ACQUISTION ADVISORY PANEL
Meeting Minutes
March 29, 2006
White House Conference Center
Washington, D.C.

The Acquisition Advisory Panel (AAP) convened its nineteenth public meeting on March 29, 2006 in the Truman Room of the White House Conference Center (WHCC), Washington D.C. In Ms. Marcia Madsen's absence, Mr. Marshall Doke was delegated Acting Chair of the AAP, and he opened the meeting at approximately 10:05 AM.

The guest speakers and their affiliations were as follows:

Mr. Barney Klehman	Director of Contracting, Missile Defense Agency	Attachment 2
Mr. David J. Capitano	Director, Defense Acquisition Regulations System Directorate, Defense Procurement and Acquisition Policy	Attachment 3
Mr. David M. Walker	Comptroller General of the United States	Attachment 4

The Working Group updates were presented as follows:

Dr. Allan Burman and Mr. Carl DeMaio	Co-Chairs, Performance-Based Acquisitions	Attachment 1

The Designated Federal Official (DFO), Laura Auletta, called the roll. The following Panel members were present:

Mr. Frank J. Anderson, Jr. (arrived at 10:13 AM)
Dr. Allan V. Burman
Mr. Carl DeMaio
Mr. Marshall J. Doke, Jr.
Mr. David Drabkin (not present for roll; arrived at 1:35 PM)
Mr. Jonathan Lewis Etherton
Mr. James A. (Ty) Hughes, Jr.
Ms. Deidre A. Lee
Mr. Thomas Luedtke
Mr. Joshua I. Schwartz
Mr. Roger D. Waldron (arrived at 10:14 AM)

The following Panel members were not in attendance:

Mr. Louis Addeo
Mr. David A. Javdan
Ms. Marcia G. Madsen

Acting Panel Chair, Doke, along with Ms. Auletta, DFO, took a moment to acknowledge the outstanding efforts of Ms. Anne Terry, Procurement Analyst, who will be leaving the staff. The Panel expressed its gratitude with a round of applause.

Mr. Doke continued the meeting and summarized the status of the first four recommendations made by the Performance-Based Acquisition (PBA) Working Group at the March 17, 2006 meeting.

The PBA Working Group Co-Chair, Carl DeMaio, continued his briefing, stating that a determination of the intrinsic value of PBA was not intended in the AAP mandate. He reminded the Panel that in the previous meeting, they discussed *how* to use PBAs. He led the discussion into the next area, *when* to use PBAs, by explaining the rationale behind Recommendation #5. He reported that the Working Group had heard extensive testimony about the importance of and difficulty in defining the requirements up front, the reliance on market research, and the uncertainty surrounding the use of a performance work statement (PWS), statement of work (SOW), or statement of objectives (SOO).

Recommendation 5: **Modify the FAR to Require Identification of the Government's Need/Requirements by Defining "Baseline Performance Case" in Measurable Terms Up Front.** Extensive discussions ensued regarding the merits, the cost and the constraints, particularly in larger agencies, of identifying baseline performance. Although Panel Members agreed that the concept was a good idea, their concerns stemmed from an agency's ability to implement this as a requirement. Panel Members were supportive of suggestions to incorporate this ideal without creating a FAR mandate, but agreed that emphasis on planning should be included. The Panel ultimately agreed to suspend further discussions until after the lunch break, wherein the modified language could be presented on-screen. Upon reconvening, Mr. DeMaio presented the following amended recommendation: *Modify the FAR to include an identification of the Government's Need/Requirements by defining a "Baseline Performance Case" in the PWS or SOO. OFPP should issue guidance as to the content on the Baseline Performance cases.* Mr. DeMaio also modified the language in the supporting text of the recommendation. In lieu of "revising the FAR to include those elements," Mr. DeMaio suggested, *"In issuing guidance on what should be included in a baseline performance case, OFPP should consider the following...."* Since no additional comments were made, the Acting Panel Chair called for a vote. Recommendation #5 was ***unanimously* adopted *as modified***.

Recommendation 6: **Improve Post-Award Contract Performance Monitoring and Management, Including Methods for Continuous Improvement and Communication through the Creation of a Contract-Specific "Performance Improvement Plan."** Panel Members voiced their concerns regarding the differing amounts of oversight required for varying complexities of acquisitions, debating the "one-size fits all" prescription. PBA Working Group Co-Chair Allan Burman suggested adding a phrase to the recommendation to detail the flexibility it intended, specifically, *"...that would be appropriately tailored to the specific acquisition."* The individual choice to use the currently required Quality Assurance Surveillance Plan (QASP) or create a separate document to monitor and report was also clarified. The recommendation ***was unanimously* adopted** with ***revised language.***

Recommendation 7: **OFPP Should Provide Improved Guidance on Types of Incentives Appropriate for Various Contract Vehicles.** Dr. Burman explained that the theme of improving appropriate use of PBAs continues in Recommendation #7. Mr. DeMaio added that creating this catalog of practices would provide a greater awareness of the incentives used, and the benefits of applying them. No additional questions or comments were raised. Recommendation #7 was ***unanimously*** **adopted.**

Recommendation 8: **OFPP Should Revise the Seven Step Process to Reflect the Panel's new PBA Recommendations: 1) Designate COPR and Form the Team. 2) Assess Baseline Performance and Desired Outcomes. 3) Examine Private Sector and Public Sector Solutions. 4) Select Transformational or Transactional PBA Model. 5) Narrowcast to Key Performance Indicators. 6) Select the Right Contractor. 7) Manage, Monitor and Improve Performance.** Dr. Burman explained that this recommendation involves changing the headings of the Seven Step Process Guide to provide emphasis on areas that require more attention. Due to element number one in this subset, Dr. Burman suggested that the Panel defer consideration until after conducting a vote on Recommendation #9. *Recommendation #9 was adopted after extensive discussions and the review of Recommendation #8 resumed.* Additional questions regarding the role of the COPR were raised based on the language in this subset. Dr. Burman and Mr. DeMaio reiterated that the COPR would be responsible for the management and monitoring of performance, as well as the coordination of program, technical and contract input on performance issues throughout the life cycle of an acquisition. Dr. Burman repeated that the COPR would be a COTR with additional duties that were specific to a performance-based effort and would go beyond that of the traditional COTR role. He went on to emphasize that the intent was to create a cultural shift by identifying an individual with specialized ability to deal with PBA at the front end, as well as the monitoring end.

The Working Group Co-Chair DeMaio addressed a question regarding the meaning of "narrowcast" in subset element number five, and entertained a suggestion to simplify it. The text of Element #5 was changed to *Focus on Key Performance Indicators.*

No other comments were made regarding the subset of elements and Recommendation #8 was **adopted** by a vote of six in favor, one opposed, and two abstentions.

Recommendation 9: **Contracting Officer Technical Representatives (COTRs) should be re-designated as Contracting Officer Performance Representatives (COPRs) in PBAs.** Panel Members engaged in lengthy discussions about the merits of creating a COPR and the specifics of that position. Debates ensued around whether a COPR was, in fact, a renaming of an existing position with added competencies in PBAs, and the responsibility to monitor performance through contract completion; or the creation of an entirely new position with specific skill sets. Dr. Burman suggested further that requiring a project management certification might also be desirable in a transformational PBA. Cost issues relating to changing nomenclatures within regulations and guidance documents versus the benefits gained by a name change, were also raised. The discussions resulted in agreement that an individual (regardless of title) should be assigned this specialized responsibility to improve the overall implementation of PBAs, and the consensus was that a functional specialist (namely a COTR) would serve that purpose. The Acting Panel Chair restated the recommendation as "COTRs in PBAs, receive additional PBA

training and be designated as the Contracting Officers' Performance Representatives, COPRs." Recommendation #9 was **adopted** by a vote of six in favor, one opposed, and two abstentions. Mr. DeMaio added another clarification that in DoD, COTRs are known as Contracting Officer Representatives (CORs).

