

May 11, 2006

Ms. Laura Auletta, Executive Director  
SARA Acquisition Advisory Panel  
General Services Administration  
1800 F Street, NW Room 4006  
Washington, DC 20405-0002

Re: Interagency Contracting Working Group Draft Report  
Entitled "Interagency Contract Vehicles" Dated 2/16/06

Dear Ms. Auletta:

Please accept this letter as input to the SARA Acquisition Advisory Panel with respect to its review of the laws and regulations that govern the performance of acquisition functions across agency lines of responsibility.

#### INTRODUCTION

In February 2006, the Interagency Contracting Working Group (ICWG) published a draft report, entitled *Interagency Contracting*. Our comments are limited to matters set forth in the report that relate specifically to franchise funds, and they are addressed in the order in which they appear in the report. Before addressing specific items of interest, however, we would like to make two general observations.

First, section 1423 of the National Defense Authorization Act for Fiscal Year 2004 (Pub.L. 108-136) directed the Administrator for Federal Procurement Policy to establish an advisory panel to review laws and regulations regarding the use of four separate and distinct contracting activities, to wit: (1) commercial practices; (2) performance-based contracting; (3) the performance of acquisition functions across agency lines of responsibility; and (4) the use of Governmentwide contracts. The performance of acquisition functions across agency lines of responsibility and the use of Governmentwide contracts raise distinct issues, and we believe that addressing these two items in combination is inappropriate and prone to cause confusion.

At the beginning of the second paragraph, the report states that "the performance of acquisition functions across agency lines is almost exclusively accomplished through the use of so-called interagency contract vehicles described in detail in the next section." This statement exemplifies our concern about the confusion that arises when the two activities are analyzed in conjunction with one another.

A franchise fund such as the Interior Franchise Fund (hereinafter referred to as "GovWorks") and the Federal Systems Integration Management Center (FEDSIM) are examples of organizations that perform the entire acquisition function across agency lines

of responsibility. Such so-called “interagency assisting entities” are able to plan, execute, administer, and close out an entire acquisition for another agency, and those functions are performed without regard to type of acquisition or contracting method. That is, an acquisition could be a performance based services acquisition conducted using open market requests for proposals without any reliance whatsoever on interagency contracting vehicles.

An interagency contracting vehicle (such as one of the Federal Supply Schedules), on the other hand, is just a tool used by both in-house contracting activities and interagency assisting entities to perform their acquisition functions. Moreover, all acquisition functions are not accomplished through interagency contracting vehicles, though such vehicles can accomplish (and thereby streamline) important steps such as price negotiations with respect to certain commodities. For example, an in-house contracting activity might use interagency contracting vehicles as one of many devices to effect a complex performance based services acquisition, but the organizations with cognizance of those interagency contracting vehicles would have little to do with the great majority of the acquisition functions being performed by the in-house contracting activity. In summary, we believe that the performance of acquisition functions across agency lines of responsibility and the use of Governmentwide contracts ought to be analyzed and reported in separate documents.

Second, our attitude in conveying comments in response to the draft report is one of collegiality. Nevertheless, we must also point out the at least some of the draft report appears to convey an unwarranted bias against franchise funds. *Ad hominem* arguments attacking the motives or integrity of managers of franchise funds and other interagency assisting entities have been raised in various fora by individuals who are philosophically or politically opposed to interagency assisting entities. Such arguments are logically fallacious, of course, and any reflection of them in the draft report renders a disservice to its audience.

Many acquisition reforms were effected during the decade of the 1990s, some of which were experimental in nature. Consequently, one should not expect flawless operations, and reviews of such experiments by inspectors general and GAO auditors is to be welcomed. However, the foremost purpose of oversight should be to improve the situation, and that cannot be accomplished if the issues are clouded by a failure to clearly identify the real issues that must be addressed. In our comments below, therefore, we will point out instances in which misstatements about franchise funds should be revised or redacted from the final report.

