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Before the

Committee on Oversight and Government Reform
United States House of Representatives

Allegations of Misconduct at the
General Services Administration

Wednesday, March 28th, 2007



Thank you, Mr. Chairman, for providing me with this opportunity to update you and your colleagues about the work of the Office of Inspector General (OIG) at the General Services Administration (GSA).

First, let me say that I am truly honored and privileged to lead such a dedicated and professional group of public servants. They work hard everyday to see to it that the taxpayers' dollars are spent wisely and efficiently and that federal laws and regulations are followed.

Second, I want to express my deep appreciation to you, Mr. Chairman, the Members of this Committee, other Members of Congress, the Office of Management and Budget (OMB), and to GSA staff who have worked with us to achieve what I believe are tremendous results for the taxpayers of our great country.

Today, my testimony will address a few of the accomplishments of GSA OIG and its new ventures. I will also provide a detailed overview of some of the challenges GSA OIG faces with the new GSA Administrator since she took office on May 31, 2006.

Background

I have devoted most of my professional life to public service. For roughly a decade and a half prior to becoming Inspector General at GSA, I served as a career federal attorney. As an Assistant United States Attorney, I worked on a variety of federal cases, including terrorism cases—perhaps most notably the case against Zacharias Moussaoui. In July 2005, the Senate confirmed me as Inspector General of GSA.

When I was confirmed as Inspector General (IG) of GSA, I took an oath to perform the duties of an IG: to conduct audits and investigations. I am duty-bound in assuming office to carry out the duties of an IG. In fact, the President and the Congress sent me here to GSA to root out fraud, waste, and abuse and to ensure that GSA programs are run with efficiency, economy, and effectiveness. These are the requirements of the Office of Inspector General under the Inspector General Act of 1978 (IG Act), and to these ends I have dedicated my efforts.¹

The duties of an IG are well established by federal law and policy. And at the end of the day, it is about accountability: accountability to the President, to the Congress and, most importantly, to the American taxpayers.

GSA OIG's Accomplishments

I would like to take just a few minutes to describe some of GSA OIG's accomplishments.

¹ Among other things, that statute requires the OIG:

1. To conduct independent and objective audits, investigations, and inspections,
2. To prevent and detect waste, fraud, and abuse,
3. To promote economy, effectiveness, and efficiency, and
4. To advise the agency head and Congress of what is necessary to achieve the above objectives.

During Fiscal Year (FY) 2006, OIG issued 155 audit reports with over \$870 million in recommendations that funds be put to better use, and OIG had 73 case referrals accepted by the Department of Justice for criminal prosecution or civil litigation. OIG activities resulted in nearly \$1.2 billion in management decisions agreeing with audit recommendations; \$52.4 million in criminal, civil, and administrative recoveries; and \$3 million in other recoveries.

In conjunction with the Department of Justice, OIG achieved the largest recovery in a civil settlement under the False Claims Act in the history of GSA's Multiple Award Schedules (MAS) program - a \$98 million dollar recovery from the Oracle Corporation for PeopleSoft's defective pricing of sales. OIG's experienced auditors, counsel, and investigators contributed to this recovery.

OIG's audits and investigations have resulted in recommended cost avoidance for the taxpayers of billions of dollars. In fact, for every dollar spent on OIG operations in FY 2006, over \$25 was identified in cost avoidance—a return on investment of over 2,500% for the taxpayers. All of these concrete benefits to the American taxpayer refute the Administrator's characterization of OIG's appropriation as “wasteful spending.”

In addition, OIG has placed an investigative emphasis on public integrity investigations, and several GSA employees were identified as committing fraud against the Government in the form of bribes and kickbacks. Those individuals were prosecuted and sent to prison; and their removal from their positions of authority in the agency helps to ensure the integrity of GSA programs and operations. OIG currently has over 390 active fraud investigations ongoing at this time involving almost every GSA service.

OIG also worked with other IG offices as part of the Hurricane Katrina Task Force. A report on our audit of approximately 255 contracts valued at \$741 million awarded by GSA on behalf of FEMA was issued in February 2007.

OIG has increased coordination and strengthened partnerships among other Inspectors General, law enforcement, and the Department of Justice to more effectively fight procurement fraud through the creation of the National Procurement Fraud Task Force. I serve as the Task Force's Vice-Chair. The goal of the Task Force is to protect the taxpayer by increasing the deterrence and effectiveness of sanctions imposed on those prosecuted for and found guilty of procurement fraud.

In addition, Congress looks to OIG for a candid assessment of the agency's financial statements, and OIG has been supportive of the agency's efforts over the last several years to improve its financial statements. The OIG closely supervised the audit of GSA's finances by Price Waterhouse Coopers, which rendered a clean opinion of the agency's financial statements in FY 2006. The Administrator had the opportunity to hear OIG's June 7, 2006, testimony in support of the agency's efforts to achieve a clean opinion before the Subcommittee on Government Management, Finance, and Accountability of this Committee during the first few weeks of her tenure.

Finally, GSA was tasked by Congress to perform a joint review with the Department of Defense (DOD) OIG to audit compliance of GSA's Federal Technology Service Client Support Centers (CSCs) with applicable acquisition regulations. Successive GSA OIG reviews of the CSCs over 3 years that initially found numerous deficiencies in contracting practices, this past year finally established that the CSCs had come into compliance, thereby improving the ability of the agency to continue its acquisition mission in compliance with applicable laws and regulations.

OIG Audit Program

Even with all of the good results listed above, the OIG's limited resources restrict its audit work to a small fraction of contracts for which GSA is responsible. In FY 2006, OIG audited contracts with a five-year value of \$8.8 billion, whereas in that year, GSA's business volume was many times that amount.

In FY 2007, OIG is undertaking a number of internal audits that will focus on GSA management. These audits include the following:

--Reorganization of the Federal Supply Service (FSS) and Federal Technology Service (FTS) as the Federal Acquisition Service (FAS)

On October 12, 2006, the GSA Administrator signed a GSA Order (ADM 5440.591, Change 1) that officially established the organizational structure of the new FAS. This action combines the FTS and FSS. The Order announces ten national office-level organizations reporting to the Commissioner in Central Office and 11 FAS Regions, each with a FAS Assistant Regional Administrator, in lieu of the six FAS zones previously envisioned.