Recommendation 10: **Improved Data on PBA Usage and Enhanced Oversight by OFPP on Proper PBA Implementation Using an "Acquisition Performance Assessment Rating Tool," A-PART.** Dr. Burman explained that this recommendation proposed a structured approach to reviewing PBA implementation that would sunset after three years. He advised that it was closely tied with Recommendation #11 as an attempt to have clear data in which to make assessments. Mr. DeMaio interjected that creating a tool to systematically collect data over a limited period of time would provide a better understanding as to whether PBA had been implemented properly and was effective. There were no questions submitted to the Working Group and Recommendation #10 was **adopted** by a vote of six in favor, one opposed, and two abstentions.

Recommendation 11: **OFPP should undertake a systematic study on the challenges, costs and benefits of using performance-based acquisition techniques five years from the date of the Panel's delivery of its final report.** Dr. Burman advised that much of the difficulty in the Panel's effort to date stemmed from the lack of a systematic effort to make assessments of PBA implementation. Panel Member Jonathon Etherton inquired about the timing, frequency, and elements involved in such a study, and Dr. Burman responded that an agency would be allowed to lay out those details, based on the degree of information available as a result of Recommendation #10 (Improved Data). Without further discussion, Recommendation #11 was ***unanimously adopted.***

The public meeting recessed for lunch at 12:38 PM, and reconvened at 1:07 PM.

Acting Panel Chair, Marshall Doke, began the afternoon session with a continuation of the discussion of PBA Working Group Recommendation # 5. (See above.)

Mr. Doke introduced Mr. Barney Klehman, the Director of Contracting for the Missile Defense Agency (MDA), which has an annual $9 billion budget. Mr. Klehman began by introducing his guests, Mr. Terry Rainey and Mr. Brad Orton from CACI, Incorporated, representing one of the two contractors that provides support to the Contracting Directorate at MDA, and Mr. Barry Richardson from the Executive Management Office of MDA.

Mr. Klehman then described his background in the space field dealing with launch vehicles, satellite, and ground command and control systems, and his excitement when he become part of MDA. He told of his astonishment in the early '90s at seeing the Department of Transportation conduct its business predominantly with contractor support. He imparted that the model, although not commonplace, made sense to him, particularly in areas where recruitment and retention of qualified candidates were difficult, and current government resources were dwindling.

MDA has had a blended workforce throughout its history, Mr. Klehman advised. The current ratio across MDA, not including the contracting function, is three to one, contractor support to government resources. Mr. Klehman reviewed several charts showing the trends for the past 20 years. He further expounded on the paramount need for more highly qualified employees, as the Strategic Defense Initiative Organization (SDIO) evolved into the Ballistic Missile Defense Organization (BMDO) which then became MDA. Along with the organizational changes, he explained, the complexity of the mission increased. As the agency progressed, he advised, the contracting mission shifted away from using services and other agencies to accomplish its mission, and more emphasis was placed on doing the work within MDA. With the higher volume of work, MDA's organic contracting workforce was insufficient to accomplish the mission, Mr. Klehman explained, and "the gap had to be filled." Mr. Klehman expressed his belief that the cycle of change will continue, and although the current workforce is well qualified, additional knowledge and resources will be needed to meet future demands. From a personal perspective, he said, the need will go beyond contracts experts to acquisition specialists who can effectively interface at multiple levels across the business. There currently is intense competition among agencies for the remaining resources, he advised, and the "brain drain" will continue.

Mr. Klehman provided for the Panel the MDA's solution, which was to use Scientific, Engineering and Technical Assistance (SETA) support to fill the gap. He advised that it was not necessarily less expensive, but the capabilities, the expertise available, and the flexibilities this approach offered, resulted in cost effectiveness. Contractors such as CACI, Inc. have been able to recruit and retain highly qualified, experienced individuals who may be retired from high profile positions, and want to remain employed at a different pace. As MDA experiences changes in the level of expertise required, Mr. Klehman offered, a SETA support contractor can provide that resource more easily. He emphasized that the support contractor can perform all functions except decision making (direction) and commitment of contracts (signing). He summarized the benefits of a blended workforce:

- Ability to extend and augment capabilities of Government team
- Access to a highly trained and qualified resource pool – right skill sets for a project
- Ability to ramp-up or downsize quickly, and move or remove people as needed
- Access to best practices from public and private sector and more diversity

Mr. Klehman also summarized the lessons learned in utilizing an extensive contractor support workforce. He advised that it was extremely helpful to have senior contract managers on-site ensuring that discipline exists to safeguard against potential ethical violations, that staff are performing only duties required, and that workload allocations are managed. Even with the limitations, he said, MDA treats the blended workforce as a completely integrated one. He explained that everyone is included in distribution of direction or policy messages, participation at meetings, and granting of administrative leave (Government 59-minute rule); however, they do maintain two performance evaluation systems. Mr. Klehman mentioned that government employees are evaluated under their current personnel system, and the CPARS system, a past performance rating tool maintained in an automated database used in source selections, is used for the support contractor.

Panel Members voiced their interest in avoidance of organizational conflicts of interest (OGI). Mr. Klehman responded that MDA contracts include extensive language indicating activities which are acceptable, and include non-disclosure agreements. Mr. Terry Rainey added that, from an industry standpoint, CACI had to make business management decisions, and live by them. Where the potential for an OGI has been raised in a solicitation, CACI has not bid. He explained that the company is proactive, has a screening process, and a mitigation plan where allowed.

The Panel Members' questions regarding the recruitment and retention of qualified staff were addressed within the presentation. Mr. Rainey added that CACI has the advantage of retaining a full-time recruiter who maintains a database of 600 to 700 contracting personnel around the world.

The Acting Panel Chair thanked Mr. Klehman and guests, and then introduced Mr. David Capitano, the Director of the Office of Defense Acquisition Regulations Systems (DARS) within the Office of Defense Procurement and Acquisition Policy (DPAP).

Mr. Capitano informed the Panel that his presentation would cover three basic areas: pricing sole source procurements, cost analysis, and other related issues. He provided the website where synopses of FAR cases are posted: www.acq.osd.mil/DPAP/DARC and specifically mentioned FAR Case 2006-036, entitled Definition of Cost and Pricing Data. He advised that there are three issues that the FAR team is tackling in that case: the question of what constitutes judgmental factors as a cost, the adequacy of the definition of cost and pricing data as currently stated in the FAR, and pricing of sole source commercial items.

Mr. Capitano said that he was not providing solutions, but an awareness of several issues for consideration by the Panel. Other areas of concern that he mentioned were adequate competition, adequate commercial sales or an alternate "test," and cost/price analysis and market research. Mr. Capitano conveyed that although the FAR includes a section on market research, it is not detailed and does not include examples. He stated his concern regarding the imbalance in the expectations to conduct market research, and the knowledge and experience of the workforce.

He disclosed that DoD had created a DFARS companion resource, "Procedures, Guidance and Information (PGI)," as a supplement which provides guidance and examples to its workforce. The PGI is amended to keep current with FAR revisions, he said.

Mr. Capitano discussed the contradictory interpretations of the FAR regarding when cost analysis can be performed. He relayed a scenario where there was inadequate competition, however it may be defined, inadequate commercial sales data, and no market research on a sole source item. "What's left?" he asked. He said that a contracting officer could start with a price that was "no good to begin with" and escalate it every year, or conduct a cost analysis.

