



GAO

Accountability • Integrity • Reliability

United States Government Accountability Office
Washington, DC 20548

October 6, 2009

Congressional Committees

Subject: *Civilian Agencies' Development and Implementation of Insourcing Guidelines*

Federal agencies rely on a multisector workforce composed of federal employees and contractor personnel to perform services as they carry out their missions. Determining whether to obtain services through insourcing with current or new federal employees, outsourcing with private sector contractors, or cosourcing with a combination of the two is an important economic and strategic decision critical to the federal government's effective and efficient use of taxpayer dollars. The executive branch has encouraged federal agencies since the mid-1950s to obtain commercially available services from the private sector when outsourcing is cost-effective. In the last 5 fiscal years, civilian agencies have on average annually obligated about \$100 billion to obtain a range of services from contractors. However, in March 2009, the President issued a memorandum on government contracting that, among other matters, expressed concern about the federal workforce as to whether agencies have become overreliant on contractors and have appropriately outsourced services. 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. 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 and is not appropriate.

Congress, also concerned with the federal workforce, in March 2009 enacted section 736 of the Omnibus Appropriations Act, 2009,¹ which requires federal agencies, with the exception of the Department of Defense (DOD), to devise and implement guidelines for insourcing new and contracted-out functions by mid-July 2009. The statute further requires that we report on the implementation of section 736. In response, we identified (1) the actions taken by OMB to assist affected agencies as they develop insourcing guidelines and (2) the status of selected civilian agencies' efforts to develop and implement insourcing guidelines.

To address our objectives, we interviewed and reviewed information provided by officials from OMB and nine agencies on the status of their insourcing efforts pursuant to section 736. The nine agencies were selected because they collectively accounted for about 80 percent of the fiscal year 2008 funds obligated on service contracts by civilian agencies.² In addition, we reviewed OMB's guidance issued in July 2009 as to whether it is consistent with statutory requirements for executive agencies' guidelines. We conducted our work from July 2009 to October 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate

¹Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, Division D, Title VII, Section 736.

²The nine agencies were the Departments of Energy, Health and Human Services, Homeland Security, Justice, State, Transportation, and Veterans Affairs, as well as the General Services Administration and the National Aeronautics and Space Administration (NASA).

evidence to provide a reasonable basis for our findings based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives.

Results in Brief

Although section 736 does not specify a role for OMB in the development and implementation of the civilian agency insourcing guidelines, OMB has initiated a number of efforts in response to the President's March 2009 memorandum on government contracting and section 736. In July 2009, after coordinating with key agencies, OMB issued guidance to facilitate the management of the federal government's multisector workforce through an approach that (1) provides an initial framework for planning and managing the multisector workforce that is built on strategic human-capital planning, (2) requires agencies to conduct a multisector human-capital analysis pilot, and (3) provides criteria on how agencies can use insourcing as a tool to manage their multisector workforces. Specifically, the insourcing criteria explain what actions agencies are to take to ensure that they are giving "consideration" and "special consideration" to the use of federal employees, as required under section 736. The OMB criteria specify that agencies generally should conduct cost analyses as part of the insourcing process but note that there may be circumstances where full cost analyses are unnecessary. How cost analyses are to be conducted and what factors are to be considered in the analyses are left to the agencies. OMB is considering what its future role regarding insourcing will be but currently does not plan to formally approve agency insourcing guidelines. It does, however, recognize that its insourcing criteria are likely to be the first step of an iterative process that may be revisited periodically due to the complexity of addressing the multisector workforce, possible changes resulting from its review of the term "inherently governmental," and lessons learned from the multisector workforce pilots.

None of the nine civilian agencies we visited met the statutory date for developing and implementing their insourcing guidelines and procedures. Although one agency issued preliminary guidelines, and two others had drafted but not issued their guidelines as of our review, most of the agencies' efforts are still in their early stages. Agency officials told us that they delayed their efforts to develop or issue guidelines as they were waiting for OMB's July guidance to ensure their guidelines were consistent, and some officials noted that they are waiting on additional direction from OMB, particularly as it relates to the definition of inherently governmental functions and when it is appropriate to outsource. Agency officials also identified a number of challenges relating to insourcing such as the complexity of the issue within the broader context of managing the multisector workforce, the time and level of effort involved in coordinating relevant agency functions, and continued uncertainty about the meaning of key terms, such as "consideration" and "special consideration." Agency officials also made some suggestions, such as multiagency working groups to share lessons learned, that they believe may help them in their future insourcing efforts. OMB advised us that the working group on multi-sector workforce management will provide ongoing support to agencies and that OMB will continue to provide information to agencies in response to inquiries.