The projected benefits of the FAS reorganization include:

- Improved customer service and focus.
- Greater career opportunities for employees.
- Greater business flexibility for acquisition solutions.
- Enhanced financial management and accountability.
- Increased efficiencies.
- Greater standardization within FAS and with external industry partners, while allowing for more innovation.
- Better support for the President's Management Agenda.

OIG has initiated an audit survey of the FAS reorganization. OIG's focus will be to assess whether the steps that FAS is taking will help it achieve the benefits and guiding principles it was designed to accomplish.

--Suspension and Debarment

OIG is reviewing the controls over GSA's administration of contractor suspension and debarments. OIG's objective is to determine if the controls in place are effective in ensuring that suspension and debarment sanctions are used to protect the Government's interests and ensure that only responsible contractors are awarded contracts. Policies and procedures governing the suspension and debarment actions are set forth in the Federal Acquisition Regulations (FAR). Agencies are responsible for establishing appropriate policies and procedures. In 2006, GSA experienced a backlog in processing these actions. OIG will review what GSA has done to address the backlog and whether there are opportunities to make the process more effective and efficient. OIG will also examine GSA's hiring of a contractor, CACI, to assist in processing suspension and debarment actions.

--Reorganization of the Office of Governmentwide Policy under the Office of Congressional and Intergovernmental Affairs and Governmentwide Policy

On December 21, 2006, the GSA Administrator signed GSA Order ADM 5440.600, which established the Office of Congressional and Intergovernmental Affairs and Governmentwide Policy (OCGP). OIG has started an audit of the reorganization of the Office of Governmentwide Policy (OGP) and the congressional affairs office because it has created concern about the new office's ability to fulfill and reconcile the independent missions and goals of the legislative and executive branches. In the past, the congressional affairs office was responsible for all aspects of GSA's communications and coordination with Congress, the Judiciary, and other federal state, and local governments. The Office of Governmentwide Policy, which was established in December 1995 at the urging of OMB, had policymaking authority to cover the areas of personal and real property, travel and transportation, information technology, regulatory information and use of federal advisory committees. The primary concern is that such a consolidation of the two offices could create problems by bringing politics into administrative, operational, and fiscal decisions. The focus of the OIG review will be to determine whether this consolidation will achieve the benefits and guiding principles it was designed to accomplish and how the goals and performance measures will be addressed in the new single office.

--Federal Procurement Data System- Next Generation (FPDS-NG)

This limited scope review is nearing completion. OIG's primary focus was to determine if FPDS-NG provides an accurate representation of Federal Procurements related to the response and recovery for Hurricane Katrina. What OIG is finding is that the system is challenged to provide timely and accurate information on procurements in this area. For example, not all agencies were submitting information to this database for Hurricane Katrina relief efforts in a timely manner. Additionally, OIG noted that some of the information was incomplete or inaccurate. The timeliness and accuracy issues surrounding the reporting and tracking of Hurricane Katrina relief efforts occurred because initially there was no way to track these procurements in the system and because data was not being directly put into the system from the agencies' contract writing systems. Agencies are making more of an effort

to timely report information and OMB now requires a process for agencies to assess the accuracy of the information. The reliability of the data is even more important now that the data will likely be used to meet the Federal Funding Accountability and Transparency Act of 2006.

OIG Investigative Program

The OIG has the only statutory law enforcement authority in GSA. OIG conducts a nationwide program to prevent, detect and investigate illegal and/or improper activities involving GSA programs, operations and personnel. The office currently has an active caseload of over 390 investigations with a staff of only 60 investigators nationwide. During this past fiscal year the office was responsible for 188 judicial actions that include 82 criminal indictments and 106 convictions. Referrals for criminal prosecution were made, in 63 cases totaling 141 subjects, to cognizant prosecutorial authorities. Criminal, civil, and administrative recoveries exceeded \$55 million—more than the entire operating budget of the OIG—which represents funds returned to the U.S. Treasury as a result of OIG investigative efforts.

Additionally, OIG made over 200 referrals for consideration of suspension or debarment to agency officials. Last year there were 138 individuals and/or companies suspended or debarred from doing business with the government as a result of our efforts. During the first 5 months of this fiscal year, an additional 102 suspensions or debarments have taken place.

The detection and investigation of criminal conduct by employees of GSA and other government employees and contractors doing business with GSA has been given top priority within the OIG Office of Investigations. OIG's efforts have led to numerous criminal prosecutions and civil actions, sending the message to government employees and the public that the Office of Inspector General is aggressively pursuing public corruption. Cases prosecuted last year included former GSA employees who have taken bribes and kickbacks and employees who inflated the costs of contracts and directed payment to companies they or their relatives owned.

The OIG Office of Investigations has placed an increased investigative emphasis on charge card fraud relating to the GSA Voyager Fleet credit card program. Working closely with the Fleet program agency officials, this initiative resulted in numerous judicial actions and defendants paid over \$402,000 in restitutions, fines and special assessments. In addition, the GSA Fleet initiative has been able to identify and cancel numerous charge cards that have been misused, thus avoiding further losses. Analysis of GSA Fleet card investigations indicates that enforcement actions during the past year may have averted as much as \$2 million in potential losses to GSA.

GSA OIG's Challenges

Over many years, the GSA OIG has developed good working relations with agency managers who appreciate the information they receive from the professional audit and

investigative work performed by the OIG staff. Many GSA contracting officers have expressed gratitude for the OIG audit information that enables them to negotiate better prices for taxpayers. My relations with former GSA Administrator Stephen Perry and Acting Administrator David Bibb were excellent. They were clearly committed to the proper functioning of GSA, and they recognized that independent oversight was a tool for management in achieving that end.

I had hopes of a similarly constructive working relationship with Administrator Doan. A day after she was sworn-in, I met with her and gave her a memorandum outlining a few short term projects that we could work together on. I also suggested that we meet monthly to go over issues. Unfortunately, early on dissonance emerged between the Administrator's view of federal procurement rules, regulations, and laws,² and my office's role in ensuring compliance with federal procurement rules, regulations and laws. Obviously, the Office of Inspector General plays a pivotal role in safeguarding adherence to legal requirements.