Cost analysis raises another three areas of concern, he reported, after reading the testimony regarding cost and pricing data and industry's position. He questioned whether the issue was that industry could not provide *any* cost and pricing data, or whether the reluctance was due to

the certification and liability that accompanies it. He queried further whether the format for submittal of the data was the problem, relaying that companies accounted for costs differently; or thirdly, whether the definition of cost and pricing data versus *other* than cost and pricing data was the real problem. He indicated that there has been an increased drive to change the language because of the resulting confusion. He also advised that the term *cost and pricing data* is used significantly throughout the FAR and would require numerous changes once that determination was made.

Several discussions about distinguishing commerciality from the pricing of an item resulted. Mr. Capitano stated that purchasing commercial items reaped many benefits other than pricing, and those advantages should be considered. He agreed that competition simplified the issue, but when absent, the pricing focus appeared to be on profit, and not value. In response to inquiries about determining fair and reasonable prices in the commercial marketplace where other information was minimal, Mr. Capitano suggested the Government take steps to get the information from industry in more detail, with more push, reverting back to his question regarding "which part of providing the cost data is the problem?" He also stated that in oligopoly circumstances where the Government is the only buyer and there are only one or two suppliers, the very label "commercial market" is oxymoronic. He stated that the Government needed to explore that void more deeply.

Another discussion regarding certifications and Cost Accounting Standards (CAS) concluded that CAS could be the reason some contractors were intimidated by doing business with the Government. Mr. Capitano indicated that the DARS public meetings did not attract attendance by small- to medium-sized commercial companies, and the questions regarding objections to providing cost and pricing data have gone unanswered from that point of view. Additionally, the confusion with the definition of *information other than cost or pricing data* was discussed. Mr. Capitano stated that the issue has been argued at length, and it is still unclear whether "other" means everything that is not submitted under certified cost or pricing data, or means similar data that is not certified. He advised that clarification will not be available until all input is received by the FAR teams.

The Panel reconvened after a ten minute break. Mr. Doke respectfully introduced the Comptroller General of the United States, Mr. David Walker.

Mr. David Walker subsequently introduced three Government Accountability Office (GAO) executives who accompanied him, Dan Gordon, Stephanie May, and Bill Woods.

Mr. Walker presented a brief framework of the Government's financial condition. He advised that it is much worse than advertised due to known demographic trends, rising health care costs and lower federal revenues as a percentage of the economy. He suggested that it was clear that reengineering of what, how, and with whom the Government does business will be necessary to meet the challenges and capitalize on the opportunities of the twenty-first century. Mr. Walker referenced a report called "Twenty-First Century Challenges: Reexamining the Base of the Federal Government," found on the GAO website. The Government increasingly relies on the private sector, he conveyed, as is evidenced by the increase in numbers of contracts issued and dollars spent, especially associated with services.

While there has been a dramatic increase in procurement spending, Mr. Walker said, the federal acquisition workforce remains flat. He expressed his concern with the workforce situation, which is complicated further by the fact that a significant percentage of the acquisition workforce is eligible to retire, amidst an increasing requirement for additional skills and knowledge to successfully negotiate and administer more complex contract arrangements.

The Government, he suggested, needs to balance unlimited wants against critical needs that are affordable and sustainable over time. He advocated that the Government must improve in its establishment of realistic and well defined requirements. Both sides, he said, "tend to over promise and under deliver," and the result has been cost, schedule and performance problems. Mr. Walker recommended a better balance of the risks associated with the types of contracts utilized and, to the extent the Government is shifting towards performance based contract activity, should only pay for positive outcomes.

Mr. Walker voiced his concern with the lack of accurate data and transparency in the use of interagency contracts, particularly Indefinite-Delivery/Indefinite-Quantity (IDIQ) contracts, which are proliferating rapidly, he said. Orders under the Federal Supply Schedule (FSS) contracts, typically awarded through full and open competition, are subject to protest and consideration by GAO, he advised; but GAO can only consider protests under IDIQ contracts in limited circumstances. He invited the Panel to consider that issue when finalizing its recommendations, but if the Panel adopted a recommendation to open such orders for protest, respectfully suggested establishing a minimum dollar value to avoid review of small dollar protests. He informed the Panel that interagency vehicles were added to the GAO high risk list in 2005 because the rapid growth in the numbers of IDIQ awards coupled with increasing demands on a shrinking workforce, increased the risk of effective accountability and confidence in the process. Mr. Walker invited questions.

In response to a question about increasing transparency for IDIQ contracts, Mr. Bill Woods, Director in the Acquisition and Sourcing Management Team at GAO, suggested greater publication of individual task orders, as an approach. He cautioned that publishing *all* orders would be unmanageable, and suggested establishing a dollar threshold. Panel Member Roger Waldron commented that there are different levels of transparency for different vehicles. Mr. David Walker agreed and reiterated that the criticism received has involved circumstances where not only was competition precluded on a task order, but there was also no opportunity to protest.

In a related question from a Panel Member regarding adequacy of existing data, Mr. Woods responded that GAO also experienced frustration with obtaining data, and recommended that the Panel look to evaluate FPDS-NG as a vehicle to collect interagency contract data.

Mr. Walker responded to several comments about the definition of *inherently governmental*, agreeing that there is an inconsistent application of the principle. He offered that no definition would satisfy everyone, but more clarity was needed. He also stated that it is imperative that the Government retain an adequate number of people with the right skills and knowledge to enforce laws, determine policy, and oversee cost, quality, and performance based on well defined specifications geared towards achieving positive outcomes. Regardless of an agency's mission,

Mr. Walker said, the consideration of what is inherently governmental should be made at the individual component/function level. He stated that, even when an agency's, mission requires that a large portion of its duties be performed by civil servants, there may be administrative functions that can and should be considered for outsourcing or shared services within the Government.

Mr. Walker purported, in response to a query concerning the ability to pay for the enhanced competencies and skills of the workforce, that, in his opinion, it is a shared responsibility between the Executive and Legislative branches of the Government to ensure that adequate human and other resources are available and the budget is appropriated accordingly. He suggested that due to significant turnover in key positions, agencies have not presented adequate business cases to obtain that support.

Panel Member Roger Waldron raised a question about eliminating the restrictions on personal services contracts in light of the increased need to use support contractors. Mr. Walker stated that the Government needed to recognize that the workforce necessary to accomplish the mission involved government workers and contractors. He was joined by Mr. Bill Woods, who agreed that the Government should review the ban in relation to current workforce trends. Mr. Walker amplified the issue by adding that with reliance on contractors for support and often, oversight, there was an increased concern with conflicts of interest, and that government-wide standards were rightly expected by taxpayers to safeguard against potential abuses.

In response to questions from Panel Member Deidre Lee regarding any recommendations or concerns about interagency contracting and the fees associated with those transactions, Mr. Walker commented that interagency arrangements were created to try to improve the economy, efficiency, and timeliness of the contracting process by utilizing a central party. He stated that his concern was the shift of incentives and dynamics under an interagency arrangement. He posed these questions: are we promoting the use of those arrangements in circumstances where it did not make sense to do so, due to the economic rewards? Does generating revenue through fees change an organization from a cost center to a profit center? Are there adequate safeguards, oversight, and accountability? He deferred a response to the query regarding the rules that follow the money in interagency transactions, where some assisting agencies have claimed that they have additional flexibilities that make the money more fungible. Mr. Walker relayed that his office would consider this and other issues, and supply comments to the Panel.

Panel Member Jonathan Etherton remarked that the GAO reports were "foundational" to the Interagency Contracting Working Group's initiation and invited comments on measuring improvement. Mr. Walker offered that the Working Group should focus on the outcomes desired, and then address which processes, technologies, environment/culture and policies are needed to achieve those results. "For any system to work," he said, "you have got to have three things: incentives for people to do the right things; transparency to provide reasonable assurance that they are doing the right things; and accountability and consequences."