We provided a draft of this correspondence to OMB for its review and comment. OMB provided technical comments that we incorporated into the final version as appropriate. Additionally, the nine agencies we met with were given the opportunity to provide comments on a fact sheet containing information from a draft of this correspondence specific to their agency. Seven of the agencies had no comments on the information in the fact sheets and two agencies provided technical comments that have been incorporated into this correspondence.

Background

Section 736 of the Omnibus Appropriations Act, 2009, requires the heads of executive agencies, except DOD, subject to the Federal Activities Inventory Reform (FAIR) Act of 1998³ to devise and implement insourcing guidelines and procedures by July 9, 2009. The statute specifies that the guidelines and procedures are to ensure that “consideration” is given to using, on a regular basis, federal employees to perform new functions and functions that are performed by contractors and could be performed by federal employees. The statute further requires that the guidelines provide for “special consideration” to be given for using federal employees to perform any function that is

- performed by a contractor and
 - has been performed by federal employees at any time during the previous 10 years;
 - is a function closely associated with the performance of an inherently governmental function;⁴
 - has been performed pursuant to a contract awarded on a noncompetitive basis; or
 - has been performed poorly, as determined by a contracting officer during the 5 years preceding the date of such determination, because of excessive costs or inferior quality; or
- a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by federal employees or is a function closely associated with the performance of an inherently governmental function.

In addition, the statute provides that the guidelines and procedures may not include any specific limitation on the number of functions or activities that may be converted to performance by federal employees and excludes certain functions from public-private competition until certain conditions are met.

Section 736 does not apply to DOD. However, section 324 of the National Defense Authorization Act for Fiscal Year 2008⁵ provided essentially the same requirement for DOD to develop and implement insourcing guidelines. In April 2008, DOD issued its initial insourcing guidelines. Then on May 28, 2009, DOD issued implementing guidance for the insourcing of contracted services.⁶ The May 2009 guidance explains that it is designed to assist DOD components as they develop and execute plans to decrease funding for contract support and increase funding for approximately 33,400 new civilian manpower authorizations. Among other matters, the guidance provides a process the components are to follow in prioritizing and reviewing contracted services for possible insourcing and the steps they are to follow once the decision is made to insource a function.

In March 2009, the President issued a memorandum that identified a number of concerns related to government contracting, explicitly noting that government outsourcing for services raises special concerns.⁷ The memorandum directed the Director of OMB, in collaboration

³The FAIR Act of 1998, as amended (31 U.S.C. § 501 note), requires agencies to submit annual workforce inventories of activities that are not inherently governmental functions. Executive agencies subject to the FAIR Act include executive departments, such as the Department of Homeland Security, and independent establishments, such as NASA.

⁴Section 736 provides that the term “inherently governmental functions” has the same meaning as that in subpart 7.5 of the Federal Acquisition Regulation (FAR), which includes extensive lists of examples of functions considered to be and not be inherently governmental functions. Although section 736 does not specifically refer to it, FAR subpart 2.1 defines “inherently governmental function” to mean “as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by government employees” and “includes activities that require either the exercise of discretion in applying government authority, or the making of value judgments in making decisions for the government.”

⁵National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181 § 324.

⁶DOD Memorandum, *In-sourcing Contracting Services – Implementation Guidance* (May 28, 2009).

⁷Presidential Memorandum, *Government Contracting*, 74 Fed. Reg. 9,755 (Mar. 4, 2009).

with heads of executive agencies and other officials,⁸ to develop and issue by July 1, 2009, governmentwide guidance to assist agencies in reviewing and creating processes for ongoing reviews of existing contracts to identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency's needs and to formulate corrective actions. Noting that agencies must operate under clear rules, the President's memorandum further directed that by September 30, 2009, OMB issue guidance to clarify when governmental outsourcing for services is and is not appropriate.