In many ways, the problems at GSA may reflect the larger debate about the IG Act. The Administrator's quarrel seems to be with the IG Act, which provides for an independent office to conduct credible and thorough investigations and audits. This debate, however, is one that belongs in Congress, not within federal agencies. The Congress enacted the IG Act, and Inspectors General serve the President and the Congress assisting in its important oversight role. Unfortunately, by choosing to address her complaints instead to GSA's leadership and staff employees, she undermines the effectiveness of the OIG to carry out the IG Act at GSA.³ For example, her comparison of IGs to terrorists and other insinuations of impropriety⁴ undermine the ability of OIG auditors and investigators to do their important jobs. In fact, the Administrator insults our hard-working auditors and investigators when she characterizes the funds for them as "wasteful spending."⁵

² For example, some of the Administrator's recent comments may illustrate this difference. The March 12, 2007, Federal Computer Week article entitled, *Doan Urges Balancing Rules and Results*, reads in part: "You can get so compliant that you have no accountability," said Lurita Doan, Administrator of the General Services Administration. But Doan, whose own actions have come under scrutiny in recent weeks, said ignoring compliance with procurement rules in seeking the cheapest prices is equally wrongheaded. Good contracting strikes a balance between rules and results," she said.

<http://www.fcw.com/article97871-03-12-07-Print>

Likewise, the Administrator is quoted in the Federal Computer Week as saying, "We don't want to spend so much time on being compliant that we don't get it done." March 2, 2007, Federal Computer Week, "*Katrina subcontracting plans incomplete, GAO finds*," by Matthew Weigelt.

³ In an email dated February 3, 2007, addressed to the Regional Administrators, the Administrator stated: "Second, everyone now understands that we have challenges with our OIG. This is going to require a lot of work to fix *and I am going to need your help*. I am frankly very worried that our contracting officers have grown even more worried about a 'gotcha' environment that inhibits, slows, and retards all of our initiatives. We are going to have to double our efforts to support our contract officers and let them know that they will not be hung out to dry for making procedural mistakes and difficult judgment calls." (Emphasis added.)

⁴ Introductory letter to the FY 2006 GSA Performance and Accountability Report (PAR), p. 8 (alleging "undue pressure and intimidation from the OIG").

⁵ Introductory letter to the FY 2006 GSA Performance and Accountability Report (PAR), p. 6.

The Administrator's express disapproval of 50% of OIG's proposed audit activity for FY2007—70% of all non-statutory audits—is bad enough, especially after her management team had initially approved or even suggested many of them. It became worse as her comments became known throughout the agency.⁶ The effect was to undermine the ability of the OIG's line auditors to conduct these needed audits. GSA officials are in an extremely uncomfortable position when they know that the Administrator does not want an audit conducted. This is bound to chill cooperation as a result.⁷

The Administrator's Campaign to Reduce Oversight

Unfortunately, the Administrator has made many statements advocating reduced oversight in general.⁸ Perhaps, the clearest expression of her intent is in her State of the Agency Address in December 2006, in which she stated:

Oversight has become another challenge. By the way, oversight is a euphemism for the IG, Congressional, and legal review. . . . The intensity and frequency of oversight has increased I believe balance in oversight is critical to the success of GSA's newly formed Federal Acquisition Service. I do not know if I'll succeed in getting others to recognize the need for greater balance – or if I will get others to agree to work toward achieving that balance, but I believe so strongly that I must try.⁹

At our August 18, 2006, monthly meeting, the Administrator stated, “There are two kinds of terrorism in the US: the external kind; and, internally, the IGs have terrorized the Regional Administrators.”¹⁰

In the 2006 Annual Performance and Accountability Report (PAR) to Congress, the Administrator stated GSA's “most serious challenge” was to find a balance between proper independent oversight without undue pressure and intimidation of the GSA

⁶ We received telephone calls from OIG staff in regional offices about the Administrator's comments, which they heard about from regional GSA staff.

⁷ Perhaps not surprisingly, we received significant “push back” to audits. Under Administrator Perry and Acting Administrator Bibb, I do not recall being personally asked to intervene to stop or delay an audit, with one possible exception. In December 2006, however, three heads of major components within GSA expressed strong opposition to our efforts to move forward on OIG audits, sometimes with dire predictions, such as ‘this audit will break our backs.’ We stood firm, however, and the audits are proceeding—and without adverse effect on those components. Indeed, we are confident that OIG's findings will help the career managers of GSA to strengthen the operations of their components.

⁸ Notably, she also includes at times Congressional and legal oversight as well as the OIG's oversight role.

⁹ It is unclear what the Administrator means by “balance.” In a March 8, 2007, speech to the Executive Women in Government Summit, the Administrator said: “Some people will say that leadership is about balance. I think that is wrong—I don't try to be balanced. . . . I don't worry about balance. I have been truly blessed to live the American dream and I have never once, not ever, tried to be balanced.”

http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=8199&channelId=-18821&P=&contentId=22556&contentType=GSA_BASIC

¹⁰ Other notable statements made during that meeting include: “I need an IG that's helping to solve the problem, not just tell about it,” and “you're killing this organization.”

workforce by the OIG—this in an agency that is charged with managing tens of billions of dollars worth of goods and services for the Government. In the one instance in which the Administrator and her immediate staff provided any specifics to look into, I directed the OIG Internal Evaluation and Analysis unit to investigate it, and the allegations were found to be unsubstantiated. Each year, OIG develops a list of the most serious management challenges facing GSA, including ensuring the best value for the taxpayer in the negotiation of GSA’s contracts, protecting federal employees in safe and economical buildings and infrastructure, and securing information technology. It is remarkable that the Administrator would identify the OIG’s work as the most serious challenge over these truly daunting challenges to the mission of GSA.

Compounding the seriousness of this situation, the Administrator has obfuscated statements she has made, especially the statement in which she called the IG / OIG employees “terrorists.” She claims not to have called the IG / OIG employees “terrorists,” even though the statement was witnessed by GSA and OIG senior staff. I was there and heard it myself.

The Administrator Proposed Significant Decreases in Audits

As discussed earlier, the Administrator has proposed significant decreases in audits which would hinder the OIG’s ability to guard against fraud, waste, and abuse. In her September 19, 2006, memorandum commenting on the OIG’s draft audit plan for FY 2007, the Administrator recommended deletion or delay of approximately 50% of the OIG’s proposed agency audits for Fiscal Year 2007. The percentage of audits opposed by the Administrator rises to 70% if we do not consider the OIG audits required by statute. The Administrator’s memorandum ignored OIG’s detailed analysis of risk areas, extensive consultation with GSA managers regarding vulnerable program areas, and analysis of agency priorities under the President’s Management Agenda, as well as GSA’s strategic goals, in formulating the draft audit plan.