Acting Panel Chair Marshall Doke raised a final issue whereby GAO has said that incumbency is a legitimate competitive advantage. Since past performance is a required evaluation factor which, when rated high is impossible to change, Mr. Doke solicited Mr. Walker's perspective on

how to deal with competition and preferences. Mr. Walker responded that he would need to ponder further, but offered that past performance did not necessarily mean the same customer, and that other ratings should be included in that evaluation. Regardless, he continued, he understood that where contractor performance was adequate, there would be a reluctance to change.

Upon receiving no other questions or comments, Mr. Doke thanked Mr. Walker for sharing his time.

The DFO adjourned the nineteenth Acquisition Advisory Panel meeting at 3:55 PM.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

JUN 23 2006

Laura Auletta
Executive Director
Acquisition Advisory Panel

Attachment 1

Performance-Based Acquisition Working Group

Recommendations
March 17, 2006

These slides contain preliminary working group findings and recommendations for discussion purposes only. These preliminary findings and recommendations have not been approved by the Acquisition Advisory Panel.

The Panel's Mandate

SARA Legislative Mandate to Panel:

" … review all Federal acquisition laws and regulations, and, to the extent practicable, government-wide acquisition policies, with a view toward ensuring effective and appropriate use of commercial practices and performance-based contracting"

Working Group Statement of Issue:

"Why has Performance-based Services Acquisition not been fully implemented in the federal government?"

GAO Review of PBSA

"According to our reviews, agencies may have missed opportunities to take advantage of the benefits offered by...performance based service contracting, because of inadequate guidance and training, a weak internal control environment, limited performance measures, and data that agencies can use to make informed decisions."

--Government Accountability Office

April 2003

When and How…Key Issue!

- Major inconsistencies in *how to define* PBC and *when to use* PBC (GAO 2002 Report)
  - Inconsistencies "raise concern as to whether agencies have a good understanding of performance-based contracting and how to take full advantage of it."

Working Group Findings

- **#1. Despite OMB Target, Agencies Remain Unsure When to Use PBSA**
- **#2 PBSA Solicitations & Contracts Continue to Focus on Activities and Processes, Rather than Performance and Results**
- **#3 PBSA's Potential for Generating Transformational Solutions To Agency Challenges Remains Largely Untapped**
- #4. **Within Federal Acquisition Functions, There Still Exists a Cultural Emphasis on "Getting to Award"**

Working Group Findings, cont.

- **#5. Post-Award Contract Performance Monitoring and Management Needs to Be Improved**
- **#6. Most Contract Incentives Are Still Not Aligned to Maximize Performance and Continuous Improvement**
- #7. **FPDS Data Are Insufficient and Perhaps Misleading Regarding Use and Success of PBSA**

Three Major Recommendation Areas

- **When to Use…**
  - #1. Revised PBA Quotas
  - #2. OMB Guidance on When to Use and PBA "Opportunity Assessment" Tool
  - #3. Agency Acquisition Performance Plans
- **How to Use…**
  - #4. Best Practice Measures Guide
  - #5. Baseline Performance Case Requirement
  - #6. Performance Improvement Plan Requirement
  - #7. OMB Guidance on Use of Incentives
  - #8. Revised 7 Steps Process
  - #9. Designation of COPR Role for PBA
- **Data and Benefits…**
  - #10. A-PART Oversight Process
  - #11. 5 Year Study of Proper Implementation…and Impacts

Recommendation 1:
OMB's Government-Wide Quota of Requiring 40% of Acquisitions be Performance-based Should be Adjusted to Reflect Individual Agency Assessments and Plans for Using PBA

- PBA targets to be set by each agency, with review by OMB

Recommendation 2:

OFPP Should Issue More Explicit Guidance and Create a PBA "Opportunity Assessment" Tool to Help Agencies Identify When They Should Consider Using Performance-based Acquisition

Two Categories of PBAs

Option 1: Transformational Performance-Based Acquisitions

- When to Use: Acquisitions involving services wherein the agency identifies a baseline need/problem, but is not in a position to specify the work that will be done. In this case, the agency should establish outcomes and allow vendors to offer unique (and potentially adjust post-award, subject to the cardinal-change doctrine) solutions proposing the specific approach to solving the baseline need/problem. The agency thus places the risk that the work being done may not solve the baseline need/problem squarely with the vendor.
- What to Use: Statement of Objectives
- What to Measure: Measurable performance standards would relate to the impact of the acquisition on the agency's need/problem, but not the work actually done by the vendor in solving the agency's need/problem.

Option 2: Transactional Performance-Based Acquisitions

- When to Use: Acquisitions involving services wherein the agency identifies a baseline need/problem, and has already substantially determined what work is to be done. In this case, the agency is more concerned with ensuring that work being done meets certain cost, quality or timeliness attributes. The agency is willing to assume the risk that the work being done may not solve the baseline need/problem.
- What to Use: Performance Work Statement
- What to Measure: Measurable performance standards would relate to the quality and attributes of the work actually done, with limited or no measurement on impact of work on agency's need/problem.

Opportunity Assessment Tool

OMB Would Create a Tool that Advises Agencies to Consider:

- whether a performance-related baseline problem exists (cost, quality, timeliness, impact to agency mission)
- the level of risk associated with the service not being optimally provided (importance to mission of the service being provided optimally);
- the level of confidence the agency has in its own “work statement” to solve the baseline problem;
- the amount of risk the agency wants to assume for managing the service impact on its own vs. shifting to a vendor;
- the readiness of the Program to measure the impact of the service on its program performance goals/mission, as well as the readiness of Program staff to participate in a PBA process

Recommendation 3: Require Agencies to Devise "Acquisition Performance Plans" to Guide their Acquisition Management

Key Elements of Agency Plans:

- **Alignment**: Identify the role of acquisition in achieving the agency's mission, with specific alignment to program goals and measures
- **Portfolio Assessment**: Include an assessment of the current service acquisition portfolio with a view on improving management and performance of current service contracts
- **Portfolio Projection**: Include an analysis of the projected agency service acquisition needs, taking into account program performance objectives, agency service challenges, and experiences of other federal agencies in using PBA techniques for similar services
- **Target and Schedule**: Establish a schedule of service areas that would be reviewed for PBA, including a target for the use of PBA for the acquisition of services
- **Workforce**: Identify the acquisition human capital needed to manage performance under the plan.

Recommendation 4: Publish a Best Practice Guide on Development of Measurable Performance Standards for Contracts

- **Measurement "Chain" or "Logic Model"** Performance measures should be defined using a structured framework

- **Baseline & Outcome Measure(s):** PBA's should be grounded in at least one or more measures that directly assess the agency's baseline need/problem relating to
  - Improved performance toward program goals, including improved service levels or impact to agency customers, and/or
  - A major cost management issue facing the program, resulting in cost savings or enhanced ability by the program to operate in a more economical or efficient manner.

- **Contract Management and Monitoring Measures**: Other performance measures used in a PBA should relate to the work actually being done by the vendor—with particular focus not on effort or activities conducted, but actual service "attributes" such as:
  - Timeliness; Accessibility; Quality; Workload levels; and Economy

- **Subjective vs. Objective Measures**: Reflecting recent revisions in the FAR, the guidance should address when and how to use subjective performance measures, including customer satisfaction.

- **Limiting Measures:** The Panel endorses the use of sampling and "representative indices" to measure large service areas rather than measures for each service area.

- **Measurement Selection Process**: The guidance should provide helpful practices to guide the process by which measures are developed—ensuring that program and subject matter expertise are used to select measures.