OMB's Insourcing Efforts and Criteria

Although section 736 of the Omnibus Appropriations Act, 2009, did not specify any responsibilities for OMB, the office has taken actions to assist agencies in the development of their insourcing guidelines within the context of providing overall guidance on managing the multisector workforce. On July 29, 2009, OMB issued guidance in response to the President's memorandum as well as section 736 that addresses achieving the best mix of contractors and federal employees and requires agencies to begin the process of developing and implementing policies, practices, and tools for managing the multisector workforce.⁹ The memorandum outlines a three-prong approach that (1) provides an initial framework for planning and managing the multisector workforce built on strategic human-capital planning, (2) as part of a planning pilot, requires each agency to conduct a multisector human-capital analysis of an organization, program, project, or activity where there are concerns about reliance on contractors and report on the pilot in April 2010, and (3) provides criteria on how agencies can use insourcing as a tool to manage their multisector workforce. Also, as part of this guidance, OMB discussed its efforts to review the definition of an inherently governmental function within the context of its efforts to clarify when governmental outsourcing for services is and is not appropriate.¹⁰

The insourcing criteria issued by OMB in July 2009 are intended to provide the civilian agencies with a framework for consistent and sound application of the statutory requirements as the agencies develop their insourcing guidelines. OMB developed the criteria in consultation with a working group composed of officials from some of the affected agencies. According to a senior OMB official, OMB established four agency working groups to address specific issues related to the President's March 2009 memorandum.¹¹ He explained that the working group responsible for addressing multisector workforce issues helped to develop the insourcing criteria since OMB considers insourcing one of many tools available to manage the multisector workforce. OMB also involved DOD in its efforts to develop criteria, in part to benefit from DOD's experience in developing and implementing insourcing guidelines and to promote consistency across all agencies.

OMB's July 2009 criteria generally address the provisions of section 736 and provide a general framework for agencies to craft their own insourcing guidelines. The criteria consist of four sections that address different aspects of the statute and describe circumstances and factors agencies should consider when identifying opportunities for insourcing. See table 1 for a description of OMB's insourcing criteria.

⁸Other agency heads include the Secretary of Defense, the Administrator of NASA, the Administrator of the General Services Administration, the Director of the Office of Personnel Management, and other heads of agencies the Director of OMB deems appropriate.

⁹OMB Memorandum M-09-26, *Managing the Multi-Sector Workforce* (July 29, 2009).

¹⁰OMB's multisector workforce memorandum notes that this review is consistent with section 321 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417 (2008), which requires OMB to review the definitions of "inherently governmental function" and develop a single consistent definition for the term.

¹¹These four working groups were set up to address (1) the definition of the term "inherently governmental," (2) managing the multisector workforce, (3) contractor inventories and information, and (4) cost determination.

Table 1: OMB’s Criteria for Insourcing under Section 736

Key sections	Agency responsibilities/actions and factors to consider
General Management Responsibilities	<ul style="list-style-type: none"> • review contractor performance on an ongoing basis and where a determination is made that contractors are performing inherently governmental responsibilities, insource such work on an accelerated basis • monitor internal human-capital capacity to minimize the risks associated with overreliance or improper reliance on contractors • ensure that there are sufficient resources to manage and oversee contractors
General Consideration of Federal Employee Performance	<ul style="list-style-type: none"> • augment existing management reviews when appropriate, to consider and evaluate opportunities to improve performance with the use of federal employees <ul style="list-style-type: none"> ○ evaluations should <ul style="list-style-type: none"> ▪ consider opportunities for new and already-contracted work ▪ generally include a cost analysis that addresses the full cost of performance and provides “like comparisons” of relevant costs to determine the most cost-effective source of support • situations when insourcing may be justified without a full cost analysis: <ul style="list-style-type: none"> ○ to establish or build internal capacity or maintain control of an agency’s mission and operations; ○ to perform a function that is closely associated with an inherently governmental function and in-house performance is necessary for an agency to maintain control of its mission and operations; or ○ to avoid the compromise of a critical agency or administration policy
Special Consideration of Federal Employee Performance	<ul style="list-style-type: none"> • go beyond existing agency management reviews and evaluate the specific function to be performed prior to the pursuit or nonpursuit of a contract action <ul style="list-style-type: none"> ○ key issues and actions for evaluations <ul style="list-style-type: none"> ▪ if an agency determines that contractor performance causes the agency to lack sufficient internal expertise to maintain control of its mission and operations, then the agency is to take actions to obtain needed in-house capacity ▪ if a preliminary analysis suggests that public-sector performance is more cost-effective and it is feasible to hire federal employees for a particular function, the agency is to initiate a more-detailed analysis of insourcing options <ul style="list-style-type: none"> ▪ extent of analysis should generally be commensurate with the size and complexity of the function in question and its importance to the agency’s mission ▪ cost analysis should address the full costs of government and private-sector performance ▪ insourcing should not be used unless performance and risk considerations in favor of federal employee performance will clearly outweigh cost considerations
Competition Restrictions	<ul style="list-style-type: none"> • reiterates restriction in section 736 from conducting public-private competitions under OMB Circular A-76 as a prerequisite to federal performance of certain functions

Source: OMB.

