrative agreements with the contractor requiring the contractor to take certain actions to remove the cause of the debarment or suspension. The intent of the agreement is to place the government in a position where, notwithstanding the reasons that gave rise to the debarment or suspension action, the government believes that under certain imposed conditions its interests will be protected and it will be safe to do business with the contractor.

- b. How do we assure accountability in the procurement process and that the government deals only with ethical contractors?

To achieve the goal of protecting the taxpayers, contracting officers must make affirmative determinations of “present responsibility” when awarding contracts to vendors. In making such determinations, contracting officers must ensure that prospective contractors have the ability to perform the contract. That involves an analysis of a contractor’s financial resources, qualifications, past performance, organization and managerial capability, and a satisfactory record of integrity and business ethics. However, we must also ensure that contracting officers have the knowledge, skills and abilities and adequate training to carry out this function; as such, training plays a critical role in this analysis.

- c. Do you support suspension or debarment for a company based on conduct that may not directly affect a firm’s contract activities with the Federal Government (e.g., Arthur Andersen, MCI)?

I believe a contractor should be considered for debarment or suspension for any cause that may affect its ability to perform a government contract. In other words, there must be a nexus. However, in the final analysis this is a judgment call for the debarring official who must decide what is needed to protect the interests of the government.

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- d. In your opinion, does the government have adequate criteria to determine whether to suspend or debar contractors?

I believe that adequate criteria are in place for agencies to determine whether to debar or suspend a contractor. The regulations provide agencies with a number of different bases for such action. Many are specific in nature but a contractor may also be debarred for any cause so serious or compelling in nature that it affects the ability of the contractor to perform the contract. However, ultimately it is the judgment of the debarring official whether debarment or suspension is in the best interest of the government. The seriousness of the nature of debarment and suspension requires that those sanctions be imposed only in the public interest for the protection of the Government. The debarring official must weigh all the information in the administrative record, including the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors.

- e. Do you believe the roles and responsibilities of various agencies involved in the debarment process are adequately coordinated?

The roles and responsibilities between agency debarring officials are not formally coordinated; however, debarring officials work together through the Interagency Suspension and Debarment Committee. This Committee, comprised of debarring officials and other personnel from Executive Branch agencies, meets monthly to discuss issues of interest related to debarment and suspension. Nevertheless, given that action by one agency to debar, suspend, or propose a contractor for debarment has government-wide consequences, I would not be opposed to a more formalized approach to the coordination between agencies. I would consider a review of the organization and charter of the Committee.

- f. Do you believe there are adequate objective criteria to govern agencies' discretion on whether they should grant a waiver to a company that has been suspended or debarred?

Agencies must demonstrate a compelling reason before awarding a contract in the face of a debarment or suspension. The standard has been kept general because of the variety of situations facing each agency and the uniqueness of each agency's mission. Some agencies, however, do include examples in their procurement regulations of what constitutes a compelling reason. For example, DOD may, in awarding a contract to a debarred or suspended contractor, assert urgency, sole source status or national defense. Nevertheless, I would consider adding additional criteria to the government-wide regulation to ensure a uniform application of the general standard.

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- g. Do you believe there is adequate coordination between agencies that grant such waivers to companies?

Formal coordination between agencies is not required. The decision to award a contract in the face of a debarment or suspension is agency specific and must stay that way. There is some informal sharing of information and some that is required by statute and agency policy. For example, DOD is required by statute to notify the Administrator of the General Services Administration if the Department intends to award a contract to a debarred or suspended contractor. Also the General Services Administration (GSA) does request that agencies inform them if they intend to award a contract to a contractor debarred or suspended by GSA. Notwithstanding these efforts, a review of the charter and organization of the Interagency Debarment and Suspension Committee might assist in this regard.

Spend Analysis

52. High-performing organizations continuously analyze their spending on goods and services to answer basic questions about how much is being spent and where dollars are going. This approach is called "spend analysis."

What would you do to encourage agencies to develop the capabilities of performing useful spend analyses?

Spend analysis can be a useful tool for agencies to determine how to most effectively spend their procurement dollars. This concept has been widely used throughout the Government – including the Departments of Agriculture, Health and Human Services, and Veterans Affairs. In addition, the Department of Homeland Security has made spend analysis a priority, and the Department of Defense is increasing its attention to spend analysis in response to a GAO report. I support these efforts.

Key government-wide initiatives are in effect the results of spend analyses. For example, all government-wide contracts, including Government-wide Acquisition Contracts (GWACs), Federal Supply Schedule (FSS) Contracts, and other multiple award contracts reflect government studies and legislation that recognized economies achievable from taking advantage of Federal spending patterns. Another example, the current SmartBuy initiative, stems from a government-wide analysis of spending for software. It aims to combine software purchases to take advantage of lower volume pricing. These are just a few examples, but they effectively cover a majority of Federal procurement dollars.

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The most important thing we can do to encourage spend analysis is to ensure that spending data is accurately collected using the Federal Procurement Data System ("FPDS"). A totally revamped Federal Procurement Data System (known as FPDS-Next Generation or "FPDS-NG") is being rolled out this fiscal year to address significant problems that have plagued procurement data collection. This initiative is intended to produce accurate data that will quickly and effectively enable senior officials to conduct just the type of spend analyses envisioned by this question.

Section 1423 of the Services Acquisition Reform Act of 2003 establishes an advisory panel to review key aspects of government contracting, and it reports to the Administrator. If confirmed, I will request the panel to consider addressing spend analysis to determine what additionally may need to be done in this area.

I would like to point out a note of caution concerning spend analysis – it is not a silver bullet solution to every acquisition problem faced by the Federal Government. Those who promote spend analysis typically cite benefits achieved by corporations primarily motivated by the bottom line. However, the government is required by law to consider not only business efficiency in its procurement decisions, but also various socio-economic considerations, such as participation by service-disabled veterans and small businesses. These priorities can sometimes conflict with each other. This all leads to the conclusion that while spend analysis is useful, it is only one performance measurement tool and thus, must be evaluated within the context of overall Federal acquisition requirements.

Procurement Basics

53. Your predecessor supported a reemphasis on procurement basics to assure that procurements are conducted efficiently and achieve anticipated results. Some have raised criticisms that an emphasis on "procurement basics" will result in an overemphasis on process and procedures and undermine the flexibility and responsiveness of the procurement system.

Do you believe that emphasis on procurement basics will result in unwarranted emphasis on process in procurements?

We must ensure that our agencies are applying acquisition tools and principles effectively. We will never achieve anticipated results from any tool, no matter how simplified, without sound planning, effective use of competition, and proper contract administration. This does not mean that every problem can or should be addressed through increased regulatory guidance or more elaborate processes. We must first look

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behind a given problem to determine its cause and then figure out an appropriate solution. Overall, I believe solutions can be achieved for most problems that do not erode the efficiencies Congress authorized over the past decade and, more importantly, maintain the trust in our workforce's ability to exercise good business judgment.

Best Practices

54. Leading organizations have found that a procurement function that successfully supports its missions must have a consistent, cross-functional, and multi-disciplinary approach. This requires engagement by all stakeholders—including contracting, logistics, finance, legal, and small business advocates—to create cross-functional teams.

What actions would you take in support of this approach?

I strongly support the need to include all stakeholders and cross-functional teams in Federal acquisition. In my role as GSA Chief of Staff, I was involved in several major acquisitions, and I know from those experiences that the best decisions are made when all relevant parties are given the opportunity to fully engage.

Equally important, having worked in the Congressional arena over the past fifteen years, I have seen the benefits of an inclusive approach to policy making. If I am confirmed, I pledge to actively solicit input from both ends of the Capitol and both sides of the political aisle – in addition to seeking views of other stakeholders.

In executing the procurement function in particular, it is absolutely critical to have the involvement not only of acquisition experts, but of substantive experts as well. This is especially true for complex acquisitions. No matter how experienced a contracting officer might be in a large telecom procurement, for example, involving technical telecom specialists through the procurement can ensure that the taxpayers ultimately receive the best value for their money. Equally important, the involvement of counsel, OSDBUs, and related parties helps ensure that not only is the contract in compliance with the FAR, but also that the procurement is handled in the most efficient and effective manner possible. Such a “holistic approach” to acquisition is certainly a best practice that needs to be highlighted for both the civilian and DOD communities.

Similarly, Performance-Based Service Acquisitions require the involvement of cross-functional teams to develop performance work statements and performance standards that best support agency missions. Another best practice is to encourage the use of draft solicitations to obtain industry feedback to help refine the requirements.

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To her credit, the prior OFPP Administrator recognized the need for cross-functional teams. When she established the Federal Acquisition Council ("FAC") (of which I was a member representing GSA), Angela Styles made it a priority to include members with different areas of expertise and backgrounds, and with both career and political status. The way the FAC functions will hopefully become a template for other cross-functional policy-making organizations. If I am confirmed, the Chief Acquisition Officers Council will almost certainly leverage diverse backgrounds and experience in the same manner as the FAC.

Accuracy of Procurement Data

55. Reliable information is critical to informed decision making and to oversight of the procurement system. The Federal Procurement Data System (FPDS) has been the Federal Government's central database of information of federal procurement actions since 1978 and is used by the Congress and executive agencies to assess the impact of government wide acquisition policies and processes. Recently the GAO raised questions about continuing reliability problems with the data in FPDS and recommended steps OMB should take to ensure that these problems would not continue with its successor system, FPDS-Next Generation.
- a. What actions do you believe are needed to improve the reliability of the data in FPDS and FPDS-Next Generation?

Given the emphasis on performance and results that is embedded in President Bush's Management Agenda, OMB has worked closely with GSA and the agencies to fully implement the next generation of the Federal Procurement Data System (FPDS-NG). Standing up the next generation data system is a critical milestone for OFPP and GSA in order to improve efforts to obtain and analyze accurate and timely procurement data.

Agency heads, OFPP and OMB personnel, Senior Procurement Executives, the Federal Acquisition Council members, the OSDBUs, and the Integrated Acquisition Environment (the procurement community's eGov initiative) are all stakeholders in the effort to resolve data collection and reporting issues. The first step is to ensure that each of these stakeholders is actively involved in and supportive of the integration of FPDS-NG into Federal financial systems.

Fundamental to the data collection system are the contract writing systems in the agencies that feed data to FPDS-NG. Like any computer system, the old adage "garbage in-garbage out" applies. Stated another way, the Federal Procurement Data

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System is only as accurate as the data that it is fed from the agencies. We must ensure that agencies have the technology and resources necessary to permit them to utilize contract writing systems capable of electronic transfer of information to FPDS-NG.

- b. What priority do you believe needs to be given to this issue?

Improving data accuracy is also a key component necessary to improve financial performance – a key Presidential management initiative. More importantly, in order for line managers, agency-heads, inspectors general, Congress, and the public to be able to analyze the spending patterns of agencies – and the government as a whole for that matter – we must have accurate and timely procurement data. The reports generated by FPDS are also used to benchmark how we are doing with regard to small and disadvantaged businesses as well as non-profit entities such as JWOD vendors.

As such, I would consider data reporting to be one of the highest priorities – and one of the most important challenges – for OFPP and for the government as a whole.

Federal Supply Schedules

56. In recent years, GAO and the IGs have reported problems with the Federal Supply Service program and claim that (1) GSA is still not employing fundamental contract pricing tools to negotiate “fair and reasonable” prices; (2) contracts are extended without any meaningful price analysis or market research to ensure sound pricing; and (3) there has been a precipitous drop in pre-award audits which are crucial to obtaining good pricing.

What actions do you believe are needed ensure that GSA has effective program management controls in place and is taking appropriate actions to obtain goods and services at the best possible prices?

My understanding is that OMB has asked GSA to undertake a combination of contract performance assessments and pre-award audits to ensure activities conducted through schedules and other government-wide vehicles result in reasonable pricing for customers and adherence to sound contracting principles. I believe this is an appropriate and timely request given agencies' increasing reliance on inter-agency contracting and GSA's schedules in particular. I intend to work with the OMB Resource Management Offices and GSA to ensure this program moves forward. Through an appropriate application of reviews, FSS should be able to take steps, if and as necessary, to better ensure both that

Senate Committee on Governmental Affairs
 Policy Questionnaire of David H. Safavian
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 Administrator, Office of Federal Procurement Policy
 April 16, 2004
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the government's buying power is being used to negotiate good pricing and that customer service is being shaped in ways that meet the needs of procuring agencies.

Human Capital

57. In the pre-hearing questionnaire for his nomination to be OMB Director, Joshua Bolten answered in the affirmative to the question, "(W)ill OMB provide timely information to the Committee on how federal employees are faring under the new A-76, particularly with respect to the streamlined and best value competitions..."

a. When will the Committee receive such information?

Section 647(b) of the Consolidated Appropriations Act requires agencies to report to Congress by mid to late May on their competitive sourcing efforts for FY 2003. My understanding is that this reporting will include information on the number of streamlined and standard competitions and will identify the winning provider for each competition. I do not know if the initial reporting will specifically include information on best value competitions, but I intend to ensure that OMB's competitive sourcing database includes information on the type of source selection strategy used, including best value tradeoffs.

b. If confirmed, will you commit to regularly update the Committee with such information?

Yes.

Share in Savings

58. House legislation known as the Services Acquisition Reform Act includes a provision for the government-wide use of share-in-savings contracts. Share-in-savings contracts require federal agencies to share savings theoretically realized as a result of the contract. The contract vehicle is controversial; however, as many have questioned agencies' ability to accurately establish a cost baseline from which to determine overall savings. In a recent letter to the Washington Post (attached), Angela Styles, the former OMB Administrator for Federal Procurement Policy, wrote that while at OMB she had "asked for evidence to document that the concept netted savings for the taxpayer at any level of state, local or Federal Government. In spite of repeated requests and significant research, my office never found or received evidence of actual savings achieved through this type

*Senate Committee on Governmental Affairs
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of contracting.” Ms. Styles added, “Even with skillful drafting by government managers, ‘share-in-savings’ contracts are usually a losing proposition for the taxpayer.”

- a. Do you share Ms. Styles’ views, or do you believe that share-in-savings contracts are an effective contracting vehicle? Please explain your answer.

Share-in-savings (SIS) contracting is an intriguing concept. As I understand it, SIS contracting is the ultimate form of performance-based contracting under which the contractor finances the work and shares with the agency in savings generated from performance. An agency can secure significant innovation or process transformation, paying only for results, not just efforts. The contractor can enjoy potentially higher returns through the assumption of greater risk. I think these potential benefits make SIS contracting a tool worth agencies’ consideration.

At the same time, agencies will need to perform a fair amount of analysis before proceeding with a SIS contract, probably more than is required for most types of acquisition tools. Because contractor-financed projects may be costly, agencies will need to develop a thorough business case analysis to weigh the benefits and drawbacks of contractor financing against self-financing, where the agency relies on the traditional appropriations process. To assess the potential value of the SIS approach, agencies will need to identify outcomes and develop quantifiable baselines of current and projected costs.

- b. What evidence are you aware of that this form of contracting has resulted in savings to the taxpayers? Please explain.

My understanding is that SIS contracting has not been widely used by federal agencies to date. However, the General Accounting Office concluded that the tool, when used properly, has proven beneficial to private sector contractors.

- c. Do you support proposals to allow for the government-wide use of share-in-savings contracts?

I support application of SIS contracting in appropriate circumstances and think the E-Government Act provides a good starting point for agencies across government to acclimate themselves to the tool. I would not encourage use of share-in-savings as a one-size-fits-all tool and do not believe that was Congress’ intent in recognizing the authority in the E-Government Act. To the contrary, agencies must undertake careful analysis to determine where SIS might be effective. For example, quantifiable baselines of current and projected costs must be developed to determine if the benefit pool is sufficiently large to offer

Senate Committee on Governmental Affairs
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reasonable savings to the government and provide incentives to the contractor commensurate with the risk each party is being asked to undertake.

I commend GSA for establishing a program office that is dedicated to helping agencies identify where SIS contracting may be suitable as an alternative to seeking direct appropriations for a particular project. While I have not had an opportunity to review GSA's materials in detail, this type of support structure will be needed to make SIS a success and avoid its application in situations that are not conducive to use of this tool.

d. How do share-in-savings contracts fit into the revised A-76? Can contractors win share-in-savings contracts under A-76? If so, please indicate how in-house bids can be structured to win competitions pursuant to performance agreements that are based on share-in-savings arrangements.

This issue requires additional analysis. If confirmed, I will look into the matter further.

Franchise funds

59. Franchise funds are a type of intra-governmental fund that were established as self-supporting business-like entities providing common administrative services on a fully reimbursable basis. In your view, should franchise funds be used to make purchases?

I am not sufficiently familiar with the scope of franchise fund activities and the results that have been achieved under them to speak definitively as to their value. As a general matter, I would expect public reimbursable sources that provide service to another agency through a fee-for-service interagency agreement under a franchise fund to operate in a transparent manner and be held accountable for providing cost-effective service for the taxpayer, as we expect of our in-house providers.

IV. Relations with Congress

60. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Yes.

Senate Committee on Governmental Affairs
Policy Questionnaire of David H. Safavian
Nominated by President Bush To Be
Administrator, Office of Federal Procurement Policy
April 16, 2004
Page 51

61. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes.

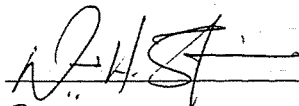
V. Assistance

62. Are these answers your own? Have you consulted with the OFPP, OMB or any interested parties? If so, please indicate which entities.

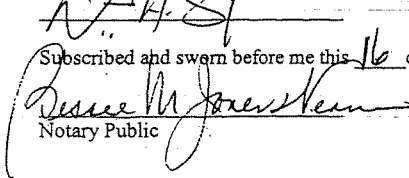
Yes. I have consulted with personnel from OMB, OFPP, GSA, and Congress.

AFFIDAVIT

I, David H. Safavian, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge and/or recollection, current, accurate, and complete.