- **Evolution of Measures**: Recognizing that the management of service acquisition is highly relationship-based, the guidance should address a process by which measures WILL and MUST change over time. (Subject to the cardinal change doctrine)

Recommendation 5:
Modify the FAR to Require Identification of the Government's Need/Requirements by Defining "Baseline Performance Case" in Measurable Terms Up Front

- **Baseline Performance State:** Using the outcome performance measures, the agency would assess the current level of performance in a particular service area. In addition to measuring the baseline, some qualitative description of the performance problems/needs would be provided.

- **State-of-Practice**: The agency would describe the current "state-of-practice" in the service area as determined from its market research.

- **PBA Approach:** Based on the analysis described above, the agency would then select and justify either the use of a Transformational PBA or a Transactional PBA. The agency would also include the SOO or PWS.

Recommendation 6:
Improve Post-Award Contract Performance Monitoring and Management, Including Methods for Continuous Improvement and Communication through the Creation of a Contract-Specific "Performance Improvement Plan"

- Include reporting of required performance standards under the QASP
- Suggest changes in work product to achieve improved performance and reflect changing circumstances, and
- Identify eligibility for contract incentives, if any.

Recommendation 7: OFPP Should Provide Improved Guidance on Types of Incentives Appropriate for Various Contract Vehicles

- A catalog of the various types of incentives appropriate for use in PBA efforts (both financial and non-financial),
- A critique of how such incentives are currently being applied in selected performance-based awards,
- An assessment of the applicability of award fee and award term approaches to performance based acquisitions (making it clear that while subjective, these techniques offer perfectly acceptable means for measuring performance), and,
- A discussion of challenges posed in managing PBAs under existing budget and appropriation rules that limit multi-year financial commitments and incentive-based budget projections.

Recommendation 8: OFPP Should Revise the Seven Step Process to Reflect the Panel's new PBA Recommendations

- **Agency Pre-Cursor: Acquisition Performance Plan (APP)**

- **Step 1: Designate COPR and Form the Team**

  The modification of this step is meant to place more responsibility on the COPR to coordinate PBA planning.

- **Step 2: Assess Baseline Performance and Define Desired Outcomes**

  The modification is meant to reinforce the practice of selecting outcome measures and assessing the existing baseline at the beginning of an acquisition—all with an eye toward improving the performance need/requirements definition.

- **Step 3: Examine Private Sector and Public Sector Solutions**

  This step remains the same.

- **Step 4: Select Transformational or Transactional PBA Model**

  This step reflects the two categories of PBA--part of an effort to move beyond a one-size-fits-all use of PBA and provide clarification on when to use a SOO vs. PWS.

- **Step 5: Narrowcast to Key Performance Indicators**

  This refinement reflects the Panel's desire to limit the number of performance measures included in a PBA contract to a "sampling" or representative index of measures.

- **Step 6: Select the Right Contractor**

  This step remains the same.

- **Step 7: Manage, Monitor and Improve Performance**

  This step would be modified to include the establishment of milestones for the vendor to prepare "Performance Improvement Plans" as well as the agency's review and use of those plans to monitor and improve performance.

Recommendation 9:
Contracting Officer Technical Representatives (COTR's) should be re-designated as Contracting Officer Performance Representatives (COPR's) in PBAs

- Formal designation of COPR reinforces a culture change.
- Improved advanced training in performance management—particularly in the development of performance measures and post-award contract performance monitoring and management.
- DAU and FAI should jointly develop a formal educational certification program for those occupying the COPR position.
- For Transformational PBA's, every effort should be made to see that key staff include a certified project manager

Recommendation 10: Improved Data on PBA Usage and Enhanced Oversight by OFPP on Proper PBA Implementation Using an "Acquisition Performance Assessment Rating Tool" A-PART

- OFPP would develop a checklist that reflects how well a particular acquisition comports with the basic elements of the seven steps guide. Agencies would then fill out the checklist for each PBA.
- A methodological and accountable approach to PBA implementation not only provides better data, but also helps agencies learn how to implement PBA in a more structured and accountable manner. More rigor is needed in the early stages of PBA's implementation until agencies are comfortable and competent in the use of the tool.
- Each year OFPP should sample the A-PART documents to see if PBA implementation is in fact being handled properly in each agency.
- This requirement would sunset after three years, unless OMB and agencies felt the use of the A-PART process should continue.

Recommendation 11:

OFPP should undertake a systematic study on the challenges, costs and benefits of using performance-based acquisition techniques five years from the date of the Panel's delivery of its final report

- More disciplined implementation and greater clarity on when and how to use PBA is the focus of Recommendations 1-9. Recommendation 10 then creates a data collection mechanism to track successful implementation.

- A systematic review of PBA implementation would offer a solid basis for concluding whether significant cost and programmatic benefits are in fact achieved through the adoption of performance-based acquisition methods.

Blended Workforce In MDA Contracting

OVERVIEW

- **Workload Resource Summary History**
- **Evolution of the MDA Contracting Organization**
- **Use of SETA Support In MDA/DAC**
- **Benefits from a Blended Workforce**
- **Lessons Learned**

HISTORY - CONTRACT ACTIVITY AND RESOURCES

Fiscal Year	Dollars Obligated ($M)	Contract Awards	Task Orders	Contract Mods	Purchase Orders	BOA Awards	GSA Delivery Orders	Active Contracts	FTEs/ Actual	
									Gov	Seta
1986	22	11	-	10	-	-	-	11	11	0
1987	136	46	-	165	-	-	-	55	11	0
1988	255	54	-	224	-	-	-	100	12	<26
1989	354	50	-	347	-	-	-	144	13	26
1990	638	34	-	510	-	-	-	143	14	26
1991	702	29	-	556	-	-	-	128	14	26
1992	894	29	-	613	-	-	-	110	13	26
1993	653	29	-	611	1	-	-	87	13	52
1994	344	23	3	548	18	-	-	80	13	49
1995	252	25	7	475	16	-	-	63	20	48
1996	300	7	6	509	28	-	-	61	24	42
1997	383	17	15	445	40	-	-	63	39	32
1998	557	12	63	749	16		-	65	41	31

