

**STATEMENT OF THE HONORABLE DANIEL I. GORDON
ASSOCIATE DEAN FOR GOVERNMENT PROCUREMENT LAW STUDIES
THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL**

BEFORE THE HOUSE COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM

February 27, 2013

Chairman Issa, Ranking Member Cummings, Members of the Committee, good morning. I am grateful for the opportunity to testify before you today regarding reform of federal information technology acquisition and management, including the provisions of the draft Federal Information Technology Acquisition Reform Act bill. This is the first time that I am testifying before this Committee, not as a federal employee, but as the Associate Dean for Government Procurement Law Studies at the George Washington University Law School. As you know, GW Law's Government Procurement Law Program has, for more than 50 years, been the premier venue for the studying and teaching of procurement law in this country.

Let me begin by commending you on focusing on the important topic of improving the way the federal government buys IT goods and services. As you know, the government pays more than \$70 billion a year on IT, and yet we have for many, many years witnessed delays, cost overruns, and technological failures in IT projects.

You are particularly to be commended for your willingness to listen to the many stakeholders in this complex area. We at the George Washington University Law School were pleased to host a symposium about the draft Federal Information Technology Acquisition Reform Act bill last October 18. At that symposium, a packed house in our Law School's moot court room heard from your Chief Counsel for acquisition and procurement policy, as well as from a range of speakers with, cumulatively, many decades of experience in acquisition law and policy. I hope that, as the bill moves forward, it will benefit from the input from the stakeholders, and I hope that it will be a genuinely bipartisan effort.

I believe that, despite the frustrations and the sense of "déjà vu," we can improve the way the government buys IT. We have already proven wrong those who said that it is not possible – that federal employees are incapable, and contractors are unwilling, to do a better job. In the 1990s, procurement reform led to a dramatic move toward the use of commercial items, and away from the use of government-unique specifications. Moreover, a number of innovations, including e-procurement, modernization of the Federal Supply Schedule, and creation of government-wide acquisition contracts (GWACs) facilitated much faster purchasing, so that today federal employees can buy IT, at least in relatively small dollar volume, almost as quickly as we do as private citizens, while maintaining the transparency and integrity that are so important when public tax dollars are being spent.

During my service as Administrator for Federal Procurement Policy, we pushed hard to put in place government-wide strategic sourcing vehicles for frequently purchased commodities, with office supplies being the focus for much of my time as Administrator, and we succeeded in then driving up use of those vehicles. As a result of the collaboration among federal employees at GSA and across the Executive Branch, the federal government obtained lower prices, while also increasing reliance on small business suppliers. In short, we can succeed in improving the way we buy goods and services.

With respect to the draft Federal Information Technology Acquisition Reform Act bill, I would offer several comments, which I have grouped under the rubrics of strengthening the federal acquisition workforce and reducing wasteful duplication in IT investment and contracts:

- **Strengthening the federal acquisition workforce.** I applaud the draft bill for drawing attention to the continuing need to invest in the federal acquisition workforce. Notwithstanding all the budgetary pressures, we must continue to strengthen the federal acquisition workforce, and to support the creation of specialized IT acquisition cadres, called out in the Administration's 25-Point Plan to improve IT acquisition and management. I appreciate that reasonable people can argue with the specific provisions of the draft bill, such as the requirement for annual reports from OMB about IT acquisition cadres, and the details of how the proposed Federal IT Acquisition Management Improvement Fund would be supported. The central message, however, is one that I enthusiastically endorse: investing in the federal acquisition workforce is needed, if we are to improve IT acquisition.

I was particularly pleased to hear private-sector witnesses in last month's hearing before this Committee talk about the importance that they attach to demonstrating to their companies' employees how much they are valued. No successful company would treat its employees the way federal employees have been treated recently – repeated pay freezes, threats of unpaid furlough days, and treatment as if they were the problem causing the nation's fiscal imbalances. In my opinion, all federal employees – and all contractors, for that matter – should be treated with the same appreciation that we show for our servicemembers. We can't treat people with disrespect and then be surprised when the result is reduced morale and poor performance.

- **Reducing wasteful duplication in IT investment and contracts.** During my service as Administrator for Federal Procurement Policy, I saw example after example of multiple agencies – and sometimes multiple components within an agency – spending time and resources creating duplicative contracts for the same goods or services. The point of our Federal Strategic Sourcing Initiative was to reduce that duplication, so that every federal employee at every agency could use the strategic sourcing vehicles when they were buying office supplies or other covered goods. I am pleased that my successor as

Administrator, Joe Jordan, together with Steven VanRoekel, the Federal CIO (who testified before this Committee last month), have created a Federal Strategic Sourcing Leadership Council to expand strategic sourcing to other commodities, including IT.

As a general matter, I support the draft bill's provisions requiring that agencies establish a business case before issuing a solicitation that would create a contract for goods or services available under existing interagency contracts. Again, reasonable people may disagree on details in the draft bill, such as the role that the Office of Federal Procurement Policy should play, particularly in light of the burden the draft bill's provisions would place on that small office. The underlying goal, though, is a commendable one: we should not be creating new contracts for goods or services already available under existing contracts, without good justification.