Subscribed and sworn before me this 16 day of April, 2004.


Notary Public

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

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LOBBYING REPORT
Lobbying Disclosure Act (Section 5)

- 1. Year 1996
- 2. Report Type (check all that apply) Midyear (January 1-June 30) Year End (July 1-December 31)
 Amended report Termination report
 No activity (registration to remain in effect)

REGISTRANT

3. Name of Registrant PRESTON GATES ELLIS & ROUVELAS MEEDS
 4. Telephone number and contact name
 (202) 628-1700 Contact Rosanne Phillips

CLIENT—Lobbying firms file separate reports for each client. An organization employing in-house lobbyists indicates "Self."

5. Name of Client COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

INCOME OR EXPENSES Answer line 6 or line 7 as applicable.

6. **LOBBYING FIRMS.** Income from the client during the reporting period, other than income unrelated to lobbying activities, was:

Less than \$10,000 \$10,000 or more

If \$10,000 or more, provide a good faith estimate, rounded to the nearest \$20,000, of all income from the client during this reporting period. Include any payments by any other entity for lobbying activities on behalf of the client. Exclude income unrelated to lobbying activities.

Income \$ 500,000.00 Total for year (if Year End report) \$ _____

7. **ORGANIZATIONS EMPLOYING IN-HOUSE LOBBYISTS.** Expenses incurred in connection with lobbying activities during the reporting period were:

Less than \$10,000 \$10,000 or more

If \$10,000 or more, provide a good faith estimate, rounded to the nearest \$20,000, of the total amount of all lobbying expenses incurred by the registrant and its employees during this reporting period.

Expenses \$ _____ Total for year (if Year End report) \$ _____

Optional Expense Reporting Methods

- A. Registrants that report lobbying expenses under section 6033(b)(8) of the Internal Revenue Code may provide a good faith estimate of the applicable amounts that would be required to be disclosed under section 6033(b)(8) for the semiannual reporting period, and may consider as lobbying activities only those defined under section 4911(d) of the Internal Revenue Code. If selecting this method, check box and (i) enter estimated amounts on the "Expenses" line above; or (ii) attach a copy of the IRS Form 990 that includes this reporting period.
- B. Registrants subject to section 162(e) of the Internal Revenue Code may make a good faith estimate of all applicable amounts that would not be deductible under section 162(e) for the semiannual reporting period, and may consider as lobbying activities only those activities the costs of which are not deductible pursuant to section 162(e). If selecting this method, check box and enter estimated amounts on the "Expenses" line above.

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LOBBYING ISSUES. On line 8 below, enter the code for one general lobbying issue area in which the registrant engaged in lobbying activities for the client during this reporting period (select applicable code from list in the instructions and on the reverse side of Form LD-2, page 1). For that general issue area only, complete lines 9 through 12. If the registrant engaged in lobbying activities for the client in more than one general issue area, use one Lobbying Report Addendum page for each additional general issue area.

8. General lobbying issue area code (enter one) GOV

9. Specific lobbying issues (include bill numbers and specific executive branch actions)

Monitoring legislation that includes the Commonwealth within its jurisdiction, and related lobbying activities. Specific legislation includes Omnibus Territories Act (H.R. 602); Rongelap Recovery and Community Self-reliance Act (H.R. 1332); Title 10, United States Code Amendment (H.R. 1689); Pacific Insular Area Fisheries Empowerment Act (H.R. 2369); Northern Mariana Delegate Act (H.R. 2876); Interior Appropriations Act for FY-1996 (H.R. 1977); Omnibus Continuing Appropriations Act (H.R. 3919); The Insular Development Act of 1995 (S. 638); Interior Appropriations Act for FY-1997 (H.R. 3662); a bill to make technical and other changes to the laws dealing with Territories (S.

10. Houses of Congress and Federal agencies contacted

Senate
House of Representatives
Department of the Interior

11. Name and title of each employee who acted as a lobbyist

ABRAMOFF, JACK - GOVERNMENT AFFAIRS COUNSELOR
BARNES, RICHARD - ATTORNEY
BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
HOLLINGSWORTH, E. BOYD - ATTORNEY
KALICKI, ANNETTE - LEGISLATIVE PARALEGAL
KNOWLTON, STACY - GOVT. AFFAIRS ANALYST
MEEDS, LLOYD - ATTORNEY

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
* NONE *

This report includes ~~009~~ Addendum pages.

Signature William Myhre Date 8/13/96

Printed Name and Title WILLIAM MYHRE - ATTORNEY

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Lines 1-7. Not applicable

- 8. General lobbying issue area code (enter one) GOV
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions) 1804), and the Intergency Task Force Report on labor immigration and law enforcement initiatives in the Commonwealth.

10. Houses of Congress and Federal agencies contacted

- 11. Name and title of each employee who acted as a lobbyist
 - MYHRE, WILLIAM - ATTORNEY
 - O'MALLEY, CINDY - GOVERNMENT AFFAIRS ANALYST
 - PECKINPAUGH, TIM - ATTORNEY
 - RUGE, MARK - ATTORNEY
 - ~~STEPHENS, DENNIS - ATTORNEY~~
 - STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

Addendum

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SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Lines 1-7. Not applicable

- 8. General lobbying issue area code (enter one) GOV
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted

11. Name and title of each employee who acted as a lobbyist
PIZZELLA, PATRICK - DIR. OF COALITIONS
DeGIUSTI, PAUL - GOVT. AFFAIRS ANALYST

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

Addendum

Page 2 of 8

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Lines 1-7. Not applicable

8. General lobbying issue area code (enter one) IMM
9. Specific lobbying issues (include bill numbers and specific executive branch actions)
Monitoring legislation for potential impact on immigration issues affecting the Commonwealth, and related lobbying activities. Specific legislation includes the Immigration Control and Financial Responsibility Act of 1996 (H.R. 2202); The Insular Development Act of 1995 (S. 638) and the Interior Appropriations Act for FY-1996 (H.R.1997)

10. Houses of Congress and Federal agencies contacted
Senate
House of Representatives
Department of Interior

11. Name and title of each employee who acted as a lobbyist
ABRAMOFF, JACK - GOVERNMENT AFFAIRS COUNSELOR
BARNES, RICHARD - ATTORNEY
BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
HOLLINGSWORTH, E. BOYD - ATTORNEY
KALICKI, ANNETTE - LEGISLATIVE PARALEGAL
KNOWLTON, STACY - GOVT. AFFAIRS ANALYST
MEEDS, LLOYD - ATTORNEY
12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
* NONE *

Addendum

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Lines 1-7. *Not applicable*

8. General lobbying issue area code (enter one) IMM

9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted

- 11. Name and title of each employee who acted as a lobbyist
- MYHRE, WILLIAM - ATTORNEY
- O'MALLEY, CINDY - GOVERNMENT AFFAIRS ANALYST
- PECKINPAUGH, TIM - ATTORNEY
- RUGE, MARK - ATTORNEY
- ~~SABAYAN, DAVID - ATTORNEY~~
- STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Lines 1-7. *Not applicable*

8. General lobbying issue area code (enter one) IMM

9. Specific lobbying issues (*include bill numbers and specific executive branch actions*)

10. Houses of Congress and Federal agencies contacted

11. Name and title of each employee who acted as a lobbyist
PIZZELLA, PATRICK - DIR. OF COALITIONS
DeGIUSTI, PAUL - GOVT. AFFAIRS ANALYST

12. *For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above*

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Lines 1-7. Not applicable

- 8. General lobbying issue area code (enter one) LBR
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)
Monitoring legislation affecting the minimum wage in the Commonwealth and related lobbying activities. Specific legislation includes The Insular Development Act of 1995 (S. 638); Interior Appropriations Act for FY-1996 (H.R. 1997). The Interagency Task Force Report on labor, immigration and law enforcement initiatives in the Commonwealth.
- 10. Houses of Congress and Federal agencies contacted
Senate
House of Representatives
Department of the Interior
Department of Justice
- 11. Name and title of each employee who acted as a lobbyist
ABRAMOFF, JACK - GOVERNMENT AFFAIRS COUNSELOR
BARNES, RICHARD - ATTORNEY
BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
HOLLINGSWORTH, E. BOYD - ATTORNEY
KALICKI, ANNETTE - LEGISLATIVE PARALEGAL
KNOWLTON, STACY - GOVT. AFFAIRS ANALYST
MEEDS, LLOYD - ATTORNEY
- 12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
* NONE *

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Lines 1-7. *Not applicable*

- 8. General lobbying issue area code (enter one) LBR
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted

- 11. Name and title of each employee who acted as a lobbyist
 - MYHRE, WILLIAM - ATTORNEY
 - O'MALLEY, CINDY - GOVERNMENT AFFAIRS ANALYST
 - PECKINPAUGH, TIM - ATTORNEY
 - RUGE, MARK - ATTORNEY
 - ~~DAVIDSON, DANIEL - ATTORNEY~~
 - STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Lines 1-7. *Not applicable*

8. General lobbying issue area code (enter one) LBR

9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted

11. Name and title of each employee who acted as a lobbyist
PIZZELLA, PATRICK - DIR. OF COALITIONS
DeGIUSTI, PAUL - GOVT. AFFAIRS ANALYST

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

Addendum

Page 8 of 8

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

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LOBBYING REPORT
Lobbying Disclosure Act (Section 5)

- 1. Year 1996
- 2. Report Type (check all that apply) Midyear (January 1-June 30) Year End (July 1-December 31)
 Amended report Termination report
 No activity (registration to remain in effect)

REGISTRANT

- 3. Name of Registrant PRESTON GATES ELLIS & ROUVELAS MEEDS
- 4. Telephone number and contact name
(202) 628-1700 Contact Rozanne Phillips

CLIENT Lobbying firms file separate reports for each client. An organization employing in-house lobbyists indicates "Self."

- 5. Name of Client [REDACTED]

INCOME OR EXPENSES Answer line 6 or line 7 as applicable.

- 6. LOBBYING FIRMS. Income from the client during the reporting period, other than income unrelated to lobbying activities, was:
 Less than \$10,000 \$10,000 or more

If \$10,000 or more, provide a good faith estimate, rounded to the nearest \$20,000, of all income from the client during this reporting period. Include any payments by any other entity for lobbying activities on behalf of the client. Exclude income unrelated to lobbying activities.

Income \$ _____ Total for year (if Year End report) \$ _____

- 7. ORGANIZATIONS EMPLOYING IN-HOUSE LOBBYISTS. Expenses incurred in connection with lobbying activities during the reporting period were:

Less than \$10,000 \$10,000 or more

If \$10,000 or more, provide a good faith estimate, rounded to the nearest \$20,000, of the total amount of all lobbying expenses incurred by the registrant and its employees during this reporting period.

Expenses \$ _____ Total for year (if Year End report) \$ _____

Optional Expense Reporting Methods

- A. Registrants that report lobbying expenses under section 6033(b)(8) of the Internal Revenue Code may provide a good faith estimate of the applicable amounts that would be required to be disclosed under section 6033(b)(8) for the semiannual reporting period, and may consider as lobbying activities only those defined under section 4911(d) of the Internal Revenue Code. If selecting this method, check box and (i) enter estimated amounts on the "Expenses" line above; or (ii) attach a copy of the IRS Form 990 that includes this reporting period.
- B. Registrants subject to section 162(e) of the Internal Revenue Code may make a good faith estimate of all applicable amounts that would not be deductible under section 162(e) for the semiannual reporting period, and may consider as lobbying activities only those activities the costs of which are not deductible pursuant to section 162(e). If selecting this method, check box and enter estimated amounts on the "Expenses" line above.

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name QUIET HEART ENTERPRISES

LOBBYING ISSUES. On line 8 below, enter the code for *one* general lobbying issue area in which the registrant engaged in lobbying activities for the client during this reporting period (*select applicable code from list in the instructions and on the reverse side of Form LD-2, page 1*). For that general issue area *only*, complete lines 9 through 12. If the registrant engaged in lobbying activities for the client in more than one general issue area, use one Lobbying Report Addendum page for each additional general issue area.

8. General lobbying issue area code (enter *one*) MAR

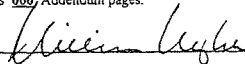
9. Specific lobbying issues (*include bill numbers and specific executive branch actions*)
Coastwise provisions of Coast Guard Authorization Act (H.R. 1361 and S. 1004); seek coastwise privileges for the vessel HERCO TIME (O.N. 91159) (S. 1684).

10. Houses of Congress and Federal agencies contacted
Senate _____
House of Representatives _____

11. Name and title of each employee who acted as a lobbyist
MYHRE, WILLIAM - ATTORNEY
~~PRESTON GATES ELLIS - ATTORNEY~~

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
* NONE *

This report includes 000 Addendum pages.

Signature  Date 8/13/96

Printed Name and Title WILLIAM MYHRE - ATTORNEY

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT
Lobbying Disclosure Act (Section 5)

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- 1. Year 1996
- 2. Report Type (check all that apply) Midyear (January 1-June 30) Year End (July 1-December 31)
 Amended report Termination report
 No activity (registration to remain in effect)

REGISTRANT

- 3. Name of Registrant PRESTON GATES ELLIS & ROUVELAS MEEDS
- 4. Telephone number and contact name (202) 628-1700 Contact Rosanne Phillips

CLIENT Lobbying firms file separate reports for each client. An organization employing in-house lobbyists indicates "Self."

- 5. Name of Client MICROSOFT CORPORATION

INCOME OR EXPENSES Answer line 6 or line 7 as applicable.

- 6. LOBBYING FIRMS. Income from the client during the reporting period, other than income unrelated to lobbying activities, was:

Less than \$10,000 \$10,000 or more

If \$10,000 or more, provide a good faith estimate, rounded to the nearest \$20,000, of all income from the client during this reporting period. Include any payments by any other entity for lobbying activities on behalf of the client. Exclude income unrelated to lobbying activities.

Income \$ 180,000.00 Total for year (if Year End report) \$ _____

- 7. ORGANIZATIONS EMPLOYING IN-HOUSE LOBBYISTS. Expenses incurred in connection with lobbying activities during the reporting period were:

Less than \$10,000 \$10,000 or more

If \$10,000 or more, provide a good faith estimate, rounded to the nearest \$20,000, of the total amount of all lobbying expenses incurred by the registrant and its employees during this reporting period.

Expenses \$ _____ Total for year (if Year End report) \$ _____

Optional Expense Reporting Methods

- A. Registrants that report lobbying expenses under section 6033(b)(8) of the Internal Revenue Code may provide a good faith estimate of the applicable amounts that would be required to be disclosed under section 6033(b)(8) for the semiannual reporting period, and may consider as lobbying activities only those defined under section 4911(d) of the Internal Revenue Code. If selecting this method, check box and (i) enter estimated amounts on the "Expenses" line above; or (ii) attach a copy of the IRS Form 990 that includes this reporting period.
- B. Registrants subject to section 162(e) of the Internal Revenue Code may make a good faith estimate of all applicable amounts that would not be deductible under section 162(e) for the semiannual reporting period, and may consider as lobbying activities only those activities the costs of which are not deductible pursuant to section 162(e). If selecting this method, check box and enter estimated amounts on the "Expenses" line above.

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name MICROSOFT CORPORATION

LOBBYING ISSUES. On line 8 below, enter the code for one general lobbying issue area in which the registrant engaged in lobbying activities for the client during this reporting period (select applicable code from list in the instructions and on the reverse side of Form LD-2, page 1). For that general issue area only, complete lines 9 through 12. If the registrant engaged in lobbying activities for the client in more than one general issue area, use one Lobbying Report Addendum page for each additional general issue area.


- 8. General lobbying issue area code (enter one) CPI
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)
Encryption; Privacy
S.1726; S.1587; HR.3011

- 10. Houses of Congress and Federal agencies contacted
 - Senate
 - House of Representatives

- 11. Name and title of each employee who acted as a lobbyist
 - HEIMAN, BRUCE - ATTORNEY
 - BERGER, AMY - ATTORNEY
 - BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
 - CARLSON, AMY - ATTORNEY
 - HOLLINGSWORTH, E. BOYD - ATTORNEY
 - STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

- 12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
* NONE *

This report includes 0010 Addendum pages.