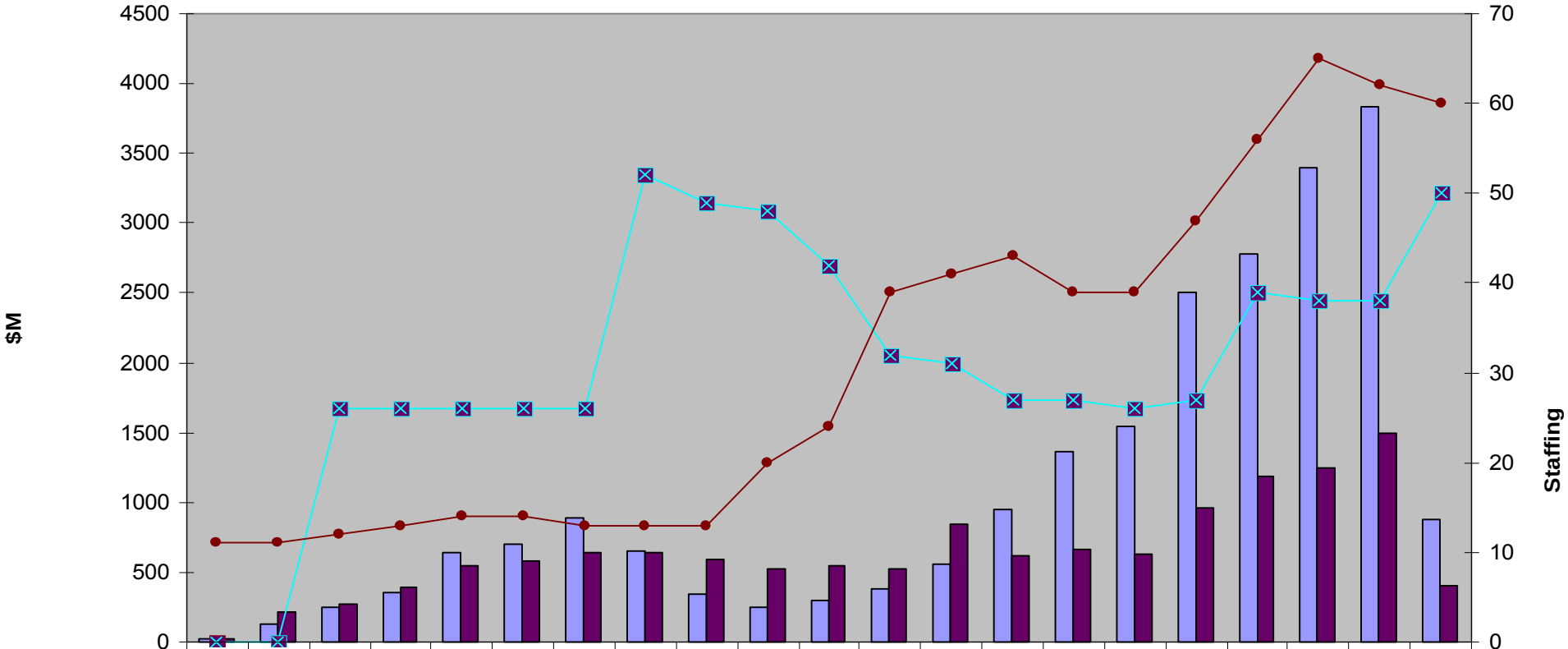
CONTRACTING ACTIVITY - HISTORY

Fiscal Year	Dollars Obligated ($M)	Contract Awards	Task Orders/BPA Calls	Contract Mods	Purchase Orders	BOA/ BPA Awards	GSA Delivery Orders	OTs/ Cooperative Agreements	Active Contracts	FTEs Actual	
										Gov	Seta
1999	955	7	59	552	4	-	-		62	43	27
2000	1,370	7	33	590	3	5	21		57	39	27
2001	1,548	8	22	554	14	3	33		86	39	26
2002	2,500	42	36	823	4	6	32	14	163	47	27
2003	2,774	137	32	994	3	6	15	4	245	56	39
2004	3,401	125	48	1070	11	1	25	3	300	65	38
2005	3,841	180	44	1311	19	0	20	0	337	62	38
2006 (1st Qtr)	883	15	7	379	5	0	1	0	205	*60	50

Count includes MDA in NCR and JNIC

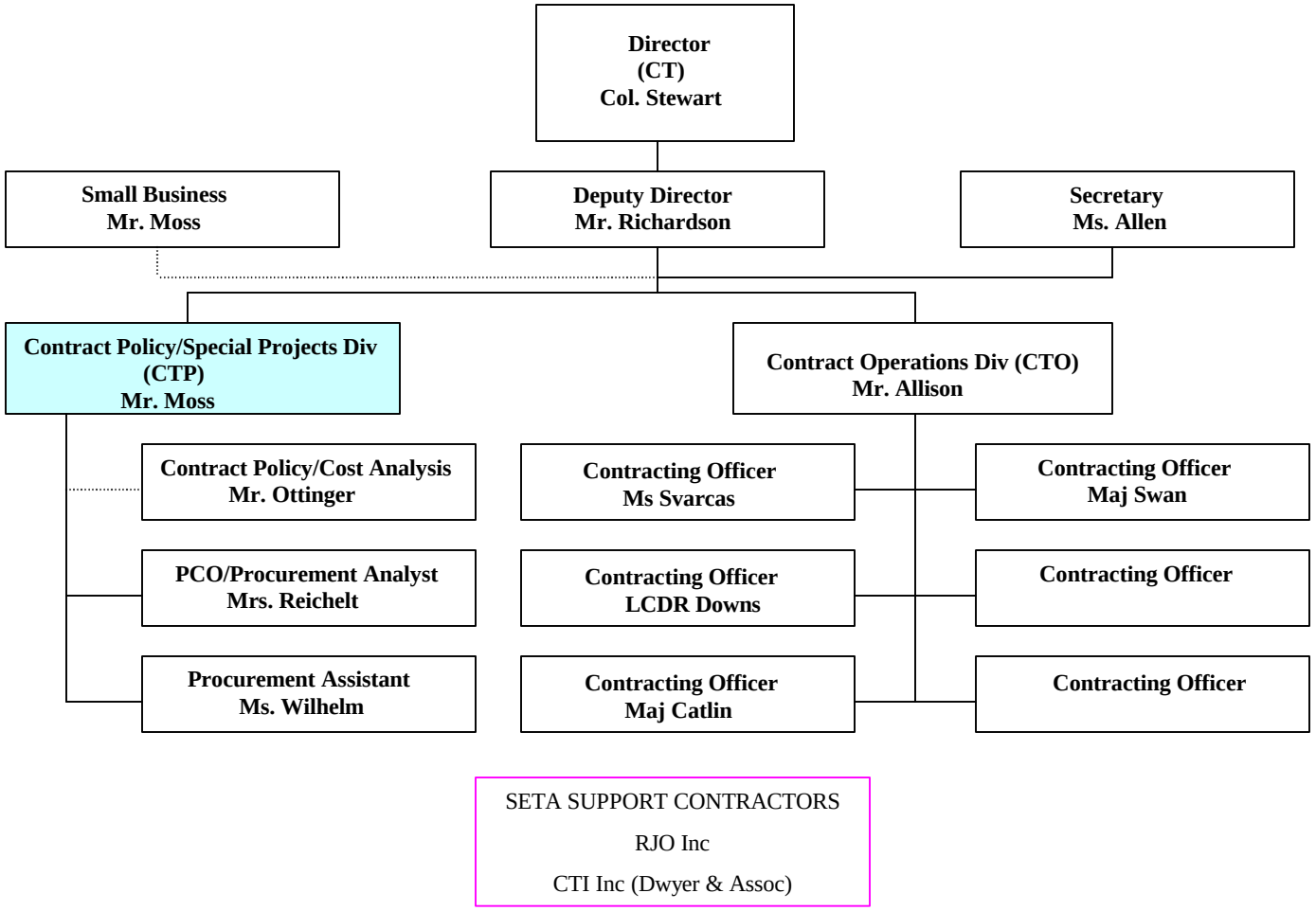
*** FTE Count includes actual on-board staffing—Authorized Gov FTE in 1st Qtr 2006: 75**

BLENDED WORKFORCE PROFILE



	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06 (1Qtr
Dollars	22	136	255	354	638	702	894	653	344	252	300	383	557	955	1370	1548	2500	2774	3400	3841	883
Actions	21	211	278	397	544	585	642	644	592	523	550	517	840	622	659	634	957	1191	1250	1500	407
SETA	0	0	26	26	26	26	26	52	49	48	42	32	31	27	27	26	27	39	38	38	50
GOV	11	11	12	13	14	14	13	13	13	20	24	39	41	43	39	39	47	56	65	62	60

1986-1992 ERA CONTRACTING ORGANIZATION--SDIO



CURRENT MDA/DAC ORGANIZATION

Workforce
Gov: 72 (Auth)
CACI: 50

DAC — CONTRACTING

DIRECTOR — Barney Klehman — SES
DEPUTY DIRECTOR — COL Thomas* — O-6

Secretary
Ms. Jones

SB
Liaison

DACA (CTA)	DACC (CTC)	DACE (CTE)	DACJ (CTJ)	DACK (CTK)
SPECIAL PROGRAMS, SENSORS & ALLIED SUPPORT	CONTRACT POLICY, REVIEW & PRICING	EXECUTIVE MANAGEMENT	JNIC OPERATIONS	KEI, M&S, C2BMC & SYSTEM ENGINEERING
Mr. Wright	**Ms. White**	**COL Thomas***	**Ms. Smith (A)**	**Mr. McLaury**

