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Congressional Committees

Subject: *OMB Service Contracts Inventory Guidance and Implementation*

Federal agencies rely on a multisector workforce of federal employees and contractor personnel to perform services needed to carry out their missions. Determining whether to obtain services through insourcing with current or new federal employees, outsourcing with private-sector contractors, or sourcing with a combination of the two is an important economic and strategic decision essential to the federal government's effective and efficient use of taxpayer dollars. Since fiscal year 2006, civilian agencies have obligated over \$100 billion annually to obtain a range of services from contractors. Almost 80 percent of contract obligations made by civilian agencies in fiscal year 2010 were for service contracts. Since the mid-1950s, the executive branch has encouraged federal agencies to obtain commercially available services from the private sector when outsourcing is cost effective. In 2009, however, the President issued a memorandum on government contracting that expressed concern about whether agencies have become overly reliant on contractors and have appropriately outsourced services.¹ In particular, the President noted that the line between inherently governmental functions—those that must be performed by federal employees—and commercial activities that may be contracted for has been blurred.² In the memorandum, the President directed the Office of Management and Budget (OMB) to lead a series of contracting-related efforts, including clarifying when outsourcing for services is appropriate.

Over the last several years, Congress too has been concerned with agencies' reliance on contractors and has directed OMB and other federal agencies to examine issues related to the multisector workforce. For example, the Conference Report accompanying the Consolidated Appropriation Act for fiscal year 2010 cited the need for agencies to have complete and reliable information on the extent of their reliance on service contractors to help determine the proper use and balance of public

¹The White House memorandum, *Government Contracting* (Mar. 4, 2009).

²Inherently governmental functions, as a matter of policy, are so intimately related to the public interest as to require performance by government employees, and include functions that require discretion in applying government authority or value judgments in making decisions for the government. Federal Acquisition Regulation (FAR) 7.503(c) provides examples of such functions. Closely associated with inherently governmental functions are those that, while not inherently governmental, may approach the category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the government administers performance under a contract. FAR 7.503(d) provides examples of such functions.

employees and contractors to accomplish agencies' missions. In this regard, the Consolidated Appropriations Act, 2010, required civilian federal agencies to complete an annual inventory of their service contracts and review and analyze the information in the inventory to understand how contracted services are being used and whether contractors are being used in an appropriate manner.³ Civilian agencies were to submit to OMB their inventories by December 31, 2010, and also make public their fiscal year 2010 inventory by January 31, 2011. To aid civilian agencies in collecting the inventory information, the act further required that OMB develop and disseminate guidance by March 1, 2010, and report to Congress by July 31, 2010, the steps it took to support this effort. We were then required to report on the guidance issued and actions taken by OMB once it had issued the July 31, 2010, report. OMB has issued initial guidance to agencies, but as of May 26, 2011, it had not issued the required report to Congress. Additionally, by September 30, 2011, we were required to report on the civilian agencies' initial implementation of the fiscal year 2010 service contracts inventory requirement.

After waiting several months for OMB to issue the required July 2010 report, we began work in December 2010 in anticipation of the report's completion. This schedule would have enabled us to follow on immediately with the work needed for our September 2011 report. Given the delay in the OMB report, we decided, in consultation with your office, to report now on the work we have done on OMB's guidance and the civilian agencies' service contract inventories. Thus, this report addresses the substance of both legislative requirements and helps form the basis for a report we are required to make on the agencies' progress in 2012. Accordingly, this report addresses (1) the steps OMB has taken to guide agencies as they prepare service contract inventories and (2) selected civilian agencies' experiences using OMB's guidance as they prepared the inventories and began to analyze the service contracts included in the inventories.

To address our objectives, we reviewed OMB's November 2010 service contract inventory guidance and analyzed the extent to which it was consistent with the statutory requirements included in the act for executive agencies' service contract inventories.⁴ We interviewed OMB officials regarding their guidance to assist agencies in collecting the required service contract inventory data. We used Federal Procurement Data System—Next Generation (FPDS-NG) data to select nine civilian agencies for further review.⁵ The nine agencies were the Departments of Energy (DOE); Health and Human Services (HHS); Homeland Security (DHS); Housing and Urban Development (HUD); and Veterans Affairs (VA); the Federal Election Commission (FEC); the General Services Administration (GSA); the National Aeronautics and Space Administration (NASA); and the Small Business Administration (SBA). We selected six agencies with the highest amounts of fiscal year 2009 service contract obligations and three other agencies that had varying

³Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, § 743 (2009).