On October 19, 2006, the Administrator gave a public speech to the Northern Virginia Technology Council in which she proposed to relieve the stress on contractors by removing all preaward audits from the OIG and giving them to small businesses. The Administrator’s publicly stated proposal was that \$5 million, previously allocated to OIG for reimbursable preaward audits of MAS contracts, would be spent on “surveys” by small businesses.

The funding, that would have otherwise been applied to an auditing function that the OIG is very experienced and successful in performing, would have been spent on “surveys” by contractors who may or may not have extensive experience in performing reviews of large firms. In addition, to have reviews performed by private firms could pose a risk to the proprietary data of the firms being reviewed. In fact, a number of vendors that we have audited have expressed that concern to us. The argument that using independent, small third party auditing firms would somehow result in real budget savings is speculative at best.

The \$5 million reimbursement arrangement was structured by OMB in 2004 in response to a Government Accountability Office (GAO) report that found that more preaward auditing was needed.¹¹ In that report, GAO recommended "... that the Administrator of the General Services Administration ensure that preaward audits are conducted when the threshold is met for both new contract offers and contract extensions; ...[GAO also noted that] the use of preaward audits and the millions of dollars in savings from such audits have declined dramatically in recent years.... The GSA Inspector General reported in August 2001 that (1) GSA contracting officials were not consistently negotiating most favored customer prices, (2) contracts were being extended with little negotiation or price analysis, and (3) preaward audits had decreased significantly in recent years. **Clearly, these problems are serious, longstanding, and have significant financial consequences....**"¹²

The facts over the last 3 years speak for themselves: while GSA was reimbursing OIG \$10.25 million for additional preaward audits of MAS, OIG was recommending cost avoidance for taxpayers of over \$2.3 billion.

The Administrator's Changes to OIG's Budget Submission

Departing from long-established practice in the agency, the Administrator made significant changes to OIG's FY 2008 budget submission in text as well as numbers. It is well known that budget text sets policy, in addition to the numbers that set funding levels.

All this was done without discussions with OIG before the changes were made, and OIG was not given the opportunity to directly present its request to OMB. The Administrator removed several references to fighting "fraud, waste, and abuse" and struck out **entirely** the OIG's proactive investigative effort. This matched her striking out entirely the OIG request for additional investigative staff to keep up with the rising investigative workload in geographic areas where GSA has operations, but OIG does not have investigative offices.

The Administrator also initially cancelled the FY 2007 reimbursable agreement through which the OIG investigated abuses of the GSA vehicle Fleet credit card program. Only the urging of senior GSA officials led the Administrator to restore the Fleet Card investigation Memorandum of Understanding (MOU)—and when she restored it, she asserted at our meeting of October 26, 2006, that she had never cut it.

The Administrator also reversed the course set by OMB and the President in the FY 2007 Budget which he sent to Congress. OMB had developed the reimbursable approach to preaward audits and it was approved by the President. The Administrator's action, cutting reimbursable funding in half and giving notice of termination of that approach in FY 2007, contravened those authoritative decisions, and did not support the President's budget already submitted to Congress.

¹¹ GAO-05-229, dated February 2005.

¹² *Id.* at 23-24 (emphasis added).

GSA's operations should be seen as serving the whole government. OIG audits are designed to serve taxpayers generally (and the client federal agencies) by assisting GSA to get the biggest discount for volume sales. The Administrator appears to have too narrow a view of GSA's mission, with the corresponding mistake of seeing OIG as merely "overhead" which does not produce revenue for GSA (and whose findings may even lead to reductions in GSA revenue).¹³ OIG's cost avoidance recommendations serve the government as a whole and the American taxpayers.

Other Budget Issues

In discussing the OIG budget issues, it should be kept in mind that the current OIG budget is less than one-quarter of 1% of GSA's budget.¹⁴

--New Charges Imposed with a Questionable Basis

Excessive centralized charges imposed by the agency have the potential to erode OIG's ability to provide core functions in a significant way. Centralized charges imposed by GSA amounted to about 17% of OIG's budget in FY 2006. In FY 2007, the agency imposed new charges on the OIG on a questionable basis. For example, even though OIG does its own personnel work for all employees at GS-15 and below, the agency has for the first time imposed a charge of \$550,000 for services of the Chief Human Capital Officer. Another questionable charge for the "Surge Account." Upon inquiry, OIG was informed that this account is the "Administrator's Discretionary Account."

--The Budget May Be Another Way For the Administrator To Reduce Oversight

- The Administrator has couched her efforts to reduce oversight as a mere "budget squabble."¹⁵ The problem with this is that she was not truly planning on saving any money, since she publicly announced plans to spend the \$5 million, proposed by the President's Budget for FY 2007 for audits by OIG, on "surveys" by private companies. So the expenditure level would have been the same, while the cost avoidance to the American taxpayer of over \$1 billion per year achieved by OIG audits would have, in all likelihood, diminished substantially.
- The Administrator's attempt to justify the need for restraining OIG's budget in her 2006 Annual PAR lacks credibility. There she stated, "The IG budget and staff have grown annually and substantially over the past five years and future unrestrained growth cannot be justified or afforded." While this sounds alarming, in truth, OIG staff grew only by 4% from 297 Full Time Equivalent (FTE) in FY 2000 to 309 FTE in FY 2006.

¹³ For example, the fees paid to GSA generally go down when the price goes down.

¹⁴ GSA announced on February 6, 2007, that GSA's budget for FY 2008 is \$20.1 Billion. The current OIG appropriation of \$52.6 million represents less than one-quarter of 1% of that figure.

¹⁵ See Federal Times, *Watchwords: Transparency, integrity, accountability*, at 22 (January 15, 2007).