Signature  Date 8/13/96

Printed Name and Title BRUCE HEIMAN - ATTORNEY

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name MICROSOFT CORPORATION

Lines 1-7. *Not applicable*

8. General lobbying issue area code (enter one) CPT
9. Specific lobbying issues (*include bill numbers and specific executive branch actions*)
 NII Copyright Protection HR.2441
 Patent Reform HR.3460; HR.359; HR. 1732, HR. 1733, S. 1961
 Digital Video Disk Protection

10. Houses of Congress and Federal agencies contacted
 Senate
 House of Representatives

11. Name and title of each employee who acted as a lobbyist:
 HEIMAN, BRUCE - ATTORNEY
 BERGER, AMY - ATTORNEY
 BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
 CARLSON, AMY - ATTORNEY
 HOLLINGSWORTH, E. BOYD - ATTORNEY
 STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

12. *For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above*
 * NONE *

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name MICROSOFT CORPORATION

Lines 1-7. Not applicable

- 8. General lobbying issue area code (enter one) IMM
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)
Immigration (HR.2202; S.1664)

- 10. Houses of Congress and Federal agencies contacted
Senate
House of Representatives

- 11. Name and title of each employee who acted as a lobbyist
HEIMAN, BRUCE - ATTORNEY
CARLSON, AMY - ATTORNEY
HOLLINGSWORTH, E. BOYD - ATTORNEY
STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

- 12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
* NONE *

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name MICROSOFT CORPORATION

Lines 1-7. Not applicable

- 8. General lobbying issue area code (enter one) TAX
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)
Foreign Sales Corporation Credit (HR-3448; Pressler
International Tax Simplification Bill)

- 10. Houses of Congress and Federal agencies contacted
Senate
House of Representatives

- 11. Name and title of each employee who acted as a lobbyist
HELMAN, BRUCE - ATTORNEY
BERGER, AMY - ATTORNEY
BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
CARLSON, AMY - ATTORNEY
GARVIE, PAMELA - ATTORNEY
HOLLINGSWORTH, E. BOYD - ATTORNEY
~~FRANKS, DAVID - ATTORNEY~~

- 12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
* NONE *

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name MICROSOFT CORPORATION

Lines 1-7. *Not applicable*

- 8. General lobbying issue area code (enter one) TAX
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted

11. Name and title of each employee who acted as a lobbyist
KNOWLTON, STACY - GOVT. AFFAIRS ANALYST

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

SECRETARY OF THE SENATE CLERK OF THE HOUSE OF REPRESENTATIVES
--

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDSClient Name MICROSOFT CORPORATION

Lines 1-7. Not applicable

8. General lobbying issue area code (enter one) TEC
9. Specific lobbying issues (include bill numbers and specific executive branch actions)
 Telecommunications Act of 1996 (HR.1555; S.652)
 Oversight on FCC implementation of Telecommunications Act of 1996
 Electromagnetic Spectrum Management Policy Reform
 Advanced Television Standards
10. Houses of Congress and Federal agencies contacted
 Senate
 House of Representatives
 Federal Communications Commission
11. Name and title of each employee who acted as a lobbyist
 HEIMAN, BRUCE - ATTORNEY
 BERGER, AMY - ATTORNEY
 BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
 CARLSON, AMY - ATTORNEY
 CONNER, DARRELL - GOVT. AFFAIRS ASSISTANT
 GARVIE, PAMELA - ATTORNEY
 HOLLINGSWORTH, E. BOYD - ATTORNEY
12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
 * NONE *

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name MICROSOFT CORPORATION

Lines 1-7. *Not applicable*

- 8. General lobbying issue area code (enter one) TEC
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted

- 11. Name and title of each employee who acted as a lobbyist
 - KALICKI, ANNETTE - LEGISLATIVE PARALEGAL
 - KNOWLTON, STACY - GOVT. AFFAIRS ANALYST
 - MEEDS, LLOYD - ATTORNEY
 - O'MALLEY, CINDY - GOVERNMENT AFFAIRS ANALYST
 - PECKINPAUGH, TIM - ATTORNEY
 - ROUVELAS, EMANUEL - ATTORNEY

12. *For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates:* Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name MICROSOFT CORPORATION

Lines 1-7. Not applicable

- 8. General lobbying issue area code (enter one) TEC
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted

- 11. Name and title of each employee who acted as a lobbyist
 - SAFAVIAN, DAVID - ATTORNEY
 - SMITH, ANNE - GOVT AFFAIRS ANAYSIST
 - STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

SECRETARY OF THE SENATE CLERK OF THE HOUSE OF REPRESENTATIVES
--

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUYELAS MEEDSClient Name MICROSOFT CORPORATION

Lines 1-7. Not applicable

8. General lobbying issue area code (enter one) TRD
9. Specific lobbying issues (include bill numbers and specific executive branch actions)
International intellectual property protection.

10. Houses of Congress and Federal agencies contacted

Senate
House of Representatives
White House

11. Name and title of each employee who acted as a lobbyist

HEIMAN, BRUCE - ATTORNEY
BERGER, AMY - ATTORNEY
BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
CARLSON, AMY - ATTORNEY
GARVIE, PAMELA - ATTORNEY
HOLLINGSWORTH, E. BOYD - ATTORNEY
SAFAVIAN, DAVID - ATTORNEY

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
* NONE *

SECRETARY OF THE SENATE CLERK OF THE HOUSE OF REPRESENTATIVES
--

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name MICROSOFT CORPORATION

Lines 1-7. *Not applicable*

- 8. General lobbying issue area code (enter one) TRD
- 9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted

11. Name and title of each employee who acted as a lobbyist
KNOWLTON, STACY - GOVT. AFFAIRS ANALYST

12. *For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates:* Interest of each such foreign entity in the specific lobbying issues listed on line 9 above

Secretary of the Senate
Clerk of the House of Representatives 31355 602

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LOBBYING REGISTRATION
Lobbying Disclosure Act of 1995 (Section 4)

Check if this is an amended registration

4

For Official Use

REGISTRANT

- 1. Name of Registrant **PRESTON GATES ELLIS & ROUVELAS MEEDS**
Address **1735 NEW YORK AVENUE, N.W.; SUITE 500**
City **WASHINGTON** State **DC** Zip **20006-4759**
- 2. Principal place of business *(if different from line 1)*
City _____ State/Zip (or Country) _____
- 3. Telephone number and contact name
202 628-1700 Contact **Rosanne Phillips**
- 4. General description of registrant's business or activities
Law Firm

CLIENT *A lobbying firm is required to file a separate registration for each client. An organization employing in-house lobbyists will indicate "Self" on line 5 and proceed to line 8.*

- 5. Name of Client ~~XXXXXXXXXXXXXXXXXXXX~~
Address **1111 BROADWAY, 10TH FLOOR**
City **OAKLAND** State **CA** Zip **95607**
- 6. Principal place of business *(if different from line 5)*
City _____ State/Zip (or Country) _____
- 7. General description of client's business activities

SEE ADDENDUM

REGISTRANT EMPLOYEES

- 8. Name and title of each employee of the registrant who has acted or is expected to act as a lobbyist for the client identified on line 5. Indicate any employee who served as a "covered executive branch official" or "covered legislative branch official" within 2 years before the date that the employee first acted or will act as a lobbyist for the client, and state the executive or legislative branch position(s) in which the employee served. Attach Lobbying Registration Addendum if necessary.
SEE ADDENDUM

LOBBYING ISSUES

9. General lobbying issue areas (select applicable codes, listed in instructions and on reverse side of Form LD-1, page 1)

MAR

10. Specific lobbying issues (current and anticipated)

SEE ADDENDUM

AFFILIATED ORGANIZATIONS

11. Name, address, and principal place of business of any entity other than the client that contributes more than \$10,000 to the lobbying activities covered by this registration in a semiannual period, and in whole or in major part plans, supervises, or controls the registrant's lobbying activities. If none, so state.

Name	Address	Principal place of business (city and state or country)
NONE		

FOREIGN ENTITIES

12. Name, address, principal place of business, amount of any contribution of more than \$10,000, and approximate percentage of equitable ownership in the client of any foreign entity that:

- a) holds at least 20% equitable ownership in the client or in any organization identified on line 11; or
- b) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances or subsidizes the activities of the client or any organization identified on line 11; or
- c) is an affiliate of the client or any organization identified on line 11 and has a direct interest in the outcome of the lobbying activity.

If none, so state.

Name	Address	Principal place of business (city and state or country)	Amount of contribution for lobbying activities	Ownership percentage in client
NONE				

Signature *Emanuel Rouvelas*

Date *2/12/96*

Printed Name and Title

EMANUEL ROUVELAS, ATTORNEY

Secretary of the Senate
Clerk of the House of Representatives

LOBBYING REGISTRATION ADDENDUM
Lobbying Disclosure Act of 1995 (Section 4)

Registrant Name **PRESTON GATES ELLIS & ROUVELAS MEEDS**

Client Name **AMERICAN PRESIDENT LINES**

Line #	Information to be included
7	An ocean common carrier with operations concentrated in the Pacific Basin.
10	Matters relating to the Merchant Marine Acts of 1920 and 1936, Shipping Act of 1984, and related matters.

Secretary of the Senate Clerk of the House of Representatives
--

LOBBYING REGISTRATION ADDENDUM
Lobbying Disclosure Act of 1995 (Section 4)

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS

Client Name AMERICAN PRESIDENT LTNES

Line # Information to be included.

Line #	Information to be included.
8	<p>Policy Practice Group</p> <p>Abramoff, Jack Government Affairs Counselor Barnus, Richard Attorney Berger, Amy Covered Official - Pub. Policy Assoc. National Science Found. Blank, Jonathan Attorney Brandt, Werner Government Affairs Counselor Covered Official - House Sgt. at Arms Carlson, Amy Attorney Conner, Darrell Government Affairs Assistant Garvie, Pamela Attorney Geiger, Susan Attorney Heiman, Bruce Attorney Helpert, Lisa Attorney Hollingsworth, Boyd Attorney Kalicki, Annette Legislative Paralegal Covered Official - Ex. Asst. Rep. William Lipinski Kirkham, Jeremy Staff Assistant Knowlton, Stacy Legislative Paralegal Covered Official - LC - Sen. Robert Packwood Latourette, Lawrence Attorney Longstreth, John Attorney Marshall, Rolf Attorney Meeds, Lloyd Attorney Mosher, Sol Sr. Advisor for Fed. Affairs & International Trade Myhre, William Attorney O'Malley, Cindy Government Affairs Analyst Peckinpaugh, Tim Attorney Rouvelas, Emanuel Attorney Ruge, Mark Attorney Safavian, David Attorney Shook, William Attorney Smith, Anne Government Affairs Analyst Covered Official - Prof. Staff - Foreign Rel. Comm. Stephens, Dennis Government Affairs Analyst Covered Official: LD for Rep. Roger Wicker Chief of Staff- Rep. Steve Stockman LD - Rep. Joe Barton</p>

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

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U.S. HOUSE OF REPRESENTATIVES
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LOBBYING REPORT
Lobbying Disclosure Act (Section 5)

1. Year 1996
2. Report Type (check all that apply) Midyear (January 1-June 30) Year End (July 1-December 31)
 Amended report Termination report
 No activity (registration to remain in effect)

REGISTRANT

3. Name of Registrant PRESTON GATES ELLIS & ROUVELAS MEEDS LLP
4. Telephone number and contact name
(202) 628-1700 Contact Rosaane Phillips

CLIENT Lobbying firms file separate reports for each client. An organization employing in-house lobbyists indicates "Self."

5. Name of Client SQUIZKONFRANETRADE&FINANCE

INCOME OR EXPENSES Answer line 6 or line 7 as applicable.

6. LOBBYING FIRMS. Income from the client during the reporting period, other than income unrelated to lobbying activities, was:

Less than \$10,000 \$10,000 or more

If \$10,000 or more, provide a good faith estimate, rounded to the nearest \$20,000, of all income from the client during this reporting period. Include any payments by any other entity for lobbying activities on behalf of the client. Exclude income unrelated to lobbying activities.

Income \$ 100,000.00 Total for year (if Year End report) \$ 200,000.00

7. ORGANIZATIONS EMPLOYING IN-HOUSE LOBBYISTS. Expenses incurred in connection with lobbying activities during the reporting period were:

Less than \$10,000 \$10,000 or more

If \$10,000 or more, provide a good faith estimate, rounded to the nearest \$20,000, of the total amount of all lobbying expenses incurred by the registrant and its employees during this reporting period.

Expenses \$ _____ Total for year (if Year End report) \$ _____

Optional Expense Reporting Methods

- A. Registrants that report lobbying expenses under section 6033(b)(8) of the Internal Revenue Code may provide a good faith estimate of the applicable amounts that would be required to be disclosed under section 6033(b)(8) for the semiannual reporting period, and may consider as lobbying activities only those defined under section 4911(d) of the Internal Revenue Code. If selecting this method, check box and (i) enter estimated amounts on the "Expenses" line above; or (ii) attach a copy of the IRS Form 990 that includes this reporting period.
- B. Registrants subject to section 162(e) of the Internal Revenue Code may make a good faith estimate of all applicable amounts that would not be deductible under section 162(e) for the semiannual reporting period, and may consider as lobbying activities only those activities the costs of which are not deductible pursuant to section 162(e). If selecting this method, check box and enter estimated amounts on the "Expenses" line above.

Registrant Name PRESTON GATES ELLIS & ROUYELAS MEEDS LLP

Client Name SOYUZKONTRAKT TRADE & FINANCE

LOBBYING ISSUES. On line 8 below, enter the code for *one* general lobbying issue area in which the registrant engaged in lobbying activities for the client during this reporting period (*select applicable code from list in the instructions and on the reverse side of Form LD-2, page 1*). For that general issue area *only*, complete lines 9 through 12. If the registrant engaged in lobbying activities for the client in more than one general issue area, use one Lobbying Report Addendum page for each additional general issue area.

8. General lobbying issue area code (enter *one*) AGR

9. Specific lobbying issues (*include bill numbers and specific executive branch actions*)
Farm bill (HR. 2854)

General Sales Manager Program financing administered by the Commodity Credit Corporation
Supplier Credit Guarantee Program administered by the U.S. Department of Agriculture.

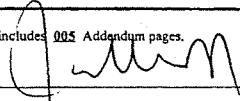
10. Houses of Congress and Federal agencies contacted

Senate
 House of Representatives
 State Department
 Vice President
 U.S. Department of Agriculture
 Export-Import Bank
 Commodity Credit Corporation

11. Name and title of each employee who acted as a lobbyist
 ABRAMOFF, JACK - GOVERNMENT AFFAIRS COUNSELOR
 BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
 SAFAVIAN, DAVID - ATTORNEY
 STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST
 BERGER, AMY - ATTORNEY
 PECKINPAUGH, TIM - ATTORNEY
 HEIMAN, BRUCE - ATTORNEY

12. *For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates:* Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
 * NONE *

This report includes 005 Addendum pages.

Signature  Date 2/13/97

Printed Name and Title JACK ABRAMOFF - GOVERNMENT AFFAIRS COUNSELOR

SECRETARY OF THE SENATE CLERK OF THE HOUSE OF REPRESENTATIVES
--

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS LLP

Client Name SOYUZKONTRAKT TRADE & FINANCE

Lines 1-7. *Not applicable*

8. General lobbying issue area code (enter one) AGR
9. Specific lobbying issues (include bill numbers and specific executive branch actions)

10. Houses of Congress and Federal agencies contacted
 U.S. Trade Representative
 Agency for International Development
 Office of Management & Budget

11. Name and title of each employee who acted as a lobbyist
 PIZZELLA, PATRICK - DIR. OF COALITIONS
 CONNER, DARRELL - GOVT. AFFAIRS ANALYST
 KALICKI, ANNETTE - LEGISLATIVE PARALEGAL
 ASMUTH, GRETCHEN - Librarian
 VASELL, SHAWN - LEGISLATIVE PARALEGAL
 CONNELL, ELIZABETH - LEGISLATIVE PARALEGAL

12. *For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above*

SECRETARY OF THE SENATE CLERK OF THE HOUSE OF REPRESENTATIVES
--

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS LLP

Client Name SOYUZZKONTRAKT TRADE & FINANCE

Lines 1-7. Not applicable

8. General lobbying issue area code (enter one) FIN
9. Specific lobbying issues (include bill numbers and specific executive branch actions)
 General Sales Manager Program financing administered by the Commodity Credit Corporation
 Supplier Credit Guarantee Program administered by the U.S. Dept. of Agriculture.

10. Houses of Congress and Federal agencies contacted

Senate
 House of Representatives
 Export-Import Bank
 Commodity Credit Corporation
 Agency for International Development
 State Department
 Vice President

11. Name and title of each employee who acted as a lobbyist
 ABRAMOFF, JACK - GOVERNMENT AFFAIRS COUNSELOR
 BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
 HOLLINGSWORTH, E. BOYD - ATTORNEY
 LATOURETTE, LAURENCE - ATTORNEY
 MEEDS, LLOYD - ATTORNEY
 ROUVELAS, EMANUEL - ATTORNEY
~~STARRINE, DAVID - ATTORNEY~~

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
 * NONE *

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUYELAS MEEDS LLP

Client Name SOYUZKONTRAKT TRADE & FINANCE

Lines 1-7. Not applicable

- 8. General lobbying issue area code (enter one) **FIN**
- 9. Specific lobbying issues (*include bill numbers and specific executive branch actions*)

10. Houses of Congress and Federal agencies contacted

11. Name and title of each employee who acted as a lobbyist
STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

12. *For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above*

SECRETARY OF THE SENATE CLERK OF THE HOUSE OF REPRESENTATIVES
--

LOBBYING REPORT ADDENDUMRegistrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS LLPClient Name SOYUZKONTRAKT TRADE & FINANCE

Lines 1-7. Not applicable

8. General lobbying issue area code (enter one) TRD
9. Specific lobbying issues (include bill numbers and specific executive branch actions)
 General Sales Manager Program financing administered by the Commodity Credit Corporation.
 Supplier Credit Guarantee Program administered by the U.S. Dept. of Agriculture

10. Houses of Congress and Federal agencies contacted

Senate
 House of Representatives
 Export-Import Bank
 U.S. Trade Representative
 Agency for International Development
 State Department
 Vice President

11. Name and title of each employee who acted as a lobbyist
 ABRAMOFF, JACK - GOVERNMENT AFFAIRS COUNSELOR
 BRANDT, WERNER - GOVT. AFFAIRS COUNSELOR
 HOLLINGSWORTH, E. BOYD - ATTORNEY
 LATOURETTE, LAURENCE - ATTORNEY
 MEEDS, LLOYD - ATTORNEY
 ROUVELAS, EMANUEL - ATTORNEY
 SARAFIANSKY, [REDACTED]

12. For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above
 * NONE *

SECRETARY OF THE SENATE
CLERK OF THE HOUSE OF REPRESENTATIVES

LOBBYING REPORT ADDENDUM

Registrant Name PRESTON GATES ELLIS & ROUVELAS MEEDS LLP

Client Name SOYUZKONTRAKT TRADE & FINANCE

Lines 1-7. *Not applicable*

8. General lobbying issue area code (enter one) **TRD**

9. Specific lobbying issues (*include bill numbers and specific executive branch actions*)

10. Houses of Congress and Federal agencies contacted

11. Name and title of each employee who acted as a lobbyist
STEPHENS, DENNIS - GOVT. AFFAIRS ANALYST

12. *For registrants identifying foreign entities in the Lobbying Registration (Form LD-1, line 12) or any updates: Interest of each such foreign entity in the specific lobbying issues listed on line 9 above*

Pre-Hearing Policy Questions for the Nomination
of David Safavian to be Administrator
for Federal Procurement Policy
Senator Lieberman's Additional Questions

Question 1. Question C.2 of the Biographical and Financial Questionnaire directed you to “describe any activity during the past ten years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy....” You responded by referring to clients listed in the answer to Question A.11, in which you listed companies and institutions with which you had business relationships. You did not disclose a number of other companies or individuals for which you had lobbied. In response to a follow-up request for more information from Committee staff, you provided a longer list of clients for which you had lobbied. Please explain why you did not initially disclose each of the following clients; please be specific with respect to each client (emphasis added):

- a. Dr. Jamal al Barzinji -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that -- to the best of my ability -- I could recall representing. Not included in this list was Dr. Jamal. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- b. Bode & Beckman -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that -- to the best of my ability -- I could recall representing. Not included in this list was Bode & Beckman. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- c. BP America, Inc. -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that -- to the best of my ability -- I could recall representing. Not included in this list was BP America. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From

Responses to Pre-Hearing Questions
Submitted By Senator Joseph Lieberman
April 16, 2004
Page 2

that data, I augmented my questionnaire to better reflect those clients I had represented in the past.