⁴Office of Federal Procurement Policy Memorandum, *Service Contract Inventories* (Nov. 5, 2010).

⁵FPDS-NG is the primary governmentwide contracting database, providing information on government contracting actions, procurement trends, and achievement of socioeconomic goals, such as small-business participation.

levels of service contract obligations for fiscal year 2009, including a large percentage of contracts in the special interest functions areas that OMB identified in its guidance.⁶ We also considered whether agencies had previously submitted inventories for the Federal Activities Inventory Reform (FAIR) Act of 1998.⁷ Collectively, the nine agencies we selected accounted for 66 percent of the fiscal year 2009 funds obligated on service contracts by civilian agencies. While our prior work has found problems with FPDS-NG data reliability, for purposes of this report we found FPDS-NG data to be sufficiently reliable for the purpose of reviewing whether the selected agencies' contract inventories were consistent with OMB's contract inventory guidance.⁸ We verified that the data elements required for fiscal year 2010 service contract inventories were present in FPDS-NG. We analyzed fiscal year 2010 contracting data from FPDS-NG to determine the differences in contracting activity that would be identified by following the statutory inventory requirements compared to using OMB's guidance. In addition, we interviewed officials from the nine agencies on their experiences implementing OMB's inventory guidance and collected and reviewed these agencies' fiscal year 2010 service contract inventories. We also queried the agencies after they began their initial analysis of the inventories to determine the progress being made. We conducted this performance audit from December 2010 to May 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

OMB's November 2010 guidance required civilian agencies to use FPDS-NG data to address a number of the inventory requirements consistent with the Consolidated Appropriations Act; however, there are some key differences between the guidance and the act. In some instances, OMB increased the amount of information agencies were to report in their inventories relative to the statutory requirements and in other instances decreased it. OMB's November 2010 guidance set dollar thresholds for which contract actions are to be included in the inventories whereas the act did not. In addition, the way agencies were required to identify personal services contracts

⁶Special interest functions as described by OMB are functions that require increased management attention due to heightened risk of workforce imbalance, such as relying heavily on contractors for information technology support.

⁷The Federal Activities Inventory Reform Act of 1998, as amended (31 U.S.C. § 501 note), requires agencies to submit annual lists of activities that are not inherently governmental functions. Executive agencies subject to the FAIR Act include executive departments, such as DHS, and independent establishments, such as NASA. Pub. L. No. 105-270 (1998), 31 U.S.C. § 501 note.

⁸For past reports on FPDS-NG see GAO, *Contracting Strategies: Data and Oversight Problems Hamper Opportunities to Leverage Value of Interagency and Enterprisewide Contract*, GAO-10-367 (Washington, D.C.: Apr. 29, 2010), and *Federal Contracting: Observations on the Government's Contracting Data Systems*, GAO-09-1032T (Washington, D.C.: Sept. 29, 2009).

under OMB's guidance is different than what is required under the statute.⁹ The statute also requires several data elements—such as the number of contractor employees—to be included in the inventories, but under OMB's guidance, the elements are not required to be included in the services contract inventories until fiscal year 2011 because the data are not presently available. OMB is working to revise the FAR and expects the agencies to be in a better position to collect the data for fiscal year 2011. Under the proposed FAR revision, the collection of the remaining data elements will rely on contractor-reported information and will be phased in over a 4-year period. In addition, OMB does not yet have a process or system in place for collecting these additional data elements, but is working to integrate these data elements into a current modernization effort.

All nine agencies included in our review submitted the inventories, and most found OMB's guidance sufficiently clear to compile the inventories as directed. One agency found the guidance less clear and its inventory varied from the guidance. Some agencies had some concerns with the required analysis of the inventories due to the large number of contract actions they would have to review and their limited resources. Nevertheless, as of April 2011, seven of the nine agencies had begun to review their inventories, and there were mixed opinions among agency officials on the usefulness of the inventories. Some agency officials believe the inventories will help with existing efforts related to workforce balance. Others are concerned they will not be given the necessary resources to implement any changes that would come from what they learned from the inventories such as converting contractor positions to government positions.