- In her December 4, 2006, speech to the National Contract Management Association, the Administrator claimed that OIG enjoyed an automatic yearly 30% budgetary increase in recent years. In truth, the appropriation for OIG has grown at an annual average of about 4% with aggregate growth between FY 2000 and FY 2006, totaling about 30% (for the six year period)¹⁶. Most importantly, the workload of the OIG is driven by the magnitude of contracting conducted by GSA. Based upon the self-reported sales from Nationwide Schedule Sales reported to GSA by its contractors and published on the GSA intranet site, over the FY 2000 to FY 2006 period, sales growth exceeded 150%, multiple times the growth rate experienced by the OIG in its appropriated funding over the same years.¹⁷

Oversight In Action

Despite these challenges, the OIG is continuing to protect the taxpayer's money from fraud, waste, and abuse by performing audits and investigations every day.

We strive to maintain our independent audit and investigative authority, because improper actions thrive in places where oversight is curtailed.

OIG's Investigations of Administrator Doan

This Committee has also asked me to discuss today three particular actions of Administrator Doan. These actions are (1) her sole-source award of a contract to a friend, (2) her personal intervention in another contract negotiation, with Sun Microsystems, including the replacement of the contracting officer after he had sent notice to Sun that its contract would not be renewed in view of Sun's refusal to provide discounts to the Government comparable to those given Sun's commercial customers, and (3) her alleged role in encouraging use of GSA resources for partisan political purposes in a manner that may have violated the Hatch Act. These matters all came to OIG from persons with information to report to OIG. In following up on these matters, OIG did its duty to investigate matters brought to us.

The Contract with Edie Fraser's Public Affairs Group, Inc.

The first of these actions is perhaps the most striking, given GSA's procurement mission. How could someone with Administrator Doan's years of experience as a government contractor have made such a basic error as to award a government contract, without competition, to a friend's company? At her confirmation hearing last May, Ms. Doan assured the Senate, "If confirmed, I would also bring to this position, a knowledge of procurements, especially GSA GWAC procurements combined with a solid knowledge

¹⁶ The budgetary figures cited reflect the appropriated funds minus rescissions and do not include the variable amounts in funds received for selected pre-award audit functions.

¹⁷ Over the FY 2000 to FY 2006 period, the Consumer Price Index increased a total of 17%.

of the FAR.”¹⁸ Her friend, Edie Fraser, similarly described Ms. Doan as “having an amazing knowledge of procurement.”¹⁹

Administrator Doan’s knowledge of procurement procedures makes this episode all the more serious. The OIG investigation disclosed a clear disregard for the Federal Acquisition Regulations by Administrator Doan, those same regulations for which her office is responsible for providing leadership to the rest of the Government. The investigation also identified actions by Administrator Doan that appear to be Federal ethics violations,²⁰ and statements that were potentially false and, at best, inconsistent and misleading to the OIG investigators.

The OIG’s investigation started on August 28, 2006, when an anonymous source provided documents indicating that Administrator Doan personally awarded a sole source contract to a friend on July 25, 2006. Based on this information, the OIG initiated an investigation. The focus of the investigation was Administrator Doan’s award of a sole source contract to Public Affairs Group, Inc. (PAG), and its division, Diversity Best Practices (DBP). Her friend, Edie Fraser, was the founder and President of PAG and its subsidiaries.

This investigation confirmed that Administrator Doan personally signed this sole source contract for public relations services in the amount of \$20,000, at her own initiative and without consulting any contracting or legal professionals on her staff. Ms. Fraser countersigned this contract on behalf of PAG/DBP on the same day, July 25, 2006. During an initial interview with OIG investigators on September 8, 2006, Administrator Doan denied any inappropriate actions, stating that she did not even have contracting authority. She characterized the document she signed as a draft proposal, only to be used to start the formal contracting process. She emphasized that once she learned the process was wrong, she did everything she could to clean up the situation. She also minimized the extent of her prior dealings with Ms. Fraser, indicating her company was called a “partner” of PAG because it bought tickets to banquets and helped mentor other small businesses.²¹ Unfortunately, subsequent interviews and documents showed that these assertions of Administrator Doan were incomplete and inaccurate.

First, was the July 25 document a contract? By its very terms, right above where Administrator Doan signed the document, the document states, “By signing this Confirmation of Service order, you agree to pay our fee for the services described above within thirty (30) days of receiving an invoice(s)”. Would an experienced businessperson

¹⁸ S. Hearing 109-168, “Nomination of Lurita Alexis Doan,” Senate Committee on Homeland Security and Governmental Affairs (May 22, 2006), p. 33.

¹⁹ Email of April 14, 2006, from E. Fraser, subject “RE: Special Lurita Doan nominated for GSA”.

²⁰ Specifically those concerning Impartiality in Performing Official Duties, i.e., Executive Orders 12674(¶8)(1989) & 12731 (1990); Presidential Memo January 20, 2001; 5 C.F.R. § 2635.101(b)(8); and 5 C.F.R. §§ 2635.501, 502 (which state, Federal executive branch ethics principles provide that employees ‘shall act impartially and not give preferential treatment to any private organization or individual’; those regulations further provide that employees should be aware of situations that may raise an appearance of partiality.)

²¹ GSA Office of Inspector General Report of Investigation I-06-0248 (the ROI), pp. 4-7.

sign such a document, if she did not intend to receive and pay for the services described?²² Our investigation later showed that both the GSA Contracting Officer and a Counsel subsequently involved treated this as a contract. When it became clear that the contract was improper and could not be corrected, GSA's Office of General Counsel insisted on sending a formal termination for convenience letter, including an offer to pay for expenses incurred prior to termination. Needless to say, a termination including an offer to pay wind-down costs would itself have been improper if there was no contract in the first place.

Second, the record does not support Administrator Doan's assertion that she did everything she could to clean up the situation. Quite the contrary, the evidence gathered suggests that Administrator Doan was at best reluctant, and at worst defiant, about terminating the contract. In describing what happened, GSA's General Counsel at the time, Alan Swendiman, told this Committee he repeatedly advised that the contract be terminated, but was unable to convince Administrator Doan to do so. She refused to sign the termination letter he had prepared for her.²³ Even after providing Administrator Doan

²² Ms. Fraser has also made public statements recently trying to characterize this as something other than a contract. However, the following excerpts from PAG's communications belie this *post hoc* characterization. By whatever name, whether One Pager, Confirmation of Service Order, PO, or contract, the evidence shows there was substantial effort to make the "final submission" and get signatures, and that the "action phase" started right afterwards:

"Based on this, GSA will issue a Purchase Order." (July 19 4:49 PM Fax cover sheet, from Fraser to Doan, transmitting a draft of the contract).

