

STATEMENT OF PAUL A. DENETT
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION,
AND PROCUREMENT
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Towns, Ranking Member Bilbray, and Members of the Subcommittee, I am pleased to appear before you today to discuss the report of the Acquisition Advisory Panel (the Panel), which was officially released last July. Of the Panel's almost ninety recommendations, sixty were either regulatory or policy recommendations that fell to me to implement as the Administrator of the Office of Federal Procurement Policy (OFPP). I am pleased to report to you today that my office has either implemented or is in the process of implementing more than 40 of these 60 recommendations.

As Administrator of OFPP, my priorities include ensuring our acquisition workforce is equipped with the skills and competencies required to effectively use the competitive commercial marketplace to deliver the most innovative solutions to meet mission needs. I am also deeply committed to institutionalizing transparency and accountability. This morning, I would like to briefly summarize several of my main initiatives which dovetail with and, in some cases, go beyond the Panel's key recommendations.

Acquisition Workforce

Like the Panel, I believe the acquisition workforce is the key to a successful acquisition system. As agencies increasingly turn to contractors for their expertise and innovation, the skills and good judgment of our acquisition workforce become more closely tied to our government's ability to buy needed goods and services and deliver effective results. I wish to thank Congress for its recent actions to support our employees by making the acquisition workforce training fund permanent and extending direct hiring authorities. These actions allow us to lay the foundation for meaningful and ongoing improvements while providing a hiring tool to support immediate recruitment needs.

Partnering with the Federal Acquisition Institute (FAI), and with the support of the Defense Acquisition University, OFPP has taken unprecedented actions to improve the caliber, agility, and professionalism of the workforce. These actions include the following.

Certifying the acquisition workforce. We have developed certification programs that, for the first time, standardize training and experience requirements for contracting officers, contracting officer technical representatives, and program managers across all civilian agencies. These programs will benefit the acquisition workforce in many ways. First, structured programs will help strengthen our employees' capabilities and professionalism. Second, common training, education, and development standards will facilitate career mobility across agencies so that resources may be more easily applied where they are needed the most. Third, focusing on the entire acquisition community, as opposed to just contract specialists, will significantly improve our stewardship of taxpayer dollars. Developing program and project managers will enable them to partner more effectively with contracting personnel to write clear contract requirements, which was identified by the Panel as essential to achieving the benefits of competition.

Closing skills gaps. I strongly share the Panel's overarching concern with acquisition workforce assessment and planning. Last Spring, at my direction, FAI provided templates to agencies to facilitate the development of acquisition workforce strategic human capital plans. We also completed the first-ever contracting workforce competency survey of the civilian agencies. Each civilian agency, in consultation with the Office of Personnel Management (OPM), is using the results of this survey to develop a tailored plan for closing its own skills gaps. OFPP is currently working with OPM to review these plans. The Department of Defense is also conducting a contracting competency assessment of all military and civilian members of the Defense contracting workforce.

Recruitment and retention. Last month, we launched the Federal Acquisition Intern Coalition to improve recruitment and retention strategies among agencies and increase the number and caliber of new hires entering the government. I believe the Coalition goes beyond what the Panel had hoped for by providing a government-wide campaign that promotes acquisition as a career of choice, and serves as a "one stop shop" for job seekers to find internship and career development opportunities. I believe the Coalition will make a significant contribution to recruiting talented, business-skilled candidates and developing them into effective buyers and contract negotiators. These efforts are complemented by OFPP guidance on the hiring of retired annuitants to fill critical vacancies in the acquisition field. Use of this authority will enable agencies to manage the loss of experience and corporate knowledge as the baby boomer generation retires over the next few years.

Recognizing acquisition excellence. The SHINE initiative, which I established upon my arrival at OFPP, ensures best practices are shared and the value of our federal employees is appropriately recognized. Dedicated exclusively to recognizing individual employee

achievements of acquisition excellence within our workforce, SHINE is the first coordinated government-wide effort of its type. The achievements recognized under the SHINE initiative have touched on all aspects of the acquisition process. It is my hope that this recognition and appreciation will encourage our workforce to strive for excellence in their daily endeavors on behalf of our taxpayers. Today, I would like to briefly acknowledge the exceptional achievements of three SHINE award winners.