Background

The Consolidated Appropriations Act, 2010, requires the heads of civilian agencies subject to the FAIR Act of 1998 to annually submit to OMB an inventory of service contracts by December 31 of each year, beginning with fiscal year 2010 contracts.¹⁰ This requirement applies to approximately 50 executive agencies. To aid the agencies in establishing systems to collect the inventory information and to ensure consistency across agencies, the statute required the Director of OMB to develop and disseminate guidance by March 1, 2010. In addition, the statute required the Director of OMB to submit a report to Congress by July 31, 2010, on the status of its efforts to guide executive agencies as they prepare the inventories, including developing guidance, methodologies, and technical tools. Key tasks and dates required by the act are shown in figure 1.

⁹A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Agencies are not permitted to award personal services contracts unless specifically authorized by statute to do so. (FAR 37.104).

¹⁰Pub. L. No. 111-117, § 743 (a) (3) (2009).

identify whether the contract was a personal services contract, but under OMB's guidance, only personal services contracts that have the personal services code in FPDS-NG would be included. According to OMB, however, the guidance allows agencies to assume such transactions have been properly coded as personal services contracts in FPDS-NG and therefore did not require agencies to review every nonpersonal services contract to identify if any have been miscoded and are potential unauthorized personal services contracts. OMB officials stated that it was not feasible to require agencies to review each nonpersonal services entry, which could be tens of thousands of actions for some agencies, by the required inventory reporting deadline. As a result, if a contract was miscoded in the system or was unauthorized and therefore not coded as a personal service, it would not be identified in the inventory. However, agencies might identify miscoded or unauthorized personal services contracts during their review of their inventories. For example, we reported in January 2011 that through its review of work performed by contractors, the Army identified 1,877 contractor employees performing unauthorized personal services.¹¹

Another key difference between the act and the OMB guidance involves when data elements will be collected. The November 2010 inventory guidance directed agencies to compile the data elements that are currently available in FPDS-NG.¹² As a result, three data elements required by the statute—the number and work locations of contractor and subcontractor employees compensated under the contract, the amount invoiced for services, and the role the services played in achieving agency objectives—were not included in the fiscal year 2010 inventories because they are not available in FPDS-NG. OMB guidance noted it would require agencies to collect this information for fiscal year 2011 inventories and is taking steps to develop a standard governmentwide data-collection process for collecting the number of contractor employees and the amount invoiced for services. Figure 2 identifies the elements OMB guidance required to be reported in fiscal year 2010 and the additional data elements required for fiscal year 2011.

¹¹GAO. *Defense Acquisitions: Further Action Needed to Better Implement Requirements for Conducting Inventory of Service Contract Activities*. GAO-11-192 (Washington, D.C.: Jan. 14, 2011).

¹²As we previously reported FPDS-NG lacks the functionality to capture all necessary information for the inventories. For example, it is not possible to identify services that are purchased under a contract action coded as goods. See GAO-11-192.

Figure 2: Services Contracts Inventory Data Elements Required by OMB's Guidance

<p>Required data elements beginning in fiscal year 2010^a</p> <ul style="list-style-type: none">• Description of the services• Organizational component(s) of the agency administering the contract• Organizational component(s) of the agency using the contract• Dollar amount obligated• Funding source• Contract type• Contract award date• Name of the contractor• Place of performance• Whether the contract was awarded on a noncompetitive basis• Whether the contract is a personal services contract <p>Additional elements required beginning in 2011^b</p> <ul style="list-style-type: none">• The number and location of contractor and subcontractor employees• How the services help achieve agency objectives• Dollar amount invoiced

Source: GAO analysis of OMB data.

Notes: Data are from OMB Civilian Contract Inventories guidance, November 2010.

^aThese data elements are available in FPDS-NG.

^bThese data elements are not available in FPDS-NG and require a separate collection method.

OMB plans to issue additional guidance for preparing the fiscal year 2011 contract inventories to include the remaining data elements and to take into account experiences with developing and using the fiscal year 2010 inventories. A proposed Federal Acquisition Regulation (FAR) rule published on April 20, 2011, revises the FAR to collect the information on contractor employees and amounts invoiced.¹³ The rule notes that alternatives were considered for collecting and maintaining this information electronically. Public comments on the proposed FAR rule are requested to be submitted by June 20, 2011. According to OMB officials, contractors will be expected to report this information annually for a given contract.