"Hi Edie: I spoke with Liz Ivey [GSA]...she suggested two minor changes to the report outline..." (July 20 1:32 PM email from K. Briscoe [PAG] to Fraser).

Subject: "Confirm time to talk in AM and interrupt me" (July 24 11:31 PM email from Fraser to Doan and Meghan Espinoza, Doan's assistant).

"Thanks for taking this next step"; Subject Line: "GSA Report Lurita doing Purchase Order" (July 24 11:26 PM email reply from Fraser to Briscoe).

"Could I get a copy of the final submission to Lurita?" (July 25 7:02 AM email from Strzyzewski [PAG VP] to Briscoe).

"PO being cut. Kevin in lead with this now to set up this week at GSA" (July 25 11:42 AM email from Fraser to Espinoza and Briscoe).

"Hi Edie, Could you send me Meghan Espinoza's phone number so that I can confirm that she received the fax?" (July 25 1:46 PM email from Gnal [PAG] to Fraser).

Fax of the contract, PAG's date/time stamp having: "JUL-25-2006 13:55 BWN"

"Jamie, get the one pager and confirm with Meghan ... Kevin, confirm that we are on to performance getting the job done" (July 25 1:59 PM email from Fraser to Briscoe, Strzyzewski).

Fax time stamp of the contract (with Doan's signature) from GSA: "7/25/06 TUE 14:04".

"Hi Liz: Just wanted to touch base to make sure we're on track to move to the action phase." (July 25 2:56 PM email from Briscoe to Liz Ivey).

"Just spoke with Liz: we're set for a 10:30 meeting Thursday [July 27]" (July 25 2:56 PM email from Briscoe to Fraser).

"When will we get the purchase order?" (July 26 12:56 PM email from Strzyzewski to Fraser).

"This is it with signature" (July 26 1:28 PM email from Fraser to Strzyzewski).

²³ The termination letter was attached to a Memorandum dated August 3, 2006, from Mr. Swendiman, GSA General Counsel, to Mr. Phelps, GSA Chief of Staff. In this memo Mr. Swendiman advised:

"1. [PAG requested information] so that they can begin work under the contract executed July 25, 2006...

2. It would appear that either the Public Affairs Group has not been notified that the contract is terminated or the program manager has not been so informed.

copies of the relevant regulations so she would understand why termination was necessary, he heard nothing back from her office. According to Mr. Swendiman it was he, not Administrator Doan, who then directed the termination letter be sent without Administrator Doan's approval.

Third, the record does not support Administrator Doan's apparent attempt to minimize this whole affair as little more than her concurrence with a draft proposal, which was quickly dropped. Rather, Administrator Doan admitted to the OIG investigator that the idea of contracting with Ms. Fraser's company for \$20,000 worth of services was her own idea, and this came to her on her second or third day at GSA.²⁴ Less than two weeks later staffs at both GSA and PAG were busy working on a statement of work, and Ms. Fraser was already suggesting other areas for work. At least three drafts of the Confirmation of Service document were circulated between GSA and PAG, with a draft of the contract sent by Ms. Fraser to Administrator Doan's home fax at Administrator Doan's request. When Administrator Doan signed the contract on July 25, Ms. Fraser's email to the PAG team was "Now on to performance", and the Administrator's office requested a purchase order number—a necessary requirement for payment, and a number was assigned by July 31. As late as August 2, an email from Ms. Fraser to PAG employees on the subject of "GSA Call David Bethel Director of Communications," gave no indication anything had been dropped, stating, "He [Bethel] and team will market the report once done . . . PAPERWORK hopefully we get it redone in the next two days." Even after the contract was terminated on August 4, that very same day the email exchange between Administrator Doan and Mr. Phelps, GSA's Chief of Staff, showed the matter was far from over. After informing Administrator Doan of the upcoming termination, Mr. Phelps went on to say, "I will simply tell [Edie's folks] that we have more work to do on our end before moving forward." Administrator Doan's response was "Okay. Now, for the next step: the SOW [statement of work]. Who is doing that work, Felipe [Mendoza, of GSA] or Edie?"²⁵ Several times over the next month Ms. Fraser sent emails to Administrator Doan asking about the status of the report work, and met Administrator Doan at her office three more times. It would appear that Chief of Staff Phelps' message that there was "more work to do on our end before moving forward" was understood by Ms. Fraser, that efforts to get her the report work were not over, and there is no objective evidence, despite the opportunities over the next month, that Ms. Doan contradicted this understanding.

Fourth, the OIG investigation revealed that prior to Administrator Doan's appointment as Administrator, her relationship with Ms. Fraser went far beyond purchasing some banquet tickets and participation in mentoring activities. In the three and a half years

3. If this is the case, the contract must be terminated immediately and in writing.

4. Attached is a proposed termination letter...

[5. ...]

6. Please advise me when a notice of termination for convenience of the government has been transmitted."

²⁴ ROI, p. 4.

²⁵ Contrast this email exchange with Administrator Doan's interview statement a month later: "DOAN said that it appeared that Fraser seemed to believe that DBP was awarded a contract and that the termination notice was a way of voiding this perception..." ROI, Ex. W1-2, p. 3.

before Ms. Doan sold her company, New Technology Management, Incorporated (NTMI), she hired Ms. Fraser's company, PAG, to provide over \$500,000 in services. Ms. Doan / NTMI paid \$206,411 in corporate and personal sponsorships of events produced by Fraser's companies. Over and above the sponsorships, \$300,000 was paid to Ms. Fraser's company for a management consulting contract. The OIG investigators found it more than slightly coincidental that under this contract Ms. Doan's company paid PAG \$20,000 a month for services until the year NTMI was sold—the same \$20,000 amount that Administrator Doan felt was a fair price to pay Ms. Fraser's company under the subsequent contract with GSA.

Administrator Doan and Ms. Fraser also enjoyed a personal relationship. This is evidenced in part by Fraser's assistance in obtaining a Congressional internship for one of Administrator Doan's daughters, by her vigorous promotion of Administrator Doan as a business leader,²⁶ and her personal advocacy with Senators in support of Administrator Doan's confirmation.

