

**STATEMENT OF
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BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
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Mr. Chairman,

I very much appreciate the opportunity to testify before you, Senator Collins and the other members of the Committee today regarding contracting issues and the use of American Recovery and Reinvestment Act (ARRA) funds. I am a former Administrator for Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB), acting in that position under President Reagan, confirmed by the Senate under President George H.W. Bush and then staying on in that role under President Clinton.

As Administrator, I was charged with setting guidelines for carrying out government acquisitions and many of the policies I initiated remain in effect today. These include those requiring the use of past performance and performance-based contracting techniques as well as the government's approach for defining inherently governmental functions.

Since joining the Jefferson Consulting Group in 1994, I have led the firm's government consulting practice in which we provide acquisition training and management consulting to a variety of agencies across the government as well as overseas. I also recently served as a member of the Congressionally chartered Acquisition Advisory Panel that in 2007 provided its report to OFPP and the Congress on ways to improve services contracting. I teach government contracting as an adjunct professor for George Mason University as well as for the International Law Institute.

I appreciate the importance and breadth of actions required to put the Stimulus program into effect and to provide effective oversight. The initial implementing guidance on ARRA released February 18, 2009 by OMB Director Orszag is thorough and sound. I very much applaud the efforts to make this process as successful, fair and transparent as possible for the American people.

While there are many important issues to be addressed, I will confine my remarks specifically to the contracting challenges associated with putting the program in place. I would particularly like to call the Committee's attention to the need for agencies to be fully prepared to define requirements and desired results early in the planning process, and to have sufficient and well-qualified acquisition resources in place to manage the procurements in a timely and effective manner.

In its implementation guidance, OMB lays out special requirements for contracting under ARRA. Having spent many years at OMB, I have great respect for that organization and I am sure that OFPP will do all they can to help agencies move this program forward. Key provisions of the guidance focus on maximizing opportunities for small business, streamlining award processes and maximizing competition, all worthy goals. Agencies are asked to do the following:

- Define contract requirements that deliver meaningful and measurable outcomes consistent with agency plans and the goals of the Recovery Act
- Obtain maximum practicable competition and clearly report contracts where competition was not used
- Apply sufficient and adequately trained workforce to responsibly plan, evaluate, award and monitor contracts
- Ensure an adequate number of qualified governmental personnel are available to perform inherently governmental functions
- Provide appropriate agency oversight at critical decision points

In carrying out these steps, agencies are encouraged whenever possible to use fixed-price contracts. One reason for this preference is that this contract type requires the contractor not the government to accept the risk of getting the job done. However, in order for contractors to be able to propose thorough and complete solutions and an accurate firm fixed price, it is essential that the government accurately define its requirements and objectives.

The guidelines also offer ways to try to obtain necessary staffing to see that the contracting process is done effectively, since standard procedures are to be followed in putting these awards in place. This is critical, given that there is a broad consensus that the acquisition process is currently facing a number of relevant and serious challenges.

Over the last year I have been engaged with a number of thought leaders through a program sponsored by George Mason University and IBM's Center for the Business of Government in assessing the acquisition processes of the Federal government. The conclusion from that assessment raises several critical concerns:

- Contracting staffing has remained relatively level at approximately 60,000 people since 2000 while the dollars associated with contracting have almost doubled to \$470 billion in 2007. This total comprises almost 40 percent of all discretionary spending by agencies. Not only are contracting staff managing a much higher procurement volume, but as agencies have moved toward acquiring services and solutions rather than commodities, procurement complexity has also significantly increased.
- Federal agencies are critically dependent on an effective acquisition process to accomplish their missions, yet many observers feel the system is broken, mired in cost overruns, accountability lapses and questionable outcomes.
- Those operating within the system see the environment as "toxic", characterized by fear and mistrust, with oversight bodies such as Inspectors General second-guessing their every action.

Our Acquisition Advisory Committee report cited similar concerns, and particularly the pressure on the acquisition community of “getting to award”, with little time for the necessary responsibilities associated with seeing that the government is actually getting what it is paying for. But even more problematic was the difficulty that every agency is experiencing in being able to adequately define requirements at the beginning of the contracting process. Numerous Government Accountability Office (GAO) and Inspector General reports cite as the key reason for failure of procurements the inability of the government to get the requirements right up front in the process. This was a message that our Panel heard from both government staff and contractors alike.