Currently, civilian agencies do not have the ability to collect full-time equivalents (FTE) from contractors, or the amount invoiced. Several agency officials we contacted stated that limited time would be available to revise current contracts in time to collect this information for fiscal year 2011. They also expressed concerns about the anticipated associated costs of collecting this information. The proposed rule will require a new contract clause to be used in contracts that meet certain dollar thresholds where contractors will report the following information on service contracts by means of an electronic reporting portal, which is currently being developed: (1) contract number, and when applicable, task order number, (2) total dollar amount invoiced for services performed during the previous fiscal year under the contract, (3) the number of contractor direct labor hours expended on the services, and (4) number of direct-labor hours expended on services performed by first-tier subcontractors. OMB expects this information will be collected in a phased

¹³76 Fed. Reg. 22070 (Apr. 20, 2011). The Act provides that agencies shall include the number and work location of contractor and subcontractor employees, as expressed as FTEs for direct labor, compensated under the contract in their inventories. Pub. L. No. 111-117, § 743 (a) (3) (G) (2009).

approach over the next 4 years based on contract type and total estimated value of a contract.

The President's budget request for fiscal year 2011 included a request for \$6 million to create and maintain a contractor inventory database that OMB officials said could be used to collect this information. According to OMB officials, the requested amount was based on the estimated cost of building a stand-alone system for this reporting requirement, as the Army has done, but this funding was not appropriated. They stated they have since begun working with the managers of governmentwide acquisition support systems that are included in a modernization initiative referred to as the System for Award Management, which is part of the Integrated Acquisition Environment.¹⁴ OMB noted that this alternative approach should help civilian agencies to accommodate the statutory requirement without further delay and take into consideration available funding levels. The final data element to be included in the fiscal year 2011 inventories—the role the services played in achieving objectives—will require additional contract file documentation, and OMB officials told us they are evaluating the best way to collect that information.

Agencies Experienced Few Challenges Compiling Inventories, but Some Anticipated Challenges Reviewing Them

Most Agencies Considered OMB Guidance Sufficient for Compiling Service Contract Inventories

We found all nine agencies submitted their fiscal year 2010 inventories. Most agencies found the guidance to be clear. Table 1 provides information on fiscal year 2010 service contracts actions and obligations.¹⁵ Agencies are to use this information as a starting point for their analysis.

¹⁴GSA has program management responsibility for the Integrated Acquisition Environment (IAE), which is an initiative to unify and streamline the federal acquisition process for government buyers and sellers, through the integration of information systems that collect and process procurement-related data. Information systems that fall under the IAE initiative include the Central Contractor Registration system, the Online Representations and Certifications Application, the Electronic Subcontracting Reporting System, and the Federal Procurement Data System-Next Generation (FPDS-NG) as well as the System for Award Management.

¹⁵Contract action means any oral or written action that results in, among other things, the purchase or lease of supplies or services using appropriated dollars above the simplified acquisition threshold or modifications to contracts without regard to a dollar threshold. FAR 4.601.

Table 1: Selected Agencies' Fiscal Year 2010 Service Contract Actions and Obligations

Agency	Number of contract actions in service contract inventory	Obligation amount for service contracts (dollars in millions)
Department of Veterans Affairs (VA)	27,810	\$8,586
Department of Health and Human Services (HHS)	17,470	13,250
Department of Homeland Security (DHS)	13,000	11,899
General Services Administration (GSA)	5,490	2,370
Department of Energy (DOE)	4,305	26,000
National Aeronautics and Space Administration (NASA)	2,552	1,384
Department of Housing and Urban Development (HUD)	1,163	1,650
Small Business Administration (SBA)	323	122
Federal Election Commission (FEC)	45	10

Source: GAO analysis of agency data.