So, the record paints quite a different picture than what Administrator Doan told the OIG investigators. Instead, what the record reflects is a range of business contacts between Administrator Doan and Ms. Fraser, starting seven years prior and continuing almost without interruption at GSA, coupled with a determined effort by Administrator Doan to get a contract awarded to Ms. Fraser's company. But, Administrator Doan—who testified during her confirmation hearing that she knew procurements and the Federal Acquisition Regulations—should have known the document she was signing was a contract. She should have known that the procurement had to be subject to fair and open competition. She should have known that GSA schedules included companies who had negotiated with GSA to provide such services to the Government. Instead, Administrator Doan awarded, without competition, a \$20,000 government contract to her friend's company for a 24 page public relations report.

²⁶ For example, Ms. Fraser was on the Women's Advisory Board of Office Depot, and co-presenter of awards, at a February 2003 ceremony hosted by Office Depot, in which Administrator Doan and Ms. Bohan (Omega Travel) received Business Entrepreneur Award and Businesswoman of the Year awards, respectively. During the prior year, 2002, Administrator Doan's company paid \$85,800 to Ms. Fraser's company. After the February 2003 awards, Ms. Fraser gave an interview praising both Administrator Doan and Ms. Bohan as follows:

“EW: You have been very supportive of Lurita Doan and Gloria Bohan ... What can other women business owners learn from them?

“Fraser: Lurita Doan is precisely what this nation needs. Her company brings innovative solutions that have been applied not only to Homeland Security, but to a number of other departments in the government. She will assess a need and foot the cost to prove an innovative solution. The company remains on the cutting edge of information technology under her visionary leadership. It hasn't been easy for Lurita. Large companies want to compete and bundling is still a reality. But with passion, perseverance, and the best there is to offer in solutions, she is winning.

“Gloria Bohan is a wonderful role model and I have been proud to promote her and support her efforts. We are so proud that Omega World Travel is the largest woman-owned business in the DC metropolitan area. *As with Lurita, we are there to support one another.* She has achieved tremendous success with government contracting, and this opportunity has helped her to significantly expand her business.” (Emphasis added). (Full article available at www.enterprisingwomen.com/fraser_qa.htm).

Of course, there may be instances where such a contract could be sole sourced to one company. FAR Part 13 provides that simplified acquisitions—those under \$100,000—can be sole sourced, but only if a contracting officer determines that only one source is reasonably available, and that source must be a small business concern.²⁷ These are facts that were, or should have been known by the head of GSA, the Government’s premier contracting agency, before contracting with PAG. These were facts that, in any event, were provided to Administrator Doan the week after the contract was signed. Unfortunately, they were disregarded. Despite PAG’s efforts to provide an after the fact sole-source justification on July 31, a Contracting Officer together with GSA counsel determined there was nothing unique about the work being done by PAG. Ironically, although the end-product was to be a short report promoting GSA’s small business utilization, at the time the contract was awarded PAG no longer even qualified as a small business. A careful review would have shown that at the time the contract was awarded, PAG was a subsidiary of NBC Universal, itself a subsidiary of GE, one of the largest multinational corporations in the world. Thus, the award by Administrator Doan also violated the exclusive set-aside under FAR Part 13 for small businesses. Administrator Doan would like to characterize all of this now as a mistaken attempt to obtain unique services from a small business; but the record suggests her actions as more akin to a reckless disregard of the facts while attempting to award a contract to a friend and her company.

It is also illuminating to consider how the \$20,000 figure for the contract was arrived at. During her interview, Administrator Doan tried to dismiss the contract as a mere proposal, in view of its lack of detail. She read aloud the task portion that states, “Produce a report with data and case examples, show progress and significance of where GSA stands and its deep commitment to the future,” and commented, “What does that mean?” Yet, she admits that on her second or third day at GSA (with even less information), she had already determined that the \$20,000 amount was “a good fair number” in order to get a good job done. This number never changed during the next month and a half’s negotiations over the statement of work, and was still the total used by PAG when backing in hourly rates in its revised statement of work, provided together with its sole source justification on July 31 in an attempt to keep the contract. Here again we would expect that the greenest of contracting officers, let alone the head of GSA, to know that when conducting a procurement you do not tell a contractor how much they can charge for their services before you have even determined the level of effort needed. It seems evident that it was not a considered view of the services needed by GSA that set the price. Rather, it appears the price may well have been arrived at from an extension of Administrator Doan’s quite different private-sector experience, such as her awards of \$20,000 to Ms. Fraser’s company each month for public relations services.

Now, the question has been asked, what is the big deal, if the contract was only for \$20,000 and was terminated less than two weeks after signing? There are several answers to this question. First, we are not talking about a simple error, a technical violation of an obscure regulation. *We are talking about the violation of key contracting*

²⁷ FAR 13.106-1(b), 13.003(b).

principles—promoting open competition with only limited exceptions, and avoiding any appearance of personal favoritism in awarding government business—by the leader of the Government’s premier civilian contracting agency, GSA.

Second, the OIG investigation showed that Ms. Fraser was planning to do far more work for GSA, and we found no evidence that Administrator Doan did anything to discourage Ms. Fraser until after they both became aware of this investigation. Only two weeks after Administrator Doan was sworn in, on Ms. Fraser’s third email of the day to Administrator Doan on June 14, 2006, (going, incidentally, to Administrator Doan’s home email account), Ms. Fraser set out a “Checklist for GSA and Lurita.” The report project which culminated in the contract was called “GSA first assignment,” and Ms. Fraser emphasized “have some other ideas . . . We can do so much with you.” Ms. Fraser went on to say: (1) “[I] want GSA to be member of Diversity Best Practices [DPB, a PAG company] and take table at Summit [DBP’s 2006 fall Banquet]”; (2) promote appointments with PAG clients (“II. OMEGA Travel and GSA and government overall”), sponsors (“V. ETHEL Batten [Vice President, HR for Lucent] for August (YES)”) and several other companies; and (3) offer what appeared to be recruiting assistance (“Sandy might handle recruiting as well” and “VI. CFO for GSA”). Ms. Fraser’s email was effusive, saying “Thanks for time and mutual support; will give you my all.”