- d. CDM Fantasy Sports -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that – to the best of my ability – I could recall representing. Not included in this list was CDM Fantasy Sports. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- e. Echostar Communications -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that – to the best of my ability – I could recall representing. Not included in this list was Echostar Communications. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- f. FOP/US Park Police Labor Committee -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that – to the best of my ability – I could recall representing. Not included in this list was FOP/US Park Police Labor Committee. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- g. Inland Entertainment -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that – to the best of my ability – I could recall representing. Not included in this list was Inland Entertainment. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.

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- h. Jones Act Reform Coalition -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that -- to the best of my ability -- I could recall representing. Not included in this list was the Jones Act Reform Coalition. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- i. American Classic Voyages Co. -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that to the best of my ability -- I could recall representing. Not included in this list was American Classic Voyages. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- j. Brown Forman Corporation -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that -- to the best of my ability -- I could recall representing. Not included in this list was Brown Forman. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- k. Burlington-Northern Santa Fe Corporation -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that -- to the best of my ability -- I could recall representing. Not included in this list was Burlington-Northern Santa Fe. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- l. H.D. Vest Financial Services -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that -- to the best of my

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- ability – I could recall representing. Not included in this list was H.D. Vest Financial Services. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- m. Metris Cos. -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that – to the best of my ability – I could recall representing. Not included in this list was Metris. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- n. Port of Seattle -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that – to the best of my ability – I could recall representing. Not included in this list was the Port. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- o. Edison Electric Institute -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that – to the best of my ability – I could recall representing. Not included in this list was EEI. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.
- p. Court TV -- Having represented a great many clients in the fifteen years that I have worked in the Washington, D.C. area, my initial submission on February 9th contained a list of entities that – to the best of my ability – I could recall representing. Not included in this list was Court TV. This was an *inadvertent* error. After receiving requests for supplemental information, I cross referenced my initial submission with the list of representations contained in the Lobbying

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Disclosure Act and Foreign Agents Registration Act databases. From that data, I augmented my questionnaire to better reflect those clients I had represented in the past.

Question 2. At Janus-Merritt Strategies, you lobbied on behalf of several Internet gambling associations against legislation that would have cracked down on gambling over the Internet. In the course of that work, you were a leading advocate of the Internet gambling industry. Do you believe this business should be legal? Do you believe placing bets over the telephone should be legal? Please explain your answers.

As a threshold matter, one cannot assume that I shared the same positions as all of my former clients held. As an advocate, I argued my clients' positions to the best of my ability. However, that fact should not be viewed as being representative of my personal or tacit acceptance of the positions of any of my former clients.

There is no simple answer to the issue of Internet gaming. When one looks at Internet gambling, and notes that nearly 25% of the community of nations (including Great Britain and Australia) licenses and regulates the activity, it is difficult to envision a scenario in which a ban on net gaming could be enforced. Merely declaring that such an activity is illegal – without some type of mechanism of meaningful enforcement – will only drive reputable vendors underground or out of business. Unfortunately, meaningful enforcement (i.e., individual better liability, holding ISPs responsible for screening content for their users, etc.) raises troubling issues as well.

I understand that in the three years since I ceased representing the industry, brick and mortar casinos have developed technology to verify a better's identity, and better manage and regulate gaming operations. Those might be better options than prohibition.

As for the legality of telephone wagering, its legality depends on the type of event. For example, since 1961, the Wire Act has broadly banned such activity. However, the Interstate Horse Racing Act and subsequent amendments have created a carve out for some forms of pari-mutuel wagering.

Question 3a. On March 6, 2003, the GSA Inspector General provided GSA with an "Alert Report on Audit of Federal Technology Service's Client Support Centers." (Report Number A020144/T/5/W03001). This report identified numerous violations of government procurement laws and regulations by GSA officials. Inappropriate contracting practices cited included improper sole source awards, misuse of small business contracts, and allowing work outside the contract scope. The GSA IG provided its final report to the agency on November 6, 2003. (Report Number A020144/T/5/Z04002). The final report provided more details concerning the

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problems described in the March report, and stated that "millions of dollars were wasted by compensating contractors for doing little more than placing orders with other favored contractors to do the actual work."

- a. Please explain (1) the actions that were taken at GSA to correct the identified problems, (2) why you believe these actions were sufficient, and (3) what you will do at OFPP to ensure that similar issues do not arise at other agencies.

Following the disclosure of improper contracting actions at the Federal Technology Service, GSA Administrator Stephen Perry asked Deputy Administrator David Bibb and I to co-chair an internal task force to address these issues. As a result, GSA took the following actions to address problems identified by the Inspector General, including:

- Immediate issuance of policy guidance for the acquisition workforce;
- Implementation of a legal review order requiring significant awards to be reviewed by the GSA Office of General Counsel;
- Creation of a post-award peer review process to determine whether a specific award was not only done correctly, but was made on the terms most advantageous to the government;
- Establishment of new planning requirements for major acquisitions that are to be circulated to the Office of General Counsel, the Deputy Associate Administrator for Acquisition Policy, and the Office of Small Business Utilization;
- Initiation of an Inspector General review of Client Support Centers in each of GSA's eleven regional offices;
- Retention of an outside consulting firm to review GSA's Information Technology business line at the Federal Technology Service; and
- Commencement of disciplinary proceedings against parties responsible for the improper contracting actions.

We believed these responses struck a proper balance between the need for oversight and the ability of contracting officers to be appropriately responsive to the needs of GSA customer agencies.

With regard to proactively addressing similar issues in other agencies, the OFPP Act prohibits the office from involving itself in specific procurements. As such, our options for involvement during the source selection process are somewhat limited. However, if I am fortunate enough to be confirmed, I intend to make training a key priority for the Office of Federal Procurement Policy. The types of errors made by the Federal Technology Service are due – in part – to insufficient training of our acquisition corps. By better coordinating the activities of the Federal Acquisition Institute and the Defense Acquisition University, I believe we

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can develop more stringent training programs and a true career development track for our contracting officers. Such action would help minimize the likelihood that the mistakes made by GSA personnel in its Client Support Centers are repeated in the near future.

Question 3b. What was your role in responding to the identified problems?

As noted above, I was tasked with co-chairing an internal, multidisciplinary task force of GSA senior managers to craft appropriate actions in response to the Inspector General's findings.

Question 3c. The Audit Report also identified frequent and inappropriate use of "time-and-materials" tasks versus fixed-price task orders. These "time-and-material" task orders (or billing by the hour) are a disfavored form of contracting under the Federal Acquisition Regulation because they provide no incentive for the contractor to control costs. Indeed, some argue that FAR 12.207 actually prohibits this type of contracting. Do you believe the use of "time-and-material" (billing by the hour) contracting should be expanded or limited? The IG found that time-and-material contracts were used 63% of the time. Do you consider that an appropriate percentage of use? What percentage would you consider appropriate?

As a general matter, contracting officers are asked to do an analysis as to whether time-and-materials contracts place appropriate risk on the contractor rather than have the government assume such risk. In that light, I believe that T&M contracting should be limited to the greatest extent practicable. That is not to say that there is no place for T&M contracting or that every contract can or should be written as a fixed price contract. Unfortunately, the finding by the GSA IG that the Federal Technology Service had used T&M contracting 63% of the time suggests that little analysis regarding risk was conducted by the GSA acquisition staff at the FTS Client Support Centers. It is my understanding that following the enactment of portions of the Services Acquisition Reform Act last year, a FAR case has been opened to implement the law and develop further guidance with respect to T&M contracting for commercial items. The issuance of such guidance will better help contracting officers determine when T&M contracting is appropriate, and when there may be better avenues to ensure that the taxpayers receive the best value for their money.

Question 4a. Please answer the questions contained in Senator Lieberman's July 24th letter. Based on your review of all available information, did OMB and agency officials comply with Section 647 of P.L. 108-7?

As Director Bolten noted in his July 30, 2003, response to Senator Lieberman's letter of July 24, 2003, the Administration "has taken several significant steps to provide for the

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responsible use of public-private competition, including development of agency-specific competition plans that are customized around the agency's mission needs and workforce mix." In addition, the Director noted that "[t]he facts, rationale, and strategy supporting competitive sourcing are explained in the enclosed report, which my office issued the same day [Senator Lieberman's] letter arrived." That enclosed report was "Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner," which OMB issued on July 25, 2003. (A copy of this report is on OMB's website at http://www.whitehouse.gov/omb/procurement/comp_sourcing_072403.pdf.) The Director then went on to say that "I believe the report responds to many of the questions raised in your letter. I would draw your attention, in particular, to the discussion at the end of the report announcing new criteria to evaluate agency progress." This is a reference to Section III.A. of the report (at page 7), on "*New scorecard criteria*", which OMB explained that "OMB has modified the scorecard criteria. These refinements have been informed by discussions with and recommendations from the Congress. These new criteria should ensure that an agency's commitment to competitive sourcing is measured against targets that reasonably reflect its unique mission and circumstances, not arbitrary or artificial goals." The report then outlined the new scorecard criteria that would apply for competitive sourcing. Finally, the Director concluded his July 30th response by stating that "I would be pleased to meet with you in person to discuss this important management initiative in detail if, after reviewing our recent report, you have remaining questions or concerns."

In the subsequent months, OMB has reiterated that agencies are to develop agency-specific competition plans that are customized around the agency's mission needs and workforce mix. OMB discussed this in its report last fall (issued on October 3, 2003) entitled "Competitive Sourcing: Reasoned and Responsible Public-Private Competition," which was "A Supplement to the July 2003 Report." (A copy of this report is available on OMB's site at www.whitehouse.gov/omb/procurement/comp_sourc_addendum.pdf.) In announcing the release of this report, OMB stated that "The report includes competition plans of agencies covered by the President's Management Agenda (PMA). These plans have been customized around each agency's mission and workforce mix." More recently, on March 5, 2004, OMB announced that the Federal Acquisition Council (FAC), in collaboration with OMB, had publishing "a list of best practices to help agency officials manage their competitive sourcing efforts in the most strategic and results-oriented manner possible." (The best-practices guide is available on-line at <http://www.results.gov/fac-manager-guide2.pdf>.) In the guide, the FAC noted (at page 5) that "OFPP advocates reasoned risk-taking and innovative problem solving in overcoming the agency-specific challenges of implementing competitive sourcing. Each department occupies a unique environment and one size does not fit all."

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- a. Since the enactment of the FY03 Omnibus Appropriations bill on February 20, 2003, have [sic] the OMB or any agencies established, applied, or enforced any numerical goal, target, or quota for subjecting federal employees to public-private competitions or for converting work performed by federal employees to private contractor performance?

Please see the above answer to Question 4a.

- b. Please list and describe each numerical goal, target or quota established, applied or enforced by OMB or agencies since February 20, 2003.

Please see the above answer to Question 4a.

- c. During any time period between February 2003 and the present [i.e., July 24, 2003], have any agencies established, applied, or enforced numerical goals, targets or quotas that were not based on considered research and sound analysis of the agency's past activities or were not consistent with the agency's stated mission?

Please see the above answer to Question 4a.

- d. Have agencies been informed that they are no longer expected to comply with the 15% goal described in the Administration's FY04 budget, and that their failure to reach that goal will not lead to a "red" score or other administrative action? If so, when and how were they informed?

Please see the above answer to Question 4a.

- e. The conference report to the FY03 Omnibus Appropriations bill provided that "[i]f any goals, targets, or quotas are established following 'considered research and sound analysis' under the terms of this provision, the conferees direct the Office of Management and Budget to provide a report to the Committees on Appropriations no later than 30 days following the announcement of those goals, targets, or quotas, specifically detailing the research and sound analysis that was used in reaching the decision. Why hasn't a report been submitted under this provision? When will a report be submitted?

Please see the above answer to Question 4a.

- f. How much money has been spent by the federal government since February 20, 2003, to establish apply, or enforce numerical goals, targets, or quotas for subjecting federal employees to public-private competitions or for converting

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the work performed by federal employees to private contractor performance?

Please see the above answer to Question 4a.

g. If you determine that funds have been spent in violation of Section 647 of P.L. 108-7, how would you respond?

Please see the above answer to Question 4a.

h. What will be done to reverse job competitions illegally based on arbitrary numerical quotas?

Please see the above answer to Question 4a.

Question 4b. If federal officials did in fact violate or ignore Congressional prohibitions on government-wide numerical quotas, what in your view can Congress do to enforce its mandates? What are OMB's responsibilities in this area?

I have no reason to believe that OMB violated or ignored Congressional prohibitions on government-wide numerical quotas. OMB's responsibilities in this or any other area are to follow the proscriptions legislatively enacted.

Question 5a. Do you believe OMB's competitive sourcing criteria should be revised to ensure that agencies are explicitly graded on how effectively they conduct competitions and administer contracts? Please explain your answer.

For the initial phase of the initiative, I think it made sense to use criteria that encouraged agencies to get their feet wet so they could gain experience with competitive sourcing as a management tool. As we move further into the initiative, it may be appropriate to revisit this criteria. In the meantime, I plan to use information gathered from the reporting process called for by section 647(b) of the Transportation Treasury Appropriations Act -- such as information on costs, savings, and performance improvements -- to evaluate progress.

Question 5b. Do you believe OMB's competitive sourcing criteria should be revised to ensure that agencies are explicitly graded on how vigorously they pursue opportunities to allow federal employees to compete for new work and work currently performed by contractors? Please explain your answer.

I think OMB's general focus on commercial activities performed by the government continues to make sense given that such work traditionally has been isolated from competition. At the same time, there is room for agencies to consider appropriate

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opportunities for their employees to compete for new work, or, if the agency has the capacity, work performed by contractors. The development of long-term competition plans will give agencies the chance to consider these options.

Question 5c. Do you believe OMB's competitive sourcing criteria should be revised to ensure that agencies are explicitly graded on whether they use standard competitions that allow federal employees to submit their most competitive bids instead of streamlined competitions, resulting in lower costs? Please explain your answer.

I would encourage in-house service providers to develop most efficient organizations as a matter of routine, including for streamlined competitions. When an in-house provider identifies better and more cost-effective business practices, it maximizes opportunities for the agency to achieve cost savings and improved performance under either a standard or streamlined competition.

Question 6. During consideration of his nomination, OMB Director Joshua Bolten promised to explore opportunities for federal employees to compete for new work, and for work currently performed by contractors. Please report to the Committee on the number of A76 competitions, across the federal government, that have been conducted on work performed by federal employees, work performed by contractors, and work which had previously not been performed by either contractors or federal employees since the implementation of the new OMB Circular A76. For the first two categories, please report on the numbers of federal employees and contractor employees to be subjected to A76 reviews.

I don't have this information. However, I understand that in accordance with section 647(b), OMB is working with agencies to collect information on the number of full-time-equivalent employees (FTEs) competed in FY 03, including the number of FTEs involved in competitions that were still in-progress at the end of FY 03. By May 24, 2004, each agency will submit a report to Congress. In addition, OMB will provide a consolidated report on efforts in FY 2003 by agencies tracked under the President's Management Agenda scorecard. As far as I know, OMB does not collect information on contractor employees that might be reviewed under the competitive sourcing initiative.

Question 7a. How are agencies collecting and reviewing for each service contract information that is comparable to the information for each function performed by federal employees that must be collected and reviewed under the new OMB Circular A76? Please explain as part of your answer the specific sources of the information about contracts and specifically what information is included.

I am not familiar with the specific ways in which agencies may use FPDS data to review their service contracts.

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Question 7b. How is the information about private sector contracts incorporated into the agencies competition plans? Please provide examples of contractor inventories prepared by agencies and demonstrator how these inventories were reviewed by those agencies and OMB to “develop specific competition plans.”

I am not familiar with whether and how information about private sector contracts may be incorporated into an agency's competition plan.

Question 7c. What are OMB and agencies willing to rely on information contained in FPDS when developing competition plans, considering that GAO has concluded that the data in the system cannot be relied upon?

I do not know the extent to which agencies are reviewing or collecting this information for their competition plans; nor do I know whether there are feasible alternatives to FPDS. I appreciate that reporting systems may not be as precise as we would like them to be. However, I would hope that the ongoing efforts to transform FPDS will eventually result in better overall data collection.

Question 7d. Should agencies be required to establish comprehensive and detailed inventories of work performed by contractors that agencies and OMB could more easily review when developing specific competition plans? Please explain your answer.

I am not convinced that the benefit of developing a comprehensive inventory of work performed by contractors would be worth the significant cost. There may be other means, such as internal management reviews, that may help agencies identify where poor contract performance is a problem. Of course, if in-sourcing were considered, the cost of establishing an infrastructure to support bringing work in-house would have to be taken into account and agencies would need to perform the same considered analysis that we require for work being considered for conversion from public to private sector performance.