According to a senior OMB official, OMB is considering what its future role regarding insourcing will be. For example, OMB currently does not plan to formally approve agency insourcing guidelines but will likely play an ongoing policy role in future insourcing efforts. He added that OMB could possibly be involved through the agency working groups, but its specific role and extent of involvement will depend on the evolving nature of the issue. OMB recognizes that its insourcing criteria are likely to be the first step of an iterative process and expects to periodically revisit the guidance due to the complexity of addressing the multisector workforce in an ever-changing environment and culture, the need for clarification on the meaning of terms such as “inherently governmental,” and the fact that OMB’s efforts, as well as those of the civilian agencies, are in early stages. OMB also anticipates gaining further insight about insourcing, including an assessment of data needs, from the pilot studies required under the broader OMB guidance for managing the multisector workforce.

Status of Selected Agencies' Insourcing Guidelines

None of the nine civilian agencies we visited met the statutory requirement to develop and implement insourcing guidelines and procedures by July 9, 2009. To date, one agency—the Department of State—has issued what department officials characterized as “preliminary” guidelines in late July 2009 and plans to revise its guidelines as insourcing efforts evolve. Officials with the remaining eight agencies informed us that they have efforts underway to develop insourcing guidelines. However, these eight agencies are at various stages of developing their guidelines. For example, two agencies recently designated the offices responsible for leading the effort to develop the guidelines and are in the process of deciding what approach they will take. In contrast, two other agencies have drafted guidelines, with one waiting on management approval to issue them and the other planning to finalize its guidelines once OMB issues additional outsourcing guidance. Table 2 gives the status of the nine agencies' efforts to develop and implement insourcing guidelines pursuant to section 736.

Table 2: Status of Nine Selected Agencies' Development of Section 736 Guidelines

Department/agency	Status as of September 30, 2009
Department of Energy	Guidelines drafted but not issued. Expected issuance date October 16, 2009, but may change based on when OMB issues additional guidance, which was due September 30, 2009.
General Services Administration	Guidelines not drafted. Initial draft expected in October 2009.
Department of Health and Human Services	Guidelines not drafted. Plan to draft based on additional OMB guidance and experiences with pilot study.
Department of Homeland Security	Initial incremental guidelines drafted. Expected issuance upon management approval.
Department of Justice	Guidelines not drafted. Established a working group to draft insourcing guidelines and procedures. Draft due November 30 and will be finalized by January 30.
NASA	Drafting interim guidelines. Expected issuance at the end of October 2009.
Department of State	Preliminary guidance issued on multisector workforce requirements on July 30, 2009. Detailed insourcing guidelines will be issued after pilot study is concluded in April 2010.
Department of Transportation	Guidelines not drafted. No timeline given.
Department of Veterans Affairs	Guidelines not drafted. Initial draft expected in early fiscal year 2010.

Source: Cited agencies.

Officials with the nine agencies cited a number of reasons as to why they did not meet the statutory deadline and have not issued final insourcing guidelines. These reasons included, but were not limited to the following:

- Wanting to ensure their guidelines were consistent with OMB's guidance, which was not issued until July 2009, which caused them to delay either finalizing or drafting their guidelines.
- Waiting for additional OMB guidance and clarification regarding outsourcing and inherently governmental functions, which was to be provided by September 30, 2009. Several officials stated that they anticipate this guidance will have a significant effect

on their development and implementation of insourcing guidelines. Similarly, OMB indicated when it provided the insourcing criteria in July 2009 that it expected to refine the criteria as it developed guidance on when outsourcing is and is not appropriate.

- Intending to use the results, best practices, and lessons learned from the multisector workforce pilots to better inform their insourcing guidelines and procedures. For example, one agency plans to use its experience with the pilot as the basis for its final guidelines, while another plans to issue initial guidelines to be used during the pilot and then revise the guidelines as appropriate based on the experiences during the pilot.
- Stressing that developing effective insourcing guidelines is complex and involves many agency functions, including human capital, acquisition, and finance and budget, all of which requires a great deal of coordination and takes time. They added their ability to focus on the development of the guidelines has been constrained by their capacity to deal with multiple management initiatives in addition to their regular core duties.