## THE DRAFT REPORT

### 1. Background (pages 5–6)

In the second paragraph of the “Background” section, “interagency assisting entities” are defined as intragovernmental revolving (IR) funds that provide interagency support services on the basis of specific statutory authorization such as the Government

Management Reform Act of 1994 (GMRA). Later, in the same paragraph, the report makes reference to a memorandum of the Inspector General (IG) of the Department of the Interior (DOI) regarding out-of-scope task orders that were improperly used to obtain interrogator services under a GSA Federal Supply Schedule for information technology. This reference is misplaced, however, because the DOI organization that facilitated the subject procurement is not an interagency assisting entity as defined in the draft report. Rather, it is a contracting activity within DOI that functions under the authority of the DOI Working Capital Fund, which does *not* constitute separate statutory authority to provide interagency support services. That DOI organization must instead rely on the Economy Act and adhere to its provisions when engaged in interagency transactions, just as in the case of any other Federal agency or major sub-organization. Consequently, the procurement to which the DOI IG referred in its memorandum is irrelevant to interagency assisting entities. It is, however, relevant to the potential misuse of GSA schedules, and the reference should therefore be moved to the part of the report that addresses the GSA Schedules Program.

2. Interagency Assisting Entities (pages 16–18)

a. At the end of the second full paragraph on page 17, the report states that franchise funds are to expire unless extended. This is not necessarily true. A passive act by Congress not to extend the franchise fund pilot program provisions of GMRA would not necessarily cause the franchise funds to evaporate, because each fund is established by a separate statute that repeats much of the authority set forth in GMRA, while adding additional authority. Those statutes would have to be affirmatively repealed in conjunction with a failure to renew the franchise fund pilot program under GMRA.

b. In the next paragraph, the report states that franchise funds are provided in many cases with authority to retain up to four percent of total annual income, but that the use of the 4 percent reserve is limited by statute to the acquisition of capital equipment, and for the improvement and implementation of capital improvements in financial management, IT, and other support systems reserve. This is quite true, but must be read in conjunction with the discussion two paragraphs earlier in the report regarding the authority of franchise funds to retain funds to maintain current operating reserves. In the case of GovWorks, for example, funds may be retained for a current operating reserve to account for depreciation, accrued leave, contingencies, etc. An *additional* amount of up to 4% of GovWorks's annual income may be retained in a separate reserve for capital improvements. The separate authorities to retain funds in reserves for current operations and future capital investment are due, of course, to the self-sustaining nature of franchise funds. We hasten to add that GovWorks has never retained amounts anywhere near the total authorized maximum, and the funds retained have been expended precisely as intended by Congress.

c. We take exception to the comment that begins at the bottom of page 17, to wit:

The GAO report [GAO-05-456] concluded that two franchise funds, GovWorks and FedSource, had failed to coordinate with DOD customers to adequately “define outcomes,” “establish criteria for quality,” and “specify necessary criteria for contract oversight” resulting in these entities not being able to demonstrate value.

This comment is misleading. What the GAO report said was that *all* parties, including DoD, failed to coordinate, etc. To quote the GAO report (GAO-05-456 page 21):

DOD and the franchise funds did not define desired outcomes and the specific criteria against which contractor performance could be measured and paid limited attention to monitoring contractors’ work. As we have reported previously, it is not always clear where the responsibility lies for such critical functions as describing requirements, negotiating terms, and conducting oversight. Although the FAR states that contracting officers are responsible for including appropriate quality requirements in solicitations and contracts and for contract surveillance, the franchise funds do not have sufficient knowledge about the DOD customers’ needs to fulfill these responsibilities without the assistance of the DOD customer. *Recently, the franchise funds contracting operations performed some internal reviews that have findings similar to ours, and the funds are working to address the problems.* (emphasis added)

The incomplete paraphrase in the draft report of the working group suggests that the franchise funds were solely responsible for the problems noted, and the report completely ignores the fact that the franchise funds had performed their own internal reviews, realized the problems, and were taking action to address those problem. The incomplete reference made in the draft report is an unfair reading of the GAO report.