Question 8. Upon termination for failure to perform, the new OMB Circular A-76 requires that the defaulting in-house workforce automatically be competed. [“If the CO determines that a service provider (i.e., private sector contractor, public reimbursable provider, or MEO) has failed to perform to the extent that a termination for default is justified, the CO shall issue a notice of termination, consistent with FAR Part 49. Upon terminating an MEO letter of obligation, an agency shall change the inventory coding to reflect that the activity is no longer performed by an MEO and shall perform either a streamlined or standard competition.” A-76, p. B-20, Section 6.a.2] With respect to a defaulting contractor, however, there is no requirement under the new OMB Circular A-76 for an

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automatic competition. In fact, the FAR allows contractors in such situations to continue under a "revised delivery schedule" and "by means of a subcontract or other business arrangement."

- b. Why does the new OMB Circular A-76 impose a strict competition requirement on federal employees when relevant procurement regulations impose no such strict competition requirement on contractors in the same circumstances?

I am not aware of the rationale for the specific wording provided for in the Circular.

- c. If confirmed, would you revise OMB Circular A-76 to ensure that federal employees and contractors are treated the same in cases of default?

I would be happy to review the Circular's policy on terminations to ensure that it is fair and reasonable to both parties.

Question 9. Only in extraordinary situations (i.e., petitioning the Competitive Sourcing Official) are federal employees allowed to secure performance agreements that last longer than five years. This has been justified by OMB as being consistent with requirements imposed on contractors. A review of FAR 17.204, however, suggests that there is no strict three-to-five year limitation on the duration of contracts, let alone a strict re-competition requirement within that time: "Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services...These limitations do not apply to information technology contracts." Moreover, FAR Subpart 6.3 includes many exceptions to the requirement for competition, which are both used, and, according to IG and GAO reports, abused to avoid re-competition.

Do you believe the five-year duration requirement for federal employees is comparable to requirements being imposed on contractors? Please explain your answer.

I would propose that the Circular be revised to allow agencies to develop appropriate performance periods based on the nature and risk associated with the services to be provided.

Question 10. Last year, during consideration of the Treasury-Transportation Appropriations bill, Republican and Democrat conferees from the House and Senate appropriations committees agreed to include language providing rank-and-file federal employees with the same legal standing before the General Accounting Office (GAO) as contractors have long enjoyed. This effort was strongly opposed by

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OMB and the language was removed from the omnibus appropriations legislation that later passed.

- a. Why did OMB oppose allowing rank-and-file federal employees actually affected by privatization to appeal agencies' contracting-related decisions to GAO?

At the time that this exchange took place, I was still the chief of staff at the United States General Services Administration. As such, I have no specific information as to what was discussed during negotiations over the Treasury-Transportation Appropriation.

- b. According to an article in GovExec.Com ("Spending bill inaction delays decision on job competition appeals"), January 7, 2004, GAO's Associate General Counsel Dan Gordon said he was not worried about the practical implications if in-house teams and unions receiving appeal rights at GAO. He noted that the GAO finishes roughly a third of all bid protests, including non-A76 protests, within 30 days. Does OMB have concerns about procedural issues if rank-and-file federal employees were to be given such standing, even in light of assertions made by GAO?

Because I have not been confirmed, and am not functioning in an "acting" role at the Office of Federal Procurement Policy, I cannot attest to the specific concerns OMB might have with respect to procedures dealing with appeal rights.

As a general proposition, however, I personally support the ability of employees directly affected by competitive sourcing studies to have parallel appeal rights to those available to other affected parties. How such an appeals process would work in practice is worthy of careful consideration. I would want to review the matter in much greater detail before making any commitments to change the Circular or commenting on specific legislation.

- c. Some have said that any in-house appeals should be vested exclusively in senior managers, the agency tender officials (ATO's). Do you believe that rank and file employees and a senior manager charged with carrying out the Administration's agenda will always share common goals?

As the individual who is responsible for developing, certifying, and representing the agency tender, the ATO is particularly well suited to deciding whether to challenge an agency's decision. However, I don't necessarily think that the ATO is the only person who could adequately represent in-house employees in GAO appeals.



MILLER & CHEVALIER
CHARTERED

855 FIFTEENTH STREET, N.W., SUITE 900
WASHINGTON, D.C. 20005-5701
202.626.5800 FAX: 202.626.0858
WWW.MILLERCHEVALIER.COM

ANGELA B. STYLES
202.626.1573
astyles@mlchuv.com

February 18, 2004

Letters to the Editor
The Washington Post
1150 15th Street, N.W.
Washington, DC 20071

The article on the front page of Monday's business section, promoting the concept of "share-in-savings" contracting, lacks credibility because the primary source is a registered lobbyist for "share-in-savings" contracting. The article not only fails to reveal this fact, it bolsters this person's objectivity.

The same lobbyist loudly heralded the benefits of "share-in-savings" contracting during my tenure at the Office of Management and Budget. I asked for evidence to document that the concept netted savings for the taxpayer at any level of state, local or federal government. In spite of repeated requests and significant research, my office never found or received evidence of actual savings achieved through this type of contracting.

Before you or the reading public rely on the article's cited instance of savings at the Department of Education, I suggest that you read the audit report on referenced contract written by the Department's Inspector General in November 2002. The audit report also should raise questions about your assertion that "[i]f an agency does not save any money, it does not pay." In November 2002, the Department of Education had obligated \$244 million to the contract. Whether money is saved or not, the contractor will be paid. The real question is the contractor's level of profit. If savings are demonstrated, the profit margins are higher because larger "savings" are achieved.

With a myriad of contracting tools available to provide incentives to federal contractors, I found it hard to support a contracting concept that could leave billions of taxpayer dollars on the table. Even with skillful drafting by government managers, "share-in-savings" contracts are usually a losing proposition for the taxpayer. I could not have stated it better than the final quote from Theresa Shaw at the Department of Education about a different contract: "We're saving a billion dollars and we don't have to share it with anybody." I think Ms. Shaw's approach is the one the taxpayers expect and deserve.

Sincerely,

Angela B. Styles
Former Administrator for Federal
Procurement Policy 2001 - 2003
Office of Management and Budget

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United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 WASHINGTON, DC 20510-6250

July 24, 2003

The Honorable Joshua Bolten
 Director
 The Office of Management and Budget
 Executive Office Building
 Washington, DC 20503

Dear Mr. Bolten:

I am very concerned that the Administration appears to have disregarded a clear directive from Congress, prohibiting the use of arbitrary numerical quotas in its push to privatize work performed by federal employees. When you recently appeared before the Senate Governmental Affairs Committee for confirmation to the position of Director of Office of Management and Budget (OMB), you agreed that OMB had failed to provide Congress with a report, required by law, on the Administration's use of numerical quotas. You declined to answer other questions, and as a result it is impossible to determine the extent of the Administration's non-compliance with the law. I regard this as a very serious matter, and now that you have been confirmed as OMB Director, I ask that you provide complete answers to the Governmental Affairs Committee, as you had promised you would during your confirmation proceedings.

As you are aware, in February of this year Congress precluded the Administration from using appropriated funds to implement the arbitrary numerical quotas that the White House had set for outsourcing federal government jobs. Section 647 of the FY'03 Omnibus Appropriations Bill (P.L. 108-7), which was enacted on February 20, 2003, provides, in part:

[N]one of the funds made available in this Act may be used by an agency of the executive branch to establish, apply, or enforce any numerical goal, target, or quota for subjecting the employees of the executive agency to public-private competitions or for converting such employees or the work performed by such employees to private contractor performance under the Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy unless the goal, target, or quota is based on considered research and sound analysis of past activities and is consistent with the stated mission of the executive agency.

The conferees included report language clarifying both chambers' "strong opposition" to the use of arbitrary quotas:

The conferees agree to a Senate provision prohibiting the use of funds to establish, apply, or enforce any numerical goal, target, or quota for contracting out unless the goal, target, or quota is based on considered research and sound analysis of past

Joshua Bolten
July 24, 2003
Page 2

activities and is consistent with the stated mission of the executive agency. Although the Senate provision was somewhat different than the provision adopted by the House, the conferees want to emphasize the strong opposition in both chambers to the establishment of arbitrary goals, targets, and quotas. If any goals, targets, or quotas are established following "considered research and sound analysis" under the terms of this provision, the conferees direct the Office of Management and Budget to provide a report to the Committees on Appropriations no later than 30 days following the announcement of those goals, targets, or quotas, specifically detailing the research and sound analysis that was used in reaching the decision.

Like many in Congress, I strongly oppose the imposition of any numerical quotas on federal agencies in furtherance of the Administration's outsourcing agenda. When managed properly, equitable competition for new and existing federal government work is one of several tools that can help agencies reduce costs and become more responsive to customers and taxpayers. The Administration's arbitrary quantitative targets, however, chill other more creative means of achieving costs savings, overtax agencies already struggling to monitor work performed by contractors, and undermine the civil service through procedures biased against federal employees.

In the Senate, I supported a provision, identical to one that had passed the House, that would have prohibited outright the use of numerical quotas. The language quoted above was the result of a Republican amendment watering down the prohibition, which narrowly passed on a party-line vote. Nevertheless, even this watered-down language requires the Administration to base its quotas on considered research and sound analysis of each agency's past activities, and to ensure that the quotas are consistent with the stated mission of each executive agency. In short, each agency may only be subject to a quota that is appropriately tailored to its circumstances and derived using a sound methodology.

"The Administration's outsourcing policies have never been based on considered research and sound analysis, and they have never been based on the circumstances of individual agencies. Rather, they have been driven by an untested ideological assumption that contractors should be doing much more of the work that is currently performed by federal employees. At the beginning of his Administration, the President set a goal of competing or converting 50% of the 850,000 jobs listed on agencies' FAIR Act inventories. In furtherance of that arbitrary numerical goal, the Administration established another arbitrary numerical quota of competing or converting 15% of the listed federal jobs. OMB made clear that all agencies had to meet this 15% goal by September 30, 2003, and that non-compliance would be noted. For example, the Administration's budget for FY'04, released in February of 2003, automatically gave agencies "red" scores on its management scorecard if they had "[c]ompleted public-private or direct conversion competition on less than 15 percent of the full-time equivalent employees listed on the approved FAIR Act inventories."

In your answers to written questions posed during the Committee's confirmation process, you made a few unsubstantiated assertions regarding OMB's compliance with the law, but declined to provide substantive answers to most of the questions on this topic. For example, you confirmed that

the OMB has not provided Congress with the report required by law, but declined to explain why a report has not been submitted. You claimed that since the enactment of the FY '03 Omnibus Appropriations bill, "agencies are no longer required to meet a government-wide competitive sourcing quota." You suggested that individual agency competitive sourcing plans were already in effect, and "are based on considered research and sound analysis," but you disclaimed any knowledge of "the specific research and analysis used to establish these plans." You also acknowledged that the 15% goal formulated "early in the Administration" was developed "as a good faith estimate of the amount of activity that would help generate an infrastructure for public-private competition." In other words, far from responding to the needs of individual agencies, the goal was developed to expedite the Administration's overall outsourcing policies.

Now that you are Director of OMB, I am writing to seek complete answers from you regarding the status of the OMB's and agencies' compliance with Section 647 of the FY '03 Omnibus Appropriations Bill. Your promises that the law, for the most part, was being respected do not reassure me in the absence of supporting evidence (evidence that should have been provided in the Congressionally mandated report). Considering that any actions taken to implement the 15% goal would be a clear violation of the law, I would have expected OMB to take quick and unequivocal action to inform agencies that they were not expected to meet the goal, and to disavow the rigid approach mandated as recently as February in the FY '04 budget. I have not seen evidence of this. Some statements by OMB and agency officials convey the clear impression that agencies are still expected to meet the government-wide 15% numerical goal. In other cases, government officials have alluded vaguely to "negotiated" or "tailored" goals, but that leads to another question: if new goals have been developed for all agencies, where is the agency-specific research and analysis that the law requires? Congress has not seen it, and I question whether it has been done.

For example, Angela Styles, Administrator of the Office of Procurement Policy at OMB, has continued to refer publicly to the 15% goal being imposed on agencies, long after having claimed that tailored plans were in effect. As early as March 19, in testimony before the Senate Armed Services Committee, Ms. Styles stated that "[w]e have worked so hard to make sure that the plans are appropriate for the mission of each agency, that are carefully considered, that are based on sound analysis and research, that we have that available for almost every department and agency." Ms. Styles gave this assurance to Congress that the OMB was following the law, and that it had developed agency-specific goals, three months ago. Yet there has been no report to Congress, as required by law, describing the new numerical goals OMB supposedly developed, nor is it clear that agency officials themselves were aware of new, tailored goals.

Other statements by Ms. Styles suggests that agencies were still being judged by their ability to meet the 15% quota. On May 29 and May 30, both *The Washington Post* and *Government Executive* quoted Styles declaring that only a few agencies would meet OMB's September 30 deadline for finishing competitions on 15% of their commercial jobs. On June 11, *Federal Human Resources Week* reported that Ms. Styles had recently decided to give agencies several more months to meet their 2003 target of competing 15% of their commercial jobs. On June 26, in testimony before the House Government Reform Committee, Ms. Styles testified that OMB had "asked the agencies to generally presume that 15 percent was going to be appropriate for them," that it had "developed tailored,

individual plans for each department and agency,” and that no more than four or five agencies would “actually compete 15% of their commercial activities before the end of this fiscal year.”

Ongoing OMB management initiatives also appear to have violated Section 647 of the FY’03 Omnibus Appropriations Bill. In an April 17 memorandum, Clay Johnson, then the nominee for OMB Deputy Director for Management, distributed to agencies exhortations to reach pre-determined mileposts towards fully implementing the President’s Management Agenda. An attached “assessment” from Angela Styles indicates that, by July of 2004, “[c]ompetitions for 15% of government’s commercial activities will have been initiated or completed.” Even more arbitrarily, the Styles assessment included a “stretch goal”: “If DoD commits to subject an additional 130,000 positions to competition, the civilian agencies will subject additional positions to competition.” Imposing a higher quota on civilian agencies, should the Department of Defense meet an arbitrary number, could not possibly qualify as a goal-based-on considered research and sound analysis of each agency’s past activities. Making clear that numerical quotas were still in effect, Robert Shea, Counselor to the Deputy Director for Management, wrote to *Government Executive*, in response to an article reporting on the Johnson memo, to assure the magazine that the deadline for competing 15% of listed federal jobs had not been extended: “Despite the contention of your May 21 article, July 2004 is not a deadline for anything. We haven’t moved the date by which agencies are expected to complete 15 percent of their commercial activities, as the article states.”

In a new management scorecard released by OMB on July 14, all but three agencies received “red” scores for the third quarter of FY ’03 for their outsourcing initiatives. The OMB’s compilation of the scores did not list any new numerical goals based on each agency’s past practices and missions, but the evaluation did note that the Department of Justice had “[I]nstituted competitions covering 15 percent of its commercial positions.” Although the OMB web-site contains links to budget documents and management scorecards reflecting that agencies automatically received “red” scores for failing to meet the 15% competitive sourcing goal, no update on the site indicates that the automatic imposition of the 15% goal has been invalidated by Congress.

Given these statements from the OMB officials responsible for directing agencies’ procurement activities, it is hardly surprising that agency officials would continue to believe the 15% goals were in effect, long after Congress had prohibited the use of that arbitrarily derived quota. For example, at a May 1 hearing before the Senate Appropriations Committee, NASA Administrator Sean O’Keefe testified the agency had “achieved the government-wide, 15 percent competitive sourcing goal.” At a May 6 hearing before the House Government Reform Committee, Kay Coles James, Director of the Office of Personnel Management, referred to the 15% competitive sourcing mandate applicable to her agency.

In a May 28 internal memorandum, the General Counsel of the Department of Veterans Affairs determined that “[b]ecause the OMB directives cited in paragraph 2 [referring to the 15% competitive sourcing goal for FY ’03] mandate that studies be undertaken for all activities, VA is required to carry out these mandates using other funding sources, and employees paid from these sources, if legally available.” In other words, not only did the VA believe that the OMB was still requiring it to meet the

15% quota, agency personnel felt they had no choice but to divert funds appropriated for other purposes so that it could conduct the required competitions.

Similarly, in a June 9 memo to regional administrators, the Forest Service proposed submitting to competition thousands of jobs in order to meet annual numerical targets, including the Administration's 15% target for FY'03. The proposal even envisioned the possibility of contracting out firefighting jobs. The Senate Appropriations Committee recently noted in a committee report, "...significant sums are being expended in violation of the Committee's reprogramming guidelines and at the expense of critical on-the-ground work such as maintenance of Federal facilities. The Forest Service alone plans to spend \$10,000,000 on competitive sourcing in fiscal year 2003, including \$3,000,000 to establish a competitive sourcing office." (Senate Rpt. 108-89, P. 8) Not only is Forest Service money being misspent on enforcing competitive sourcing quotas in violation of the law, the money is being misspent for that purpose when the agency is stretched thin battling fires in the West.

Collectively, this adds up to clear evidence that the OMB and federal agencies have been violating the law in pursuit of the Administration's pre-established numerical quotas for outsourcing. It seems inconceivable to me that officials at each of these agencies understood they were only to apply numerical quotas "based on considered research and sound analysis" of the agency's activities. It is less likely still that any meaningful research and analysis on individual agencies' circumstances would have led to the same result: the Administration's pre-existing goal of 15%.

Accordingly, I ask you address the following questions regarding the Administration's compliance with Section 647 of the FY '03 Omnibus Appropriations bill.