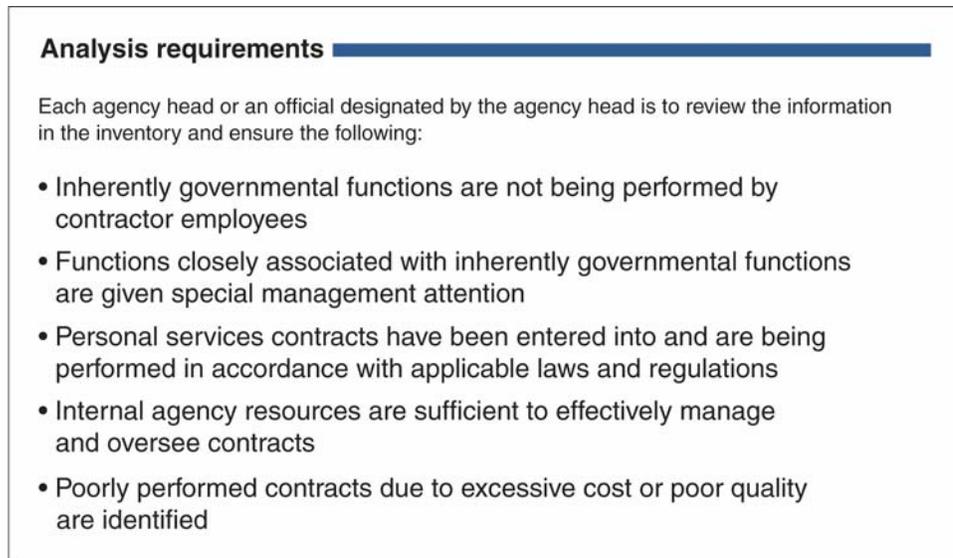
Note: Data are from service contract inventories.

One agency's inventory varied from the guidance; NASA only included new obligations incurred in fiscal year 2010 that were associated with ongoing contracts, new task orders associated with ongoing and new contracts, and the exercise of options that extended the performance period of a contract. NASA excluded obligations that existed in fiscal year 2010 that were based on an award prior to 2010. NASA found the part of the guidance that addressed this aspect of compiling its inventory unclear, so it sought additional guidance from OMB and compiled the inventory based on OMB's response. NASA interpreted OMB's response to mean that the approach it used was consistent with OMB's guidance. As a result, NASA's contracting actions and obligation amounts are lower than if they had compiled their inventories similarly to other agencies.

OMB's Guidance Provided Direction for Agencies on Reviewing and Analyzing the Inventories

OMB's guidance provided agencies direction on completing the required inventory review and analysis. OMB recommended that agencies analyze the inventories by sampling contract files, interviewing program managers and contracting officer technical representatives, and using any other information-gathering method the agency deems is necessary. Figure 3 shows the requirements included in OMB's guidance that agencies are to address when reviewing their inventories. Agencies are to review information in the inventories to ensure contractors are not performing inherently governmental functions and to provide special management attention to contractors performing activities closely related to inherently governmental functions due to the nature of these contracts.

Figure 3: Analysis Requirements in OMB Guidance



Source: GAO analysis of OMB data.

Besides reviewing contracts to address concerns about using contractors for inherently governmental functions or functions closely related to inherently governmental functions, OMB guidance also directed agencies to give priority consideration to certain “special interest functions” that require increased management attention due to heightened risk of workforce imbalance. The imbalance was expected to fall into two areas of services: professional and management services and information-technology support services. OMB provided an illustrative list of these functions for heightened management consideration based on concerns of increased risk of losing control of mission and operations and the risk of overreliance on contractors.

Agencies Anticipated Challenges Reviewing the Inventories but Are Moving Forward with Their Analyses

Agency officials cited some concerns with the requirement to analyze their inventories to determine if contractors are being used appropriately and effectively and if the mix of federal employees and contracts is balanced. In early 2011, several officials at the agencies we spoke with expressed concerns about completing a thorough inventory analysis by June 30, 2011, with the time and resources available. However, when we followed up with these agencies we found that as of April 2011, seven of nine agencies had started their analyses. For example, GSA officials told us its Office of General Services Acquisition Policy, Integrity, and Workforce is coordinating GSA’s review and that four groups within GSA are analyzing their inventory: Public Building Service, Federal Acquisition Service, Office of the Chief Information Officer, and the Human Capital Office. GSA plans to meet the June 2011 deadline and will share the results of its analysis with senior management in an internal report. DHS officials stated they are early in the review process, but a number of groups within the agency are part of the review. The results of their review so far have been mixed; there are some contracts they believe will need to be converted into government positions, but they have determined others are

appropriate to be outsourced. DHS officials stated that they are trying to ensure their process for conducting inventory analysis will be repeatable to facilitate inventory analyses in subsequent years.