As mentioned in the GAO report, we have recognized for some time the need for better coordination with clients, and giant strides have been made in response to the problems noted. In 2004, we contracted with Acquisition Solutions, Inc., to evaluate GovWorks’s operations, and to make recommendations for improvement. This assessment was accomplished and a report was issued in 2005. GovWorks has been using the assessment to develop and implement the policies and procedures required to overcome weaknesses described in reports from IG and GAO auditors. In addition, we have established a separate Policy Division, and one of the most important projects of that division is to obtain ISO 9000 certification, thereby ensuring that the right policies and procedures and in place and enforced. Moreover, we have just hired a very talented and experienced manager to establish a separate Compliance Branch, who reports directly to the head of GovWorks. In summary, the GovWorks organization that existed during the time period under review in the various audits and other reviews is not the same organization in place today.

3. Existing Requirements for Creation and Continuation—Franchise Funds (page 19)

Contrary to the statement in the draft report, the financial management elements that are reported by franchise funds to OMB do not include *any* that are “relating to contracting practices.” Therefore, the financial management elements do not focus on contracting practice to any degree whatsoever. The relevance of this aspect of franchise funds is unclear.

Franchise funds were created under a pilot program administered by OMB to establish shared service providers within the Federal government that would compete among themselves and with other organizations in providing common administrative services to other Federal agencies on a self-sustaining basis. Obviously, therefore, evaluating franchise funds on the basis of revenue and customer satisfaction is to be expected. Because franchise funds were not established to engage in interagency acquisitions, *per se*, those that were are subject to the same oversight mechanisms that apply to any contracting activity. The desire to provide top quality customer service includes the desire to avoid failures of compliance that naturally reflect badly on an organization. The GAO report cited in the draft report simply opined that the emphasis on good customer relations might create an incentive to meet client agency needs at the expense of sound contracting practices, but it did not present any evidence to show that such an incentive *actually* precipitates the misuse of interagency contract vehicles. One could just as easily argue that an emphasis on good customer relations creates an incentive to ensure compliance because failure to do so would harm customers.

It is correct that GAO discovered errors in contracting by assisting entities on behalf of DoD agencies. But as already mentioned, the possible causes for those errors include the joint failure of DoD agencies and the franchise funds to adequately define their requirements. Such failures are not necessarily inherent in the nature of assisting entities, nor are they necessarily ones that are systemic of the use of an assisting entity. Instead, such failures may be due to inadequate training and coordination, which often account for a wide variety of problems that might arise in a pilot program. The proper solution, then, is to:

- (1) ensure closer coordination between the client agency and assisting entity;
- (2) improve the education of the acquisition workforce;
- (3) develop management improvement goals within assisting entities; and
- (4) implement closer oversight.

And it is important to note, again, that these issues were already being addressed by GovWorks at the time GAO reported its findings, and solutions are now being implemented.

4. Incentives to Use Interagency Contract Vehicles—Funding Constraints (pages 21-22)

In the single paragraph on pages 21 and 22, the draft report discusses the phenomenon of “parking” of funds, and cites testimony from GSA and DoD officials. In that same paragraph, the report points out the legitimate flexibility that is offered by franchise funds (and other organizations such as FEDSIM) with respect to their ability to execute contracts after the end of the fiscal year with funds that were properly obligated under an interagency agreement before expiration. The implication seems to be that such flexibility would encourage “parking”. The report also includes a screen shot of some obsolete web pages from the GovWorks web site that was designed to inform viewers of this flexibility in the context of end-of-year budget execution, which is sometimes tumultuous. We offer the following from GovWorks’s 2001 web site to demonstrate that the requirement to comply with the *bona fide* needs rule has always been a part of GovWorks operations:

**3. How do we get started? What happens to funds transferred to the Interior Franchise Fund?**

Give us a call. We'll help you get started. When you have a bona fide need, funds can be transferred to the Franchise Fund, which creates an obligation for your agency. The funds obligated includes the cost of the bona fide need and the GovWorks' fee. GovWorks acts as your prime contractor for acquiring goods and services. GovWorks will immediately begin working on your requirement to award a contract for you. Funds obligated for a bona fide need will remain available until spent. Click here to link to [Agreement Format](#).

We also invite anyone interested to view our current web site, especially item #13, at: <http://www.govworks.gov/home/faqs.asp>. In addition, it is noteworthy that since its inception, GovWorks has deobligated over \$700 million and returned those expired funds to customer agencies, which is clearly inconsistent with a policy that would encourage “parking” funds.