1. Since the enactment of the FY'03 Omnibus Appropriations bill on February 20, 2003, have the OMB or any agencies established, applied, or enforced any numerical goal, target or quota for subjecting federal employees to public-private competitions or for converting work performed by federal employees to private contractor performance?
2. Please list and describe each numerical goal, target, or quota established, applied, or enforced by OMB or agencies since February 20, 2003. For each one, describe:
 - a) the agency or agencies affected by the numerical goal;
 - b) the nature of the numerical goal;
 - c) the date or time period in which the numerical goal was established, applied, or enforced, as well as the date the goal was first developed;
 - d) the methodology with which the goal was developed, including, where applicable, the research and analysis used, and factors taken into account, in developing the goal and reaching the decision to use it;
 - e) the manner in which the numerical goal was communicated to personnel at the relevant agency; and
 - f) all instances in which federal employees were subjected to public-private competitions or direct conversions based on the numerical goal, including the number of employees affected and the results of the activity.

3. During any time period between February 20, 2003, and the present, have any agencies established, applied, or enforced numerical goals, targets, or quotas that were not based on considered research and sound analysis of the agency's past activities, or were not consistent with the agency's stated mission? For each such instance, describe:
 - a) the agency or agencies using the numerical goal;
 - b) the nature of the numerical goal;
 - c) the date or time period in which the numerical goal was established, applied, or enforced;
 - d) the methodology with which the goal was developed;
 - e) all instances in which federal employees were subjected to public-private competitions or direct conversions based on the numerical goal, including the number of employees affected and the results of the activity; and
 - f) the funds expended on establishing, applying, or enforcing the numerical goal.
4. Have agencies been informed that they are no longer expected to comply with the 15% goal described in the Administration's FY '04 budget, and that their failure to reach that goal will not lead to a "red" score or other administrative action? If so, when and how were they so informed?
5. The conference report to the FY '03 Omnibus Appropriations bill provided that "[i]f any goals, targets, or quotas are established following 'considered research and sound analysis' under the terms of this provision, the conferees direct the Office of Management and Budget to provide a report to the Committees on Appropriations no later than 30 days following the announcement of those goals, targets, or quotas, specifically detailing the research and sound analysis that was used in reaching the decision." Why hasn't a report been submitted under this provision? When will a report be submitted?
6. How much money has been spent by the federal government since February 20, 2003, to establish, apply or enforce numerical goals, targets, or quotas for subjecting federal employees to public-private competitions, or for converting the work performed by federal employees to private contractor performance? For each agency that has expended funds, list and describe:
 - a) the amounts expended by the agency;
 - b) how the funds were spent;
 - c) how much of the funds were spent for activities that were not based on considered research and sound analysis of the agency's past activities or were not consistent with agency's mission.
7. If you determine that funds have been spent in violation of Section 647 of P.L. 108-7, how would you respond?

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8. What will be done to reverse job competitions illegally based on arbitrary numerical quotas?

I look forward to your prompt response to the above questions. Please contact Kevin Landy of my staff at (202) 224-2627 if you have any questions.

Sincerely,


Joseph I. Lieberman
Ranking Member

cc: Senator Susan Collins



February 4, 2004

The Honorable Susan M. Collins
Chair
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

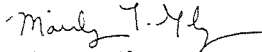
Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by David H. Safavian, who has been nominated by President Bush for the position of Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

We have reviewed the report and have also obtained advice from the Office of Management and Budget concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter (with enclosure) dated January 23, 2004, from Mr. Safavian to the agency's ethics official, outlining the steps he will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Safavian is in compliance with applicable laws and regulations governing conflicts of interest.

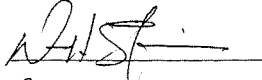
Sincerely,


Marilyn L. Glynn
Acting Director

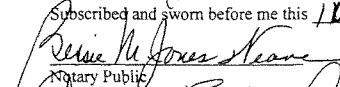
Enclosures

AFFIDAVIT

I, David H. Safavian, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



Subscribed and sworn before me this 10 day of May, 2004.


Notary Public

Commission Expires: August 14, 2004

Post-Hearing Questions Submitted by
Senator Susan M. Collins, Chairman
for the Nomination of David Safavian to be
Administrator, Office of Federal Procurement Policy
Office of Management and Budget

1. **In your hearing, you indicated that you supported “parallel” procedures for private sector and public sector GAO protest rights in A-76 competitions. Do you believe that the public sector’s protest rights should be controlled by the agency management official responsible for tendering the most efficient organization’s (MEO) bid? Or do you agree with me that members of the MEO should be able to choose a single representative for purposes of filing a protest at GAO?**

I support the ability of employees to have parallel appeal rights. If Congress were to authorize employee appeals at GAO, I believe that the Agency Tender Official (ATO) is in the strongest position to seek such relief.

If it is critical to have a designated employee representative (beyond the ATO) filing appeals, I would add caveats that I would hope would be addressed in any CICA amendments. First and foremost, the fundamental approach of CICA, in which GAO review is limited to compliance with established rules of procedure, should not be altered. Second, only one appeal should be permitted. The ATO should be given a right of first refusal to appeal, with an employee actually impacted by the competition (a “designated employee representative”) having standing only if the ATO has declined to go to GAO. But multiple appeals of the same competition (ATO and designated employee representative) should be precluded. An expedited time frame to review appeals should be established so that the government-wide competitive sourcing initiative is not unduly delayed. Finally, a mechanism to address frivolous appeals would need to be identified, possibly, such as having appellants that are found to have filed frivolous claims underwrite the GAO’s actual costs.

2. **As a former regional administrator of the Small Business Administration, I am glad to see that you are attuned to the needs of the small business community when it comes to government contracting. I know that you, as a former staff member at the General Services Administration, are familiar with GSA’s outreach efforts to the small business community. As you know, new regulations regarding bundling and other small business contracting issues took effect last year. Can you tell us whether, in your view, these regulations have had any impact, and whether further congressional action is warranted at this time?**

OMB’s report to the President on contract bundling outlined a nine step strategy to curtail unnecessary bundling and increase federal contracting opportunities overall for small business. Several of those steps rely upon issuance of regulations. The Office of Federal Procurement Policy (“OFPP”) chaired an interagency team that developed and issued implementing regulations that were published October 20, 2003.

The regulations contained several provisions to curtail unnecessary and unjustified contract bundling. However, the new regulations have a broader effect in that they require more meaningful involvement by agency small business advocates in individual agency acquisitions as well as systematic reviews of agency procurement programs by these advocates. I believe that these regulations are starting to have an impact. In fact, I understand that last year, the government exceeded the 23% small business goal for the first time in recent memory. As agency personnel adapt to and become more familiar with the regulatory requirements, the impact will increase. But, OMB has more work to do to implement the Administration's strategy as well as related provisions in the fiscal year 2004 Defense Authorization Act. I understand that OFPP is working with the Small Business Administration to develop and issue regulations to increase small business access to federal subcontracting opportunities. OFPP is also working with the Small Business Administration ("SBA") and procuring agencies to identify best practices for maximizing small business contracting and subcontracting opportunities.

The fiscal year 2004 Defense Authorization Act contains related provisions that address concerns that we share. Although contract bundling and consolidation may be justified and necessary in some cases, we need to keep a close eye on the unintended effects these practices can have on small businesses. When substantially fewer small businesses receive federal contracts the federal government has a reduced supplier base. The reduced competition could cause us to miss out on cost savings and innovations that we might otherwise realize. I understand that the OFPP intends to coordinate with the Defense Department to issue implementing regulations as soon as possible.

My personal view is that further Congressional action is not necessary right now. Agencies need time to adapt to and become more familiar with the new regulatory and statutory requirements. Agencies must also realign their internal procedures to meet these requirements. Creating another set of statutory requirements could confuse and possibly alienate agency personnel at a time when we are asking them to take on greater responsibility in this area.

3. **It is vital that we find new ways to make the federal acquisition process accessible to as many potential bidders as possible in order to increase competition. FedBizOpps is designed as the federal government's "one stop" website to let contractors know about opportunities to do business with the federal government. In your opinion, has FedBizOpps been a success as a single access point for information about federal contracting opportunities and are small businesses aware of, and using, this resource?**

With a 99% availability rate, FedBizOpps is an outstanding tool for contractors to identify opportunities to do business with the Federal government. As such, I would call it an unqualified success – not just for large contractors, but for smaller and/or more specialized vendors as well. Yes, there are areas that can be improved (which should be addressed in GSA's upcoming re-competition of the contract to operate FedBizOpps). But overall, the program has become a critical resource for vendors of all varieties.

As to whether small businesses are aware of – and using – the FBO tools, I am not sure. Anecdotal evidence suggests that they are. However, I believe this is one area in which OFPP and GSA can focus media attention on, so that small businesses in places like Augusta, Maine or Buehlah, Michigan learn of its benefits as well.

**Additional Questions Submitted by Senator Collins
on behalf of Senator Bond
for the Nomination of David Safavian
May 6, 2004**

Question 1: For the past 6 fiscal years, the Executive Branch has failed to achieve the minimum level of HUBZone contracting required by PL 105-135. In the last year for which data has been published (FY 2002), the Government only achieved .71%, when the law requires a minimum of 3%. Because HUBZone contracting is such a valuable economic development program that builds communities and creates jobs where America needs them most—in America's poorest regions, this consistent level of under-performance must not be allowed to continue. What will you do to increase the levels of HUBZone contracting and to ensure that all Departments of the Executive Branch properly implement and emphasize the HUBZone Program?

ANSWER: Like service-disabled veteran preferences, the HUBZone Program has struggled with meeting the statutory targets set by Congress. Indeed, my former agency, the General Services Administration, attempted to address this precise matter by creating a government-wide acquisition contract ("GWAC") made up entirely of HUBZone vendors. Unfortunately, despite having this acquisition vehicle in place, its usage level has not met expectations.

As I noted in my confirmation hearing, one of my four major priorities will be to expand contracting opportunities for small and disadvantaged businesses. This will include HUBZones. One part of that effort is to ensure that we have the next generation of the Federal Procurement Data System up and running. If we don't know what we buy, and from whom we buy it, the government cannot be expected to set *or meet* realistic performance metrics with regard to disadvantaged businesses.

In addition, I believe the Administrator for Federal Procurement Policy must work closely with the Small Business Administration to set meaningful goals, and then help agencies meet those goals. That may entail reviewing existing and/or proposed policies, bills, and Executive Orders to see whether changes would increase the performance in this area.

Question 2: Several HUBZone contractors have informed me about continuing problems with Departments and Agencies that fail to follow the statutes and rules established for HUBZone contracting. Departments are often awarding contracts to businesses on a sole-source basis to non-HUBZone firms without any competition and without exploring potential HUBZone contractors. What will you do to ensure that agencies follow the law and do sufficient market research before awarding non-HUBZone contracts?

There is no excuse for agencies to fail in following applicable laws, regulations, or policies validly enacted and in force. However, the Office of Federal Procurement Policy is statutorily prohibited from involving itself in ongoing procurement activities. That responsibility falls to agency leaders, working in conjunction with their respective auditors and Inspectors General.

Questions for the Record Submitted by Senator Daniel K. Akaka
Hearing for David H. Safavian
Nominee for Administrator, Office of Federal Procurement Policy
Senate Governmental Affairs Committee
April 30, 2004

Questions for the Record

Questions for David H. Safavian, Nominee for Administrator, Office of Federal Procurement Policy

1. In your pre-hearing questions, you stated that federal agencies have demonstrated cost-savings as a result of competitive sourcing, but I understand that current contracting data does not permit a full cost-savings assessment of outsourcing activities across the federal government.

Can you provide specific examples of agency components that have used in-house data to evaluate the cost-savings of their procurement activities?

I am not sure what you mean by "in-house" data. The Department of Defense has used competitive sourcing since the late 1950's as a management tool. In the 40+ years, savings have been independently benchmarked at anywhere from 10-40%, regardless of whether the in-house team or the private sector wins the competition.

With regard to civilian agencies, Congress directed that they report their 2003 competitive sourcing activities by May 24, 2004. Accompanying individual agency data will be a consolidated report issued by OMB on the government-wide results from the competitive sourcing initiative. One part of that consolidated report will discuss enterprise-wide savings expected as a result of the 2003 competitions. However, because all of those competitions are still in their performance periods, it is not possible to provide actual cost savings at this time.

2. In response to my question regarding the commitment made by OMB Director Bolton, you agreed that it was important to train employees. Will you commit to seek funds for agencies for the purpose of training employees in order to, as Director Bolton stated, "improve opportunities for federal employees to compete for new work and work currently performed by contractors?"

I will work with agency managers and other stakeholders (including Congress and labor unions) to ensure that federal employees have access to resources necessary for them to compete on a level playing field in the context of the competitive sourcing initiative.

3. During your pre-hearing interview with Committee staff, you said you would revise the current language of the A-76 Circular so federal employees do not have to re-compete for their jobs every five years. What can we expect in this regard?

As a threshold matter, I understand that the Circular needs to be revised in some areas to comport with recent legislation passed by Congress.

I believe that agencies should be free to determine the appropriate performance periods to reflect their unique missions and objectives. As such, it is clear to me that a "one-size-fits-all" five year re-competition period would deprive agency managers of the ability to tailor their competition plans to their agency needs. That is not to say that in-house teams should be shielded from competition indefinitely. Rather, some positions may be suitable for competition in eight years, some in four, while others might fall in between. The critical point is that agency managers should have the flexibility to make that determination.

4. Would you please provide the Committee with examples of work you would consider to be inherently governmental and not subject to outsourcing?

In light of the definition of "inherently governmental" that is found in the Federal Activities Inventory Reform Act ("FAIR Act"), I believe examples of work not subject to competition would include law enforcement, awarding and terminating contracts, and policy making.

5. Concern has been expressed about the possible impact of privatization on the diversity of the federal workforce. For example, the Department of Veterans Affairs has reported that the impact of privatization on the diversity of its workforce is 'huge.' Is diversity a factor in the competitive sourcing scorecard. Moreover, do privatization reviews analyze the percentages of women, minorities, and veterans who may be affected if work is contracted out? If not, do you believe diversity should be a factor?

The competitive sourcing initiative is based on applying principles of competition to generate better customer service, increased performance, and reduced costs. It does not factor in the racial or ethnic mix of the employees being studied for competition. Indeed, it is my understanding that such data is not collected.

I do not believe competitive sourcing and diversity are mutually exclusive. The key to ensuring that the Federal government maintains a diverse workforce is to coordinate the competitive sourcing initiative with the President's directive on the strategic management of human capital. With 40% or more of the workforce eligible for retirement in the next five years, managers will have significant opportunities to foster diversity in hiring and promotion decisions. However, use of racial or ethnic data when undertaking a competition – no matter how well-intentioned – will undermine the ultimate goal of the competitive sourcing initiative, i.e., to generate improved performance, reduced costs, and ultimately, results.

4. The San Francisco Chronicle (April 18, 1998) cited you as the Executive Director of the Internet Consumers Choice Coalition ("ICCC"). Your financial and biographical documents do not indicate your affiliation with this entity. Have you ever had ties to this organization, and if so, please describe the nature and duration of your activities.

The Internet Consumers Choice Coalition ("ICCC") was an ad-hoc coalition of Janus-Merritt clients having an interest in Internet gaming legislation to provide a mechanism for U.S. citizens to weigh in with their members of Congress. I served as the informal head of that coalition, which called for licensure and regulation of Internet gaming, rather than a broad-based ban that would hold Internet Service Providers liable for content viewed by individual Internet users. On behalf of the coalition/Janus-Merritt clients (each having different issues with regard to pending legislation, but all united in opposition), the firm established a web site that allowed people to send emails and faxes to their members of Congress. In addition, the coalition approached other organizations willing to co-sign letters to policy makers regarding adverse impacts and collateral consequences that Internet legislation might have. Organizations that co-signed such letters included: American Civil Liberties Union, Americans for Tax Reform, Association of Concerned Taxpayers, Citizens for a Sound Economy, Competitive Enterprise Institute, First Amendment Coalition for Expression, Interactive Services Association, Small Business Survival Committee and the United States Internet Council. As for the duration, I believe the ICCC web site was running between 1998-2000.

**Post Hearing Questions from
Senator Carl Levin (D-MI)
Committee on Governmental Affairs
For David H. Safavian
Nominated to be Administrator,
Office of Federal Procurement,
Office of Management and Budget**

Do you believe that Sections 801 and 803 of the 2002 Defense Reauthorization Act should be made applicable government-wide?

ANSWER: I understand that Section 801 requires the Department of Defense to establish a management structure for the acquisition of services, conduct related data collection, and establish a program to review major services acquisitions.

I support the intent of Section 801 to force the Defense Department to improve its overall management of services acquisitions. Given the government's growing use of service contracting, I can appreciate the desire to ensure that agencies pay greater attention to these actions. However, before I could state that the provision should be applied government-wide, I would need to speak with DoD procurement executives and other stakeholders to determine what impact Section 801 has had on DoD operations. I would also want to make sure that any management structures we may impose are appropriate to the size of the agency and the complexity of its procurements.

With regard to Section 803, I understand that the provision requires DoD to obtain at least three bids when procuring services in excess of \$100,000 from multiple awards schedules and similar vehicles. I believe the government gets the best value for taxpayer dollars when competition is applied during an acquisition. I also recognize that agencies must carefully balance the need to obtain best value with the need for efficiency and timeliness.

My instinct would be to favor the application of Section 803 to the civilian agencies, so long as there are mechanisms in place to ensure that procurements are not unnecessarily delayed. Before reaching a conclusion, however, I would look to the panel established in Section 1423 of last year's Defense Reauthorization Act to review this issue in greater detail, and provide a recommendation.

QUESTIONS FOR THE RECORD
OF SENATOR FRANK R. LAUTENBERG
GOVERNMENTAL AFFAIRS COMMITTEE HEARING ON THE NOMINATION OF
DAVID SAFAVIAN
Thursday, April 29, 2004

Background Question One

In March 2003, the Department of Defense's Army Corps of Engineers secured a no-bid contract with Halliburton's subsidiary, Kellogg Brown & Root (KBR) just to extinguish oil fires. When Congress began asking questions and delving into this contract, it was revealed that this was a cost-plus contract that was capped at up to \$7 billion dollars. This no-bid contract grew in scope and size after the war, with KBR, not finding fires to extinguish, hired to repair and reconstruct oil fields.