That should be distinguished from opposition to interagency contracts. As Administrator for Federal Procurement Policy, I often found myself explaining that interagency contracts can reduce duplication, as long as we have a business-case mechanism in place, and they should be encouraged. For example, if dozens of federal agencies use a few GWACs to buy IT goods or services, those interagency contracts reduce the duplication that we would have if each of the dozens of agencies created its own single-agency IT contract. For that reason, I was pleased that GAO recently removed management of interagency contracts from its "High Risk" list – while interagency contracts, like all contracts, need to be properly managed, there is no longer justification in calling them out as presenting particularly high risk.

With respect to strategic sourcing of IT, I applaud the draft bill's language calling for an inventory of IT assets. While details will need to be refined, the importance of the government getting better knowledge of what it owns cannot be denied. We have heard too many instances of agencies wasting money because they had never conducted an inventory. I remember being told of one agency that had more cellphones than employees, and of another agency that had many cellphones sitting unused in desk drawers, with the employees they were assigned to long gone from the agency, even though the agency continued to pay a monthly fee for every phone. Compiling an inventory of what you already own should be one of the first steps in planning future acquisitions.

I also support the draft bill's effort to increase the transparency of blanket purchase agreements (BPAs). These agreements, which are typically negotiated under the Federal Supply Schedules, often represent unjustified duplication, since one agency generally has no way of knowing that another agency already has a BPA in place for particular goods and services. While deciding the best, and most user-friendly, way to share information

about BPAs will be challenging, I am convinced that reducing duplication in BPAs can reduce the waste of taxpayer funds.

Apart from these comments on the draft bill's provisions, allow me to highlight several additional factors to keep in mind as you move forward:

First, there are limits to what legislation can do in this area. I found it noteworthy that, in the Committee's January hearing, neither GAO's Dave Powner nor OMB's Steve VanRoekel expressed the view that new legislation was needed. Mr. Powner, whose expertise and insights I am familiar with from my years at GAO, called for continued Congressional oversight through hearings, and I agree with him. The problems that plague federal IT projects and IT contracts are often the result of management weaknesses, which do not lend themselves to improvement through legislation. Contrast that with the excessive use of sole-source contracts that was a key reason for the enactment of the Competition in Contracting Act in 1984. Mandating competition, or written justification for not conducting competition, is something that can be accomplished through legislation – improving management may not be.

Two key challenges that the federal government faces in large IT projects (and it is worth noting the similarity, in this regard, to major weapon system procurements) are acquisition planning and contract management, and with respect to both of those challenges legislation can have only limited impact. Congress has sometimes tried to mandate good acquisition planning, but that legislation has brought, in my opinion, only marginal benefit. What I learned when I served as the Administrator for Federal Procurement Policy was that agency personnel are sometimes reluctant to speak with industry during the planning phases of acquisitions, and the result has been poorly drafted requirements in the solicitations – which, in turn, has led to problems throughout the life of the contract. It is for that reason that we launched the “MythBusters” campaign, part of which has been an effort to encourage and foster more communication between government and industry during acquisition planning.

Regarding program and contract management, one of the great challenges in large IT projects is identifying program and contract performance problems early and taking steps to address them promptly. In this regard, OMB's IT Dashboard has been particularly helpful, and I saw the benefits that flowed from the “TechStat” sessions that Vivek Kundra initiated, when he was the Federal CIO. Periodic Congressional oversight through public hearings may be the best way to shine a spotlight on troubled IT programs and procurements. Having GAO issue periodic reports, as it has done on large projects, from the Capitol Visitor Center to major weapon systems, can also be helpful. Whether legislation can be beneficial in addressing these program and contract performance challenges is, in my view, less clear.

Second, the federal government should learn from industry's practices, but it cannot copy them. Just as when a private company is making its IT purchases, federal IT acquisition does need to deliver goods and services at low prices and high quality. Unlike private companies,

though, federal agencies have to ensure the competition and transparency that our laws require and that our citizens expect of their government. Moreover, we strive to have 23 percent of our federal prime contract dollars going to small businesses. All of these are worthy goals, but not ones that private companies have to worry about.