DACN (CTN)	DACR (CTR)	DACS (CTS)	DACT (CTT)
GROUND BASED MIDCOURSE DEFENSE	BUSINESS OPERATIONS	CONTRACTOR SUPPORT SERVICES	ADVANCED SYSTEMS, MFG, TARGETS, TESTS & COUNTERMEASURES
Mr. Runner (A)	**Ms. Cunningham**	**Ms. Coleman**	**Ms. K. Jackson**

DACL (AL-K)	[SS-K]	[TH-L]	[SM-K]
AIRBORNE LASER & LASER TECHNOLOGY	SPACE TRACKING & SURVEILLANCE SYSTEM	TERMINAL HIGH ALTITUDE AIR DEFENSE (THAAD)	AEGIS BMD
Ms. M. Jackson	**Col. Blalock**	**Mr. Schick**	**Ms. Rustemier (A)**

***Dual-Hatted**

INTERESTING ACQUISITION INITIATIVES HAVE DRIVEN THE WORKLOAD

- Super SETA Contracts (1988) were the model for Multiple Award Task Order Contracts in FASA
- LACE/RME Launch Services – Innovative Approaches
- Major Influence In Early Days was on Keeping Many Technologies Under Work and Shifting Funds to those With the Most Promise
- Heavy use of Award Fee Contracts to Support Need for Flexibility and Responsiveness
- Many, many other innovative programs and contracting approaches have driven the need for more highly qualified contracting personnel

SDIO/BMDO/MDA

- **All Three Organizations by Careful Design Utilized a Mix of Government and Contractor Personnel**
- **These Organizations All Changed Rapidly in Technology and Skills**
- **All MDA-NCR Directorates Are a Blended Workforce – Not True Yet for External Locations (CO, CA, NM)**

WHERE ARE WE NOW?

- MDA WORKLOAD INCREASING – AMOUNT AND COMPLEXITY
  - MANY ELEMENTS INCREASING DEVELOPMENT
  - MORE EMPHASIS ON TOTAL INTEGRATION
- 1102 WORKFORCE IS IN SHORT SUPPLY
  - RETIREMENTS – INSUFFICIENT REPLACEMENTS IN "PIPELINE"
  - COST OF LIVING INHIBITS RECRUITMENT FROM ELSEWHERE
  - INTENSE COMPETITION AMONG GOVT AGENCIES AND PRIVATE SECTOR (GETTING WORSE EVERY DAY)
  - INABILITY TO RECRUIT/RETAIN TO NECESSARY LEVEL
    - REENGINEERING MOVES, BRAC MOVES, MARKETPLACE
- SOLUTION: USE SETA SUPPORT TO FILL THE GAP
  - USE OF SETA NOT CHEAPER, BUT CAN BE MORE COST EFFECTIVE
  - EASIER TRANSITION, LESS NONRECURRING COSTS, MORE CAPABILITY
- RESULT: HIGHLY SUCCESSFUL – MISSION STILL BEING ACCOMPLISHED DESPITE ADVERSE CONDITIONS

BLENDED WORKFORCE IN MDA/DAC

- **SDIO/BMDO/MDA Workforce Has Changed Often in 20 Years. Surges Up or Down Have Been Met With Changes to Contractor Workforce**

- **Current SETA Contract Calls for 50 FTE: Up from 38 in 2004 to Off-set Loss of Government Staff – Total Authorized Workforce Now Managed Interchangeably – Allows Greater Flexibility Based on Market Situation**

- **42 On-Site FTE In HQ and Operational Functions:**
  - **Heaviest Concentration Work as Contract Specialists Supporting Pre-Award, Award, and Post-Award Contract Functions**
  - **Systems Administration and E-Business Support**
  - **Policy and Special Projects**

- **Eight Offsite FTE Comprise Work by 15+ Specialists Supporting MDA and Multiple Other Clients --- Bring Great "Reachback" into specialized skills:**
  - **Competition Support for Automated Source Selection Capabilities**
  - **Special Studies and Policy Support**
  - **eBusiness and SPS Expertise**
  - **Training and Facilitating**

BLENDED WORKFORCE BENEFITS

- **Leverage the Core Government Workforce—Extend and Augment Capabilities of Government Team**
- **Highly Trained, Experienced, Qualified Resource Pool**
- **Ability to Ramp-up for Surge Workload**
- **Ability to Downsize Quickly**
- **Ability to Quickly Find Right Skill-Sets for Project Requirements**
- **Successful Implementation of e-Business changes of last fifteen years**
- **Ability to Take Action to Quickly Move/Remove People When Stronger Skills are Needed or Due to Behavior/Performance Issues**
- **Bring knowledge of best-practices in public and private sector**
- **Provides Very Stabilizing Influence – Particularly In Last 12 Months of High Government Turnover (Impact of Marketplace, BRAC, etc)**
- **Provides Better Breadth and Diversity; Critical for Complex Programs**

LESSONS LEARNED

- **Making SETA Staff Part of the On-site Team Works Well When Full-time Support is Needed—On-site Contractor Management Is Needed To Provide Contractor Oversight**

- **Having Access to SETA "Back-Shop" Experts, as Needed, Leverages DAC Capabilities**

- **SETA Staff Typically Have Prior DoD Contracting Experience and Know Limits on Their Actions**
  - **Defined Responsibilities Can "Get in the Way", but Work Requirements Need to Be Adequately Covered In the Contract**
  - **Feedback Has Proven Beneficial On Defined Taskings**
  - **Partnering Vs Traditional Government/Contractor Relationship**

- **Different Contracting Officers Have Used SETA Resources Differently—Creates Confusion – Striving to Create More Consistency in Processes and Management**
  - **Enables better use of SETA Resources**

LESSONS LEARNED CONT'D

- **On-site SETA Staff are Not Entitled to Government Privileges such as the "59 Minute Rule," Snow days, Parking—Sometimes a Cause for Concern – but Normally "One" Workforce**

- **Tendency for Government Managers to Want to "Interview" Potential New Hires or Otherwise Get Involved With the Contractor's Hiring Process—Sometimes Needs to Be Checked (Non-Personal Services Restrictions)**

- **We Have Used FFP, CPAF, and CPFF Contract Vehicles. No Distinguishing Advantages Accrue to Either—both CPARS and Award Fee are Powerful Tools**

- **Turnover Has Been Less of a Problem with SETA than With Government – Critical to Mission Accomplishment**

SUMMARY

- **NECESSITY IS THE MOTHER OF INVENTION**
  - **POLITICAL DECISIONS DRIVE CONSTRAINTS**
  - **INABILITY TO DO OUR MISSION IS UNACCEPTABLE**
- **EXTENSIVE USE OF SETA SUPPORT MAY NOT BE APPLICABLE IN ALL CASES – BUT HAS CLEARLY BEEN A SUCCESS STORY FOR MDA**
  - **ACROSS THE BOARD IN ALL MDA FUNCTIONS**
  - **IN CONTRACTING**
- **WE HAVE NOT EXPERIENCED ANY SITUATIONS WHICH ARE QUESTIONABLE ETHICALLY – THE OPPOSITE IS TRUE!**
- **WE THINK THIS IS A USEFUL TOOL WHICH SHOULD BE CONSIDERED IN A POSITIVE FRAMEWORK FOR THE POTENTIAL BENEFITS VICE FEAR OF NEGATIVE SITUATIONS**