- Ms. Jean Todd of the Army Corps of Engineers set up an on-site, full service contracting office in New Orleans to provide critical reconstruction support in the wake of Hurricanes Katrina and Rita, including the award of contracts for more than 81,000 temporary roofs. Nearly \$1 billion in subcontracts were awarded to small disadvantaged businesses and significant opportunities were also created for local small businesses.
- The late Commander Philip Murphy-Sweet volunteered to be the on-site contracting officer in central Baghdad to help support establishment of a Criminal Investigative Court in direct support for the Baghdad Security Plan. His critical dedication as part of the Joint Contracting Command for Iraq and Afghanistan helped to ensure milestones for this important project stayed on track.
- The acquisition team at the Department of Justice's Bureau of Prisons and its private sector contract partner employed an innovative alternative dispute resolution (ADR) partnering approach in constructing a new environmentally friendly "green" federal correctional facility on time and on budget. Both parties recognize the project, which was completed without any formal claims or contract appeals, as a model project and the Bureau now is utilizing similar partnering ADR approaches on its other construction projects.

Competition

As the Panel's report documents, competition is the cornerstone of our acquisition system. Competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. The acquisition workforce has a number of tools to facilitate the efficient and effective use of competition. However, like the Panel, I am concerned that we may not be taking full advantage of these tools, especially in the placement of task and delivery orders under multiple award contracts. I welcomed the Panel's report and,

even before receiving their recommendations, initiated a number of changes to enhance competition in government procurement. Some changes mirror the Panel's recommendations while others go beyond. They include:

- Requiring agency competition advocates to submit written reports annually to their Chief Acquisition Officers and Senior Procurement Executives, with special emphasis on the quality of planning, execution and management of task and delivery orders over \$1 million. Agencies were instructed to provide copies of the first report to OFPP in December of last year. We are reviewing these reports to identify competition best practices, such as including increased use of competition in employee position descriptions and performance plans;
- Limiting the length of contracts awarded noncompetitively under urgent and compelling circumstances to the minimum contract period necessary to meet requirements, and no longer than one year unless approved by the head of the contracting activity; and
- Strengthening competition for orders under multiple award contracts to include:
 - public notice of orders awarded on a sole source basis;
 - a requirement for the receipt of three proposals on Multiple Award Schedule (MAS) contract buys and fair notice to all contract holders on other multiple award contracts;
 - clear statements of requirements, greater disclosure of the government's evaluation criteria, reasonable response times, and documentation of the basis for best value award decisions; and
 - an explanation of the government's award decision for unsuccessful offerors.

Other Significant Panel Recommendations

The Panel made a number of recommendations to promote strategic acquisitions and effective accountability. My initiatives address these goals and the Panel's recommendations. They include improved use of interagency contracting and performance-based acquisition (PBA) and ensuring our contractual language on conflicts of interest and protection of proprietary data protect both government and industry.

Interagency contracts. I have asked Chief Acquisition Officers to give greater attention to the management and use of interagency contracts. Interagency contracts offer important

benefits to Federal agencies, including economies and efficiencies and the ability to leverage resources. OFPP has developed comprehensive guidance to strengthen acquisition practices under these vehicles, including a model interagency agreement to help agencies delineate their respective roles and responsibilities throughout the acquisition process. The guidance will be issued next month. In addition, we are working with the General Services Administration (GSA) to improve the accuracy of interagency contract data in the Federal Procurement Data System and recently posted information on our homepage about multi-agency contracts, a popular form of interagency contracting for which little government-wide data has been available to date. We also plan to ensure that agencies develop appropriate business cases as a prerequisite to the establishment or renewal of multi-agency contracts.

Maximizing the use and value of interagency contracts is helping to promote strategic sourcing -- a priority OFPP initiative that offers significant benefit for the taxpayer. Identifying multi-agency solutions for commonly purchased goods and services allows the government to leverage its purchasing power, reduce cost, and improve performance. Through the Federal Strategic Sourcing Initiative (FSSI), led by GSA, the federal community has come together to strategically source domestic delivery services, office supplies, and telecommunications expense management. In the case of the FSSI domestic delivery solution, over 52 agencies have placed almost \$120 million in orders and some are saving up to 40 percent off the MAS contract prices for domestic package delivery services. In FY 2008, savings in this area alone could exceed \$20 million.

Performance-based acquisition. OFPP has taken many steps to strengthen PBAs, including the interagency development and maintenance of *The Seven Steps to Performance-Based Service Acquisition*. This online guide includes templates and examples of performance

work statements, standards, measures, and incentives. OFPP's PBA Interagency Working Group continuously reviews and evaluates samples for incorporation into the guide. The group is also developing new features to supplement the guide, a number of which were specifically recommended by the Panel, including:

- an assessment tool to help agencies determine when to use PBA;
- a matrix of contract performance incentives;
- a best practices guide on performance measures; and
- a checklist that assesses how well an acquisition works within the basic elements of the *Seven Steps* guide.

Conflicts of interest. The Panel recommended that changes be considered to the current conflicts of interest rules in light of the government's growing reliance on service contractors and the increasing consolidations in many industry sectors. The Panel suggested that a review consider rules governing contractor behavior as well as how to best protect contractor proprietary data from unauthorized use and disclosure. At my request, the Federal Acquisition Regulatory Council has opened cases to evaluate current conflicts of interest regulations and we are also considering the training needs of the acquisition workforce responsible for implementing these regulations. I am pleased that the Office of Government Ethics agreed to join us in reviewing these matters and also thank the Government Accountability Office for attending our first meeting to discuss their research in this area.

Proposed Legislation

The Subcommittee asked that I provide my views on several bills: (1) the Contracting and Tax Accountability Act of 2007, H.R. 4881, (2) the Contractors and Federal Spending Accountability Act of 2007, H.R. 3033, and (3) the Government Contractor Accountability Act of 2007, H.R. 3928. We have some concerns with the bills and would welcome the opportunity

to work with the Subcommittee on its efforts to strengthen the acquisition process and ensure sound stewardship of taxpayer resources.

H.R. 4881. When I last testified before this Subcommittee almost a year ago, I expressed the Administration's commitment to improve tax compliance. I am pleased to report that we have made significant progress in meeting this important goal.

Next month, after significant deliberation and careful review of agency and public comment by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council, the Federal Acquisition Regulation (FAR) will be amended to authorize the appropriate federal officials to use tax delinquency as sufficient grounds for debarment or suspension in accordance with the established process in the FAR for protecting government interests. The rule will add conditions regarding violations of tax laws and delinquent taxes to standards of contractor responsibility, causes for debarment and suspension, and the certifications regarding debarment, suspension, proposed debarment, and other responsibility matters.

In addition, the Federal Contractor Tax Compliance Task Force, on which OFPP participates, has made a number of significant improvements to policies and processes that directly result in increased debt collection. The Treasury Department states that levy collections from federal payments to contractors increased from \$7 million in FY 2003 to \$59.6 million in FY 2006.

These actions represent an important step forward. We hope you will wait to see their beneficial results before making a final decision on the need for legislation.

On a related legislative matter involving tax compliance, I urge the Subcommittee to pursue the repeal of section 511 of the Tax Increase Prevention and Reconciliation Act, which, with limited exception, requires a withholding of 3 percent from any government payment for

property or services. As noted just a moment ago, government-wide efforts to recover delinquent taxes have improved substantially in the past three years and the community should focus its tax compliance efforts on these effective measures. Any law or regulation to increase tax compliance must be more carefully targeted on delinquent contractors. The negative impact of this one-size-fits-all law will be significant on the vast majority of contractors who are tax compliant. This is especially the case for small businesses, who would be the most likely to face serious cash flow challenges and lost opportunities to reinvest in their businesses. Equally important, there will be very significant costs to the federal government in implementing this law, which will require modification to virtually every federal payment system.

H.R. 3033. It is important for federal departments and agencies to share information with one another regarding improper conduct or questionable activities of contractors. In addition to exchanging information about debarments and suspensions, agency debarment and suspension officials should share information about certain problematic contractor conduct that would not necessarily give rise to a debarment or suspension. For example, agencies sometimes enter into administrative agreements with contractors and grant recipients as an alternative to suspension or debarment from doing business with the federal government. When considering action with respect to a particular contractor or grant recipient, an agency debarment or suspension official should know whether another agency used an administrative agreement with that contractor or grantee, what the terms of the agreement were, and whether the contractor or grantee had complied with the agreement. With this goal in mind, my office and the Office of Federal Financial Management jointly issued a memorandum to Department and Agency Heads in August 2006 directing agency debarment and suspension officials to share this information with one another through the Interagency Suspension and Debarment Committee (ISDC).

While H.R. 3033 also seeks to promote improved information exchange, the provisions in the bill raise concerns. For example, H.R. 3033 would require the Executive branch to establish and maintain a database with a broad range of information, including: Federal or State suspensions or debarments; all suspension and debarment “show cause” orders; all civil, criminal and administrative proceedings “initiated or concluded” against a person by any Federal or State agency; all administrative, civil and criminal settlements, agreements, consent decrees, enforcement actions, corrective actions; and information on all federal contracts and assistance agreements that were terminated due to default and other actions. I have been advised by the Department of Justice that, to the extent that these provisions may be construed to require disclosure of ongoing investigations, including grand jury investigations and proceedings under seal such as *qui tam* actions under the civil False Claims Act, they contravene the law, jeopardize critical law enforcement efforts to root out fraud, waste, abuse, and corruption in procurement, and unfairly expose those falsely or mistakenly alleged to have committed fraud. In addition, OMB is concerned about the cost and difficulty of maintaining this information, both for States and the federal government, and the impact of differing State laws.

OMB objects to provisions of the bill which would prescribe the role of the ISDC, which was created 22 years ago by Executive Order 12549. For example, provisions of H.R. 3033 would inappropriately limit OMB's ability to revise OMB's suspension and debarment guidelines, by providing for the ISDC to authorize OMB to issue revised guidelines.

H.R. 3928. This bill would require a contractor whose annual revenues exceed \$5 million to either certify that 80 percent or less of its annual gross revenues are from federal contracts or submit a financial disclosure for public posting that provides the names and salaries of certain senior executives. A contractor would be required to annually update the certification

or disclosure. I am concerned about the unintended harmful impact these requirements could have on our acquisition system. The accounting and reporting burdens associated with certification, coupled with public disclosure of the names and salaries of senior company officials, will likely have a chilling effect on contractor participation in federal acquisition that, in turn, will harm the government's ability to take full advantage of the competitive marketplace. The required public disclosures could also weaken the competitiveness of individual companies whose salary structures would become known to competitors. We think the burden of this bill will be especially harmful to small businesses and weaken business development programs that were created to help Federal agencies take better advantage of the innovation and creativity that small businesses offer. In my view, the Administration's ongoing efforts to strengthen acquisition planning, use of competition, and contract management are more appropriate approaches for protecting taxpayer interests. We urge the Subcommittee to carefully reconsider this bill.

Conclusion

All of the Administration initiatives you have heard me discuss this morning are shaped around a common goal: making sure our acquisition system produces the best results possible for our taxpayers. OFPP will continue to work closely with agencies on the effective implementation of these initiatives, including those that carry out recommendations of the Panel. We look forward to working with the members of this Subcommittee and the other members of Congress in a bipartisan effort to build on the progress we have made in strengthening the acquisition process and the performance of government.

This concludes my prepared remarks. I am happy to answer any questions you might have.