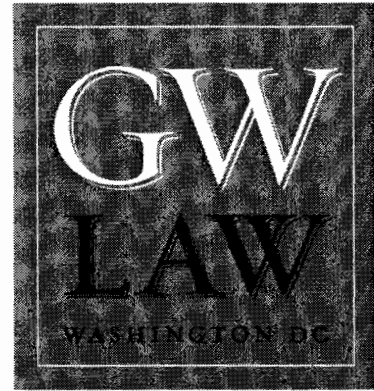
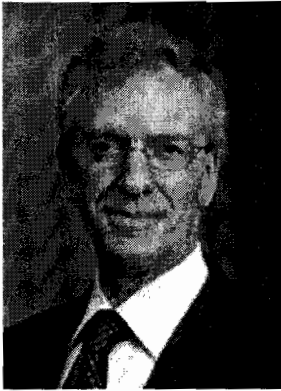
In addition, our lawmakers make it more difficult for federal employees to conduct sophisticated, efficient IT acquisitions. The salaries that we pay our IT and acquisition professionals are constrained by law, while private-sector salaries are not, so that we are often told that agencies have to use contractors to have IT services performed, because anyone with the requisite skills would decline to work for the amount that the government pays its employees. Furthermore, as members of this Committee well know, we generally insist on agencies using one-year appropriations in their IT acquisitions, a constraint that no private company has to contend with. And, at least recently, we haven't given our agency personnel even a full year's appropriations, but instead have demanded that they run their IT acquisitions – and all their operations – under short-term “continuing resolutions,” interspersed with crises over debt ceilings and sequestration. No private-sector company has to deal with any of that when it buys IT.

Third, many of the challenges are genuinely difficult, and it is best to proceed with caution. Legislation can be a blunt instrument, and there is a risk that even the best intentioned legislation will lead to unintended and undesirable consequences. Three examples relevant to the draft bill are worth mentioning here:

- Deciding how much to centralize acquisition is not an easy question. When centralization of procurement goes too far, the result is too great a distance between the people making the acquisition decisions and those who will have to use what is bought – often leading to delays, user dissatisfaction, and waste. We have been down that road, in the days – now relegated to history, fortunately – when GSA was buying commodities for the whole government. Yet when procurement is totally decentralized, the result is duplication and waste, which is why we have struggled to promote government-wide strategic sourcing.
- Strengthening the role of CIOs can be a good thing, but there are limits. In a large agency, the challenges of centralization vs. decentralization mentioned above can appear in deciding whether the agency's top CIO should be involved in all procurements. Moreover, there is always a risk that strengthening an agency's CIO will translate into weakening the agency's acquisition workforce, which can be harmful – particularly since acquisition professionals are often more sensitive to competition requirements and small business goals than some other agency personnel. In this regard, the December 2010 25-point plan to improve IT called for integrated program team, including IT, program, and contracting staff, as well as other agency stakeholders, and I think that team-based approach is a good one.

- Modular acquisition of IT, or proceeding by “chunks,” has appeal, and we have had it on the books, including in the Clinger-Cohen Act and Part 39 of the Federal Acquisition Regulation, since the 1990s. It risks, however, leading to inefficient, disjointed acquisition planning and contract performance, and needs to be managed well. Among other challenges: if a contractor does not perform one or more “chunks” well, the agency needs to consider whether to conduct a new competition, which could lead to another firm doing a better job, but also risks introducing additional costs and inefficiency into the process.
- Creating centers of excellence, while the idea has appeal, can lead to unintended consequences, undercutting agencies’ own workforce and complicating the acquisition process. Unless we sweep away our existing structures, creating centers of excellence also risks duplicating what GSA already does. A limited pilot may be a prudent way to proceed in this area.

In conclusion, I would again commend you for your work in this important, but challenging, area, and thank you for the opportunity to appear before you today. I would be pleased to respond to any questions you may have.



Daniel I. Gordon

Associate Dean for Government Procurement Law Studies
George Washington University Law School
2000 H Street, N.W, Washington, DC 20052
202-994-4546 dgordon@law.gwu.edu

B.A., Brandeis University; M.Phil., Oxford; J.D., Harvard University

Dan Gordon is Associate Dean for Government Procurement Law. Before joining GW Law School in January 2012, he was the Administrator for Federal Procurement Policy, a position to which he was nominated by President Obama and confirmed by the Senate. Before that, he worked for 17 years in the Office of General Counsel of the Government Accountability Office (GAO), where he began as a line attorney, rising through the ranks and ultimately holding the positions of Deputy General Counsel and then Acting General Counsel. Among his other work at GAO, he headed the bid protest unit for a number of years, and served as counsel to the congressionally-chartered Commercial Activities Panel, which looked into questions regarding the use of contractors and federal employees to provide commercial-type services. Before joining GAO, he served as a court law clerk at the U.S. Court of Appeals for the District of Columbia Circuit and then practiced for a number of years with a private law firm in Washington, DC. Dean Gordon has frequently testified on acquisition issues before Congress, and he has published law review articles and book chapters on various aspects of procurement law and policy. During his tenure at GAO, he served for many years as a member of the Law School's adjunct faculty.

Dean Gordon has worked with many U.S., foreign, and international entities in efforts to improve acquisition policies, practices, and training, including federal agencies, the World Trade Organization, the United Nations Commission on International Trade Law, and the World Bank.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – “Truth in Testimony”
Required by House Rule XI, Clause 2(g)(5)

Name:

DANIEL I. GORDON

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2010. Include the source and amount of each grant or contract.

NONE

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

NONE

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2010, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE

I certify that the above information is true and correct.

Signature:



Date: FEBRUARY 25, 2013