5. Oversight Concerns (pages 23-24)

In the single paragraph on pages 23 and 24, which discusses the lack of internal controls over the use and management of interagency contracts, the draft report states that “recent reports have been particularly critical of Interagency Assisting Entities, such as DOI’s GovWorks Franchise Fund and GSA’s Federal Technology Service’s Customer Support Centers.” None of the GAO reports cited in that paragraph, however, even mention franchise funds, let alone GovWorks. If there is evidence to suggest that franchise funds have been criticized with respect to their use of interagency contracts due to a lack of internal controls, then such evidence should be cited. Otherwise, the reference to GovWorks and GSA in this context should be deleted.

6. Data on Management (page 25)

The logic of the reference to franchise funds in the second sentence of this paragraph is unclear. In the context of collecting and reporting data on interagency contracts, a franchise fund is no different than any other contracting activity in the Federal government that makes use of interagency contracts. Our response to the repetitious material at the end of this paragraph has already been set forth above.

7. Proliferation (page 28)

In the first full paragraph on page 28, franchise funds are listed with GWACs and the Federal Supply Schedules within the “Proliferation” section of the draft report. While generally innocuous, this reference should be deleted for two reasons. First, franchise funds are not interagency contracts any more than FEDSIM or an in-house contracting activity is an interagency contract. Second, franchise funds are few, and the pilot program under which they exist is not likely to expand.

### CONCLUSION

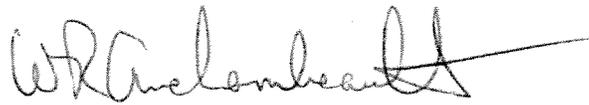
With respect to interagency assisting entities, and franchise funds in particular, the draft report reports some general concerns about internal controls, oversight, and external coordination that are based on material that is obsolete. For example, the GAO report on DoD’s use of franchise funds was based on fiscal year 2003 data, which are no longer accurate. For example, GovWorks now performs analyses that DoD can use to assess whether franchise funds deliver good value. Moreover, as mentioned above, GovWorks has conducted extensive management reviews, identified opportunities for improvement, implemented performance reviews, and established improvement goals. In 2005, we reviewed and updated those reviews and goals, and will continue to do so annually. GovWorks has established its own internal policy division, and has also retained the services of a leading government acquisition consulting firm to assist in developing and implementing various policies and procedures. This year, we are also establishing a separate compliance and oversight branch that will report directly to the Assistant Director for GovWorks.

We are now capturing additional information to demonstrate the value that client agencies such as DoD obtain by using a centralized acquisition workforce, with concentrations of various expertises, under a single management system. For example, GovWorks has achieved very high percentages in socio-economic business development goals, which are passed on to supported agencies to meet their own socio-economic goals. Finally, the competition rate at GovWorks over the past three years has fluctuated between 82% and 92%, which belies the notion that GovWorks (and probably any other so-called assisting entity) sacrifices competition to garner customer satisfaction. Given the well-publicized concerns about the current size of the acquisition workforce and the challenges it faces from a more complex acquisition system, franchise funds offer an opportunity to develop acquisition centers of excellence that can overcome any

challenges while making use of the limited acquisition workforce in the most efficient way possible.

To exploit the full benefits of franchise funds, concrete remedies should be pursued to overcome the issues raised in the draft report. One of the most important changes that might be considered by the Panel would be legislation to make the franchise fund pilot program permanent. Such legislation should also grant authority to OMB to issue regulations that would provide the guidance necessary for both franchise funds and their customers to address the concerns set forth in the draft report in a comprehensive manner, rather than under numerous memoranda of agreement between each franchise fund and each of its customer agencies.

Sincerely,

A handwritten signature in black ink, appearing to read "W Archambeault", with a long horizontal flourish extending to the right.

William Archambeault  
Acting Assistant Director  
Acquisition Services Directorate

Cc: Mr. Jonathan Etherton, Chairman  
Interagency Contracting Working Group  
Etherton and Associates, Inc.  
9300-D Old Keene Mill Road  
Burke, Virginia 22015-4277