DOE officials told us they have begun their analysis of the 4,305 contracting actions worth about \$26 billion in obligations that they reported in their inventories. Thus far, their analysis shows that about 3,100 actions worth approximately \$5 billion would be part of their review. DOE officials has decided they will exclude a special type of contract called management and operating contracts, which DOE has used for over 60 years, from further analysis. The majority of these contracts, valued at about \$21 billion, are for the management and operation of DOE national laboratories. According to DOE, a management and operating contract is characterized by its special purpose and the unique relationship it creates between DOE and the contractor. DOE states the unique characteristics of these contracts are critical to mission success. DOE believes that these contracts would not be good candidates for insourcing because doing so would negatively affect the ability of DOE to perform its mission.¹⁶ However, according to the OMB guidance, one purpose of compiling the inventory is to better understand how contracted services are being used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.

Other agencies are not as far along in reviewing their inventories. For instance, HUD officials told us in April 2011 that due to staff shortages they have not been able to start an analysis yet, but they plan to review the inventory in May when they go through their program management review process. Similarly, VA officials told us that they were beginning the analysis. VA has selected contracts to be reviewed through statistical sampling and has selected a contractor to review them starting in May 2011. VA officials believe they will meet the deadline for conducting the required analysis.

Overall, agency officials expressed mixed feelings about the usefulness of the inventories for making acquisition and workforce decisions. HHS officials consider the inventories a management tool to help them determine what services the departments are really buying and why they are buying them. Further, they said the inventory would be another tool they can use to obtain clear contract data to help inform acquisition decisions. Similarly, DHS officials believe the inventory effort is closely related to existing workforce balancing efforts and view the inventory data as the sort of information they need to help achieve their goals. HUD officials said the inventory exercise could have value in helping them look at broad activities and how they are performed. Conversely, officials at DOE stated that because the nature of their work requires heavy reliance on contractors, and the way money is appropriated to the department, insourcing would be difficult at their agency. DOE officials are concerned about the availability of budgetary resources to implement any workforce decisions they would want to implement based on the analysis. DOE officials stated

¹⁶According to the DOE officials, the management and operations contracts involve about 100,000 contractor employees located at numerous DOE facilities and laboratories across the United States. DOE officials believe that obtaining the authority to convert these contractor positions to federal civilian employee positions as well as finding employees with the requisite technical skills would be difficult to do as well as disruptive to the agency's operations.

the agency would need additional budget support to change its current infrastructure for accomplishing its mission if federal employees would be performing more of the work. VA officials also expressed doubts about the usefulness of the inventory citing their concern that VA will not be able to implement any decisions due to uncertainty over additional authorized staff levels and budget resources.

Concluding Observations

Good information on the roles and functions performed by contractors is important if federal agencies are to move forward in evaluating the balance of their multisector workforces. OMB's service inventory guidance has enabled agencies to take the initial steps to collect this information and begin analyzing their inventories, but challenges lie ahead in how agencies will collect the additional required inventory data that are not currently available governmentwide. Because the revision to the FAR will not likely be implemented until late in the current fiscal year and the process and system for collecting this information are not available, agencies will not likely be able to modify existing contracts in time to collect the additional inventory data for the fiscal year 2011 inventories. Moreover, it is still unclear at this time how agencies we reviewed will analyze and use this information as a tool for making workforce decisions once it is collected. Given civilian agencies' early stages of implementation, the additional planned guidance from OMB will be important to agencies in helping them address these challenges and in determining how their contractor inventory analyses will address multisector workforce decisions.

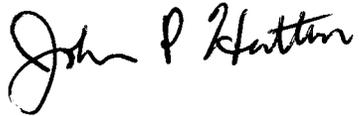
Agency Comments

We provided a draft of this report for comment to the heads of OMB and the nine civilian agencies we reviewed: DOE, DHS, FEC, GSA, HHS, HUD, NASA, SBA, and VA. OMB and DOE provided technical comments, which we incorporated where appropriate. The remaining agencies responded that they had no comments.

We are sending copies of this report to the Director of OMB; the Secretaries of Energy, Health and Human Services, Homeland Security, Housing and Urban Development, and Veterans Affairs; the Administrators of the General Services Administration, National Aeronautics and Space Administration, and the Small Business Administration; the Federal Election Commission; and interested congressional committees. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-4841. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report

include Jim Fuquay, Assistant Director; Morgan Delaney Ramaker; Lauren Heft; Julia Kennon; Victoria Klepacz; John Krump; and Roxanna Sun.

A handwritten signature in black ink that reads "John P. Hutton". The signature is written in a cursive style with a large initial 'J' and 'H'.

John P. Hutton
Director
Acquisition and Sourcing Management

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