Section 1423 Panel
Presentation by David J. Capitano
Deputy Director, Defense Procurement and Acquisition Policy (DARS)
March 29, 2006

- Pricing Sole Source Procurements
- Cost Analysis
- Issues

Section 1423 Panel
Commercial Items/Services
Pricing Sole Source Procurements

- Adequate Competition
- Commercial Sales
- Price Analysis
- Cost Analysis

Section 1423 Panel
Cost Analysis

- Cost or Pricing Data
- Information Other Than Cost or Pricing Data

Section 1423 Panel Issues

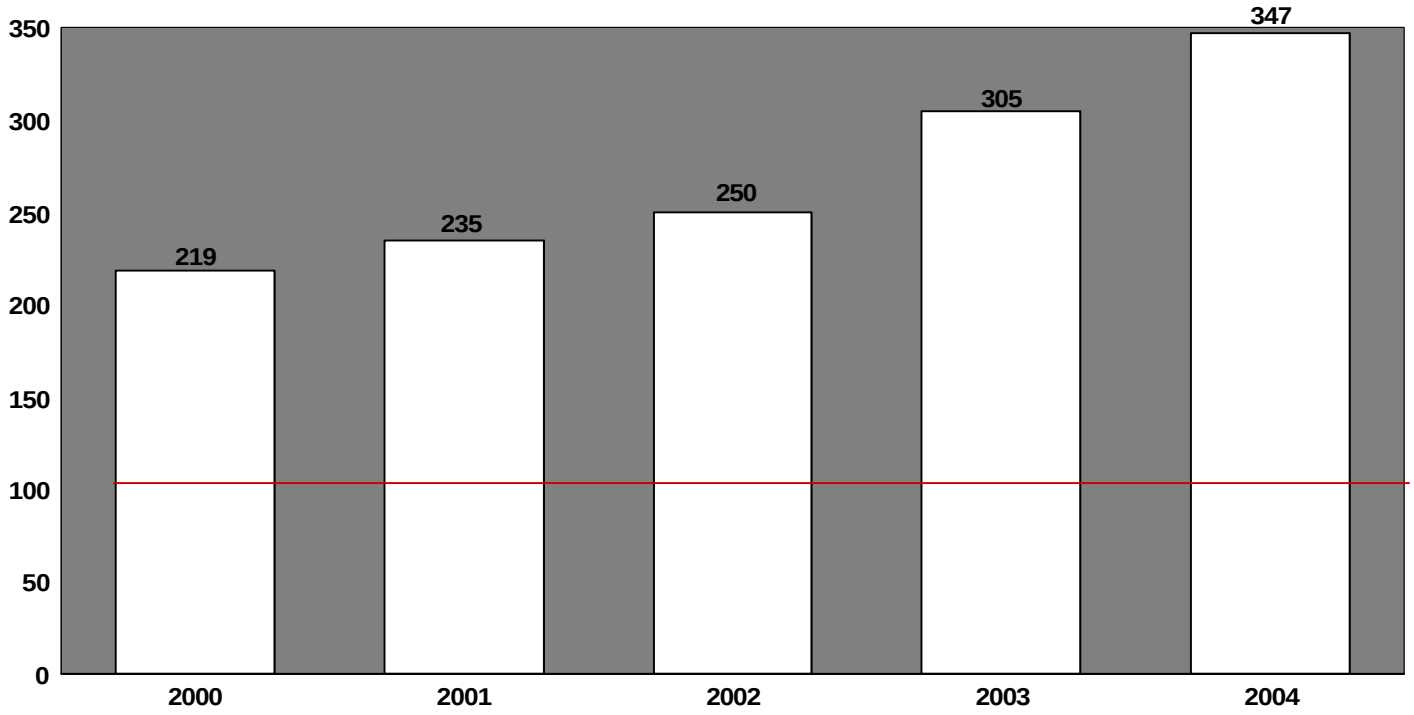
- Cost or Pricing Data
  - Certification
  - Definition
  - Format for Submittal of Data
- Significance of Commercial Designation
  - Pricing
  - Other (e.g., Intellectual Data Rights)

Attachment 4

Federal Acquisition Trends

Federal Procurement Spending

Dollars in billions



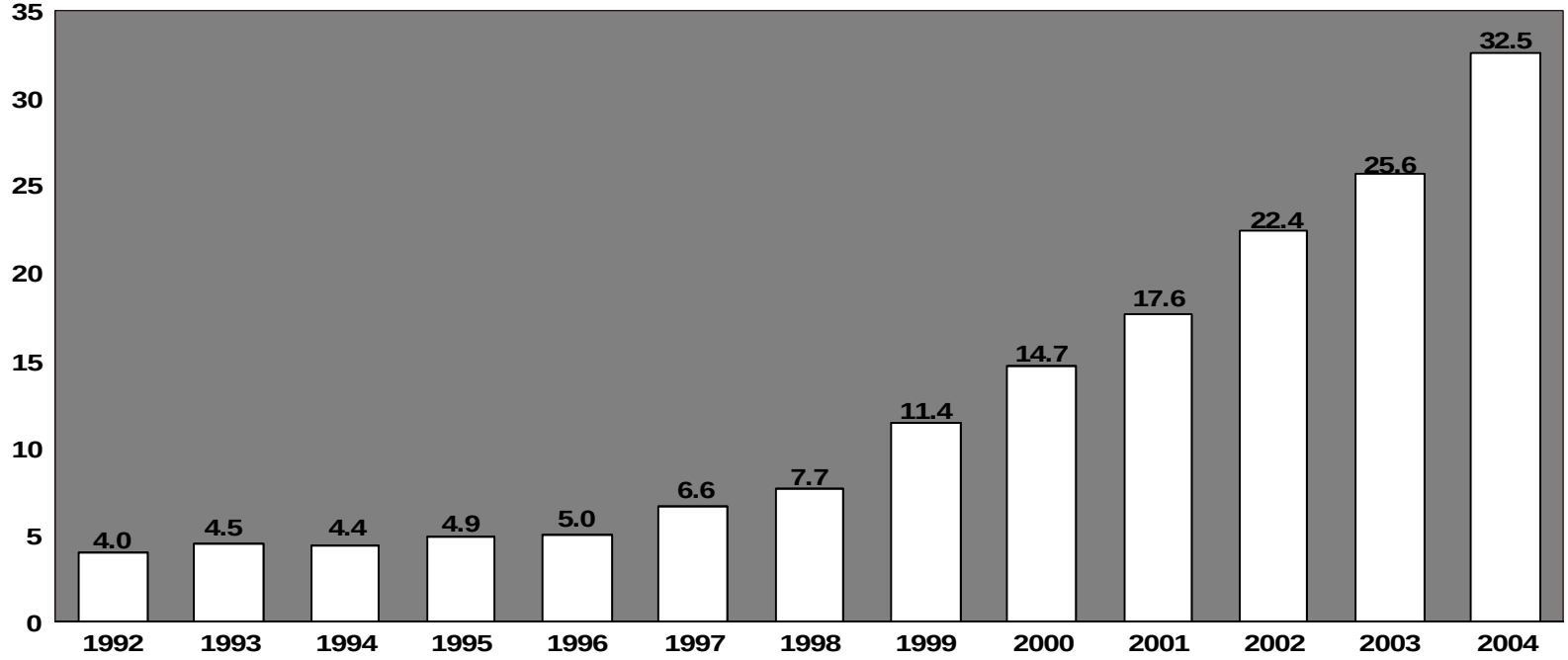
Acquisition workforce remains at about 106,000

Source: Federal Procurement Data System

Rapid Growth in Interagency Contracting

Multiple Award Schedule Sales Fiscal Year 1992 through 2004

Dollars in billions



Source: GSA