QUESTION ONE:

If confirmed, what will be your policy regarding no-bid contracts? If you allow individual agencies to arrange such contracts, what type of oversight and limits will you institutionalize to prevent abuse of no-bid arrangements?

ANSWER: I believe competition is the key to taxpayers obtaining best value for the tax dollars spent on acquisition contracts. I strongly prefer having competitive forces at work during the procurement process, and indeed, the Federal Acquisition Regulation reflects that preference. However, I am also cognizant that in certain circumstances, contracts are awarded outside of full and open competition. Examples of such non-competitive awards include the selection of small, women-owned, minority-owned or veteran-owned businesses to provide goods and services to

agencies. There are also circumstances where it is in the ultimate interests of the taxpayers that contracts be awarded outside of the traditional competitive process. For example, national security agencies may have immediate delivery or substantive requirements that justify the use of sole sources. Such procurements require that a justification be developed to validate the need to deviate from competitive procedures. In such cases, oversight should primarily come from the agency itself, i.e., the agency's Inspector General.

The Office of Federal Procurement Policy is statutorily prohibited from involving itself in ongoing procurements. As such, any pre-award interference or review would be inappropriate. That responsibility falls to each agency's leadership, working in conjunction with the Inspectors General. Nevertheless, there may be a need to review current regulatory guidance with regard to sole-source contracts. If confirmed, I will work with OFPP staff – and seek input from Members of the Committee – to determine whether additional guidance is required.

Background Question Two

Halliburton's record in Iraq reads like a case study for bad business practices. The company has been associated with kickbacks, overcharging for fuel importation, providing inadequate food service. Both the Defense Department's own auditors and its Inspector General have raised questions about its business practices

QUESTION TWO:

If companies receiving massive government contracts are found to be overcharging the U.S. taxpayers, or found guilty of other dubious business practices, will you consider them less eligible or ineligible from receiving future contracts?

If not, how will you ensure that the companies receiving federal contracts are striving to provide top services at the lowest cost to the taxpayers?

ANSWER: Entities that are found guilty of overcharged or other types of malfeasance are subject to suspension or debarment, if they lack "present responsibility." In effect, they are made ineligible for further federal contracts until they can demonstrate sufficient corrective action. As you know, the Office of Federal Procurement Policy is statutorily prohibited from involving itself in ongoing acquisitions. As a result, the determination of whether a company has "present responsibility" falls to each contracting officer when he/she considers such a vendor for a federal contract.

As I mentioned in my opening remarks at the recent confirmation hearing, one of my four major priorities is to review the regulations concerning the suspension and debarment process.

Specifically:

I believe we need to review the present rules, regulations, laws, and policies concerning suspension and debarment. We must ensure that the government only deals with presently responsible contractors, and that agencies do so in a fair, open, and consistent manner.

I stand by that statement, and look forward to working with you, other Members of the Committee, and stakeholders in general on this important matter.

Background Question Three

Over the past couple of years, the Federal Aviation Administration took steps to contract out components of the U.S. Air Traffic Control (ATC) system, including classifying air traffic control as a “commercial” function instead of an “inherently governmental” one. This is clearly a result of pressure by the Office of Management and Budget (OMB) to force Federal agencies to adopt the President’s Management Agenda on competitive outsourcing. While the term “inherently governmental” is defined specifically by regulation, there will be room for interpretation.

QUESTION THREE:

In this job, you will have to provide guidance and interpretation of what kind of work is considered “inherently governmental.” Can you give us some examples of work you consider to be inherently governmental and not subject to outsourcing? What about air traffic control?

ANSWER: Consistent with the Federal Activities Inventory Reform Act of 1998 (the “FAIR Act”) and long-standing policy, I would consider any activity to be inherently governmental that is so intimately related to the public interest as to mandate performance by government personnel. Examples of inherently governmental activities would include those that involve: (1) the determination of agency policy (such as setting regulations), federal program priorities, or budget requests, (2) the award or termination of contracts, (3) the direction and control of federal employees (including hiring decisions), and (4) the direct conduct of criminal investigations or prosecutions. It is imperative that inherently governmental activities be performed only by our able federal workforce.

In addition, it is important that our competitive sourcing policies recognize that some activities, while commercial in nature, may nonetheless be unsuitable for performance by the private sector. This may be the case, for example, where an agency needs to preserve core capabilities. My understanding is that the Federal Aviation Administration (FAA) views separation and control of air traffic at enroute and larger terminal facilities in this fashion -- i.e., as a commercial activity, but one that is a core capability of the FAA and therefore unsuitable for public-private competition.

Background on Question Four

Under the May 2003 “revision” of OMB Circular A-76, Federal employees do not have the same rights as contractors to file an appeal of a contract award (called a “bid protest”). In fact, they have fewer rights under the revision than they did previously.

QUESTION FOUR:

Under the A-76 process, do you believe Federal employees be denied the same rights as contractors and be prevented from filing a bid protest?

ANSWER: Recently, the General Accounting Office determined that the Competition in Contracting Act (“CICA”) does not presently permit GAO to review employee appeals of competitions. I believe contractors and employees should have parallel appeal rights.

QUESTION FIVE:

In this position, how do you intend to avoid even the appearance of impropriety while your wife is employed by the House's equivalent to this Committee where she currently serves as chief counsel for oversight and investigations for Government Reform Committee Chairman Tom Davis?

ANSWER: To avoid even the appearance of a conflict of interest, my spouse has agreed to adhere to a recusal agreement with the House Committee on Government Reform. In entering into this agreement, Jennifer Safavian has agreed to recuse herself from any matters where the conduct of officials and employees of the Office of Management and Budget is the central issue, as well as matters relating specifically to procurement policy, competitive sourcing, or information technology. A copy of this agreement was submitted to Ms. Marilyn Glenn, Acting Director of the Office of Government Ethics, on December 9, 2003, as well as to the Hon. Henry Waxman (D-CA), Ranking Member of the Committee on Government Reform.

Background on Question Six

Angela Styles was formerly the OFPP Administrator (from 2001-2003.) During her tenure, she was responsible for leading the revision of OMB Circular A-76, and implementing the Bush Administration's competitive sourcing program as part of the President's Management Agenda. In testimony before the Congress in July 2003, Ms. Styles elaborated on her views on competitive sourcing, commenting that "Competitive sourcing is not about arbitrary numbers. This initiative is about reasoned plans, accountable infrastructures, and balanced processes that facilitate the application of public-private competition where it benefits mission objectives and the needs of our

citizens.”¹ The Bush Administration later pledged to drop its “one size fit all” approach and OMB announced that it no longer would require federal agencies to meet mandated, numerical, competitive sourcing targets, but would negotiate an approach tailored to the specific mission and circumstances of each agency.

QUESTION SIX:

a. Please describe the goals of the President’s Management Agenda, and your performance goals for OFPP?

ANSWER: Broadly speaking, the primary goal of the President’s Management Agenda (“PMA”) is to foster a results orientation within the Federal Government. More specifically, the objective is to improve management and performance of Federal employees and agencies. The PMA is broken down into five primary initiatives: (1) Strategic Management of Human Capital; (2) Competitive Sourcing; (3) Improved Financial Management; (4) Increased Use of Electronic Government; and (5) Budget and Performance Integration. Each of these initiatives is designed to incorporate a results-oriented ethos in the corporate culture of the Government.

With regard to my performance goals if I am confirmed to lead OFPP, I intend to focus on four main priorities: (1) improved management of the acquisition workforce; (2) furtherance of the competitive sourcing effort to ensure that competitions are conducted in an even more open, transparent, and fair manner for both the employees impacted and the private sector; (3) increasing contracting opportunities for small and disadvantaged businesses; and (4) review of

¹ Excerpts from the testimony of Angela B. Styles, OMB Administrator for Federal Procurement Policy, in a hearing before the Subcommittee on Oversight of Government Management, The Federal Workforce and the District of Columbia, Committee on Governmental Affairs, United States Senate, on July 24, 2003.

the Federal Government's approach to suspension and debarment, to ensure that agencies only do business with presently responsible vendors.

b. What is your view of the role of the Administrator for Federal Procurement Policy?

ANSWER: The role of the OFPP Administrator is multifaceted. In my view, the leadership responsibilities are: (a) the execution of OFPP's statutory mandates; (b) the provision of leadership to the procurement communities; and (c) the fulfillment of the President's Management Agenda where it intersects with acquisition issues. However, the position is also one of being a line manager, responsible for motivating OFPP staff and fostering an environment that rewards performance and results.

c. How will you personally communicate with the various constituencies that are concerned about the Bush Administration's competitive sourcing agenda, including (but not limited to) labor organizations that represent federal employees, private contractors, trade associations, federal agency contracting officials, and the general public?

ANSWER: I believe a significant responsibility of the Administrator of Federal Procurement is to be accessible to all stakeholders having an interest in procurement policy and competitive sourcing. Accordingly, not only will I accept meeting requests, I will proactively seek out meetings with stakeholders (including labor unions) to dialogue on competition issues.

I also hope to hold routine meetings with various constituencies as a means of better understanding the challenges they face, and identifying areas of mutual cooperation and agreement.

QUESTION SEVEN

a. A few years ago, a private contractor called the Jefferson Solution Group (under the leadership of Allan Burman, former Administrator for OFPP) performed a study at DOD's request to examine the size and shape of the defense acquisition workforce. The study confirmed that by the year 2005, over 50% of defense acquisition workforce personnel would be eligible for retirement, and that this exodus of trained acquisition professionals would occur throughout the federal government. Based on your knowledge of the federal acquisition workforce, does the federal government have the right mix of people, with the right skills, to meet the demands of the new acquisition and contracting environment?

ANSWER: The acquisition workforce extends far beyond traditional contracting operations to include the many supporting functions that play key roles in the acquisition process, such as program and project management. The government must identify and develop core, government-wide competencies for the acquisition workforce to ensure that our employees have the skills to fulfill mission needs from the earliest stages of an acquisition through contract completion. As government priorities and needs evolve, the contracting environment changes; our workforce must be trained and developed to accommodate a variety of policy, operational, and technological changes. We must ensure that our workforce planning efforts reflect the needs of this dynamic environment by taking a broad, government-wide, long-term approach to human

capital. If confirmed, I will be committed to ensuring that we recruit, develop, and retain talented individuals so that our acquisition workforce succeeds in an ever-changing environment.

b. Critics have pointed out problems with federal government contracting. For example, the General Accounting Office has characterized federal government contract management as an “high risk area”² within the Departments of Defense, Energy, and NASA, and the DOD’s Inspector General is investigating allegations of contractor mismanagement, fraud, and questionable business practices relating to contracts in Iraq.³ In addition, some Members of Congress have expressed concern over the size and the scope of the “indefinite-delivery, indefinite quantity” contracts awarded for large scale recovery and reconstruction activities in Iraq and Afghanistan. Given the complexity of these issues, are federal contracting officials given enough education, training, and authority to effectively oversee acquisition and contracting management activities? If not, what changes do you believe should be made?

ANSWER: As a threshold matter, I don’t think there can ever be enough training for our acquisition corps. Government contracting is a complex and challenging function that requires the commitment of skilled professionals and the support of senior leadership. The Office of Federal Procurement Policy is charged with setting the policies for the civilian acquisition workforce including establishing education and training requirements. If confirmed, I will be

² Since 1990, GAO has identified certain federal government programs and functions as “high risk” because of the potential for waste, fraud, abuse, and mismanagement. For further information, see The U.S. General Accounting Office, *Determining Performance and Accountability Challenges and High Risk*. GAO - 01-169SP, November 2000; and *Major Management Challenges and Program Risk: A Government Perspective*. GAO Report-03-95, January 2003; the GAO Performance and Accountability Series post its *High Risk Areas* list online at <http://www.gao.gov>.

³ For further information, see King, Jr. Neil. “Halliburton Tells the Pentagon Workers Took Iraq-Deal Kickbacks.” *Wall Street Journal*, Jan. 23, 2004, p. A1.

committed to ensuring that we recruit, retain, develop, and refresh the acquisition workforce in concert with the rigorous requirements of the Department of Defense to ensure that civilian and defense acquisition professionals share common competencies. Additionally, in accordance with the Services Acquisition Reform Act (SARA), the acquisition community will now look to agency Chief Acquisition Officers (CAO) for senior leadership. The CAOs are non-career employees who are appointed or designated by agency heads to ensure that mission needs are achieved through management of acquisition activities. This increased visibility and accountability of the acquisition function, coupled with the development of a highly-skilled workforce, will reduce risk in and improve the management of contracting activities.

c. In DOD, where there are fewer contractors competing for large contracts, and where there may be only two companies capable of competing against one another for the same contract, are the U.S. government needs being served well by the lack of greater competition? What actions do you believe are needed to increase the level of competition?

ANSWER: This is a difficult issue, as market consolidation is occurring, particularly in the defense industry. However, even where there are only two vendors, meaningful competition can take place. At the same time, there may be opportunities to get other vendors involved, particularly if the awards are large. For example, DoD should look to see if some portions of the work might be suitable for performance by small or disadvantaged businesses. Similarly, depending on the nature of the work, joint ventures between small, specialized businesses and large contractors can be encouraged as a means of offsetting a shrinking contractor base for defense procurements.

d. In your opinion, is it a good long-term business decision for the federal government to place greater reliance on a private contractor work force, and less reliance on the development and maintenance of an organic federal work force? How should private contractors be managed, and by whom?

ANSWER: I believe it is in the best interests of agencies to focus on their core missions and strategic objectives, and utilize contract services for those commercial functions that are either: (1) out of alignment with the individual agencies' unique missions; (2) performing poorly, as established by objective benchmarks and criteria; or (3) facing difficulties in recruitment and/or retention of personnel. The maintenance of an organic Federal workforce is critical, not only to inherently governmental activities, but to core competencies that reflect each agency's unique mission and strategic objectives.

As for how private contractors should be managed, I believe that many aspects of contract management are inherently governmental functions. Each agency must have sufficient in-house capability to manage the contracts awarded – and to manage them well so that the taxpayers receive the best value for their tax dollars.

QUESTION EIGHT

a. What is your view of offshore outsourcing (where companies move jobs to countries where there is a cheaper labor pool, such as India and Pakistan)? Should the federal government encourage or prohibit the practice of offshore outsourcing for work that it funds? How many U.S. departments and agencies are currently outsourcing work abroad? Which departments or agencies? What role should Congress take?

ANSWER: I am certainly not supportive of offshoring. But neither do I support isolationism.

Growing up in Detroit, I spent much of my time working for a small manufacturing company my grandfather started nearly forty years ago. Trenton Forging Company sells parts to Ford and GM. But they also sell to Mazda and Mercedes-Benz. So I understand both the opportunities and threats that foreign competition can bring – particularly to small businesses.

The debate about international trade policy and offshoring *in general* are outside the scope of my expertise. But in the context of competitive sourcing, I can tell you what we have seen – and more importantly, what we haven't.

So far, employee work groups have won between 80-85% of the competitions. But even when the private sector can demonstrate results in doing the work better, faster, cheaper, most of that work – by its very nature – must be done domestically. One can't move work to cut lawns or clean federal buildings overseas.

In response to your question, I don't know whether any agencies have offshored work following an A-76 competition. I conducted a number of searches online, and spoke to OMB staff, and could not find any instances where jobs were, in fact, moved offshore following an A76 competition.

That is not to say that such a scenario cannot happen. But given the rare likelihood, I would be more concerned about the consequences of retaliation if we were to screen out all foreign companies from the A76 process. I believe that American businesses of all sizes sell far more to

foreign governments than the small amount (if any) that could be generated by non-US suppliers in the context of competitive sourcing. Essentially, we risk far more than we stand to gain by legislating away foreign competition.

b. Over the past ten years, Congress has passed several important reforms, among them the Federal Acquisition Streamlining Act of 1994, Federal Acquisition Reform Act of 1996, Defense Reform Act of 1997, and the Federal Activities Inventory Reform Act of 1998. Federal Acquisition Streamlining Act, or FASA, P.L. 103-355. These legislative initiatives revised many of the statutory rules which governed federal contracting, encouraged federal agencies to buy commercial, off-the-shelf products, and simplified government procedures for procuring those products. In addition, other key provisions raised the acquisition threshold for waiving many statutes governing federal procurement, streamlined the bid-protest process to prevent costly delays that could result when contractors protest procurement contract awards, and raised the monetary cap on federal contracts thus allowing bidding defense contractors to bypass special accounting systems requirements. The effect of these reforms has been to lower or abolish what some believed to be barriers to doing business with the federal government. What is your review on the results of these reform initiatives? Are they working? Should the Congress consider further reforms?

ANSWER: I think there remains a justifiable need for the increased flexibilities that our acquisition workforce has been given over the past decade. Between information technologies that may change rapidly and other technologies that may be in high demand at short notice to fight the war on terrorism, agency buyers need a system that is responsive and results-based. At

the same time, my sense is that we are sometimes slow to identify weaknesses in and unintended consequences of current operations. I believe more could be done in that regard. With the reforms comes agency responsibility to ensure that rules in place are being followed and that sufficient internal controls are in place to safeguard the taxpayers' interests.

Section 1423 of the 2003 DoD Reauthorization Act requires the establishment of a panel to look at performance-based contracting, commercial acquisition, and use of the multiple awards schedules. The panel has been tasked with reviewing each of these areas and report back to Congress and the Administrator for Federal Procurement Policy as to whether further legislative, regulatory or policy changes are needed. I look forward to seeing the results of the Section 1423 Panel's work.

Additionally, I am open to further reforms, but would want to analyze specific legislative language before taking a position either in support of, or opposed to statutory changes.

c. In your opinion, what activities do you consider to be “inherently governmental” in nature, and therefore should be performed by federal employees? What activities do you consider “commercial” in nature, and therefore appropriate for competitive sourcing? Is this the right framework to use, “inherently governmental” vs. “commercial?” If not, can you suggest another way of viewing what activities should be performed by federal employees, and what activities should be performed by the private sector?