This problem is compounded by the difficulties in achieving effective collaboration between the agency contracting office staff responsible for putting the contract in place and the program staff that has the responsibility for both defining what is being sought and then monitoring contractor activities to see that the results are achieved. One of the biggest challenges in moving toward a performance-based environment is in seeing that the right people work together as a team and ensure that all of these responsibilities are successfully met over the life of the contract.

These issues are very real. Just last month I met with contracting staff as part of a larger acquisition review project. In an office that is still finishing one-quarter of its work from last year, to accomplish the goals of ARRA, they are expecting to have 17 years of work to do in the next few months without any sizeable increase in staff.

These problems may be even more pronounced in state agencies and those in counties and cities across the country that are strapped for funds and training. Many locations expecting millions of dollars in Stimulus money will be challenged to contract with firms who can do the work and create the jobs this legislation was designed to do. These communities may want to consider using the General Services Administration schedules program where available to them as a proven vehicle that is easy to use and reduces the risks associated with rapid timelines and high volume procurement.

It is critical that agencies proactively address these issues. We have seen from the experiences in Iraq and Katrina the consequences of pressure to get to award but then the after-effects as reviewers point out all the flaws of what was done and what was not done. To have these funds distributed poorly or wastefully in spite of the best intentions of all involved will benefit no one and only serve to call into question the basic integrity of the whole procurement process.

There are actions that can be taken now that will help ensure the Nation gets the best results possible through its contracting efforts in the ARRA program. I offer the Committee the following suggestions:

- Agencies should see that contracting staff and program officials are collaborating effectively at the front end of the process both in defining requirements and putting in place an effective monitoring approach to ensure results are achieved.

Our George Mason – IBM working group identified the Chief Acquisition Officer, a position established by Congress, as the likely position to see that this collaboration takes place. However, since these are non-career positions, many of them may not yet have been filled. Moreover, many agencies have not used this position effectively, assigning this responsibility to individuals not adequately qualified to carry it out or having so many other responsibilities that they cannot give reasonable attention to the role. Agencies should assign a key senior official the role to ask these important questions regarding up front collaboration and make sure contracting actions are aligned with agency and Congressional intent.

- Encourage, or direct, agencies to use an independent review body such as the National Academy of Public Administration to serve as an independent check to see that this collaboration is both working and effective at the front end of the process, before the contracts are let, as well as during the contract life. This is a role that the Academy is well equipped to play and Congress in the past has frequently suggested that agencies look to the Academy for this type of sound, objective management guidance and assistance. We all recognize the pressures that will be on contracting staff to get these funds out quickly so that they are working effectively for the American people. Having someone outside the agency providing guidance and concurrently providing a check to see that acquisition planning and execution are done well will prevent all kinds of problems later on. The Academy could assist in developing government-wide templates and in seeing that good practices by one agency are made available to others as well. This would not be a post-mortem review body ready to criticize poor performance but rather a proactive partner to help make good performance the rule and not the exception.
- Establish a business council at each civilian agency chaired by the Deputy Secretary with membership of the agency chief management officials, including Chief Acquisition Officer, Chief Information Officer, Chief Financial Officer and Chief Human Capital Officer to focus directly on all of the major agency contracting efforts. Such a body will offer another means of ensuring that effective business type collaboration is occurring at the highest level of the agency to define requirements and desired outcomes and the acquisition process is aligned with agency objectives.
- Consider creating a Federal “contracting life line” that states and localities might use for online training of staff and for acquiring effective templates and best practice approaches for seeing that they get the best possible results from their contracting efforts.

The George Mason–IBM assessment resulted in a number of other long-term recommendations that would also significantly improve the acquisition process. These include the following:

- Initiating a more robust human capital strategic planning process that would provide a full picture of all federal and contractor resources likely to be needed to accomplish agency missions.
- Providing sufficient resources to see that the right people with the right talent are in place to carry out all aspects of the acquisition function; as this Committee recommended, the Congress in the National Defense Authorization Act for 2009 has already taken steps to address acquisition workforce issues in terms of better defining staffing needs and addressing the issue of what constitute inherently governmental functions. These will be important efforts in seeing that agencies conduct effective human capital strategic planning to meet the acquisition challenges described above.
- Transform OFPP into an Office of Federal Acquisition Policy and include agency program managers under its policy purview to help to bring about that collaboration between program and contracting staff critical to an effective acquisition process.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions.