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Competitive Sourcing Town Hall Meeting: Where Do We Go From Here?

Carl DeMaio (CD)- GAO Commercial Activities Panel released a report in May. A bipartisan group of individuals sat and deliberated for a year and studied competitive sourcing in the Federal Government -- taking a look at the process. The report said the process was broken and could use substantial improvements and laid out some principals. The report became a Call to Action. Today we are going to be looking at "Where Do We Go From Here?" What are some specific modifications to the A-76 process that governs competitive sourcing (CS) or the Federal Acquisition Regulations. How can we change those processes to make it better, more effective, a better deal for the agencies, the vendors, as well as the American people -- the tax payer.

We are going to be having a give and take discussion this morning and that is why when we invited all of you we focused not only on government agencies -- those people in the trenches working on government competitive sourcing, the A-76 Manager, but also representatives from unions, academic institutions, and private industry (the vendors who serve government). We want to make sure that as we are looking at the broad principals for reform and then looking at very specific changes in the processes that government CS that it is realistic, that it relates to the challenges that all of you have faced out there in the field in whatever capacity you play on CS projects.

So I really want to encourage you. We are going to have up here a series of provocateurs, experts in the area of CS, providing their view and actually proposing specific changes that, after they provoke, I am going to ask you to respond by taking a look at that change and giving your veteran commentary on whether that would work, whether that is a positive change for A-76 or FAR CS.

Let me give you a little bit more information on today's event. This is a very timely topic. So timely that the House of Representatives weighed in the past week on the issue of CS in terms of passing an amendment offered by Congressman Moran regarding CS targets and whether or not the Administration should pursue them. But it is an important topic because first and foremost we are always engaging in sourcing decisions in government everyday. Should we make or should we buy? Ultimately we are required to be accountable to the tax payer to produce an efficient government that provides results oriented or performance based solutions. There has been a lot of debate. This is not the first time anyone has attacked A-76 or commented on whether it should be changed. There has been a lot of debate over whether or not we are getting best performance, best value, higher costs as a result of A-76, whether it is actually working.

Second of all, we have an Administration that is taking the issue of CS on as a goal area and making it a management priority in terms of the President's Management Agenda announced last year that has very

specific goals for agencies, including targets for how much competition we should be doing. Not an outsourcing target, but how much should we be examining under a competitive process. And of course, as I mentioned, the Commercial Activities Panel, this bipartisan group of experts looking at our experiences with A-76 and coming out with a very specific set of criteria and saying that the Administration should be considering reforms. Hopefully today we can put a little more meat on the bones by looking at specific changes in A-76 and/or the FAR.

The principals that they laid out in that report and the Call to Action that they delivered to Congress and the Administration basically covered ten (10) areas:

- First, that any CS initiative should be aligned first and foremost to support agency mission, goals, and strategies. Basically, how can CS help execute the agency's mission? They recognize in the report that CS initiatives are going to be different depending upon what mission you are engaged in and what agency you are working in. Some agencies are going to have a lot more CS, a lot more work being done by the private sector, the non-profit sector and others will have very little working depending upon the relevance and the importance of their mission in using a vendor.
- Second, when you are looking at CS you can not look at it just from an acquisition perspective, but you have to consider what are the human capital dimensions of your decision. In a lot of cases we see outsourcing occurring because we cannot recruit and train enough human capital, enough staff, to keep that position for those functions within the agency. So looking at CS as a tool to use as part of work force management.
- Next principle, is that inherently governmental activities should be performed only by government employees. There are public trust responsibilities that must be carried out by a Federal work force that not all activities funded by government are appropriate for performance by another party. We need to create incentives for performance based management. We want to create performance based organizations and that CS is an important tool. One important tool towards that end and we should be looking at performance issue in applying a competitive process to these issues.
- Other criteria include create a clear and transparent process.
- Avoid arbitrary FTE goals in terms of out-sourcing.
- Allow the door to swing both ways. In other words if your going to go to your employees and say we are going to let the private sector compete against you and then potentially out-source this activity, we should have a process in place where an activity is being performed by the private sector and our employees have ability to compete against that private sector vendor to bring that activity back in-house. But the door should swing both ways based on performance.
- Conduct fair and efficient competitions.
- Consider cost and performance. This is perhaps one of the most important principles that they laid out. It is no longer a government looking for the lowest bid. Government will not only be looking at providing services using the lowest bid, but using the best value - cost and performance.
- Finally, ensure accountability for both the process and the performance. If someone wins a competition then let's hold them accountable for what they said they were going to perform under in terms of a performance based contract as well as ensuring accountability throughout the entire process.

Ten principals I think most people can sit back and say, "Yeah, I agree with that." I think the hardest part of this whole process is going to be taking that report, taking those ten principals and actually operationalizing

them. Trying to figure out “OK, so where do we go from here? You studied it for a year. Now we have to implement it, what are the specific changes?”

Now I know each of our panelists and I spoke to each of them and said that I want you, especially the panels working on FAR and A-76 to throw away that old speech you’ve been giving around town about how A-76 is broken or here are some principals. Throw that away. We’ve heard that. I need specific changes. I want you to go right into A-76. I want you to provide me with actual language. I want you to go right into the FAR. I want you to provide me with actual language. So each of our panelists will be giving basically their proposals and they will be given about 2-3 minutes to describe: Why do we need to make this change in CS? And then we are going to allow you to react to those proposals. So in your handouts are the specific language, and some actually have legal language that they are proposing to put into A-76 or FAR, so we will be going through step by step that process.

What we want to do first is kick it over to the Office of Management and Budget, Jack Kalavritinos, who is the point person at the Office of Management and Budget for CS. He is here to talk about the Administration’s views on CS, the President’s Management Agenda and how it has set CS as a goal, and some of the things OMB is trying to look for in terms of changing the CS process to make it more performance based and respond to the GAO Commercial Activities Report. Jack.

Jack Kalavritinos - Thank you very much Carl. On behalf of Dr. Angela Styles who actually is the point person on CS. I guess I am her point person to coordinate this effort because as Administrator of our procurement policy this is just one part of her overall mission. A very large and significant part but this is my 100 % focus. I do appreciate being here at this important and quite significant Town Hall Meeting. I don’t think I have ever seen a more diverse group in terms of being able to see among the group here folks that I have been meeting with and Angela has been meeting with from various civilian agencies in defense, union, a couple of private sector groups and think tank groups so this reminds me almost of have a dejavu to the panel a little bit. Which was quite an experience. My second day on the job being thrown into a one year blue ribbon panel with about 85 meetings and about 185 drafts of the report that eventually came out.

I want to mention that, I know I believe, that the Reason Foundation truly is one of the leading voices out there on this topic and we surely do appreciate that on the desks of federal managers, as one of my colleagues recently said, are materials from Reason and the Performance Institute reminding folks about the President’s Management Agenda. It is something that I know all of you have been hearing quite a lot about. We wish the American people would hear a little more about it as well. The fact that we are here at the Press Club is obviously a fantastic opportunity to take something that people talk about here in Washington but doesn’t get much play outside the Beltway.

I sort of feel like we should be on book notes right now. I’ve seen this setting here before on C-SPAN some many times. I have no book to talk about.

I do want to give you all a sense of the landscape, the problem that we currently see and why we believe that CS is the solution. The progress in some of the agencies that are being made and then what we can say about directions that we would like to go regarding A76 and reactions that OMB had from the panel. I’m sure we are going to be breaking a lot of news since we’ve been talking about some degree about which direction we may be going in. Certainly for us, the most important thing is reading the report that is being developed by you all. I have already started looking at some of the PowerPoint presentation already before this morning from some of the folks. Al Burman; The fact that you have a former OFPP Administrator here talking to us about possible FAR changes and what is needed is certainly something we want to be listening to. The day we come out with it and put it out for Federal Notice and Comment, we are going to start reviewing those comments that come in. But this is a unique opportunity to talk to use before we finalize anything.

The landscape as we see it right now with the Federal Government, because I think that people get very focused some times on one segment or the other, but basically the American People are being served by this huge blend of people and services. We are talking about full-time government employees, part-time government employees. We are talking about military and civilian contractor. It is a huge blend that you can put in to a pot and mix around and I think the American people, if they think about it they would understand it, but I don't think people often focus that have the mission of any given bureau or any given agency that is performed by this blend, and if you take any part of this out we have some quit significant problems. Since the 11th there have been many acts of heroism that have been performed by people from the federal level, on the local level with fire and police. We are talking about FEMA employees but we should also recognize that there is an incredible dedication by those working for the entrepreneurs, those workers that often are unionized, as are many of our government employees, that put together the technology that have helped us win this war in Afghanistan. People that have put together refuge camps in the Balkans that work for firms that are made up of American people. So I think it is always important to note that what we accomplish in this Federal Government is really accomplished by a blend of lots of different people.

So what is the problem then if there is already this blend? Well the problem is that except for the Department of Defense, when it comes to the fact that there are 800,000 civilian employees as of the 2000 Fair Act, which we think is actually a low number, doing commercial activities, and as my boss Ms. Daniels likes to say we kind of confuse things when we use words like that, when we are talking about jobs that can be found in the yellow pages, they are done without competition, that is a bad thing. It is not a bad thing in government hands, its a bad thing that so many jobs are done without any sort of competition. The strange thing that I guess occurs in this setting is that once a group of employees are performing a job regardless of performance it is often impossible to shift to another source. Costs need to be compared and you need some sort of process that governs that and that is where A-76, starting in the 50's and going all the way through now with lots of different permutations and changes, that's where that comes in. Once a process is undertaken to compare costs and develop the best source, 50% of the time, about, the government employees win, 50% of the time the private sector win. So competition is good enough for us in every area of life, whether we are in school, whether we are at work, if we are in the private sector. Why is this idea of competition one that has created so much angst? I guess one the of the problems is if it isn't occurring in a place and you force it to occur and you set some targets and goals to do that, it is obviously going to cause some to be unhappy because these are real jobs and real people and people obviously, if they are still at that job, don't want to leave. And that is perfectly understandable. This process is not perfect and has a fair amount of problems. So if we are using a less than perfect process to determine who is going to best do that source, it is quite understandable that we would have some strong feelings about it. But whether it is the President or it is Mitch Daniels, there isn't a great deal of sympathy though towards monopolies. And when it comes to Government monopolies it has even more relevance here. Some of you might have heard the pleas coming from the government printing monopoly to know just how upset people get when entities like OMB begin to talk about the problems with government monopoly.

Now, we are making some progress right now. An amazing thing that this has occurred at different times. And when I started the job I had different people explain to me attempts at success, but lots of failure in the past at doing this, the amazing thing right now is one could see this as the most significant largest effort to competitively source positions in our history. If you look at total numbers in the country people can debate maybe whether in the late 90's in the Department of Defense there were more ongoing A-76's, but when you look at the entire Federal Government starting at Agriculture, Interior, Energy, across the board, no one has ever seen this before. I am not saying that the progress is exactly where we would like it.

I see that the score card is now magically up there. I was told before I started that there was a problem with the PDF file that I sent over. But you will see that under CS there is quite a difference in the

progress. This progress was assessed as a quarterly process of accessing where an agency is against where they said and we said they would be in a CS plan. It took quite a bit of time and effort on the part of the agencies and the part of our OMB examiners who know the agencies as well as they do to come to some agreement on these plans. Where there is some mix success right now is just the implementation. We work for someone who is pretty impatient when it comes to results in our OMB director, so we are pushing pretty hard. That having been said, the amount of background and education needed for agencies represented in this room by those who do have the experience especially those at the DOD or those consultants that have learn quite a bit from the DOD. This education process cannot happen over night. But there are some agencies moving quite rapidly to gear up their folks.

Now about the challenges. We certainly understand the challenges of doing this. It became quite clear to a couple of us when we flew down to Fort Stewart, Georgia, which I learned is the largest, most rapidly deployable mechanized force of any militarily base in the Nation. They house the 3rd Infantry. They have a very serious mission. They are always rotating tank battalions in and out to training facility in CA and then out to Kuwait where the 3rd infantry currently goes. This is a serious, serious place. We went down there to take a look at their successes with CS, both in terms of public-private competitions and some of their direct conversion experiences. I can tell you that going from the airport to the base with an Army Ranger Colonel who told us he knew nothing about this before he was handed the file and told, "Here is the existing A-76 and here is the new one you have to start up." And he said "What is an A-76?" As one of my colleagues said -- Here is a guy at the top of the food chain basically when it comes to the Rangers, that is used to living in trees and eating berries and accomplishing some pretty serious stuff and he is being told now that he has to accomplish a successful A-76. And how he described putting the MEO together and asking his deputy garrison commander to basically run the process, but he himself was going to do everything he could do to achieve success for the MEO and the firewalls that were created, was dramatic. What we saw was Federal Employees winning a supply function where they took 24 little, as they call them "WWII wood", little shacks that look like fruit and vegetable stands on the way to Ocean City where they currently have their supplies. They moved those into a big warehouse that looked more like a Walmart, 4-story warehouse. And the Government Employees won that function. They improved their efficiencies and cut costs. What was sad was that the person giving us the tour was the person that was most responsible for putting that MEO together, a civilian, and there is no guarantee that he himself will keep his job because of our current civil service rules in terms of who had seniority over him and all that so it was quite a rude awakening for those of us that went down their.

On the other hand, private sector went ahead and there was a direct conversion for, what they do is they have artillery ranges, where just like you have target practices for pistols, target practice for tanks. They had green suits, soldiers, running the machinery to pop up the targets for the other soldiers to hit. Now they have contractors doing that, so that more green suits, as they say, can be actually doing the training to help fight and win the wars, which is exactly what Secretary Rumsfeld is attempting to do by converting more commercial functions that are being done by military into the hands of non-military and in this case a contractor. Frankly I had no idea there were contractors that ran tank ranges but apparently there are and for those of us that saw that were quite happy that there were no longer soldiers, while they were supervising it, they were not the ones actually spending their time doing that.

I was going to mention a note about the goals, but everyone is quite familiar with the goals, so maybe I will just mention reaction to the legislative developments. After saying that the goal to create an infrastructure in every agency in the aggregate government-wide 15% goal is something we stand by. It is Mitch Daniel's way to accomplish the President's goal, which was enunciated during the campaign, for 50% of commercial activities to be competed. And 15% is a reasonable way that one can have an infrastructure in each agency to accomplish this. There remains a veto threat on the Treasury Appropriations Bill that this

Amendment was put on. This Amendment, being put on the Treasury Appropriations Bill, was quite ingenious quite frankly because as opposed to some of the past Amendments that effect a portion of the work force this effects the Executive Office of the President's ability to manage Federal Agencies, in this part of management. But the principle is there that we are being told, and there was some conversation beforehand, "Oh lets talk about performance based government and management and so on," and yet there is an attempt to thwart the Executive Branch's desire to manage the Executive Branch. So there is a veto threat that remains. We are working with allies in the Senate to see what can be done. We are certainly not going to give up on this because we consider it quite a serious matter. We believe it is an attempt to stop our progress and it hurts tax payers, and frankly it hurts millions of workers and entrepreneurs that want a chance to compete for jobs. And that is a message that we are just going to keep repeating. Its effecting workers who are currently at entities that are not able to complete for these jobs, and entrepreneurs. And we want to not only remove barriers but also remove possible legislative restrictions from doing that. I certainly want to thank members of Congress, whether it is Congressman Pete Sessions, or Congressman Istook, whether it is Senator's Craig Thomas or Bond that clearly speak out and try their very best to enunciate these.

What are the benefits? Why are we even doing this? Whether workers in construction, Maritime, information technology, benefit from doors opened from new opportunities gained from CS? We believe tax payers win as CS reduces the cost of Government delivery of service to citizens. We believe the President's priorities to secure the home land and wage war on terrorism are strengthened do to savings and performance enhancements. Take the creation of the Department of Homeland Security, right now OMB is managing the transition of that, and OFPP, in terms of procurement, is very actively engaged in many of these discussions. There are over 100 agencies in Washington with homeland security responsibilities. Despite everyone's best intentions there is certainly a dispersal of authority, lack of accountability, the truth of the matter is a needless drain on the critical resources. And as appointees in the Bush Administration we are certainly reminded that every single dollar we spend is the tax payer's. It is the taxpayers money, they worked hard to earn it and we should spend it wisely and reluctantly. And that is where CS can certainly help. When we can save and average of 1 billion dollars for every 3 billion we spend, we should be doing that. We should be doing that every where we can.

I mentioned before the progress on the initiative. We see some agencies that are making progress literally right across the board and we are certainly very happy with the progress of agencies like NASA and others. Some are off to a slower start. It is certainly important to keep in mind, and Director Daniels mentions this all the time, these five initiatives were chosen because they tackle the government's often most serious problems. Long neglected management problems and these weren't easy items that just could be picked up to achieve success in one year and then go home. Certainly fixing them won't be easy it won't be quick, but we are looking for results. We are looking for agencies to say this is what we have competed. These are the exact type of functions, this is where we are in the process. You can not inundate us with enough real information. You can inundate us with information that isn't specific and talks about desires to help, but we really are looking for examples and we will highlight them.

We also get asked, "What are you all doing to integrate these initiatives?" I know that is something that Reason has done a great job of and the National Academy of Public Administrators has done a great job of and is really helping to integrate these five.

Take a look at E-Gov. Mark Foreman, our E-Gov guru, recently noted that there is a international report benchmarking e-government, a global perspective, that rated the US now as the world leader in e-gov based on our achievements over the last year. Yet, with E-Gov there is still obviously a long way to go. It is not just making sure every agency has web sites. It's doing things like reducing response times from weeks to days or from days to hours. If you look at DOE right now, linking E-Gov and CS, something very unique is being done. According to those gurus out there of A-76, it's one of the very first times that we have seen an

across the board study to look at one function across bureaus. Or to use a little more highly charged term, across silos. As you all know every agency has silos. And as some of my friends at Energy have noted that it is quite significant at their agency; it is hard to note an agency that has more significant silos, yet the CIO there is taking a look at the internal (in-house) and currently contracted E-Gov, IT work that is being done, and looking to compete that with the private sector and let the best entity win. If it works, it will certainly be a model for others because we certainly like seeing single commercial functions that go across the board at an agency being competed and the efficiencies that occur no matter who wins.

OK, now fixing the A-76 in view of the report. Shawn O'Keefe was Mitch Daniels' first representative on the panel. It was one of those great Washington scenes were you are in this GAO closed door meeting with a table in the middle of the room and all of the panelist around the table, so Shawn O'Keefe was there. And, the next constellation, its like a ring around Saturn or something, their deputies, Angela Styles was in that, and I was in the next ring around that and then there was another seating area. I guess my big thrill is that when Shawn was made head of NASA, I bumped up a level. So now Angela's at the table and I was sitting at the next layer, behind. Quite a few meetings, we believe that it is a measured and constructive proposal. Very pleased that there was unanimity on the 10 principals that Carl highlighted before and also pleased to see such a strong show of support for such a dramatic change, although some won't see it as dramatic as other do and some will see it as revolutionary. But what came out of the CAP Report and what will eventually come out of our current process, which I will touch on in a second, will be a measured response with significant changes.

Both Shawn and Angela pressed during the deliberations that that this not be one of those Blue Ribbon panels where its only these sort of fuzzy general principals that come out of it that there be something specific for us to do and therefore we are very pleased that this FAR based, integrated approach was talked about and developed, although with as much that was written about it and said about it there is quite a long way to go to make it part of A-76 which is why we anxiously wait to hear the comments, not only from the panelists, but also the audience, for the report you all are going to put together. It is one thing to get to an agreement on a specific proposal but it is quite another to actual weave into a very lengthy and complicated document that allow A-76 consultants do quite well to explaining to people. It is going to be quite a challenges weaving that into the circular.

Now, the panel was diverse. It certainly was. Like this room, Federal Government, Unions, think tanks, private sector, several agencies from OMB to Defense to OPM. Some were not heard, but the group that was not heard were those workers who are represented by unions in the private sector who represent real jobs, and unfortunately, I'm not saying it was the fault of anyone, we certainly want to hear their voices, we recently met with a group that included those that work on Maritime project and construction projects to hear their voices as well, but none the less it was an extremely diverse group and everyone was well meaning during the process.

So what will we be doing? A-76 will be put on a diet. In keeping with the President fitness initiative, people should expect a leaner, slimed down version that clocks a better time and leaves participants more secure in results of the competition process. Although according to many the process is broken, there is an odd equilibrium that has been achieved and that odd equilibrium allows government to win 50% of the time and the private sector win 50% of the time. That being said changes are needed and our e-gov guru, Mark Foreman, he might put it this way: That A-76 needs it's enterprise architecture to be re-engineered. OK in e-gov audiences I think that would get a chuckle, but I often sit in meetings and every time enterprise architecture gets thrown into the sentence they lose me for that sentence. And since it occurs in every other sentence, it's an often interesting meeting.

So it is certainly unacceptable to all. And when I say all, I say the voices we've heard from AFGE and NTEU and from the private sector, the time frame for doing these, this 24 month average for putting

together a PWS, according to the Department of Defense, is unacceptable. It is unacceptable to Mitch Daniels, its bad for morale, it is not right. For smaller functions there is the A-76 streamlined version and it can be used for smaller functions and is being used by groups, I see the Department of Interior here today. Plus we need to better understand what jobs are out there and this is where the awful four letter word, the FAIR Act, that so many people love to hate. The FAIR Act passed in 1998 has been the tool for use to understand what jobs are out there and yet OMB has been receiving the hard copies of stacks of function codes relating to existing and non-existing people because of vacancies, and yet it is only commercial and we haven't known what is deemed by the agencies to be inherently governmental. So at the same time we're trying to do this with A-76 and we're trying to make progress with each of the agencies we're also trying to improve how we make sense of the FAIR Act. It took some doing but the budget gods of OMB have agreed to allow us to use their mega max computer system. Mega is my word, max is theirs, I can see Al smiling here, but we can now use their system to enter in that wonderful data that you guys, those of you with agencies that send these inventories to us. We will now be doing something with theses. We will be putting it in and little reports will be spit out. We will see if this really happens. Keeping our fingers crossed so we can see things, like how many cafeteria workers across the government are federal employees which right now we can barely even tell you in any given agency. You would think the Federal government would know more about how it runs itself and where the jobs are. I am hear to say we don't and thank God for the FAIR Act and we are doing something with that that has not been done before. It has caused quite a bit of consternation among some folks, but we are asking for inherently governmental lists. Except for national security reasons, we believe that it is extremely important for purposes of transparency, for purposes of good management, to know the full range of what is in an agency, a bureau in terms of human resources. I know many share that desire and others don't necessarily. It will take a great deal of time, it has taken a great deal of time I know for those of you that have done that, but it certainly is going to help with this overall project.

There is an interagency working group that has been meeting on A-76 changes. This working group is made up of non-DOD and DOD, OMB Budget and OMB Management combined together to basically say: "Let's look at these goals of making the processes faster and fairer, let's look at some of the things talked about in the CAP report and put together the new A-76."

Will it be renamed? That is still an open question. But certain things you should know it is administrator's Styles view that it should not take a team of experts to understand the new circular like it does the current circular. It may take one expert by your side, but not a team of experts. It has truly become a Christmas tree were every couple of years there is a revision to the supplement and another supplement and there are handbooks. We are trying our best to reformat it and streamline it. It needs to maintain that sense of equilibrium that equity and fairness. Although in some areas there is not a lot of fairness and we want to improve that.

Replacing the entire existing program right now is quite challenging and difficult. That is something that Angela Styles has noted that it is not just going to be tossed and replaced with something brand new through adding elements of a proven FAR process into A-76. There will be time and an ability to look at it and test it and look at some of those agency's results. While significant, I don't think it is as dramatic as some are worrying about in terms of the immediate impact of it.

Best Value. Best Value or cost technical trade offs will certainly be authorized in certain areas. There is a great recognition that on one hand using best value for the most basic of basic services may not be in the best value to the tax payers. But certainly the old way of only looking at costs when comparing the government and the private sector function for very complicated very high tech functions is just not the way procurements are run any more, and we should be bringing A-76 into the 21st century in terms of best value.

We have been asked the question: "Will there be a major effort immediately to change the FAR?" I think there was a little misunderstanding about that and I think we have tried our best to clear that up. As I

think one of your panelists is going to talk about later. To do what is needed to change the FAR in order the change some of these things would be so massive, so time consuming, that the decision was made to at least initially take elements of the FAR and put into the A-76. That is the thinking of Administrator Styles on this right now.

A couple of other things. Making better use of DOD's costing software. They have put a lot of time and effort into it, once you've paired down the competition, and DOD has developed, apparently, I have not actually used it but heard some wonderful things about it, we should be making it available to other agencies. We have to find ways to do something about the fairness issue right now. We talk a lot about accountability and there are a lot of auditors that are looking over the shoulders of those that win contracts. We have to do a better job in order to increase the levels of participants in competitions of accountability when it comes to the MEO, the in-house team. Heard a lot of comments and complaints about how you have an entity that ends up winning, rightfully, a competition probability of about 50% the government wins, and then there is no oversight, no accountability whatsoever. We're spending considerable amount of time to do something there. We want to make it fair but also make sure there is the right kind of accountability and with that we hope that more entities will throw their hat in the ring and say I want to compete instead of what we hear time and time again are private entities saying we want nothing to do with this A-76 stuff because we think it is utterly and completely skewed. Now, we also hear public sector says we don't have the resources to compete with these big mammoth entities, and often, frankly, it is the small business that win, we can't compete with these entities that have marketing departments and so forth. So we are going to be doing everything we can at OMB to be encouraging centralized management. Which sometimes works at DOD in some areas and sometimes not in other areas. Centralized management teams that can implement some of these competitions and also allow some savings to be kept locally. Because we certainly empathize with the Ranger Colonel that said: "I did my thing, I achieved my savings, we went through a lot and yet I don't see, we have some real needs here on this base." 220 thousand acres of land and quite a few people. It is a small city and yet he doesn't keep any of the savings. And so you have an OMB that is listening to that and wanting to do what it can, obviously you have an institution call Capitol Hill that might have other ideas with some of those savings, but we want to do everything we can to encourage that there are incentives for people to do this.

Conflict of Interest. I can't really talk a lot about that right now except to say that we are looking very closely at that because that is certainly a contentious issue and with GAO's rulings and so forth we are looking at that quite closely and there are going to be additional changes as well.

So this is an incredible time. Today I have to actually head up to the Senate. I have to defend this whole program as folks on this Hill are gunning for it, unfortunately. And just another note on that. I will just say I think that also there is a little bit of a misimpression that this was almost like a sense of Congress, "Well, we don't believe in quotas. We are going to define what the administration is doing as quotas and it's no big deal." But the fact of the matter is that in the last day or two we are hearing that people are really understanding that no, this is has some pretty serious consequences, this Amendment, in terms of affecting the Executive's Branch's authority to set goals and set a very significant goal and then some interim ones and have some conversations.

If I can leave you with this: When it comes to progress, we are working with every agency one on one. And any idea that there is this 15% cookie cutter that we are just applying and we are unwilling to speak, we have meet with every agency on numerous occasions and are trying our very best to craft individual plans of attack on this and each of the 4 agenda items. We believe it is worth it. It is not easy, it is not pretty, it is not fun, but when you look at the performance enhancements and major cost savings, we believe it would be wrong not to be doing this.

Thank you for this time. I appreciate it.

CD - Thank you very much Jack. Jack has to go out of here to get to the Senate so we will let him go. We are also right out of time, so let's call our next panel up. The first panel will be changes to A-76. We will not be taking a break right now, but we will take a break right after this panel. So if Mike and Dan could come up.

Our first panel will be focusing on A-76. Changes we could make to existing A-76 guidance and language and we have two experts on this first panel, Mike Del-Colle from Accenture. Before going to Accenture, I think 2 or 3 months ago, Mike oversaw the CS initiative at the CS Excellence at the DOI. And as you noticed during the previous presentation DOI still has a red light for the result. For the plan of action they received a green light and Mike oversaw that agency going from about two miles an hour to a nice comfortable 55 miles and hour at least to get the plan of action in place.

Michael Del-Colle (MDC)- I think it would be more appropriate to say that a group of people sitting in the fifth row back, I just have to keep following them, Helen and a group of others.

CD - So you had a bunch of back seat drivers.

MDC - Not back-seat drivers, but they knew how to make course corrections.

CD - Good, Good. And also Dan Guttman, who is a fellow with the National Academy of Public Administration, a co-author of a monumental book, *The Shadow Government*, with a good friend Paul Light from Brookings, that looked at the whole issue of a Federal work-force and then the shadow work-force working for contractors and Dan and I shared the stage back in January when the White House asked us to come over and do a point, counter-point dialog debate on CS and strangely enough I think Dan and I agreed on a lot of stuff there, so something must have been in the water that day.

We are going to first let Mike talk about his changes. What we are going to do is let them go step by step with specific changes, they will be talking about the content of their change to A-76 and then they will be given about 3-4 minutes for each change to basically give a rationale. Why is this change positive, the impact on A-76 managers. Then we will look at all 7 changes, 4 by Mike and 3 by Dan, and we will let you review each of these changes and comment on whether or not they would work for you.

So Mike go ahead and walk us through your four changes. Your slides are over here.

MDC - Great.

One thing to clarify, for those of you that saw the bullet bio I put together, Corry Rindner asked me, I was actually able to keep a job, but I just thought I'd show a range of experiences. He wondered if I could keep one.

The first change I would like to talk about is foundational. And that is on the FAIR inventory. As Jack mentioned, that is kind of the starting point and from my own experiences at Interior and from the conversations I've had with others, it is clear that there is an extraordinary amount of effort in putting an inventory together. And the fact of the matter is that my word is that they are not authentic. They don't really reflect what is commercial and make it very difficult to discover what is inherently governmental because of the way they are constructed.

Some thoughts I've got about changes that we might want to contemplate. I would like to use a classification system. It is the most common thing. One of the things to realize is that I don't know of any large industry, any large business that has literally told everybody that you have a stake in trying to redefine your position, your role, your function. And what we've done is give them an entirely new matrix of definitions and characterizations of how they should classify themselves. Yet for all these people, whether

they have been in the Federal Government for 1 month or 35 years, they know the classification system, supervisors know the classification system, as well as most organizations are structured around that classification system. There is extraordinary effort that is being expended to try and basically convert from system A to system B in order to get it to OMB, where the entire rest of the budget and everything else is based on system A. It just doesn't make sense and it is going to facilitate things, particularly for one of the most critical backup functions in making CS succeed and that is the HR community. The HR community works from that classification system as well.

Second, I think there was a tremendous mistake made by focusing on goals instead of functions. I think the whole idea of trying to count bodies, even if you use a classification system, is problematic. If you are talking about a commercial function then let's talk about functions. Let's identify those kinds of activities and way the positions are identified as opposed to what appears to be the current trend, which is do your body count and then all the sudden you have to reconfigure them into the competitive or business units that you think exist.

I applaud what Energy is doing. I think that emphasizing enterprise efforts is more important. The fact of the matter is that throughout the Federal Government we have a lot of duplicative efforts. And I think IT is a perfect example. Frequently within departments you've got 3 or 4 major bureaus, offices, whatever you want to call them, they have their own infrastructure. The lack of commonality, or the opportunity for greater commonality is being overlooked because we are asking single functions to look at their own efforts as opposed to looking at the aggregate on the whole. And again if you look at any kind of business process re-engineering, any kind of reorganization, you do it usually at a higher level trying to aggregate where it makes sense. That's not taking place by virtue of the way most departments are running their federal inventories, it starts at the site and then gets fed up. There is no principal structure or architecture that people are working from. That makes it very difficult and you have to understand I believe it is difficult from my point of view because I believe the government can create competitive business units, but its jeopardizing its ability to do that while allowing the program to become too fractured. And that's why I think it is important to look at enterprise functions.

It is also important because you will never have true competition. A lot of contractors can compete on an enterprise basis, but if you are going to fracture things into small component units, you put contractors and the government at a disadvantage. Because it becomes like a PacMan diet - little snippets here and there and nobody can intelligently and aggressively compete and know the end goal, which is the delivery of good services to the tax payer or to another federal employee that happens to be a client of that service. I think we need to look at the business case and not the analytical data that so many people are using. I am particularly, to be very frank about it, very tired of hearing Mitch Daniels talking about the Park Service and the gardeners, just because he looks out a window and sees that. If we are going to be talking business then let's talk business. I think it is very unfair to the government employees and I think it is counterproductive to look at analytical data and use it as a basis to justify and rationalize what we plan to under take. It is a business case, that is what the entire focus on becoming best value oriented is. It is looking at the rational, the return on investment, and what makes the case for the way we are going to choose to go. Not whether or not we happened to like the particular color of a shirt an employee is wearing. We need to change that particular mentality. I think that is disingenuous from my point of view.

I think the guidance on the MEO sets a very narrow set of parameters. I think that we need to look and one of the areas we don't clearly understand. If I had a chart of CS up here, best value procurement is not new. It has been around for a long time. As the chief of procurement for a number of different offices, its been done for a long time. So let's get rid of the idea that that is new, it is not.

Writing performance work statement is not new. It has been around for a long time.

The HR rules that apply to the decisions that result from this aren't new.

The only thing that is absolutely new is the discipline required to effect change management in the Federal Government. And the fact of the matter is the Federal Government is hampered by being forced to live within a set of HR rules having to do with compensation, personnel classification and a lot of other issues that effectively produce the government from creating a competitive business unit. Now you need to understand something. Even though I have left the government, I am committed to that competitive business unit because it is critical to industry to have a good player. They are not interested in going onto a basketball court with a class Single A team. They want to play ball. That is the purpose for the tax payer at the end. From my point of view a lot of the personnel rules need to be changed. We have to look at pay banding. There is no way the government can effectively start a business unit by starting with GS 1 Step 1, and going to GS 15, Step 10 and saying: "But in those boundaries and the way that hierarchy is established, the way the classification rules exist, that you can create a competitive business unit." I'm not asking you whether you can create an acceptable hierarchy, it is a competitive business function. More latitude is needed.

I think one of the areas we spend a lot of unnecessary time is capturing the thought that we have to rewrite PDs. I think there is a thing in the personnel system called a primary standard. If we are going to stay with that GS scheduling classification system then we need to speed up the process of writing PDs or assessing what the responsibilities, duties and skill levels are for that position, so that we can quickly conclude what's the appropriate grade, because a grade translates into a salary, which is what you need to do the in-house cost estimate. We don't need to spend an extraordinary amount of time. I don't know how many of you are government supervisors, but the fact is that when you are asked to write another PD it is going to take you a long time. It takes you a long time now. It doesn't go any faster if you are doing it for an entire organization. That itself is a major speed bump to anything that is going to take place.

I believe the capital investment and the budget process require significant adjustments and I don't think they have been considered. Capitol programming, which requires a complete business case justification for the expenditure of large sums of money or relatively important sums of money to that organization, need to be reconsidered, because if you are going to create an MEO and a competitive business unit, that group needs to have greater flexibility in the way it has access to money and the way it makes significant capitol investment decisions that relate to being competitive. And those things have not been considered to date.

Most of you already know the principal ways of doing CS in terms of A-76. You can do the full study, you can streamline, you can do direct conversion and you can do the express review that Interior got. But I think we need something else. I think we need to be able to create an MEO. We need to be able to do the kind of analysis characterized by streamlining and then we need to balance that with public disclosure. Right now under streamlining that takes place in-house and doesn't necessary get a full light of day. It becomes a questionable process because of that. However, I believe that if we could allow the government to create an MEO, do something of cost benchmarking on terms of the cost of that function, and also have the process open for public review and challenge, we can get down to what I think is the most important issue: Quicker decisions on whether a function should stay in-house or move quickly into the competitive environment. Again, an extraordinary amount of time trying to do the full study because organizations are not committed to doing streamlined, because doing a streamlined study means that you are putting all your eggs in one basket and it doesn't provide the organization the opportunity to achieve what is intended: To improve service and delivery. And remember, contrary to what people think, the cost of doing these studies comes out of the operating budget. Everyone gets hurt when that happens. It means that the government in terms of its own functions is losing money and existing contractors may find their funding reduced and their ability to deliver services reduced because that money is being redirected.

Another change, we recompetete right now, within a minimum of 3 years, the cost comparison is typically got to consider at least three years, well minimal three, typically most government agencies do some kind of service contract for a base year plus four option years and depending on special approvals for IT you

can go a little bit further. I think you ought to consider some other things. I think we ought to create performance based extensions. I think we ought to provide the opportunity to say that if we have a performance work statement, if we have a quality assurance surveillance plan and if the group performing the function, be it contractor or government, is meeting the performance matrix that is there that one of the things we put in place is an extension of the contract. Maybe not necessarily for another term of five years if that is the base, but for a period that recognizes that and recognizes that we have achieved that and we are not going to go throughout the cost and expense and distribution of the delivery of services by doing a re-competition just because we have some kind of cookie cutter approach that says every five years every three years or what ever it may be. That there is some recognition that the good performance justifies continued work. I think we need (Tape Transition) Whether we have CS or not we all know how subject government is, both as contractors and as employees, to that yin-yang process. While business may have to exercise cost discipline, to be very frank about it, they don't work each other over by bouncing their budgets back and forth when they don't need to. But we find that happens here and I think that is a problem.

The last one I'd like to look at is the guidelines for current cost estimates, prescriptive and these pre-determined computational values. Let's get down to brass tacks. Everybody thinks that cost comparison sucks. It stinks, it's lousy, it's not fair and everybody has a legitimate reason for having that view. I've heard a lot of them and I can tell you each one of them makes sense and is reasonable. So let's change it. I would like to suggest that while ABC is not perfectly implemented throughout the government, and that's a problem, it doesn't mean that it may not be a good enough ideology for accruing an accurate reflection of costs within a function. And that in fact it is also timed to one of the President's management objectives in the financial area. The point is let's use some kind of different modeling. In that we have to understand in the supplemental handbook is not in the FAR, it is not an obligatory change, it's a change of just doing something different. And far too often one of the problems we have is that different is neither right nor wrong it's just different. We tend to institutionalize the different and then say that one is better than the other and that is not the need.

Number two: We ought to look, if we are going to stay with some kind of prescriptive process for costing, create business function related indirect rates as opposed to using some gross numbers that are meant to cover everything that both industry and we know are a lie. IF anyone has an overhead of 12% let me know. If you got 12% put your hand up. OK. So we know, not good, either because its too much or more likely cause it significantly understates the cost. So let's look to something different.

The other is we need to be able to introduce performance incentives again. We need to kind of free our minds that some how rewarding people for good performance is bad. It happens to Federal employees, it happens in industry, it happens across the globe. We need to realize that doing well deserves to be an incentive and that when we are creating costing models we need to provide for it. Whether it is because the government wins or industry wins we need to recognize and to encourage good performance by providing for it and planning for it as opposed to scrapping for it.

CD - OK, thank you Mike. Dan, you have three changes you want to present to us.

Dan Guttman (DG)- Yes, thanks. First let me thank Carl. It is a privilege to be here. I'm not sure whether as expert or provocateur. I hope it is at least some in the expert part.

I would like to first preface my three changes which are of a piece because they are all relating to once concept and that's the question of "How do we account for government?"

Jack was saying earlier that we have had the good fortune, probably uniquely among the world, of having a terrific a public/private relationship that is not a 1980's or 90's creation but goes back to at least WWII. And that relationship is one that unfortunately has never been examined looking at the work force as

a whole. All of our committees going back 30 or 40 years have been procurement commissions or civil service commissions and never the twain shall meet. And the questions that I had hoped that the A-76 panel would have address, but did not, was: How do you connect the two? In particular, the A-76 panel reconfirms what has been on the OMB government policy since the beginning of the Cold War and that is that the government must maintain the capability to account for, in fact, not just in theory, the actual work of government. Sometimes express as inherently governmental principal, people are confused by that, sometimes the core capability principal. Current A76 and the panel piously says well of course that's the governing law. In reality, however, and this is what I wish they had discussed.

So my three proposals are addressing three questions.

1. One: Should the public and the government itself be told that our governing policy as embodied in OMB circulars since the 50's and the CAP report, that officials must be able to account for all the work of government is now in practice. Too often a fiction.
2. Two: Should the government be required to alert themselves and the public to circumstances where this policy may not be in effect?
3. And three: Take steps to mitigate the potential damage to the public interest in these circumstances. And my third proposal relates to the obvious question "Should accounting for implementation for A-76, or whatever its successor is, be systematic and independent?"

Now the preface to this is the obvious question, Who cares who does the work of government?, whether it is officials or private folks. There is a number of answers, but for me is that the Western tradition a tradition, we share with France and all the western countries, is that there is a Rule of Law tradition, which in part and central part means that we apply special rules to those who do the work of government to protect ourselves as citizens, companies and individuals, against government. And also in order to define and limit the authority of government. What are these rules? When we think about them they are kind of obvious. The most obvious is the Constitution of the United States. Guess what? It does not apply to private actors it applies to officials. If a baggage screener breaks down your computer or goes into your purse or makes you unclonche, if that baggage screener after 9/11 is an official, he or she may have violated your rights under the Unites States Constitution. If that same person does that same thing as a contractor you may have zero rights. Very practical implications. Who does the work of government? The constitution of course is at the top of the hierarchy. Over 150 years we have enacted a whole series of further rules to protect us against officials. What are they? We all know them. Conflict of interest rules, pay rules, political activities rules, labor relations, who can strike who can't strike, protection of private property, trade secrets, and of course the basic difference is we have two difference sets of codes to deal with civil servants and third parties. Title 5 deals with officials and appointees. Title 41 of the US Code deals with contractors.

Now the critical thing to understand is the beauties of this rule of law tradition is that it permits, it isn't inconsistent with, it permits the use of third parties, contractors/grantees. How does it do that? It says that is recognizes that when folks like Mike at Accenture come to work for the government they are working for other folks as well, they've got needs in terms of compensation in terms of public access that differ from those of officials. We are only going to be able to use people like Accenture if we don't impose too many restraints on them. And the way we do that is we are sure that the people that are overseeing Accenture, the officials, are themselves subject to the protections that we require most of the time of those accountable to the public.

So to be specific, conflict of interest rules that apply to officials say you can't work for the DOT and General Motors or you go to jail. However, sometimes we have contractors that are doing both, not because the are bad, but because they are experts and we assume they are being overseen by officials. If that's not the case then we have a problem.

So that leads us up to our first proposal. I would change the specific language, that's what Carl asked for, It's actually a terrific idea Carl, change add to the policy provisions of A-76 or whatever replaced it is FAR. It is the policy of the US government to talk straight to the American people and itself, not withstanding a half century of OMB policy which I will call the presumption of regularity, in essence the presumption that government is in control. It cannot now be routinely assumed the only officials perform the work of government. In essence, as important as it is to proclaim that officials should be able to account for government, it is not in the public interest to deceive ourselves about this where it is not the case.

Brief explanation about this change. One, as Paul Light documented in his book, the true size of government since WWII, we have had a bipartisan Republican/Democrat, Executive/Congressional policy of pretending big government is small by keeping a lid, personnel ceilings, executive and congressional, on the number of civil servants. So we can tell the American people, guess what, Big Government has grown. The effect of that, the hydraulic effect like water pressure, is our government grew since WWII, every agency had to get its workers somewhere; get them from the private sector. This is not a secret, this was not something just discovered yesterday, it was not 1990's reinventing government, its 1945. In 1962 the best and only report on this question, which was to President Kennedy, said these developments have blurred the traditional dividing lines between the public and private sectors in our nation, raising profound questions effecting the structure of our society being unable to distinguish what rules apply to officials and third parties and who is whom. This report to President Kennedy have to be address but it is the Cold War we can't stop to address them. After that report, our country went on automatic pilot; bipartisan fiction government who as if the civil service were all that we need to be in charge and that the more that the third party work force grew ironically the more the official re-assertion the inherently governmental and core capability are essential policies. These policies only went into statute with the FAIR Act in the 90's.

So the consequence of this fiction is what I call short term rationality. If I were in government, as I have been and I had to do work, of course I'd hire a contractor. They've got the expertise because they have been working there and I'm not allowed to hire a Fed. But it may yield, and have yielded, that long term rationality. We today have a real question as to whether we have the in-house capabilities, its no secret, in areas needed to control the work of government. And there are at least three basic dynamics at work.

One is that the third party work force has acquired permanence. Its span of control is qualitatively different from, and in many cases greater than in time and organizational dimension, than that of civil service. Contractors work between and among the agencies. An official may have a contractor without knowing that the contractor is working at a part of the agency or another agency that is supposed to be checking that officials work. A lot of contractors work passes anonymously under official imprimatur.

Two, because the personnel ceilings, when we've had new programs, the work of learning them, the opportunity of learning them, is done by contractors. The entire new area is IT. Where the IQ of government never was in government from the start.

Three, because of the dual sets of rules governing officials and private folks there is an obvious incentive. Why would I want to stay in government if I can make twice as much, not be subject to conflict rules and go outside government. Post 9/11 this point is punctuated. What is the one contractor that is talked about in terms of moving into the homeland security agency, or people say, is should they still want it: Los Alamos Laboratory. Los Alamos, of course where the atomic bomb was built, is part of the DOE, nuclear weapons complex, which is a quintessential template for what we are talking about. Sid Heckler, in 1997, who is the head of Los Alamos, said that development, construction, and life cycles support of a nuclear weapons complex required during the Cold Ware were inherently government functions. However, we had contractors doing the work. Now here we have an A-76 policy that says inherently governmental functions can only be done by the government. Here we have the head of the primary post 9/11 contractor saying, but we've always been doing this outside. Doesn't the public deserve a squaring of this? DOE as we all know,

again as a sensitive post 9/11 setting. In 1980 Senator Pryor found twenty thousand officials, the department did not know how many contractors, maybe two hundred thousand contractor employees. In 1993, Secretary O'Leary told Congress "We can not control our contractors. We don't have the capability to control them." In 2000, following 8 years of Clinton administration reform, the GAO said DOE privatization initiative, more contracting has little success in achieving cost savings and keeping projects moving forward or getting improvement. 2001, last year, the DOE workforce analysis says the DOE has 14,700 Fed and over 100,000 contractors. 44% of the Feds are over 50. 6% of the technical work force is under 35. Now the Walker Report says that the FAIR says that 9,889 DOE employees are outsourcable. But when you do the numbers it looks like the official work force can go negative!

I was going to do a view graph. What does that mean about the inherently governmental presumption or the ability to control.

So what do we do? This is very simply, I'm a go with the flow kind of a guy. This is were Carl and I agree. What works works, but there is a law that has to be applied. Look we want to contract out, we don't believe in big government, meaning we don't believe in officials, that's cool with Dan Guttman, however, we shouldn't delude ourselves that we have control. Therefore, if you are going to contract out, I'm not talking about Dell Computers or paper and pencils but things in the area of studies and analyses things relating to government or things so technical like Lockheed building a fighter, the government's not going to do it, but you need someone to over see it. You've got to be able to understand whether you are going to be able to control that contractor. So there should be a certification either inherently governmental, the accountability principles are in fact working, or, "Look boss, we can't really tell you, but we know what this contractor is doing or we can evaluate it and we are going to put into effect certain tools of government in the current vernacular, which will hopefully assure that," and I'll go down them in a second.

As a footnote, I think this certification in sensitive cases can't be left to the contracting officer or the program office. Contracting officers, as you all know, are terrific, but they're doing a million different programs. When I was looking at the DOE, Dave Newman was flat out told by the program office that Secretary of Energy Watkins testimony never could have been written by a contractor. Guess what?, that was false. How did Dave Newman know it. He couldn't. When I was working for Senator Pryor and we found out that the DOE was using a company to deal in nuclear fuel policy that was reporting to the foreign beneficiaries of that policy, the program officer said that these are fine people, they used to work for us. Program officers didn't know the people were working for the other side at the same time. Serious 9/11 problems. So you need someone independent to do this.

What are the kinds of measure that I have in mind? Well you all know them.

One, they are all very practical rules of thumb. Rule of Law, when you see that a contractor is doing something that a Fed usually does and usually is bound by certain rules, maybe you should apply selectively, not all the Fed rules, but some. For example, we see two or three years ago the chemical industry gets upset when it finds out that Harvard in essence wrote the rules that are going to regulate Clear Air, did the studies. You can't give access to the chemical industry because Harvard University is not a government agency and therefore is not subject to the Freedom of Information Act. So Senator Shelby changes the law. We are selectively applying the Freedom of Information Act to a contractor when that contractor is performing a function that requires public access to that data. So it is selective application.

Two, new public management techniques, all the things that people at Accenture and Steve Calman are telling us about. Performance incentives, performance measures, they're terrific. The caveat is that they are not new, been around for a 100 years. Many of you saw that study in the press a couple of weeks ago, over 90 years, it turns out that cost estimates have constantly remained 40% beneath actuality on major projects, big government private projects. 100 years, no improvement. We see today with Arthur Anderson, Enron, WorldCom. If it was last year we had this conversation, it would have been the best bottom line

performance measure, profit and loss turns out to be readily manipulatable, notwithstanding Arthur Anderson's oversight. . . . (unintelligible comments)

Transparency, obviously public access. Ready public access to contracts. If you've got a public contractor with a conflict of interest, you may hire him, but the public should know what it is. Third party enforcement rights, strafing the capability of the official workforce. Obviously we are not going to get more civil servants but we can, as Senator Voinovich has been pointing out and screaming about for years, we can train them better. We can recognize that they are more than just contract managers.

Finally, the all important X-factor. All these technical things, performance measures. We all know that is a lot of mumbo-jumbo. What really counts is that when you have a government that people really care about, during the Cold War, WWII, post 9/11, people may do better, may exceed what they expected themselves.

Final change, very brief, very obvious. For every trillion dollars that the government spends on contractors the public is entitled to one independent analysis of it. When you look around and see 50 years of A-76 policy. How well does it work. In 1995 John Coskin from OMB and Mr. Nye told Congress "We have no clue." After 45 years this is not contracting for technical stuff, it is contracting for routine commercial stuff in many cases, we have no clue. I'm now told by the good people from GAO that they have now done some studies. They say the data ain't so good but it looks like you could save money.

We are also told that the Center for Naval Analysis has done many studies that demonstrate that this all saves money. I went to the University of Rochester which manages naval analysis, so it is near and dear to my heart, a terrific organization. But CNA is wholly, obviously, it was created to be a contractor for the government. And so if you want to have your CNA's doing your studies, that's terrific, I'm not against that. Contractors that have conflicts are entitled to do a studies, but the public is entitled, if you are going to spend 200 billion a year, one every 5 years to have somebody that is not dependent in whole or part on the government looking at this. In particular, looking to see whether the so called performance measures are there and the data gets collected.

CD - This is not contractor specific it would be all contracts throughout agency.

DG - That's right. If people want to leave out paper and pencil contracts for some reason that you can find that certain kinds of purchases are so routine and obvious that they need to be studied, well fine, that's what learning is. Do a first cut and find that you only have to focus on bright hard cases, that's fine but that's why we do these things.

CD - Thank you very much Dan. Now this is where we are going to switch to the fun part. As Jack mentioned, what we are trying to do is get these provocateurs, these experts, to say: "Here are my 3 or 4 changes," and you get to respond to them, but you also have the opportunity to propose your own changes, so you have 40 minutes to talk about changes to A-76. Let's switch back over. We are going to start talking about Michael's changes. We are going to go through each of them independently. I want you to tell me basically would this work would it not work, do you see a problem with Michael's change? Then obviously we are going to have, after we go through all seven changes, any changes you feel needs to be made you can state the change and I'll give you a little bit of time to explain why that might have a good impact.

So Michael's first change related to FAIR and how are we going to classify these positions. In his proposal he says we should not be looking at separate FAIR Act ways of classifying but we should actually look at the classification system. Any one have a response to that, would this work, would it be beneficial.

Ma'am, right up here in the front row, and if you could speak right into the mike, because we are trying to transcribe the meeting.

Audience (woman)- Sareen Gerson, OSHA, Department of Labor and I worked for 20 years as chief for classification for OSHA. Using the classification system would be excellent because it would be a lot easier and would also make it easier for people that want a challenge because they would know what you are taking about. The function codes area terribly hard to cross relate. However, there is a problem and that is in the present systems, in classifying these FTE, we are supposed to be classifying functions not jobs. And the functions codes accomplish that. In cases where a particular FTE or positions, they are very hard to divide up, but anyway we think of them as ours, FTE's are hours of work. And if any one FTE or position you might find functions that are outside of any one classification series, so either we have to dump this idea of going by the hours and functions and dividing them up and in the MEO grouping the functions so they are most efficient and just use the series as we did before.

CD - Mike, how would you respond to that criticism?

MDC - I think there is a couple different issues to consider. I think your point is well taken but it may not be a perfect translation, for purposes of being fair. I think some things to consider. One, government recommendation, the second item below classification, is to look at function. If I talk maintenance, or facilities management, or IT technology, one can typically group a series of classified positions as being associated with that activity. I'm looking more how do I create a collection of information that would allow an organization to create a competitive business activity in the associated positions that I already have. The difficulty that I saw people having is the inability to ensure employee equity, in the sense that, for example, in Interior I have nine bureaus who are trying to go through and create their FAIR inventories, I had no assurances that everybody was going to use the same function code to necessarily characterize the same kind of activities. And what I'm looking for is a better opportunity to have equity for all the employees to ensure them that regardless of where I work I know there is a common matrix that is less liable to be subjectively exercised by managers or organizations, and that's the number one concern.

Two, by aggregating that way one of the issues that I think is more strategic and in light of the demographics of the Federal Government, in terms of people going to retire and young people it's got, it it's able then again to better aggregate and to collect and look at business functions and be more strategic. I think one of the issues that has to be addressed here is that change management cannot be governed by the term of an administration. I believe that one of the issues here underlying, just to be very frank, is that the senior career management of the Federal Government needs to embrace change management as a matter of principle, as a matter of technique because in order to effectively accomplish better service to the tax payer, it cannot be governed by whether or not I want to call it NPR or competitive sourcing or whatever the next flavor or color is going to be. It has to be a dedication to change management that we take ownership for and that we realize that there is no inherent Right of Entitlement to a government position, if in fact the delivery of the services can be more effective done by another alternative.

Just like I think equity will provide the opportunity to assure that where the government is a more competitive business unit, it can do that. And that's what I am looking at when I look at these kinds of solutions; How do I facilitate any one manager or department out here to better look what it has in front of it without having to go through extraordinary efforts to translate and rethink and reform itself?

CD - Maybe there is a third way. You come from the DOI where BLM has had extensive experience using an activity based costing system. And I now you mentioned ABC for your cost calculation, would ABC be a helpful tool to look at in terms of tracking the hours and allocating them to functions for a FAIR Act analysis?

MDC - I think; What's the right word to use? I would defer that in fact we probably have people in the audience who can be more expressive about that.

CD - Go ahead, you are going out to Phoenix to do an ABC work.

Audience (woman #2)- You and I have had this discussion before, but I guess my take on using the ABC on this is I would pose to the agencies who would undertake this initiative, the issue here is if you want to use ABC to do your inventory or to do costing, do you want to re-wicker your ABC architecture to speak functions. Functions aren't necessarily processes. The focus of ABC is processes. So to do this if you are going to remain pure to the intent of ABC which is to capture the cost of doing business across your processes and activities, you are going to have to build some sort of cross walk between the processes and the functions that we have to use to build our inventory and the functions that are by the way which is what we are supposed to be studying under A-76.

CD - It is possible to have an indicated system that would help you with the PMA goal for improved financial management and CS and even go one step further, tossing it in and doing work competency analysis for your human capital plan by. . . .

Woman #2- I'm not saying it can't be done, I'm just saying that it is a lot of work and that represents expense. It is a question of what the Agency is willing to undertake.

CD - OK, other reactions to the FAIR Act recommendations that Mike has laid down in number 1. Anyone against it? Any one opposed to moving more towards a classification system?

Audience (woman #3)- I just want to go backwards, and maybe I'm one of the few people in the audience, but I don't know what ABC is, could you just give us a quick definition of what it is?

CD - Activity Based Costing, and it is one of elements in goal three of the President's Management Agenda that is required that every agency has to move toward an activity based costing system or an equivalent system to calculate track and report financial information, the cost of activities, services, parts delivered.

MDC - Carl, if I could mention one other thing. One of the reasons I also emphasize this is that one of the things that is currently missing in the current process is the kind of effort that needs to go into the preplanning. What tends to happen is the inventory is created and we immediately jump into CS plans. I believe that by using the classification system we can take the time and energy that is spent trying to do that cross relationship to function codes and do more in the area of pre-planning and actually making that more of a requirement. I think one of the problems we have is that too many people are involved in CS. What I mean by that is it goes down to the lowest level supervisor to do their inventory and then it gets moved up and it keeps getting purified or puréed, depending on where you are, as it goes up.

And the other point for me is that we need a lot better planning and you have to understand that some improvements like this benefit whoever is going to be a participant in the process. Better planning creates a better performance work statement provides an opportunity to better define what the function is to give everybody to find out what are we competing for? Whether it is a contractor or whether it is the MEO.

CD - OK, the second change Mike is proposing is the process in which we create and MEO. So let's go to that change and look at it. Existing personnel policies, compensation plans and policy guidelines hamper

efforts to create competitive federal business entities. What Mike proposes is pay banding, use of a primary standard, changes and modifications in the capital investment and budget process to make it a little more realistic. Consideration and more flexibility for the MEO on capital and budget. And MEO streamlining the process, not necessarily going through a full blown study. Your views on these changes, help or would they hurt?

Audience- Help.

CD - Help. Anyone have any specific heartburn with any one of them or why don't you talk about the way you want to see it implemented? The question was, How many FTE will you be over?

MDC - I would first use 65 as a modeling process. Jack mentioned something very interesting and it's a Catch 22. In the Federal Acquisition Regulations, part 12 deals with commercial activities, you know the standard kind of thing you can buy and the way they have simplified it. I think that if in fact we have commercial activities, that kind of standard thing, I'd like to use 65 or less as a way of modeling that and then looking at larger numbers as well. Cause understand, one of the real issues here is getting both for the employees benefit and for everybody's benefit to the decision point, is it staying or is it going? And we go through an extraordinary amount of effort to get to that point and we keep everybody in suspense. Really what we need to do is get to that point quicker, but for the employees and the contractor community to know, do we have something that is really in play or are we basically, depending on your faith experiences, your doing something your afraid you would be embarrassed to do in public. What we do to do full studies in order to get around all of the requirements is embarrassing. We need to do something better.

CD - Any one here from industry have a reaction to those changes in the MEO process. Supportive? OK with that? Any other commentary or questions about these elements?

MDC - There is a clarification I have to make real quick just because of some comments Dan made. Please understand, I'm not here, while I'm an employee of Accenture, my continued participation in CS discussions isn't because Accenture has a practice in that area. I'm here because of the experience I had as a Director at Interior and because I'm comfortable sitting in front of people and speaking. Not because I'm here to argue for Accenture, per say. They very generously allow me to continue to do this and pay my salary while I participate in the public discussion of this sort.

CD - As many of you who have been to these forums before, he is not up here because of Accenture, but because of his work at Interior and his knowledge.

Audience (Corey Rindner)- Maybe it is already included in your part of your changes and adjustments there, but I would like to see some type of a mechanism where if an MEO wins and the people are more effective and cost effective in their performance that some of that cost effectiveness can be turned back for rewards for the people. Just as a contractor is able to incentivize their employees for cost effective performance. I could be able to retain some of that savings for cost effective performance for the performers.

CD - Corey, I did, but I probably did it in the wrong spot. On the fourth recommendation I talk about in developing the cost estimate of the MEO have the ability to create incentive tools.

Corey - So it is a silent agreement?

CD - I am also going to ask that as a very specific questions because, as Jack said, you can not have CS be a change management tool if you don't put some incentives on the table. So I'm going to ask you how to incentivize some of the processes and also relate to compensation and bonuses?

Audience (woman #4)- I just wanted to respond to that by saying that the private industry is incentivized by getting to keep their jobs or getting to keep the contract or past performance to get the next contract. And that is something that is interesting to try to model in the government, but that is a very important incentive. So if the government can save money by having a better performance, don't necessarily say just give it back to the employees or this or that. We are saving money, I mean this is a big deal we get to stay in business.

CD - So your argument is many employee incentives are not necessary or are not warranted?

Woman #4- Well, what I am just saying is that it is an important difference between private industry and the government. I don't know that it can be reconciled, I'm just saying it is an important difference that you should recognize.

CD - OK, good commentary.

MDC - Oh, no it's Dot!

Audience (woman, Dot?)- Can you amplify a little bit by what you mean by public disclosure of the streamlining process a little more? I guess my concern there is that if we are talking about public disclosure of how the process of how we come to our MEO, I would like to see something similar with the private sector. My concern here is trade secrets.

MDC - OK. That is a good point. What I was looking at here was experience suggests that the streamlining process that is now provided for 65 or less you can do that review, is done in house, it doesn't get any exposure to day light. I know that on the Federal side, besides doing the express review Interior got approved for 10 or less, unless you do a full study you can't deal with 65 or less. Your caught doing the full study and the cost that that requires. I'm looking at this as an opportunity to say, number one how do we implement change, create a new MEO, create a new business entity, but not have to expend the amount of money that a full study requires and that the trade off for that as to have some for of public exposure that allows you to validate because as a results of that you'll decide to keep something in house or to contract out for. And I think that the trade off between the various stake holders interest requires some sort of public disclosure of that decision.

Now you bring up a good point in terms of the contractor community and to be very frank I hadn't thought about it so much as Looking how do we get to the end point which you see here is the decision to retain or to put something out for contract and to get past this very extended process where you have 25 or 30 employees, you are going to do a full study, a full competitions, a best value decision amongst vendors typically, your then going to get into a cost shoot out or best value process and your going to take 18 or 36 months, where this modeling would be meant to maybe get you to the point that within, in my terms of thinking, within somewhere between 4 to 8 months, on average 6, you'd be able to make that decision, people would know are we fishing or cutting bait. That would be the objective there. But the process, and stop to think about it, public disclosure, some of the things Dan talked about, require that we would at some point say these are the things that we observed and validate and get everybody to buy in. Again remember , it's a

business case issue. Do we have a business case that presents the argument, we ought to keep it. Do we have a business case that objectively forces us to say move it out as opposed to dragging it out.

CD - Let's move on to the third change, related to the contract term. We compete within a short term cycle sometimes is a hindrance to competition that Mike is exploring performance based extensions, almost like award term contracts, as well as looking at appropriations protection in terms of getting a bit more guarantee that the money is going to be there rather than all these budget games where the budgets go back and forth. Commentary on this change. In particular, the award term or automatic performance based contract extensions.

Dot- We already have that, they are already doing that.

CD - So A-76 already provides for that.

Dot- Not A-76, you've already got some agencies doing that under incentive type contracts right now.

MDC - You do, I would admit that. The problem is that most people, let me correct that. I'm not sure the contracting community and the management community have broadened their thinking to consider and incorporate that as meeting as satisfying and expanding . . .

CD - So the tool and the ability is there, but we are not using it.

Dot- The tool is there. I think the contract community is still on learning curve. I think there are only a few contracts out there and the jury is still out on them, but they are doing them

MDC - And you are speaking to a very fundamental problem that I think we all recognize. CS is not about contracting. It is about management decisions, program decisions, resource decisions. The fact of the matter is it's been tagged onto the contracting process because at some point there is a proposal and there is a proposal and they are competed. But the biggest issue, as I told you earlier, is the fact that the government, in a discipline structured manner, has to implement change management. The contract process is there the best value process is there. PWS is there. The HR rules are there. And that were we need to look at that and have everybody expand ;their thinking as how to deal with creating a management plan, competing and facilitating that process to quick decision.

CD - Now moving on to the next one, I would be really interest on how you would write a provision to force the appropriators to behave, cause if you got it I'd love to see it because there is a lot of other provisions we need to write about them.

MDC - First of all, I know some of them and I am always mindful of the fact that 50% of all college graduates, 50% of all lawyers and 50% of all doctors graduated in the lower half of their class and therefore I do not ascribe to them greater brilliance than is justified.

CD - The appropriators?

MDC - Yes.

CD - OK.

MDC - There are some things I can't control obviously.

CD - It is a wish.

MDC - It is a wish, but I think there are some things that if it were less politicized, and you were looking at how you improve the delivery of services to government there are in fact changes that you can deal with. There have to be some assurances. You don't create an MEO and have the government win or have the contractor win and believe that the program then is scriptable to constant unjustified changes that are going to create pressures as to the ability to perform, the inability to perform, the ability to get the kind of capital investment you need or not. If in fact, the government wins or the contractor wins, they need to know the money is there for the investment.

CD - OK. Let's go on to the last one, costs. The big question of how do you calculate those costs. Consider the use of ABC as the cost methodology, create business function indirect rates and providing the performance incentives. Commentary or reaction to changes in how agencies would have to compare and calculate the cost? Go ahead Fran.

Audience (woman, Fran)- Only one comment on the use of ABC. While I think ideally it makes more sense than the current way of costing A76 competitions, there is a timing problem. My experience with ABC is it just takes years and years and years to get up to the point where it is full and complete enough to be used as a costing mechanism and you don't want to stop the process until that happens. So there needs to be some kind of transition period if there is serious consideration to using ABC. Secondly on creating indirect cost rates by business function. That was one of the original intents of the Circular. The reason they went to a 12% was that they were getting such strange rates all across the board or no rates at all, that they needed to have something in there that would approach reasonableness. So if your going to have indirect rates by business function, I think you are going to need some way of creating those rates that has credibility and is accepted by most everybody.

CD - Could you give us a little more depth about the rates? What did they find when there were trying to do these initial calculations?

Fran- You would have indirect rates of 1% or 2% or the agencies would not develop the rates consistently. They wouldn't use the same cost factors. They wouldn't cap the same numbers of people as part of the function or overhead for the business function. It was just very, very inconsistent and you would not have believable numbers coming out and you need to be able to develop something that gets you to believable numbers before you can use the indirect rates by business function.

CD - Other reactions to the cost proposals?

Audience (man #2)- I think ABC is part of the solutions, basically is it part of the equation because you do have three type of metrics. You have basically work metrics that relate to ABC and then you have process metrics and you also have product metrics. And bottom line is that you want to be able to measure was something accomplished and not just merely the activity and so yes this is part of the equation, but I don't believe it is the whole equation.

CD - Any other comments on these cost proposals. What if, again assuming we move toward the ABC or ABC like system, which is the goal of the PMA, it does not mandate ABC but it mentions ABC, you already asked to move toward that system to be compliant with that one PMA goal, what if in the interim we keep this arbitrary indirect cost rate with the hope that if we are making progress on the other goals of the President's Management Agenda we can start using that cost information. Do anyone think that would be an absurd idea or a bad idea? Speak now, that would not be a bad idea. Stick with the devil we know while we try to make improvements in these other area of getting better cost information.

Let's go ahead and switch over the Dan Guttman's changes. The first change was the policy side. It was almost like the banner statement that should shock most Americans if the understood the importance of it that we can no longer certify that Federal employees are carrying out the functions of government, that they are the ones caring out the functions of government, and that we have sufficient level of oversight or accountability. Comments on that policy statement being put into the A-76 guidance. Everyone thinks it is a good thing? Would it help you to competitively source? Is it important to disclose? Is it important for us to look at this principal, should we have this accountability? Should we be worried that no federal officials are carrying out the work of government?

Audience (man #3)- No. The net loss in the next 8 - 14 years, there is going to be a mass exodus of civil servants. So ultimately you've got to look at contractors running parts of government. Everyone has said it this morning, your not going to get any more FTE's and the ones that are hear will be gone, it is just a recognition of that fact.

CD - What you are saying is that in a perfect world the work would be done by efficient government employees. But because we can't recruit enough of them and because sometimes we need to have competition and every once in a while the private sector might have to win to have competition, we sacrifice a little of that principal in order to have that efficient government.

Man #3- Some of the examples he gave, it's already happening. Why not recognize it and move on?

MDC - I think you need the requirements to have a bit more discernment, because I think even for the head of Los Alamos or somebody else to self declare this is inherently governmental, I think you have to be real careful because there are other forms in other democracies, and I think New Zealand is one, in which they have from the very beginning of the formation of their government, decided that certain kind of functions are not going to be done by government people.

DG - I want to pick up on Mike's excellent point, that we really should be talking about, he made the essential point that I was trying to make. We are not talking about contracting we are talking about the work force resources, the human resource of government. That is the policy we are talking about. This gentleman said we're going in certain way we all see that same way. The question is how do you account for it. Now, we have a spectrum in the United States of tradition under which we can take things that we call public purposes, public utility services as an example, we get served by PEPCO, or what used to be called VEPCO, I don't know what the heck it is called now. Those are private stock companies. They perform a public purpose. Dan Guttman doesn't get up and say this is an outrage they should be government officials. Maybe they feel that way, but no body is making that argument. The reason is because we have 300 - 400 years of Rules of Law for controlling non-governmental entities that perform those public purposes. The Rule of Law we have for our federal government presumes that the purposes that we are talking about here are not going to

be provided by contractors but by officials. If we are going to move to have those provided by contractors, that may be a good idea this conversation is essential. But what Rules do we apply.

This is an important point and the New Zealand thing is quite interesting. One of the real fascinations is when you get around globally, is to discover how ignorant we, I mean Dan Guttman, Congress, Scholars are. We have a global vernacular. You can go anywhere. The reality of the New Zealand experience, putting aside New Zealand is not the United States, its a smaller country etc., etc., is that a lot of what they refer to as privatization wasn't privatization. It was taking an entity that was formerly a ministry, a department like HHS, and turning it in to what we would call a government corporation, a state run agency. One of the things is omitted in modern day discussion is that we have a whole tradition, a spectrum, with in the public sector, 1945 government Corporation Control Act, permitted us to create power administration, Amtrack, COMSAT, blah blah blah, so you can get business entrepreneurship within a public forum. I'm not saying it is the way to go, I'm simply saying we use examples like New Zealand without a careful appreciation of the fact that we have already been doing as a reform since WWII. And putting aside where New Zealand is going, and they are going back on that. These are things that require careful understanding of what the actual legal structures are and the accountability mechanisms are. You can't just say public-private, contract or not.

CD - So your next change actually flows from that one. As I heard you, the first part of this is that they have to certify that they are comfortable with the work being performed by a contractor and that when they are not they have to make provisions or they have to mitigate any potential deficiencies that they see. And the way you would mitigate is that you would write into the contract or make them accountable for a provision like FOIA or a provision of standard conduct.

DG - If I were a citizen and I knew that this work was being done not by a government official, would I care? If I knew that the welfare determination for my mother was being made by a contractor, would I want the same rights of appeal, constitutional due process rights, that I would have if it was made by an official? Wisconsin has a rule saying contractors made those determinations subject to appeal.

Can I make one comment here because we have sort of given up hope, there are two terms that are conventionally used, inherently governmental and core government capability, and let me just make a little -- it is confusing but it is important. First of all the way we use inherently governmental today -- it is at the core of the FAIR Act, and Allan Burman is right in the middle of having to deal with that and we thank him for that.

First of all, the inherently governmental concept, just to give the context, may surprise some people but the Supreme Court of the United States has found that there is virtually nothing that is inherently governmental. The only two things it found were primary elections, and this was in particular relation to the racially segregated primaries in the South in the 30's and 40's and it is not clear there is anything else, military national complex, military defense, we've been relying on contractors. The Constitution says we can hire privateers but the Congress has to give out a letter saying that the private companies are working for the government, so the point about inherently governmental it is not an on/off.

Two, it is involving not only looking at a particular subject are like defense, but also giving out government dollars even if the dollars are for commercial services. Well whose in control of those dollars. In practice, if you really want to look at inherently governmental you don't look as who signed the decision. It is not that Allan Burman signed that decision but was it written by his contractor and he said "Sure, use my name". That wasn't at all what happened with Allan, but we can make Allan an example because we know he did his work. The point is it is a very difficult test in practice.

Core capability by contrast; take the baggage screener. Obviously baggage screeners can be private folks, because that's what they've been. Nobody is saying baggage screeners have to be public servants. The reality is though that is makes a practical difference to the person whose baggage is being screened as well as the screener to know which body of law that baggage screener under. Is that baggage screener protected by whistleblowing rights or not? Like most contractors, False Claims Act is a qualification. Is that baggage screener under the Constitution or not? So that both cases, inherently government and core, the question is what Rule of Law? Do we care as citizens? It is a practical question. It is not looking at the tax code and saying do we put this here or there.

CD - Let me pose a practical question to the audience in terms of response to these. I think Allan had a comment.

Audience (Allan Burman)- I spent about 2 1/2 years of my life working collaboratively with Mr. Gutman and getting beat up by Senator Pryer, as I recall, in trying to come up with a policy that more or less develop a brightline test for saying what is inherently governmental and was isn't. Back in '92 we actually produced a policy document that laid out, I think, very sensible provisions there to say that the government should be, the people, issues that were so intimately involved that affected people's interest needed to be inherently governmental issues. Issues where you would be getting advice, comments from out side, but where you had the ability to take that advice and make judgments on it and use that advice in a governmental manner, you could rely on contractors and we came up with about 17 areas that were definitely governmental in nature. For example, awarding a contract would be something that was governmental.

The issue is the one Dan is raising, whether you in fact have that capability on the part of the government to be able to make the judgment based on the information given to you. As a mater of fact, I had to deal with the issue one time where we had private sector people reviewing security clearances and making recommendations as to whether or not some one could get a job with the Federal Government. It seemed to me that that should be done by governmental folks. Preparing testimony is another area although we did deal with that issue.

But I think the question Dan is raising is not so much the question - What the policy is, but - What's the practice? If your saying that we are really not following that policy that we need to look at it more carefully and have some one make a judgment, a specific judgment in whether or not is makes sense for something to go out in contracting.

DG - Yes, but the important part is we are past that. We have given up. We have determined as a country Republican and Democrat, we don't care, as this gentleman said we are not going to have Feds we are going to have contractors. To which Dan Guttman says, I'm not the country. If that's what your going to do, all I'm saying is that you might want to apply to those folks. It as if Allan Burman tried to draw the line and people are still doing whatever they are doing, you should take Allan Burman's 90 to 1 circular policy and say "Well, let's see. I'm contracting out for writing testimony. Allen said I should be concerned that might be something that people care about or officials should know about. What do I need to put into that contract to make sure the public knows what is going on and the official has some kind of help?" Maybe if only that the public is alerted to watch more closely the Secretary's testimony.

So we are past, my point is that where we are now is passed the notion that we can put the inherently governmental and core back in the box. It is out of the box. The question what do we say in A-76 or its successor. That's my point.

Allan Burman- Just one point Carl, if you take a look at what has happened to new agencies that have been set up in the last 20 years or so it really confirms that. If you look at the Department of Energy, or Education, or EPA, how many people there are Feds as opposed to how many contractors work for those agencies verse Ag or Commerce or some of the older line agencies you can really see that transformation taking place.

CD - Other reactions to the slide, where a Contract Officer will have to sit down, if they cannot certify that there is no risk, they have to sit down and write into this contract, various provisions, various mechanism where this contractor would have to either report or be accountable and be covered under some of the same systems a government worker would be covered under. Go Ahead.

Audience (Man #4)- My comment that is I don't think the Contracting Officer is the proper place for the certification. And I don't think that is what was implied here or perhaps I misunderstood. Speaking as a contracting official, we don't know the answers to all those questions and I think this was brought up in the situation where we buy everything from soup to nuts; we are jack of all trades, master of none. So to expect us to, we are already battling with issues in Section 508 in the certification. To try and put yet another certification on something we have no clue whether we are making an actual good faith certification or not is, in my opinion, a significant problem.

CD - So you don't necessarily think it is a bad idea, but you don't think that certification should be made at the Contract Officer level?

Man #4- Correct. This is an agency decision and so it should be made perhaps by a senior agency official.

CD - So assume that some one else in the food chain makes the decision you still think we should take that contract and analyze the contract and identify where the provisions need to be made to ensure accountability.

Man #4- I think that is our responsibility any way. As a contracting team who is trying to execute the vision that the management decisions are being made, it's important that we provide value added at every step. But the certification by a Contracting Officer is not going to add value.

DG - I'm really glad to hear that because when I made my comment, those of you that are or have friends that are contracting officers would say "Who the hell is he to say contracting officers can't do this?" But my experience is the COs are terrific but they have all this other stuff and precisely because of the need to contract for personnel ceiling reasons, you are in no position to tell the Program Officer that is reporting to the Assistant Secretary "Well, this doesn't meet technical requirements A, B and C" and a lot of the problem in the Volker Commission and all those comparable reform things is the notion that all of the problems that Mike and you are taking about are going to be fulfilled by turning civil servants into contractor managers without any understanding that there are two kinds of people that do that function now. One, is you guys who are in charge of the law and two, the people that know about the contract and the programs. That is like saying you have these two people that are overworked now we are going to turn those two people into one.

CD - Other reactions to this provision? How about people from industry? How about having some of this written into your contract? I know some already do it, but how about having this as a formal process of certification? (End of Tape)

CD - He had clarified part of it by saying that there maybe a threshold of sorting out the essential from the mount essential contracts but this is where every agency would have to get an independent organization to come in and review their compliance and their implementation with the various aspects of A-76 and come up with some sort of statement of fact as relating to not only compliance but benefits, performance, costs. Reviews on this, and I guess every 3-5-7 years, so this would be occurring for your agency. Commentary? Yes, go ahead Fran.

Fran- First of all, I'm presuming that you would look at both in-house ones and contracting, you wouldn't be just restricted to contracts. I guess my only comment on that is that there are a number of organizations that routinely look at both in-house and contract wins for various purposes and they all do it slightly differently so I think it be important, if your going to have a requirement like that, one – to see if there is one of those ways that would suite so you wouldn't have to duplicate it and two – have a clear understanding of how you would go through that process so that everybody would look at it the same way because what we found is depending on how you look at it the answer changes. And so you want to have a really objective wholly understood way of doing it that could be applied from organization to organization, agency to agency.

DG - Yeah, well I'll tell you where I'm coming from this is I teach at John's Hopkins on this stuff and I was looking for materials for students on this whole debate on whose more efficient, government versus feds and its difficult to measure efficiency when talking about think tank studies or stuff like that but I thought A-76's, its commercial, it would be relatively bread and butter surely there would be a whole history since its been in effect for 45 years and I was stunned to find in the Congressional Testimony '95 people saying, this basic bread and butter procurement as you where saying there have been sporadic attempts to measure it but whose got the resources to go back then there's the base line changes and the this and the that and all those kind of things so part of the question I'm trying to get at is that what all you good folks and Mike and all are working towards is some notion that we can get a rational system that is a learning system and I'm simply saying as a lay outsider whose not anywhere in the details of the cross matrix of the this and the that I'm saying "cool" and could you just present for the average American citizen some study that you all think is ok, its probably studies because we are not going to agree on. Then I can say ok, its there, it's all been studied and analyzed and you can't find anything.

Fran- A couple of years ago - I'm one of those poor people from CNA you unjustly misaligned - (laughing) we looked 2 years ago, we were trying to see the long terms saving that materialized from A76's and we took a sample from about 50 competitions that met our various criteria and one of our criteria is that they be equally balanced of in-house wins and contracts wins. Out of that 50, we were able to get 16 competitions where the data was sufficient for us to come up with any judgment what so ever, and out of the 16 only 2 of the in-house wins had sufficient data. What we found as a general rule was that the contract data was vastly superior to the data that was available for in-house wins. That's not to say they were or were not performing according to the way they did; you just didn't know. There weren't any personnel records, there wasn't any cost records, there wasn't any workload data. Any measure that you would try to find to say what happened after the decision was made you couldn't find on the in-house side. Where at least on the contract side you had the contract files that documented the changes.

CD - What we need is an action forcing mechanism that would require there attention towards the data...

Fran- The reason I'm saying that is it points out the need to come up with something that is clearly understood on both sides of what their going to need to keep for records and how they are going to go about doing it.

DG - Two half points in response: One, as Allan may have heard as Senator Pryor used to say, one of the cheapest of learning experiences, every time he mentioned a maligned contractor by name on the floor of the congress, its stock went up. That's the effect of publicity it doesn't matter what you say. Two, just as a practical matter what I have in mind is somebody be it, I don't know who wither it be a university or this or that, sitting down with CNA and saying ok can you just tell us what you did, how you did it. Maybe we agree with your method, maybe we would do this differently, so that there would be an alternative or a double audit. Not to replace, but you've already built the capacity.

CD - What we are going to do now is take a 15 minuet break. Please join me in thanking our panel, Mike and Dan. What were going to do is come back and hear from Al Burman, former OFPP head, and Stan Soloway, who was on the A-76 panel. And also hear from your ideas on what to change.

BREAK

CD -kind of hinted in his opening remarks as it relates to FAR, the Office of Management and Budget is looking at FAR and, the best way I can describe it, kind of borrowing from the cooking realm, the attempt is to take a little bit of FAR and sprinkle it into A-76. That's a lot easier said than done and a lot of us, and I've heard this commentary for many years from various A-76 conferences and many from you either industry managers or federal contract officers: "If we could just use something simpler like the FAR, the FAR principles, we'd be able to make this work."

We have two guests here today who are going to be giving a little bit of thought to that question and actually they are going to be laying out some challenges, some very key questions that need to be wrestled with in order to look at FAR principles either whether you are reforming the FAR itself or trying to bring or migrate some Far thinking into the A-76 process. Stan Soloway is currently the President of the Professional Services Council before that he was the deputy undersecretary of the Department of Defense for Acquisition; he was also a member of the Commercial Activities Panel. Al Burman is President of Jefferson Solutions and before that many of you know him from his role as the administrator of the Office of Federal Procurement Policy at OMB, the same position that the Angela Styles holds today. Both of them have been given the challenge of provoking us, being provocateurs, as it relates to what elements of the FAR should we be thinking of, in terms of the A-76 challenge, and then we are going to spend a lot more time during this session pulling your ideas out in terms of changes to A-76 or answers to some of the questions they are going to raise about FAR. So which one of you would like to go first?

Allan Burman (AB) - Since I'm up here, why don't I kick it off.

CD - Ok, Al go ahead and kick it off.

AB - I should preface this with Carl's remark about lets do something simple, why don't we just use the FAR. I'd bring a visual aid along with me so that people could see that simpler approach. What I wanted to do is more or less to raise some questions about some of the changes that we might make and not necessarily give the answers to those, but think about them and get the group as a whole to maybe have some ideas about how we might deal with this shift. And looking at the language of the panel, and of course Stan was on the panel so has a very good feel for this.

As I read the precise language, we are talking about a shift from OMB Circular A-76 to a Federal Acquisition Regulation framework and I think the framework makes some sense here because the more that I've been looking at what's going on and trying to make use of the FAR the more I think that a framework taking ideas from the FAR practice and putting them off into a circular then back into the FAR in another way might make more sense than trying to deal with the FAR as a whole. Clearly this integrated competitive process; the idea was we wanted to emphasis fairness, transparency, integrity all of the sorts of things that are pretty integral to what the Federal Acquisition Regulation is about. And so you're taking principles that are central to the contracting effort and trying to apply them across the board. Of course the other part of the recommendation on best value is to look at contracting by negotiation the FAR Part 15 that lays out a whole spectrum of activities that you can do to deal with that continuum of best value and how to deal with best value.

So, essentially, it seems to me that the goal ought to be is coming up with the most effective vehicle for making sure that you've got a level playing field and coming up with an approach that's pretty consistent with the way contracting people in government agencies have been doing work over the last decade or so. There has certainly been a much greater focus on performance, results, outcomes and streamlining and making the process more efficient then when I was an administrator in the late 80's, early 90's when we where trying to move the government in that whole direction.

So let's move to the next slide here, one of the reasons why I say it seems to me it might make more sense to look at the FAR framework but use the Circular as the basis is just the whole making process itself. I mean, it is a very long and arduous and difficult process and if we are trying to talk about trying to make something happen in a any kind of a reasonable timeframe, the ability to get that to happen quickly I think it is much greater to go the Circular root and then move into the FAR for that. And also there is a certain predation having spent many years in OMB I am aware of how OMB likes to view these sorts of things and OMB likes Circulars better than rules in general and there is a little bit of language that goes in the Circular and I had this discussion, it's a little bit of dejavu all over again, having this discussion with Dan Guttman cause I haven't had that discussion with him in a while, we talked about what is required by law versus what is required by Circulars and I remember always dealing with the OMB General Council when we put one of our policy letters or one of our Circulars together and there would be one provision in there that said judicial review. And I'll just read this to you, If I can read it to you: "this policy letter is not intended to provide a constitutional nor statutory interpretation of any kind of and is not intended and should not be construed to create any right or benefit subsistent to the procedural and enforced by law by a party against the United States, its agencies, its officers, or any person. So that's kind of the escape clause in OMB Circulars, it's a way to say well this is a management effort. And I think Mike Del-Colle had some very good points about what this is. It is a change management process it is not a contracting process, per say, so there is a little broader context to this so I think there is a comfort level with circulars that's probably a bit more of a comfort level when we are trying to put something in regulation. One of the more difficult issues is just coming to that conclusion. Out of all the changes coming out of the Panel, what can we do, on an administrative standpoint, that will hold up to ensure that people are in fact treated pretty equally and pretty the same, and what do you actually have to put in the rule making process so guarantee those set of rights?

So here are a couple of things to look at. Let's move to the next slide. And your just starting practically page one of the FAR, and Carl was asking this question what do you have to change to make the FAR apply, here you can start just in the definitions. You can just identify "what is acquisition". What is acquisition? It is acquiring by contract. So the whole FAR is about doing things by contract and every piece of the FAR has that contract element tied to it. And I'm starting to think man if we had to go through this and try make every change throughout the document to deal with that question I think it's a good key, its going to keep people employed for a long time and I guess that's a good thing at a government function to have a lot of folks plugging away at this but it would be a major task to get that done and the definition deals with the

world contracts – contract financing, contract performance, contract administration - so right from the beginning of the document. What is it that the government entity gets? It's probably not a contract, is it? So how do you deal with that issue? And I think that would be something that would be very interesting to get the reaction from this group to as to what ideas they might have to deal with that type of question.

Then lets move to the next one, Part 7 of the acquisition planning, its in sub part 7.3 that now addresses A-76 so, in essence, what you do now if you want to look at the FAR to see what's going on in terms of what's going in terms of doing these competitions that's where you go. One question is, well with this new effort, does that part disappear? The more I've been looking at this the more sense it might make sense to go the Circular rout, take the framework language, put it in the Circular route and then put it back here into the framework and I'd be interested in the reaction of the group wither this makes some sense or not. But that's, as I've been trying to answer these questions, seems to be the way to go; to rewrite this section after you've done the Circular rewrite.

Let's take a look at the next one, Part 15 of the FAR. Here's your best value. And right now it's actually referred to in Part 7 but take a look at how you do this in Part 15. But again, just looking at the basic language, and I was just flipping pages in this to see, well what might you change. They talked about the solicitation received proposals and information. What's the focus? Exchanging information quote with industry. And you are going to find that kind of language throughout that part of the FAR. How long did it take to get part 15 done? Ramona, what would you say?

Audience (Ramona)- Probably about three years, maybe more.

AB - Three years, that's a lot of words! A lot of words that people probably had to fight over, in terms of...

Ramona - It was bloody.

AB - It was bloody! (Laughs, Unintelligible Chatter)

AB - And so that's something to think about to when you start looking about this. This would have been my life's work, I think, had I taken Carl to heart and said: "OK, I'm going to put in all the changes in for you folks because I probably wouldn't have been able to do anything." It would have had to be an I.O.U. I'm sure on that. So that's a third part of the area. But it seems to me definitions Part 7 and Part 15 are three places where the kinds of things coming out of the Commercial Activities Panel seems to flow and then lets move onto the next one. These are just some other concerns, and Stan and I talked about these a little bit so I'm not going to address them but I'd think they'd be some areas to just have some dialog on and to just have some conversation on; past performance, What do you do on the government side versus the industry side? I put that past performance policy letter out again, that's a decade ago when we put that out, and now everybody is doing it on the industry side and it's counting quite a bit. So how do you come up with something that matches if you're really thinking of coming up and creating a level playing field. And I know Stan has some ideas on this.

Types of contracts. Does the government entity get a fixed price contract?, sort of the point Mike Del-Colle was making on pay banding, incentives. What about negative incentives? How do you put negative incentives on the government side? I mean do people not get paid. Do you have something other than a cost reimbursable kind of arrangement? That's an interesting sort of an issue to ponder; it seems to me as well.

Protests. How do you deal with protests and I know that was a lot of discussion. Stan wanted to chat about that as well. Kind of the final point on this question of looking at how you want to do this. What I'm concerned about is there is so much stuff in the FAR that if you don't come up with some kid of a

containment strategy as to where to put this, then you could if you miss something. And if you miss something, you know we all try to make government as non litigious as possible in this. But if the government should win and the contractor should lose and there is something in there that all of a sudden didn't let the government do something because we forgot there was a piece of the FAR that related to that particular item. And they say: "Well, wait a minute, you didn't follow the rules, are the rules going to allow this?" It strikes me that this will be grist for a legal mill for many years as well they might get good support from the legal community; I don't we'll have to ask the ABA as to where their coming from on this issue. But that's another point to think about if your think about doing a broad ranging set of changes to the FAR as opposed to trying to contain it in some way. So that's a very quick run through of some ideas and some of the concerns and issues that I had in looking at this. And if we go to the last page I guess that my conclusion wouldn't be that different from yours. If we are going to do this and do this in the FAR there is going to be a team of folks who are going to have take some time to get that done. And I'll take questions later on.

CD - Yeah we'll do that right after Stan. Stan why don't you go ahead and start

Stan Soloway (SS)- Thanks, Let me start with admitting to a certain degree of embarrassment, being in a room with Al Burman and Fran Clark and others. In my haste, I was out of town; I trying to get the slides to Carl for this, in my haste I miss sited the FAR, which is not a good thing to do with this audience. But wherever it says Part 1, its FAR Part 2 and wherever I said FAR Part 44 it's supposed to be FAR Part 42. So just bear with me for the mistakes.

What I want to do is before I get into the specifics there are a number of things I want to talk about that that relate directly to what Al just raised, is go back to the foundation of this again I was not here earlier so I don't know the context of which you discussed the report. But I think Al is absolutely correct that the way to do this, the appropriate way if you want to make change in any timely manner is to put do this as a Circular and then to take the Circular itself and the put it back in the FAR in a contained section because there are particulars and specifics and words and what have you in various parts of the FAR that you would spend your life doing word searches on the computer to find every place industry was referenced or every place this or that or the other thing. But you can solve the problem through a framework based on the FAR and then having your own contained section of the FAR which has the appropriate language and the key elements.

Second piece is that no one believes, I don't think that at the end of the day your going to have a process that looks like a private competition and all of that entails. There are differences between the entities that are always going to exist and therefore what we are looking for is the framework for a level playing field, not an absolutely exactly the same playing field. And that can, will never happen. And there are a number of reasons why. Not the least of which is the issue of how you too fix price contract with the government and other things. By the same token, you can make this process look an awful lot more like the FAR and what the FAR is founded on. Which is principally: All bidders treated fairly, all bidders get the same rights, all bidders have the same responsibilities. I mean that is essentially the underpinning of what the FAR is supposed to do. And as we in the Panel started establishing the ten principals I'm sure Carl went through in some detail earlier today, two things emerged. One, the ten principals are one thing. You can't go in and say well I like this one I like that one I'm going to work on this one, I'm going to ignore that one. They are one, interconnected recommendation. And that is absolutely critical. We lose that focus, this whole exercise falls apart.

The second piece is that as we started looking at the principles and started noodling in the panel and then on our own with our own staff, what changes would you have to make to an A-76 to align A-76 with the principles. Cause frankly on almost all of them A-76 was out of alignment. What it started looking like was the principle tenants of the FAR and what might surprise some of you but and it wasn't me or others from the industry who made the recommendation to the panel that we move to a FAR based process. I'm not going to

go into internal discussions. But it happened because it was a logical extension of what we are trying to achieve vis a vis the principles. We are agnostic on the question of whether it should be a FAR case or a new circular or what have you. The point was, as Al made very clear and I think really critical, it's the FAR framework and migrating to a public/private competition, those basic principles, and there are a number of them.

What I've identified here are areas of the FAR that one would have to, as Al did, one would have to specifically deal with in order to accommodate that but again, I think a lot of the accommodation comes in writing a circular that makes sense, that is closely aligned as possible with the actual FAR but creating a new circular that, is then later when we are comfortable with it, is migrated back under 7.3 or wherever appropriately it would go.

In the next slide, a couple things real quickly. This is supposed to be FAR Part 2 as I told you. What is the definition of a bidder and the definition of a government entity? This is an absolutely critical question, it goes to the whole issue of a contract or a binding performance agreement which would be government equivalent, and as we will discuss in a few minutes, the whole issue of things like protests flows at the very beginning. There is no government bid today in an A-76. It's a cost comparison. It doesn't align with, in terms of evaluation factors, what you're actually responding to and so forth, anything that the private sector is responds to I mean it does in a general sense, but it's not the same.

You start with FAR Part 1 you move on, as Al mentioned, to Part 15. A lot of elements of Part 15 that we actually have to deal with particularly the best value rules, issues for down selects and so forth. One quick example, A-76 today, the government has guaranteed to be one of the last two standing. Under a FAR type, even a FAR framework, that presumably will not be the case. If the government is incapable of performing the work, the government team could be down selected they might not even make the competitive range. We need to discuss how you do that and what the rules of that are.

The next one is FAR Part 30 - cost accounting standards. As the Panel looked at this issue, and I think Fran made the point earlier in the last panel about the center for naval analysis study, which is a very compelling study primarily because as she pointed out one of the studies they looked at the competitions they looked at went to contract they did find a pattern of retained saving, but they were unable to do anything with internal work because of the nature of government financial management systems and cost accounting systems. You just saw in the paper I assume the other day the pressure Congressman Kucinich is putting on agencies relative to their improved financial management. And actually talking about penalizing the agencies in dollars for their inability to meet financial management goals and objectives in terms of information and insight. This is a big issue. What kinds of audit requirements are you going to have? How are you going to have cost realism without trying to get too much of an advertisement or parochial here? But one of the real problems we've seen, when I was a DOD in particular, we saw lots of MEO's coming in with really rash workforce cuts and cost estimates and, frankly, a lack of cost realism attached to them. I know of at least three cases in which the decision, because the costs were so low, was made to keep the work in house. Where the day that decision was made and everything closed out and everything was over, there were RFP's on the street for support services because there was no cost realism attached to it. Because our ability and our willingness to really do those kind of audits internally. Now, I'm not going to tell you it never happened with a contractor, everyone of you that is a contracting officer has had problems with that, but we do have mechanisms and tools in place that we try to use and are increasingly using. And we always have the stick of past performance and other things in the process. This is a big issue that I think we should not ignore. It also gets back to some of the issues that Dan Guttman raised in terms of how you actually track costs.

The next slide talks about Part 33, that's really the disputes and protests issue. I don't know if you want to get into the details of that here but I think we ought to have a long discussion about that. There are many of us who think this is, I think all of the issues that we are talking about, by the way, have answers, and

I think there are ways we could do it particularly in the context of a Circular that is not tied word for word to everything that is in the FAR, which is a common sense approach. This issue, protests, is probably the single most difficult. We at PSC, myself, my staff, have proposed to OMB and within the panel had some discussions about ways you could do this but its not easy and as I said everything starts from the definition up at the front of the process.

Then you get to FAR Part 44, Al raised this, he was talking about: Who administered the contract? What are the rules of administration? We do have some rules today in A-76 frankly under the circular where it is supposed to mirror to the maximum extent practical a contract. There is supposed to be constant evaluation, there is supposed to be cure notices, and the ability to terminate an MEO and go to a competition just like you would a contractor and so forth. Fact is we don't do it and how do we put some teeth into that and make it real and actually make sure the government get what it bargained for wither it goes to contract where we all agree we have contract management and contract administration challenges. But also internally where I think some of the problems are even greater. Because the folks in government trained to manage contracts are not managing internal operations. They are managing external suppliers. They don't have oversight of the organization in which they work or an outside organization or what have you. And that relationship may well have to change.

The last point I want to make is when we talk about the FAR and we get into the complexities of this it's easy enough to find reasons why its hard to do it. A couple of observations: Number one, I don't think this is rocket science, I think this can be done in a common sense framework and that's really the critical element here. Second, I think as we do it we really need to keep measuring ourselves against those ten principles for two reasons: One, I think the principles are good and solid, and two, they were unanimously agreed to all the parties all the stakeholders involved in the Panel agreed on these ten overarching principles and they do provide something of a road forward. The third issue is how fast and how far do we go. There has been a lot of discussion a lot of debate, about "this is going to take a long time, we should go very slow, we should have pilot programs" and so forth. I use the words of Dave Walker, the Comptroller General, who has said this before Congress, in the Panel discussions and some of our public hearings, "The attraction of this solution is the FAR is the common language of government acquisition." Outside of a relatively small cadre of people in DOD, granted its not numerically small but relative to the universe it's a small group of people, most people have relatively little experience with A-76. But they do know the FAR and they understand the principles of the FAR and I believe if we hand the government workforce a commonsense framework that they can actually function under that and frankly I've asked. I've asked procurement executives, I've asked the Federal Acquisition Conference, I was out at the MCMA World Congress in Los Angeles earlier this week, and asked the same question and most people believe if they are given right framework this is a more workable process. Most importantly, it's a process that's likely to deliver a lot better solutions for the government because I think we've all come to the conclusion as the Panel reports says that we have an A-76 process for another era and a process that in and of itself really cannot be fixed.

So, with that let's get into some discussion...

CD - Great, with some good food for thought there, so from the audience lets take the broad question: There are some choices, you can go to a FAR system, or as the Panel has been recommending and looks like as the OMB is probably going to pursue, is borrow from the FAR, keep an A-76 circular, and reference back into the Far; some people in industry here would rather scrape it. Scrape A-76 and move right into FAR. Are we comfortable having an A76 anchored process that borrows from the FAR?

SS - Let me rephrase the question because I think your right that that's some of the procedures, but if you migrate the critical elements of the FAR into, quote, a New Circular, it will look very little like the current A-

76. You will have elements of A-76 that you will probably have to retain relative to the building of government cost and so for some of those initial elements, some of the surrounding stuff, but the competition process, the competition piece of it which is where most of us are concerned, will be extremely different. So I think we ought to be clear. I don't want to characterize it as what we know as A-76 with some FAR stuff thrown on top of it. It's a very different Circular, if its done right.

CD - Reactions from the audience. Yes, from your three years of experience in writing portions of the FAR Audience (Ramona)- I think that initially we're going to be misleading the competitive sourcing community that this is going to be a faster process. I don't think it is initially because, and I think the contracting officers will agree with me, we're talking about the government is going to have to be kept in for at least one round of sessions. I think we can all agree that the MEO's are not going to be good proposals, in most cases, because they don't have experience and I don't know one contracting officer out there, and contracting officers let me know if you disagree with me, when we wrote the FAR 15 one of our biggest challenges was we were trying to make FAR 15 more flexible for contracting officers and we were trying to let them, the old way of doing business was if in doubt keep a proposal in. And we wanted to change it to 'if in doubt, throw them out' so that contracting officers could talk to fewer offerers and to a smaller number who had a reasonable expectation of getting that contract. But, with GAO's recent spate of decisions, particularly in the A-76 arena, I don't know one contracting officer who is going to be willing to throw out a contractor who has proposed something, a proposal that is less than the MEO in the first round of discussions. So, they are going to end up talking to more offerers the first round and maybe even the second round, so that's going to take a little bit of time to do.

CD - So if our goal is to streamline maybe this is not all its cracked up to be. Stan, what's your....

Ramona - At least initially, I think as we get more experience at it then yes, we're going to get there.

SS - One of the problems with A-76 clearly is the time it takes, we all can agree with that. However, time in and of itself is not the goal here. And I think your right as we move into this new process, phase it in, and people get more comfortable with it, understand it better. We have a workforce that knows the FAR once they begin to understand the relationship, I think it will begin to streamline itself. But, it may or may not take significantly less time initially. But that not necessarily the principle goal. You touched on a couple of things in your comment,

Ramona - I just think that there is a misconception among the competitive sourcing world in the government that, "Hey, this proposal is going to get us there faster." And I don't think that's going to happen, at least initially.

SS - I think you have to go back and look at, let me make two points. One, you've touched on a couple things which I should have mentioned earlier. They are really the principle reason we are pushed in this direction. That is, under A76 you have virtually no acquisition flexibility (Momentary tape problems) You can do anything you want over here with the private sector guys, but the end of the day you are locked into this body for body cost game that really doesn't necessarily give you the full answer. Under the FAR you have the full flexibility to determine your requirements. To me that's a very compelling case for change. If you look how A-76's work; you have to look at what it is that takes so much time. I don't think it is the competition piece of A-76. The part where we are actually into comparisons is really where the big time is spent. It is extraordinary to look at the data, and it's in the report, some of the data, about how long it takes to

develop the Statement of Work at the front end. In single function studies, the average is 30 months. We are writing requirements for massive transformation requirements in 6 months. That's where I think you can really start streamlining some of the time - is having a much more focused effort. Because now you're really looking at everybody responding to an RFP, I mean it is a different process at the front end than in the competition phase. But if it doesn't cut 50% of the time initially, that doesn't make it a failure. If it makes it a better process in terms of outcomes and I think, as you said, over time it will start to streamline itself because it is a more familiar process to begin with.

CD - Other reactions to taking some of these provisions out of FAR and trying to mirroring them into A-76?

Audience (Man #5)- I do have question about the Economy Act in interagency agreements. You raise a lot of intriguing questions about how a federal agency contracts with another federal agency. Well, the conventional answer to that is that you enter into an Economy Act interagency agreement. Why can't that be the model?

SS - Well we are not taking here about agency to agency. You would have to create something that you can do within the agency, I guess.

AB - The competition with the private sector as well, which is . . .

Man #5- Well, you would have a competition in which all three types of parties might submit proposals. You'd have private sector proposals, you would have a proposal from your federal agency, and you might have interservice support, one of the other federal agencies submit a proposal. They'd all compete in the same ring and you would have a winner, choose under FAR rules. If the winner were the interservice support agency, you would award an Economy Act Interagency Agreement. I don't know how you would contract within an agency, but it seems to me the Economy Act works. My own office, has agreements at are essentially fixed price agreements.

CD - I don't think anyone disagrees with the idea of competition, but I think it is already provided for.

AB - Part 17 has the Economy Act Provision.

SS - But the point he is making, I think, if I understand it, is under the concept we are taking about, this is not difficult with interagency competition. Other words if you are competing library services and some other agency has library services franchise fund, or whatever it is, and they want to compete for it, they are just another bidder and there is a mechanism for creating a contract there. Internal with what we now term the MEO, which is presumably will disappear because it is now the government entity, how do you create a binding performance agreement? I think we've sort of toyed with that idea in other areas., but, you know what, I don't think that's that hard. If you did it right you're not going to have huge legal issues. You could create a construct in which you have a binding performance agreement, but as AI said there is going to be differences between that and a specific contract, per say.

CD - If that change were made in FAR Part 2, why could you not have a MEO subject to a contract if that's what actually will be the vehicle for the funding and the management of the MEO?

SS - I think when I say binding performance agreement it is really the kind of document that you have with a government entity, but it is going to mirror as much as possible the contract. But as Al said, could it be fixed price? Big question.

There are all kinds of possibilities here if you want to talk about performance based government, all kinds of possibilities, a little bit radical, but really quite exciting in terms of government and the opportunities given to government employees when their entities win.

AB - And that goes back to pay banding and those other issues as well, as to how much flexibility does the government have to deal with those kinds of personnel issues.

CD - And budget and investment capitol as well.

Man #5- The initial question, as I understood it, was: Should we pursue using the FAR or using the circular as a methodology of implementing? For me, I think it boils down to a relatively simplistic thing. The FAR is designed to deal with private contractors. There is no part of it that really addresses how the government deals with itself. With the possible exception of what we are talking about, interagency agreements. So from my perspective, even though I am very comfortable with the FAR, I don't think that is the place to do this at this point in time. I think the Circular is a better answer because not everything that is in the FAR can be applied to A76 in a logical fashion. And there are things that you would have to exempt in order to make the A76 process work, I think, in any construct that I've heard. I guess another thing, a different question, this is kind of a comment to follow on to what I just heard, I think it is relatively easy for us to envision how positive incentives might be applied to the government in a contract situation. I think it is very difficult for us to work through the underlying issues about how negative incentives might be applied, or poor performance preventors, if you will. So I think that that is an area that would take a lot of significant thought at a much deeper level than can it be done. I think first we not only have to figure out first if it can be done, but also how would you do it, before you could ever consider applying those things in a contract situation.

SS - I'm much less worried about negative incentives, frankly. I think that you could build positive incentives, you should have them on both sides anyway. Then, frankly, the "negative incentives" come down to "If you don't do your job, you're going to lose the work." I'm not being flip about your comment. You know you could spend a lot of time trying drill down on how do I hold back people's pay?, or do I prohibit them from getting raises? So if we are really going to move to a performance budget environment, then some of those will take care of themselves because you won't be meeting your performance requirements. Second is, put some teeth into it. We should be holding contractors liable for what they say they are going to perform. We should be holding ourselves in the government liable if we don't, we compete with them. That is probably the best incentive of them all.

CD - You mentioned that under A-76 there are provisions for examining the performance of an MEO and deciding if the goals and objectives are not met, going ahead and subjecting that to the competition, but we just don't use it.

SS - You have to go back to an A-76 competition. Do you want to spend another 3 -5 years competing the same thing?

AB - A follow on about the point you were making as well about contracting aspects of the FAR versus a circular, I raise that point on Right To Action because that does give a lot of flexibility it seems on the government's part to deal with issues that aren't contracting. For example, on the A76, I think they even mentioned this in the Commercial Activities Report, you can't get a protest because someone fails to do things under A-76. Once you have a solicitation out on the street, then you can get protests, but one of the other issues is on the performance management side. Are they actually doing the job? If that is language in the Circular, that says agencies have to do these kinds of things, the question is: How easily can those be enforced?, and how some one on the outside that lost that competition come back in and complain and have some recourse. And that while that provides flexibility on one hand, it would also provide an ability for the government to say sorry this isn't a law, per say, or a regulation. I don't know. I'm just raising that as another issue on how well you might be able to use the circular to do other aspects.

SS - Relatively early we may discover you have to make some relatively small changed within parts of the FAR to reference the Circular, there may be some cross cutting you need to do here.

CD - In terms of performance issue, two challenges obviously are going to be looking at past performance on order to evaluate during the competition process, as well as holding people accountable for delivery. Is this a good opportunity or an opening to link A76 and FAR to GPRA? Is that a useful linkage to be making or should we not be trying to link up to GPRA? In terms of looking at the performance measures under the Government Performance and Results Act and examining past performance using those indicators, and at the very least if there are no indicators, because in a lot of cases the GPRA Managers are silent, or not very useful, should the elements of performance that the MEO is ascribing to, should those be made actual performance indicators that would then be tracked and reported under GPRA rules publicly, so an organization can come in and say they said they were going to do this and that was the result. How many of you think that would be a viable option? Anyone think that is not a good idea?

SS - The issue of how you measure performance, I think was being mentioned on the previous panel when I walked in, is a critical one. One of the tricky issues we tried to deal with on the panel in a very delicate sense and didn't really get down to an answer is what do you do on past performance when you are making a source selection decision on the first time out. That is an interesting question which we should probably talk about. Once you have, let's say you make a decision in-house, that the government entity wins, there is really no excuse to not maintaining a performance record just like you would for a contractor. There is no excuse for establishing a performance history so that when that activity is re-competed 3, 4, 5 years down the road, now you have a relative equivalence in terms of performance history. I think the biggest trick is doing it at the front end when its the first time an activity is competed or been competed and trying to find some equivalence because you are going to be turning to the 3, 4, 5, 6, 7, 10 companies that are bidding, well 25, 30, 40% of your source selection may be based on past performance, but one of your competitors doesn't have past performance, but we are not going to penalize them, so how do you balance that out? I think that is a trickier issue than later on. But I agree with you. I think you have to establish some very clear rules and I think the GPRA rules are the right way to go to measure performance. The other think I would say is we ought to be thinking now, outside of the realm of public/private competition, about that kind of performance measured down at the activity, level not just globally, but within an agency or large segments or components of the agency, so that you being to build that record so 5, 8, 9 years from now, when we are having competitions, we have an internal record and this is not as much of an issue. I think this is a short run issue, or should be a relatively short one the first few years, and for those cases when it is the first time something is competed.

AB - I agree, on the past performance issue it's sort of an anomaly, because you've got a group that is going to have been doing that work themselves. And then other people would have done other similar type of work to demonstrate they know how to do it and do it well, and other people will think well of them, and for the group that is actually doing the work, they may end up with a neutral rating. That strikes me as a little bazaar. They're the folks that are doing the work, somehow you need to think through, how do they get credit if you are going to use a 25% factor, which most of the procurements I see going out today have a 25% factor past performance. It seems like it would be unfair for them not to get credit for what they have been doing for many years.

CD - On the issue of performance, because if we are going to tackle best value, how do you think we could start looking at past performance from a go for it basis, holding them accountable for whoever wins for performance, goals and measures. How would you want to whisper in Angela Styles ear, as say as you are writing everybody's guidance, this is what you should be doing? Any ideas from those of you in the trenches? This is really a good opportunity to put some things on the table.

SS - How many of you have been through A-76's before? One of the issues that we raise from this side, Al and I have talked about it before and we talked a little bit in the panel. It is a challenge with past performance and as Al said you don't want to penalize the incumbent work force simply because there is not a method or system that tracks historical performance. But one of the weaknesses, it seems to me, and some of you that have worked with A76 I'd be interested in your thoughts on this. One of the currently weaknesses of the A76, it seems to me, is that you can't even assign performance risk factors. So that I have a bid coming in from the government side, which is theoretically evaluated by a technical evaluation board and theoretically meets some sort of level of credibility, but when I look at a private sector bid, I may well be assigning risk factors for various things to it that, some might relate to past performance but it might also just be the credibility of the proposals, the cost realism and so forth. That might be one area where you could in fact look at both, and again this is an equivalency. I'm not putting special burden on the public bid, looking at things like risk factors and really doing a much more robust kind of technical evaluation.

I'll give you one example. When I was at DOD I visited a major command that was in the process of doing an A76 involving a couple of hundred positions and they were describing to me the process they were using and they were very excited because they were doing a great job, performance based, they'd done a tremendous amount of market research, it was going to be a fixed price contract with all kinds of incentives, as well as penalties for failure. They really built this thing and were trying to do it right. At the end of the brief presentation of the contract, the Contracting Officer said "There is one other thing we have done, because this is the value of market research. In our location here today the economy is booming, and it is very hard to get people, particularly hourly labor, since we know the contractors for this particular requirement are likely to be bidding the service contract act, because that is what they typically do, and we know they won't be able to get the workforce for service contract equitable wages because of the nature of our economy, we are assigning a risk factor to their bid because our market research shows this is how they operate."

My response was two fold. I thought that was an interesting observation, but I question it in light of the fact that you have 25% of the source selection is past performance, so these are companies that said they were going to do it and they do it. And second, it is a fixed price contract with incentives for high performance and penalties for failure. So you really don't have much risk, if you will, on the government side. That's the whole idea of past performance, is we are looking at companies that are going to do their own market survey. They are going to know what they can hire, who they can hire and so forth.

Leave that aside. The question I asked her, the second part was, "Do you have trouble keeping the encumbered civil service work force in those jobs today?" She said yes, it's terrible, the turnover is

unbelievable. I said because the government wages, which is relatively equivalent in this case to government service contract act, just aren't enough to compete. So what is the risk factor on the MEO?, because the MEO is going to be costing itself on government wage rates. Well, we can't do that. She was right. You can do it under A-76. Yet the real risk, of course, was on internal performance because you would either have to be jack wages way up which then changes the cost comparison and all that stuff or you are going to be struggling with constant turnover and as well all know, any one who has ever run an organization, turnover is unbelievable expenses, much more than people realize. So my point is, Could we deal with those elements of risk outside without just looking at past performance that we can not now assign to public bids as one way to try and even this situation out?

CD - How would you respond to a risk based system rather than looking at a hard performance information for your comparison? Streamline, would it be easier to do that than actually go in and looking at-

SS - We are talking about just for the public bids.

CD - Right. Would we be comparing apples and oranges at that point? No one can make an argument against that?

SS - I think everyone is too embarrassed to say this guy is totally whacked.

CD - What about a stipulation that the MEO has not been using performance management, that that is inherently a risk? This is an organization that has not to this point exhibited a performance based culture, they have not tracked, not measured their effectiveness, their quality, their efficiency. Would that be a sign that this is not a culture that has supported performance based management in the past? Would that be part of the risk factor? Because the complaint has always been what are we going to use as a benchmark or the base line for the MEO? Because they don't have performance information? Should that be acceptable? If a vendor said I'm sorry I don't have any references for you, I have no past performance record, would that concern you?

Audience (woman #8)- I say yes, but I think it is going to be difficult, and that is one of the things I thought from the beginning, I don't think it is necessarily impossible because the government does have customers somewhere. Just like you ask your vendors, give me customer references, the government has customers. Maybe no in all cases, but if it is an IT function and they provide software engineering, somebody down the hall just wrote software for it, you might have to asked somebody down the hall.

SS - I think your right, on the other hand, one of the things we were trying to get away from with the past performance system is the ad hoc reference checking because it lacks a little of the transparency, and what happens when you are in a self contained organization and your customers are internal and there if effectively a conflict of interest.

Woman #8- Right, that's why I said it is not going to always work.

CD - So risk factors may be on option, so we'll see if some of you will comment on that off-line. At the end I'm going to give you the website and the internet address for where you can privately submit remarks to issues that came up today in case you want to keep it private.

So we talked about best values FAR Part 15, how about Part 30? Cost accounting. Any ideas on cost accounting, drawing from what Michael put up this morning. Any ideas you have for better ways to do cost accounting?

SS - Two suggestions being discussed, I don't know if they are being discussed at OMB, but certainly in context of the Panel and certainly those of us in industry, one is activity based costing, which some agencies are moving towards.

CD - Which we talked about

SS - One suggestion that has been made and I'll just throw this out, I'm not necessarily endorsing, is in this case you treat it a little bit like you would a bidder. You either have essentially what would amount to as a certified or approved activity based costing capability, or there is an agency audit. I believe the Army, I think it is the Army, but I'm not sure, has actually moved to essentially audit all most all of its public bids, if you will, with the Army audit agency. That is essentially what would happen in the private sector, either I have an approved purchasing and accounting system or I'm subject to significant audit by the government. That would be one way to deal with it.

CD - The audit would occur after?

SS - No, no, it is a pre-award audit.

CD - Pre-award?

SS - You have to have cost realism in this. We talk a lot about it and you hear a lot of debate about best value and cost and non-cost factors, to me it is a little bit of a red herring, since all of you who are in government procurement now are doing some variation of best value on almost every procurement you do, but the issue of cost realism remains very important. Because cost is always a factor and you'd better have the right numbers.

Audience (woman #1)- The problem is really the cost of doing cost accounting, the cost of training, the cost of ABC type computer systems. This is what I've been hearing in my department. I think FACE had either mandated this or suggested this something like eight years ago

CD - Suggested.

Woman #1 - I think '97 or something and then it was put off for a year and then put off for two or three years and then the next time I asked thinking about costing. Well we sent some one out to San Francisco for training. What else is happening? Well we have to think about the system. How much is that going to cost? Too much.

SS - This is something, we collectively, whether your in the government, private sector, or unions, it doesn't matter, we ought to be squawking a little bit. It is so classic to avoid that up front investment for long term benefit. We are such a short term, what we say about our kids, the instant gratification mentality. We tried the same thing at DOD. We instructed the Departments, you are going to come in with activity based costing capabilities in your acquisition and logistic areas. They came back with, "Oh, I don't think we are because it is too expensive." No one wants to make those investments up front for long term benefits. They are starting

to see some of it. You see agencies experimenting with enterprise resource planning which is going to drive you to activity based costing. Some of the performance budgeting you see requires that you really get down to that level. And it is really unfortunate that in agency after agency, in a resource constrained environment, we don't want to make the investment for something that is actually gives you a better insight and capability to manage.

Woman #1 - What people don't realize about this unless you've been around long enough to have had it in business schools something like 45 years ago, its the old managerial accounting. They have just made it fancier and given it a new name and now we have computers. But it used to be the kind of accounting you did so that manager's would know when to stop doing something or start doing something and how much exactly how much it would cost. Very simple, why is it so complicated now?

CD - Cause managers no longer determine how they are going to track their costs. I think that, just as an aside, at BLM, they started out with 500 word processes they were going to cost to, they are now down to 9. Why? Because they realized that after tracking all that information for two years it was not giving them any sort of managerial relevant pay off. I think on cost accounting, the difficulty is making real simple so that everyone can track their eight hours today to something. It doesn't require them to fit it down to ten minutes increments and getting down to the specificity needed for A-76 because your not taking an entire program and outsourcing it, It is usually a service, activity, or function. Trade-offs.

SS - That is also true in companies, not just true of the government. There is the theory that the more information I have and don't share the more powerful I can be. And what senior management is finding out, and the ERP's are examples, is the more shared information the better I can manage, and then the more powerful I can be.

CD - More transparency there. Any ideas on cost? Cost ideas. I am very surprised you guys don't have more ideas or comments on cost because it seems to be the largest challenge we have come across.

Audience (Man #6)- Something I would to bring up is the issue of proprietary rights. Lately in the newspapers there has been a lot of discussion among private sector companies about going out for criminal prosecution on industrial espionage of senior managers. To my knowledge there are no industrial espionage laws for public servants for who, for what ever reason, chose to join a private sector company and share information. Another issue is A-76; it is not unusual to be literally assaulted with plural request from potential private sector companies that may want to bid on A-76 for all types of information. That kind of creates a, how shall I call it, dichotomy standards of proprietary information in that I know of many cases of people that are on MEO teams will say they are concerned that they may eventually be an MEO type scenario involved later on in an organization and say I have a bright idea, I really don't want to go out and submit this because then it may eventually become public knowledge. I'd rather want until we are protected under an announced A76. So what happens is, in fact there are some inhibitions to create what CAP panel referred to as a high performance organization. So I am not saying the prior approach is bad, I'm just saying I think this is an issue that has to be considered.

SS - I think you have made a really critical point and just to give the flip side of it, there is a tremendous concern in the private sector that is quite well founded about intellectual property and proprietary rights going the other way. The technical leveling process, almost by definition, is a significant IT technical data right proprietary issue. Because in that case you have to take my solution and actually apply it to my competitor if

you will. I'm being a little overly simplistic. So the issue really exists. We have had several GAO cases on conflict of interest in the last couple of years, significant conflict of interest. One of the things that I find very appealing about the FAR type solution is that you would kick in all of the procurement integrity and conflict of interest rules that exist in the FAR but the GAO has, by decision, begun to apply to the A-76. You would automatically have these kick in from day one and so you would have some protection for the kind of concern you are talking about and the very real concern that exists on the other side. Conflict of interest and protection of intellectual property is a big issue and I think the best way to deal with it is to make eminently clear the conflict of interest and procurement integrity rules apply as soon as we start, just like they would apply on any procurement.

Now, to the point that some people have ideas and they are afraid to come forward because they are afraid they may be exposed in some sort of MEO environment. That may happen, at the same time, you may well in fact it happens all the time, the base commanders in the navy all get together and they are not trying to violate intellectual property- (Tape change) -and conflict of interest rules on both sides.

Audience (Man #7)- I want to highlight a couple of things that were discussed regarding the cost accounting, especially when it comes to activity based costing. In working with clients we've seen a lot of benefits in using ABC in all parts and all phases of the A-76 process, even before the A-76 process begins in helping to identify activities and determining and re-looking at the FAIR Act inventory even. We've used it to help identified the activities for the PWS. We've used ABC in order to highlight the high cost activities in order that we can better focus the management study in determining the MEO. We are starting to use it in tracking the performance at the end of the process and comparing the different activities and the cost of those different activities as you move into the out years. So we've seen ABC actually work in all phases of the A-76 process.

I just wanted to highlight another point that was made; you can definitely make ABC as complicated or as simple as you deem necessary. You can make it very expensive or you can keep it at a reasonable cost, as long as you keep it relatively simple. And in most cases you only need to keep it pretty simple.

CD - Keeping it in the hands of the Program Managers, having them drive it and Financial Manager's figuring out how to architect it and let the Program Managers determine what they need out of it.

SS - I want to touch on two other pieces, and you touched on them briefly, one is the way in which costs are established now, which of course is not an activity level, but you also have some inconsistencies in the DOD compare software, I think, as I understand it, I think I'm right about this. As I do my should cost work analysis and build my cost, and for hypothetical sense say it looks like it is GS 7 and 5 work, that maybe because of rating or age or poor management of my work force I actually have GS 9 and 10's doing the work, the cost comparison actually reflects the work analysis and what it should be but the actual cost may be I have 10 and 11's doing 5 and 7 work. You have a reality check there.

On the back end, most MEO audits that are done, and this was a RAND study done a few years ago, which I thought that really interesting, and at the DOD took us by surprise, where those audits have been done, and they are few and far between, they've looked not at cost, but numbers of people. So typically they would say, if the MEO is saying, "This is going to take 110 FTE people to do the work and you have 110 FTE people or fewer, way to go guys." That doesn't necessarily translate to the cost of those people. So this would create a whole different construct on both sides again. You should be looking at the same thing for contractors. That is why I don't happen to think counting contractor heads makes a lot of sense. Look at

them or what they are costing you for the performance they are delivering and be tough on them. You can also do it on the other side. And ABC helps you get to both of those answers.

CD - One last comment on cost from Adrian.

Audience (Adrian Moore)- I think that the performance evolution really folds in both the cost issues and the proprietary issues, if you think about step outside government contracts for a second. When you hire someone to build you a house, you don't ask them how they build a house, you are interested in, Do they build a good house and are their customers satisfied? Did the insurance companies and the home inspectors pass their houses? Did you get the permits, does it work? Do you end up with a good house? You buy a car, you don't ask so what exactly is your cost structure for building that Ford Excursion or Toyota, how exactly do you cost that Camry. No, you care about the consumer reports quality rating, the safety rating on the car, the maintenance records of the car, the cost of the car. It is the performance measures that matter to you for that product that you look at.

Same thing, if we weren't drilling into all of how the services are being provided rather than the performance of the service, we wouldn't be exposing proprietary issues. If we weren't trying to make everything a simple cost comparison, if we were really doing best value, we don't have to have software to do complicated cost comparisons. You don't do cost comparisons when you are purchase a house. You don't define the house and then say who can build me this house for the lowest price. You say who can come to me with house ideas and price packages so I can choose myself. You don't choose a minivan and then go to different Honda dealers looking for the best deal. You say I want a minivan and then go to Honda to find out what their best deal is, you go to Ford to find out what their best deal is and so on and so forth. It is the performance evolution, the performance framework, for the best value approach that is going to actually solve these cost comparisons and proprietary issues. The focus is in the wrong place if we are trying to get to those places rather than get to a real performance based will fold those issues right into it.

SS - To be blunt about it, that is part of your argumentation, is with all the reasons that this should be a cost only process is intellectually bankrupt. It defies all logic.

CD - Let's go to one last issue I really want to focus on and for the last 10 minutes I going to ask you for just one line statements that you would want to whisper in Angela Styles ear over the next week regarding, as she is looking at different changes to A76, what would be the most important change that you would like to see that has not already been discussed so far. Before we get to that fun little exercise, FAR Part 33 Disputes and Protests. Anyone have any suggestions specifically just on that issue, Disputes and Protests? GAO has been very active recently, go ahead.

Audience (woman #9)- I do think is sort of unfair and I'm not really and advocate of the government being a protester, have something so there is one process, I don't know, an A-76 Appeals Board, and that takes care of anything relative to what the contractor wants to complain about or what the government wants to complain about. But you don't give the contractor an opportunity, I don't know how you get rid of the protest process, but you don't give them the opportunity for appeals and a protest and only giving the government an opportunity for appeals. That is unfair.

SS - I think the general assessment on the Panel is that is if not a real inequity or a perceived inequity, and I say that not because I don't support the principles I quoted before, but because in many ways the workforce of the government is the equivalent of a contractor work force and the government itself is the equivalent of

the contractor. So there is a little bit of difference here. But it was widely understood and accepted and I think clearly stated in the report, that in the context of the FAR based process, and only in that context, you would migrate protest rights to the federal entity. And this is the critical point, as I mentioned going back to Part 2 of the FAR, defining the entity that is going to have the Standing to Protest. Standing to Protest is essentially defined in the Contracting Act. You must have the responsibility and authority to commit agency resources, you must have the responsibility and authority to manage the function and so clearly it doesn't go to individuals in the work force. It is clearly not something you could ever grant to a labor union. You would have it to the entity that's involved. But only within the context where we are dealing with all the equity issues and saying we are going to place the process in the system that is founded on the same rights/same responsibilities. So that means, the changes and they are not insignificant, you are responding to a solicitation. You would have to be responding with a Section L. Section M would be the same. You go through it and at the end of the day you have to have a binding performance agreement. So, protest rights are actually not that simple. But you could do it and you could define the entity based on who is going to sign the Government bid and have that legal authority from the Government's perspective.

Here is to me the trickier part; How do you guard against frivolous protests? Because in the private sector, frankly, we used to have a lot more frivolous protests than we do right now and I think a lot of the changes that were made to Part 15 have really helped that situation along. But the cost of protesting is exorbitant. So what happens is, I as a General Manager of a division of a company bidding on these requirements say "Oh we got hosed, I'm going to protest." And I have to go to my General Counsel and my General Counsel does an analysis and says what is it going to cost, not only is it a good enough protest to win the protest, but is the material enough to overturn the decision. So I do a cost benefit analysis. Now some times protests are filed quickly because of the clock, but then withdrawn quickly thereafter because that analysis is then complete and the company says even if I win this I'm not going to get the award or the cost is much greater and so forth.

What check and balance do we have internally? And a couple of the things I'm going to suggest so of us have been taking about, again, not necessarily in the panel report - One is maybe we create, and as much as I hate to create structures, some sort of protest review board. Here is the thought, this is not completely thought out and I would like to get your reaction. You would identify a cost government, these are all government people. Twenty to thirty procurement law experts, legal experts. So when an entity decides it wants to protest, instead of going through the agency's General Counsel, which after all is their lawyer, interesting conflict of interest problem, they submit it to the protest review board. Maybe two of these people, rotate so it is not a heavy workload, two of the people randomly selected to review the protest to made the determination that I just described that the General Counsel in a company makes. If they say yes it is valid material, then the protest goes forward and the government pays for it. After all if the government got hosed, the government should have a chance for re-direct. If they say no, then you have two options, either the protest process ends there, which a lot of people feel it ought to. Others said well even if they say no, maybe you let the work force go forward on their nickel, like the union pays for it or whatever. There are legal issues with that too, but maybe that is one way to establish a process to some finality.

The problem with an A-76 Appeals Board is it is generally within the agency and that is never a satisfactory..(unintelligible) I think for a variety of legal reasons you would probably be better off finding a way to have a public entity protest than getting rid of the due process from the back end.

CD - And we are going to end the protest dialog there. For those of you who have a burning issue to raise that I won't have time to address, we are taking comments until August 2, via e-mail. All you have to do is remember what you had to say hear today or come up with something else you want to share, and e-mail it to info@performancweb.org. Just e-mail it and we are going to be, we have already e-mailed all acquisition

offices to let them know they have this comment period. We are going to take all those comments and try weaving them together to “Here’s all the ideas we came up with.” So in the last seven minutes that we have: Angela Styles sits down and gets a copy of this report, what do you want her to hear? Besides what we have already spoken about. Any other burning issues?

Audience (man #8)- Yes, I have a burning issue. There are about five or six major components in the A76 circular that it addresses, the MEO, the PWS, the independent review, etc., a couple of them - independent review/administrative appeals -- are reactive. What they need is one more component that is more pro-active and before the PWS and that would be a planning component perhaps. I don’t know what you want to call it but some sort of planning component. It could include feasibility analysis, business case analysis, something to be more pro-active to set the stage for a CS study.

CD - So add a planning section to A-76. Other rapid fire items?

Audience (man #9) - What we really need something relative to the market analysis that is explained in the FAR but really is not, in most service contracts, is really not mature to end up like we should be. It would help the A-76 process very much.

CD - Are you talking about something similar to what the DOI got, in terms of its waiver under the A-76 for going out and getting three market surveys?

Man #9- Determine all the sources out there in the commercial market, also maybe what is happening in house, such as due to a lot of positions being vacant and could be filled and that in turn would cause problems if the service provider that gets the A-76 and thinks he’s going to want to hire a lot of those same people that were with the government. There are a lot of issues that are not looked at ahead of time.

CD - OK, so have the guidance be a little bit more on those issues.

Audience (woman #10)- I just want to say don’t lose the benefits of acquisition reform in streamlining. For instance, when Ramona said something about competitive range including the government. I wouldn’t want to see the bar having to be lowered to have bigger competitive ranges if you have a poor proposal that comes in. You might have had a competitive range of 4, don’t make it 9 because the government is way down there.

CD - OK, other things for her to consider?

Ramona - I would like to know if the worse comes to pass and the goals go away, what would OMB use to incentivize the rest of us to continue competitive sourcing?

CD - The Amendment itself talks about OMB not being able to spend funds, etc. That is why it was a really creative way to stop the goals. Again, it is really funny to have a performance based management agenda with no goal. You take a goal out of CS I don’t think that is going to change the President sitting down once every six months has he has with his Secretaries and saying, “Here is how you’ve done, you still have a red light.” We don’t have any arbitrary goals in these other sections, about 15% of your goals have to be performance based. So it is going to happen one way or another. That’s my two cents. Anyone have any other comments in addition?

SS - I have one thought that I'd like you to whisper in Angela's ear that I'm surprised we haven't talked about. On the issue of the Amendment and that goals, if it is going to make OMB's management challenge greater. But there are ways to do it to force performance and not just focus specifically on numbers of CS position, but talk over all performance. Don't approve plans that don't show robust competition, but don't establish an arbitrary goal. It could be done but it makes it more complicated.

One thing that hasn't been discussed, that I think is critical to this process, and it was discussed a lot on the panel. It was referenced in the report in various ways, perhaps not as directly as it should have been, but that is the people process here. To me one of the great and most credible complaints about A76 is it treats people as pawns. It is a body shopping game. Whereas if you have a more flexible FAR type process which lets you use a variety to acquisition strategies, you can be a whole lot more creative about the impact on the people involved. You can also get to a situation where you may decide, it doesn't look like I as the government am a viable bidder, what do I do? Well why don't we look at lessons learned from things like the Navy/Marine Corps internet or NSA Groundbreaker, or Army Logistics Modernization, Other cases where people have gone out and said, "OK, you want our work but our people are our asset and a significant element of this sourcing selection is going to be how you treat my people." This is, by the way, an increasingly common commercial practice. In commercial outsourcing where companies are absorbing entire work forces, redeploying them, because those work forces benefit from now being a core function of their new home, but they are not necessarily doing the same thing they did before, which is what A-76 essentially drives you to. So flexibility to enable a much more innovative and robust treatment of incumbent work force, I think, is an important part of this new process.

CD - Other key things for her to consider?

Audience (woman #11)- I work in HR and I ways thought the RIF process was complicated. The A-76 process, to me, is very resource intensive, very time consuming, and we have already spent a fortune training people on this. I would like to see the process simplified so it doesn't take so many teams dedicated on a full-time basis to do this.

CD - How about linking capitol planning?

Woman #11 - Unfortunately we found that a lot of HR departments are trying to keep the two separate, human capitol and CS, which is a shame.

CD - Other Items that she should be considering?

Audience (man #10)- Yes, just a follow on to that, actually, I've heard it mention that we need to think about the capitol investments that are required and make short term decision that make long term gains. One of the things I'd like to see OMB take a look at, how do we fund the kinds of things that it takes to do A76 studies so we can gain the long term benefits of them. Its hurt a lot of people and I don't think anyone has taken a serious look at the research issue.

CD - If we are still going to have direct conversions, have them define preferential procurement program is.

Woman #11 - At an HR CS Conference we put on at DOI, Angela Styles made the statement that there is a 30% savings and that includes the cost of conducting the study. I think there are studies out there from GAO

that says 30% savings but it does not incorporate the cost of actually conducting the study. I'd like to see some data on are we really saving money by going through and doing this process?

CD - Our good friends over at CNA did that analysis. 20% is when the MEO wins, 40% is when it is directly converted. 30% included all costs.

The other issue is, just to share with you, just in case you are interested in, cost factors. When Reason went through and did a survey of the performance aspect of outsourcing, organizations that had a successful CS projects as opposed to failures, the successful ones were motivated by factors outside of cost. If they ever touched cost they said they wanted cost certainty rather than cost reductions. Those that were more likely to be failures were organization motivated primarily, if not exclusively, by a search for reducing costs and cutting expenditures. Most organizations were successful when they went in looking to clear the deck of extraneous activities so they could function on core mission. The core mission is the issue.

Two last comments and then we have to get out of here.

Ramona - One of the things we in the small business community are most concerned about. Many of things that are going to CS are the things that small business community has been historically able to do but they are getting bundled into large contracts so the small business community can not do now. The House and the Senate Small Business Committee is looking at increasing small business goals of 30%. We'd like you to think about how these CS things can be done in such a way the small business community can participate.

CD - OK, and one last comment.

Audience (man #11)- I would say that Angela Styles should consider freeing up the federal work force and allow them to be very creative in the submission of their competitive bids. For example, allowing partnerships with the private sector, joint ventures with the private sector, other creative business arrangements that would allow them to basically be more competitive. Including going after a broader base of business in order to lower their costs.

CD - So allow our employees a fair crack at bat, don't let them compete with their arms tied.

Man #11 - Yes, and not just using government resources.

CD - Two other quick announcements. Our report will be going in two phases. We will be providing a transcript of today's session to OMB very quickly, probably within the next week. We are also going to be coming up with a summary report based on the survey e-mails that we are getting in from the various acquisition shops after August 2. OMB has tried to set a target date of sometime in August to release their changes. More likely it will be some time in September that it will be coming out. So what you were able to provide us with today, I think, is going to be very important factors that they will be looking at as they are finalizing their guidance and their changes so we really appreciate you participation in The Town Hall Meeting.

Two other forums. Reason and Performance Institute will be convening, we are skipping August, September we will convene a forum on e-government. We are looking at citizen centered e-government. How are agencies are measuring and planning citizen centered e-government. Are we actually attaining cost savings?

Are we actually achieving better program performance. We are survey all federal CIO's at the Department level and some of your agencies have not finished the survey yet. But we will be released our findings in this room with Mark Foreman in September.

And then in October in partnership with the Senior Executive Association, the advocacy group representing our SES managers in government, we are going to look at SES performance plans. Looking at how each agency has implemented the OPM guidelines in that part of the PMA relating to manager accountability. So we have two more forums already planned. We will probably do additional forums in November and December, again, still on the PMA.

Again, we appreciate you help in the CS forum and we will get back to you with the report and please share it with as many people in your agency as possible.

Thank you very much. Thank the Panel, Stan Saloway and Al Burman.

END OF TAPE.