Insourcing Challenges

Agency officials we met with noted that while the process of developing insourcing guidelines can be complicated, the broader issue of insourcing within the context of managing the multisector workforce is complex and involves many challenges. According to agency officials, the complex nature of insourcing and the many functional parts of an agency that are involved require managers to share responsibility and coordinate activities. The various functions that will be involved in an agency's insourcing efforts—such as human capital, acquisition, finance and budget—must be identified, as well as the roles each will play. Officials also stated that once identified and given roles, the functions must then work together to identify and resolve matters such as the types of services and number of positions to be insourced; the hiring timeline for federal employees; training and security clearance needs; budget needs for additional resources; facilities and equipment needs; and oversight needs and capacity. According to agency officials, another challenge of insourcing is that it represents a major shift in the focus and culture of the multisector workforce. Established processes and procedures are geared toward outsourcing and shifting to insourcing and a “total workforce” approach—that considers both contractors and federal employees—will take time and requires flexibility to meet the needs of an agency within an ever-changing environment. In addition to these overarching challenges, agency officials identified the following issues that may affect their insourcing efforts:

- Continued uncertainty as to what is meant by terms used in section 736 and OMB's criteria such as “inherently governmental,” “mission-critical,” “core competency,” and “consideration” versus “special consideration” makes it difficult to address them in agency guidelines. However, officials we spoke with were not always in agreement regarding the need for and level of specificity for some terms, as some officials preferred having greater flexibility in interpreting and applying the terms.
- Confusion as to when a cost analysis is needed and the appropriate procedures to conduct one makes it hard to define what procedures are necessary to sufficiently address the cost issue. OMB's criteria do not specify the procedures for conducting a cost analysis or define what constitutes full cost of performance. While some agency officials thought there should be standard cost-analysis procedures, officials with at least one agency preferred more flexibility in determining how it should conduct cost analyses when making insourcing decisions.
- Difficulty in gathering and analyzing certain types of service-contracting data needed for making insourcing decisions. For example, information on the type of service contracts and the number of contractor-equivalent personnel may not be readily available, even though some officials indicated that such information may be needed to review contracted-out services and make insourcing decisions. Although one

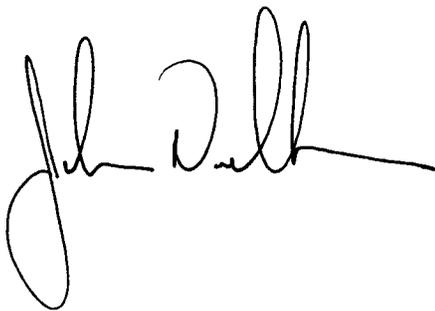
agency had already issued a data call for specific service contracting information and was in the process of analyzing the data, others indicated that they are waiting for the pilot programs to help them identify what data best inform the insourcing decision-making process.

- Limited budgets and resources may constrain insourcing efforts. For example, if after applying its guidelines, an agency determines that a function should be insourced and additional government employees need to be hired, the agency must ensure the funds are available to pay for them. There may also be a significant time lag between the decision to insource and the process for reprogramming funds in an effective and timely manner.

While agency officials cited many challenges to insourcing, they also offered suggestions that they said may help them in their efforts to address these challenges and shift the culture. These suggestions included OMB convening ongoing, multiagency working groups to encourage agencies to work together by sharing lessons learned and providing each other examples of how to work through both the development and implementation phases of insourcing plans and having a point of contact within OMB for insourcing information. In response, OMB advised us that the standing working group on multi-sector workforce management will provide ongoing support as the current special working groups complete their tasks and that OMB is continuing to provide information to agencies to address their inquiries.

We are sending copies of this report to the Director of OMB; the Secretaries of Energy, Health and Human Services, Homeland Security, State, Transportation, and Veterans Affairs; the Attorney General; the Administrators of the General Services Administration and NASA; 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) 512-5274. 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 Johana R. Ayers, Assistant Director, Marie Ahearn, Greg Campbell, Mary Jo Lewnard, Rae Ann Sapp, and Viraphonh Vongvanith.



John K. Needham
Director
Acquisition and Sourcing Management

List of Committees

The Honorable Daniel K. Inouye
Chairman
The Honorable Thad Cochran
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable David R. Obey
Chairman
The Honorable Jerry Lewis
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Edolphus Towns
Chairman
The Honorable Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548