The Federal Activities Inventory Reform Act (“FAIR Act”, Public Law 105-270) defines the term “inherently governmental function” as follows:

(A) The term "inherently governmental function" means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

(B) Functions included.--The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as--

(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) to significantly affect the life, liberty, or property of private persons;

(iv) to commission, appoint, direct, or control officers or employees of the United States;

or

(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

I believe that those activities which fall outside the statutory definition of 'inherently governmental functions' constitute commercial activities. However, not all commercial activities are suitable for competitive sourcing. Agencies are free to identify positions which go

to their core missions and competencies, and thus, are deliberately shielded from competition. An example of this is the position of realty specialist at the General Services Administration. In that particular case, the Commissioner of Public Buildings determined that for GSA to fulfill its core mission, it required an in-house competency for realty services. As such, it listed realty specialists as commercial in nature, but not subject to competition. (See also ANSWER to Question 3, above for more analysis on inherently governmental vs. commercial activities.)

I believe the FAIR Act, combined with the agencies' ability to shield certain core mission capabilities from competition, provides an appropriate framework to determine where market forces (i.e., competition) should and should not be used to improve performance and reduce costs.

d. What is your view on the use of sole-source contracts, such as the LOGCAP contract awarded to Halliburton for reconstruction activities in Iraq? What is your view on the policy of limiting competition for federal government contracts?

As noted above in Question One, I have a strong preference to see competitive forces utilized in procurement to ensure that the taxpayers receive the best value when agencies acquire goods and services. However, I recognize that in certain circumstances, contracts may need to be awarded outside the scope of full and open competition.

With specific regard to LOGCAP, I don't have first hand knowledge as to how the contract award was made.

e. Over the past year, several federal agencies, including the Office of the DOD Inspector General, have taken steps to suspend or debar several large government contractors, due to allegations of misconduct. However, while the investigation is ongoing, these companies are not prohibited or discouraged from competing for, and winning, additional contracts for government work. What is your view of the policies governing the suspension and debarment of contractors for government work? Should the rules be changed? If so, how?

ANSWER: Debarment and suspension procedures must be consistent with principles of fundamental fairness. Action to debar or suspend should not be taken based on allegation but on adequate evidence or a finding that improper conduct jeopardizes the interests of the government (i.e., lacks "present responsibility"). I am aware there is concern about the effectiveness of the debarment and suspension procedures, particularly in light of the high profile cases of the last couple of years. Accordingly, I have committed to making review and appropriate changes to debarment and suspension procedures a primary agenda issue during my tenure as Administrator, if I am fortunate enough to be confirmed by the Senate.

Background for Question Nine

The Buy American Act,⁴ enacted in 1933, is the principal domestic preference statute governing most procurement by the federal government. It restricts foreign access to U.S. government procurement by giving preference to domestically produced, manufactured, or home-grown products. The Berry Amendment,⁵ enacted into law on April 5, 1941, contains a number of domestic source restrictions that prohibit the Department of Defense

⁴ Title 41, United States Code, 10a through 10d.

⁵ Title 10, United States Code, Section 2533a

(DOD) from acquiring food, clothing, fabrics (including ballistic fibers), some specialty metals, and hand or measuring tools, that are not grown or produced in the United States.

Generally, proponents of the Buy American Act and the Berry Amendment have argued that these restrictions are necessary to maintain a viable industrial base, and that they serve as some protection for critical industries by keeping them healthy and viable in times of peace and war. However, critics argue that these laws can undercut free market competition, and may produce other negative effects such as reducing businesses of incentives for firms to modernize and causing inefficiency in some industries due to a lack of competition. Some argue that these laws may result in higher costs to DOD because the military services pay more for “protected” products than the “market requires” and may promote U.S. trade policies that might undermine international trade agreements.

QUESTION NINE

a. In light of international trade agreements like the North America Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) rules, what is your view of the relevance and viability of the Buy American Act and the Berry Amendment?

ANSWER: I understand that since the enactment of the Berry Amendment and the Buy American Act, the US has negotiated numerous trade agreements with foreign countries that cover government procurement. These agreements provide non-discriminatory treatment to vendors supplying goods manufactured in countries with which we have government procurement agreements. As such, they mitigate the impact of domestic preference restrictions imposed by the Buy American Act.

It is my understanding that such agreements have no impact on the Berry Amendment, which is a domestic source restriction. Commodities covered under the Berry Amendment are listed as exceptions in the schedules of obligations to our agreements. Unless a non-availability determination is made, DOD is required to purchase those items from domestic suppliers.

b. With regard to the Berry Amendment, what are the pros and con's of DOD granting preference to domestic manufacturers over foreign manufacturers?

ANSWER: The Berry Amendment is a domestic source restriction that requires DOD, with certain exemptions, to purchase the covered items from domestic suppliers.

The Berry Amendment and similar restrictions are designed to protect the US manufacturing base from job loss and deterioration and from potential negative impact on national security with over reliance on foreign markets. However, these restrictions run counter to international trade considerations, could slow the acquisition of new technologies, and may increase programmatic costs.

c. Are there specific products that you believe should be exempt from the requirements of the Berry Amendment?

ANSWER: While there are existing exemptions to the Berry Amendment, none are being interpreted to my knowledge to cover force protection acquisitions or acquisitions of products intended to provide defense to nuclear, biological, or chemical weapons. I believe these items should be considered as further exemptions.

**Post-hearing Questions Submitted by Senator Lieberman
for the Nomination of David Safavian**

1. **News reports from 1998 describe you as Executive Director of the Internet Consumers Choice Coalition. Did you serve in that position? If so, please describe the coalition, its members, and the work you performed for the coalition.**

The Internet Consumers Choice Coalition ("ICCC") was an ad-hoc coalition of Janus-Merritt clients having an interest in Internet gaming legislation to provide a mechanism for U.S. citizens to weigh in with their members of Congress. I served as the informal head of that coalition, which called for licensure and regulation of Internet gaming, rather than a broad-based ban that would hold Internet Service Providers liable for content viewed by individual Internet users. On behalf of the coalition/Janus-Merritt clients (each having different issues with regard to pending legislation, but all united in opposition), the firm established a web site that allowed people to send emails and faxes to their members of Congress. In addition, the coalition approached other organizations willing to co-sign letters to policy makers regarding adverse impacts and collateral consequences that Internet legislation might have. Organizations that co-signed such letters included: American Civil Liberties Union, Americans for Tax Reform, Association of Concerned Taxpayers, Citizens for a Sound Economy, Competitive Enterprise Institute, First Amendment Coalition for Expression, Interactive Services Association, Small Business Survival Committee and the United States Internet Council.

2. **In March 2003, two months before the revised A-76 was finalized, the Department of Defense (DoD) Inspector General (IG) concluded that the 12% overhead rate imposed on all in-house bids is "unsupportable," and that "[u]nless DoD develops a supportable rate or an alternative method to calculate a fair and reasonable rate, the results of future competition will be questionable." ("Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions," (D-2003-056) March 21, 2003, p. 24). A 2000 study by RAND reached a similar conclusion, finding it was "likely that MEO costs were substantially overstated in competitions we examined." ("Personnel Savings in Competitively Sourced DoD Activities: Are They Real? Will They Last?", Susan M. Gates, Albert A. Robbert, 1999/2000, p. 106)**

- a. **Do you agree with the conclusions in the DoD IG and RAND reports? Please explain your reasoning.**

This is a long-standing issue. Indeed, a GAO study completed in 1998 determined that the 12% rate, while imperfect, "represents a proper move toward including costs in government cost estimates." Defense Outsourcing: Better Data Needed to Support Overhead Rates for A-76 Studies, GAO/NSIAD-98-62, February 1998 at P8. GAO found that the 12% rate was intended to "reduce the administrative burden of developing a rate for each commercial activity." Id at 9. As I understand it, the 12% rate is essentially a good-faith estimate that reflects a compromise

reached after looking at the range of possibilities, which ran from 0% to 30%, depending on which expert was being consulted.

It should be noted that GAO suggested its major concern was that the 12% rate would skew competitions in favor of private sector contractors over public employees. See, Comments from OMB Acting Deputy Director for Management G. Edward DeSeve, January 13, 1998. However, that concern has not been proven out under either the 1996 Handbook procedures that preceded the 2003 revisions of OMB Circular A-76 or the 2003 revisions. Under the old Circular, the government won just over 50% of the competitions. Initial results under the 2003 revisions, which include a number of provisions to expand federal employees' opportunity to compete, suggest the government is faring even better -- winning anywhere from 80 to 85% of the FTEs competed.

Even if not perfect, my sense is that the 12% overhead rate represents a reasonable compromise. It acknowledges that taxpayers do pay for overhead when federal workers perform work, even if it is difficult to calculate this cost with precision in any given circumstance. It also helps to create a level playing field to ensure private sector participation without any significant disadvantage to the federal sector's ability to compete effectively.

- b. If the 12% overhead rate is in fact inflated, and not adequately supported by data, how would that inflated rate affect the fairness of A-76 competitions? Please explain your answer.**

If the rate were inflated, it would place the in-house bid at a disadvantage. However, the results of competition suggest no evidence of government providers being placed at a disadvantage. To the contrary, it appears that in-house sources are able to more than hold their own under the revised Circular.

- c. Based on your review of the referenced reports, what steps, if any, do you believe should be taken to correct the current overhead rate? Please explain your answer.**

I'm not persuaded that there is a systemic problem, at least not at this point in time. If a systemic problem were to arise where the current overhead factor created a disadvantage -- to either sector -- I would most certainly be prepared to take action.

- 3. In his responses to the Committee's pre-hearing questions, then-nominee Joshua Bolten acknowledged that the Administration's competitive sourcing initiative's "focus [on reviewing work performed by federal employees] should not obscure the importance of promoting competition in other areas," i.e., for new work as well as work performed by contractors. In response to a post-hearing question, Mr. Bolten made an explicit commitment on this issue: "If confirmed, I will ask the Administrator for Federal Procurement to recommend ways to improve**

opportunities for federal employees to compete for new work and for work currently performed by contractors."

- a. **What steps have been undertaken by OMB to allow federal employees to compete for new work as well as work performed by contractors?**

Beyond implementing the redraft of OMB Circular A-76, the Office of Federal Procurement Policy has not taken any public steps to change the way federal employees are permitted to compete for new work and for work currently performed by contractors. This is, in part, because the position of Administrator for Federal Procurement Policy has been vacant since September, 2003.

- b. **If confirmed, will you "recommend ways to improve opportunities for federal employees to compete for new work and for work currently performed by contractors"?**

If I am confirmed, I will review the current rules to determine whether employees presently have a fair opportunity to compete for new work and for work currently performed by contractors. If it is found that federal employees are placed at a disadvantage with regard to competing for such work, I will recommend ways to level the playing field.

4. **41 USC Section 433(b)(2) requires the head of each executive agency "ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency," and (b)(3) requires the OFPP Administrator to "issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission." In 1997, the OPM GS-1102 Contract Specialist qualification standard, as applicable to civilian agency contracting positions, was amended administratively. These amendments stated that, to the maximum extent practicable, the civilian agency GS-1102 qualification standard was to be comparable to that used at DOD. Although the 1997 amendments to the qualification standard brought the civilian agencies into conformance with the then existing DOD standard regarding education and training, the DOD standard was statutorily revised in 2000. As a result of the 2000 revisions, individuals hired into GS-1102 positions at DOD, who were serving in these positions as of Sept. 30, 2000, do not need to have a college degree and 24 semester hours in business or law-related subjects in order to qualify for higher-graded positions. However, the civilian agency standard, which is administratively under OFPP's control, has not been amended. Accordingly, individuals in civilian agency contracting positions need a degree and 24 semester hours of business or law-related education to advance beyond grade GS-12, while their DOD counterparts who were serving in these positions prior to Oct. 1, 2000, do not have to meet the advanced education**

requirements.

- a. **Do you believe the civilian agency GS-1102 qualification standards should be amended to comport with those used at DOD? Please explain your answer.**

While I appreciate the challenges that agencies and employees have experienced in their efforts to professionalize the workforce, I don't envision that OFPP will pursue changes to the education requirements for civilian contract specialists if I am confirmed. Civilian agencies developed extensive career management plans for their workforce based on the Clinger-Cohen requirements, OFPP Policy Letter 97-01, and the OPM GS-1102 contract specialist qualification standard. The purpose of these requirements was to professionalize and improve the quality of the acquisition workforce, and I believe that the workforce has had time to adjust to these changes. In accordance with OFPP Policy Letter 97-01, agencies are encouraged to provide tuition reimbursement, in accordance with section 4107 of title 5, United States Code, for personnel in acquisition positions; agency senior procurement executives may also waive the education requirement for civilian GS-1102s seeking higher-graded positions, as necessary, on an individual basis. These flexibilities reflect the government's commitment to professionalize the acquisition function and develop a highly-qualified, well-trained cadre of acquisition professionals.

- b. **Do you believe the different standards are justified by appropriate differences among the agencies' program requirements? Please explain your answer.**

Although civilian and defense agencies share many of the same program requirements, I feel that civilian agency GS-1102s have had the opportunity to meet the education requirements of the position if they wish to advance in their careers. Developing a highly-qualified, well-trained acquisition workforce will be one of my top priorities, if confirmed, and I support the current education requirements for the civilian agency GS-1102s. However, I would be willing to explore the current flexibilities provided under OFPP Policy Letter 97-01, in order to provide acquisition managers additional latitude for making personnel decisions.

Several new initiatives are underway at OMB to ensure that civilian and defense acquisition professionals share common career development requirements and opportunities, and I believe these initiatives will increase career opportunities for the entire acquisition workforce. OFPP recently chartered the Federal Acquisition Institute (FAI) Board of Directors to assist in directing the activities of FAI. One of the Board's primary goals is to align civilian and defense workforce training requirements by developing a common curriculum for all GS-1102s. Representatives from the Office of the Secretary of Defense and the Defense Acquisition University (DAU) serve on the Board to advise FAI on program, policy, and funding decisions related to civilian workforce development. Additionally, DAU and FAI are developing common core competencies for the acquisition workforce that will be used to ensure that training satisfies common learning objectives.

1800 Diagonal Road
Suite 200, Alexandria, VA 22314
(877) 770-9274 (703) 519-0029
Fax: (703) 519-0028
<http://www.trsa.org>

TRSA *Textile Rental Services Association of America*

ROGER F. COCIVERA
President and CEO

Representing the Textile Rental Industry: Linen Supply, Uniform Service, Dust Control and Commercial Laundry Services

**STATEMENT OF ROGER F. COCIVERA
PRESIDENT/CEO
TEXTILE RENTAL SERVICES ASSOCIATION OF AMERICA**

**SUBMITTED TO
COMMITTEE ON GOVERNMENTAL AFFAIRS**

**IN SUPPORT OF
DAVID H. SAFAVIAN
NOMINATED TO BE ADMINISTRATOR OF THE
OFFICE OF FEDERAL PROCUREMENT POLICY**

UNITED STATES SENATE

April 29, 2004

Ms. Chairwoman and Members of the Committee, I greatly appreciate the opportunity to provide this written statement for your subcommittee today in support of Mr. David H. Safavian's nomination as Administrator of the Office of Federal Procurement Policy (OFPP).

My name is Roger Covicera, President and CEO of the Textile Rental Services Association of America (TRSA), a national trade association representing over 1,100 company locations across the nation. Since 1913, TRSA members have provided textile maintenance and rental services to commercial, industrial and institutional accounts — over 93 percent of TRSA member companies are small businesses. TRSA members serve hygienically clean textile items to millions of customers in commerce, industry, and other professions. Major customers of most uniform and linen supply services and commercial launderers include: automobile service and repair facilities, food processing companies, pharmaceutical manufacturers and other manufacturing facilities; hotels, restaurants, hospitals, nursing homes, doctors' and dentists' offices and clinics; retail stores and supermarkets; and a variety of other industrial and service companies. The combined textile rental industry had an estimated 2002 sales of about \$10.9 billion. Linen supply and industrial laundering companies employ more than 110,000 people.

On behalf of our membership, I am pleased to convey TRSA's support of the President's nomination of David H. Safavian as Administrator of the Office of Federal Procurement Policy (OFPP). I have met Mr. Safavian personally and it is my firm belief that he will bring to his position a keen understanding of the needs of small business owners, and a willingness to work with the small business community to address the significant hurdles that faces these entities in the federal procurement process.

Additionally, I believe that he is up to the challenge of ensuring that the Administration achieves the obvious benefits of increased efficiencies while safeguarding the fundamental concept of truly competitive opportunities for the private sector and especially for small businesses. OMB has already started working towards achieving this goal with their management initiative relating to competitive sourcing.

Federal government officials must never forget that they are spending taxpayers' dollars to the tune of over \$200 billion a year in goods and services. Because they are spending the public's money, they must be committed to ensuring that the best and most efficient use of taxpayers' dollars is achieved -- whether a federal or private sector service provider is performing these functions.

TRSA supports the Administration's efforts to fully implement its competitive sourcing initiative across *all* federal agencies. TRSA is specifically supportive of the Administration's competitive sourcing initiative within the Department of Veterans Affairs, which currently remains stalled. With United States' forces engaged in the global war on terrorism, the number of servicemen and women returning from active duty will continue to rise. As such, the demand and costs of providing the best quality medical care for our veterans will most certainly increase. Competitive sourcing will help to address the increased funding needs at the Agency by generating billions in savings at the VA -- savings that will be invested back into "direct patient services" at the Agency.

TRSA looks forward to working with Mr. Safavian and other Members of Congress on these complex issues. Thank you, Madame Chairwoman and members of the Committee for the opportunity to provide this written statement in support of Mr. David H. Safavian's nomination.