Although the next three months must have been busy ones for Ms. Doan as the new Administrator, she met at least four times and regularly talked and corresponded with Ms. Fraser (PAG even produced ten emails and one fax with Ms. Fraser using Administrator Doan’s private email and fax.)²⁸ Administrator Doan made time to speak at DBP’s July WOW! Conference, and Ms. Fraser’s prepared introduction called Administrator Doan “a committed supporter of BWN and Diversity Best Practices.” A week later, even while work was underway finalizing the outline of work for the PAG contract, Ms. Fraser was discussing more expansive work. Her emails with Administrator Doan between July 20, at 11:41 pm, and July 21, at 7:19 am, said “I have great idea to match what Lurita wants to do,” and “have recommendation re Public / Private Partnership as for the meetings I have two companies that would join in hosting with GSA and this is huge deal for doing all year long for two meetings per month.”

Between July 19 and August 17 Ms. Fraser continued to work on these other matters. In her email of August 17 to Administrator Doan entitled “GSA Relationship,” Ms. Fraser reported success on both a “Meet the Administrator” initiative (stating, “Native American on Sept 6th”), as well as two other appointments for August 31—while still urging action on the GSA contract (“The REPORT: on GSA plate and awaiting response.”) These additional meetings occurred as scheduled. While it is not clear what direct benefit Ms. Fraser and PAG received from these meetings, it is worth highlighting that Ms. Fraser urged both the Native American participants and Administrator Doan to have their respective organizations pay for tables at DBP’s upcoming October 2006 Gala.²⁹

²⁸ By contrast, Administrator Doan produced none.

²⁹ To GSA, Fraser said “Summit and GALA: . . . want you to speak and Want GSA to be member of Diversity Best Practices and take table at Summit.” (June 14, 2006, Email from Fraser to Doan). To the participants at the Native American meeting with Doan, Fraser said “Congratulations on a great

On September 6, 2006, Ms. Fraser sent another email to Administrator Doan, summing up the success of the Native American meet and greet earlier that day, while also prompting for more, paying, work.³⁰

On September 8, 2006, PAG's custodian of documents was served with its first subpoena from GSA's Office of Inspector General concerning this matter. Administrator Doan was also interviewed on September 8, 2006. According to Ms. Fraser, she also received a brief phone call from Administrator Doan around this time in which Administrator Doan alerted her that she might get a call about the work that PAG had done for GSA.

Based on her own experience, Administrator Doan knew or should have known that Ms. Fraser stood to benefit far more than just from this first \$20,000 contract. The stream of calls, emails and meetings show that Ms. Fraser clearly hoped for much more from GSA. But, after it became clear that the leading activity of the relationship, the July 25 contract and report preparation, was under investigation, all further activity appears to have ceased.

The Contract with Sun Microsystems, Inc.

Administrator Doan's conduct, and its results in a recent award of a contract extension to Sun Microsystems, Inc. (Sun) for certain information technology (IT) products and services, are also troubling. There are three problems that I would like to highlight in connection with this award. First, the price accepted by GSA fell far short of GSA's regulatory policy, which requires GSA to seek from its multiple award schedule (MAS) vendors the best price they give to their most favored commercial customers (MFC pricing).³¹ Unfortunately, it appears that Administrator Doan, in intervening in the contracting process to keep the Sun contract from expiring, was far more concerned about GSA's business volume and portfolio than she was about the overall value to its U.S. Government customers. Second, as a direct consequence of her intervention, and in breach of GSA's fiduciary duty to the U.S. taxpayers, the pricing concession made to Sun means that the U.S. taxpayers will inevitably pay far more for Government IT products and services than they should. Third, Sun's competitors are adversely impacted in competing for Government business. To the extent one contractor is able to get away with lower discounts (i.e. higher prices) to the Government, it has achieved an unfair competitive advantage over all other companies forced to grant the Government the accurate discounts reflecting their true commercial marketplace pricing. If this were to become accepted practice, it would encourage more companies to adopt aggressive price negotiations strategies, further eroding the ability of conscientious contracting officers to

meeting...Our Summit and Gala is October 25, 26...we want to have at least 35 Native American businesses represented." (September 6, 2006, email from Fraser to meeting participants).

³⁰ This email reads, in part,

"Hispanics are ready. Disabled are ready. African American in process. Asian American in process.

"Lurita, I will do anything for you and will do for the rest of my life. Bottom line, want relationship with GSA and will keep delivering as you know. But I have spent so much time at GSA from the report planning to these sessions with ZERO \$\$. How do we solve"

³¹ General Services Administrative Manual (GSAM) 538.270.

achieve the goal of MFC pricing for the Government. While this is not the first time a contracting officer has awarded a GSA contract below MFC pricing, it is the first time we are aware of in which an Administrator has personally intervened this way.

Let me begin by first providing some background on the contract in question. Sun was awarded two contracts, one in June 1997 and another in August 1999, covering hardware and software maintenance, IT equipment and services, software licenses, and training. The contracts were merged together into one MAS contract in January 2003.

In September 2004, in response to a hotline complaint alleging overcharging in connection with Sun's maintenance services, the OIG initiated a post-award audit for both contracts. Since the consolidated Sun contract was due for renewal around this same time, GSA's Federal Supply Service and contracting officials were briefed on the significant compliance issues identified in connection with the post-award audit then underway. Because of their concern, the contracting officer (the second CO³²) decided not to renew the contract, but instead granted a six month extension in order to allow the OIG to perform a pre-award audit to help determine Sun's current commercial sales practices and the appropriate discounts due the Government. The CO also required Sun to agree to an extensive corrective action plan addressing each deficiency already identified. When negotiations had not yet closed at the end of the extension period, the second CO informed Sun that he was considering canceling all of Sun's resellers MAS contracts because of the poor pricing offered and Sun's failure to submit a complete, updated offer as requested. In fact, on August 1, 2005, the second CO cancelled Sun's contract. But, after Sun's management complained to GSA management about the cancellation, the second CO was directed to reinstate the contract with an extension. He did so, but only after requiring Sun to agree to significantly higher discounts (the Interim Discount) for the extension period. The CO felt this step was necessary because by that time it was already clear that Sun had substantially understated its commercial sales discounting, and the Government was due a substantially higher discount.³³

Unfortunately, as the end of the extension period approached, the second CO was notified that he was being reassigned. He tried to expedite and conclude negotiations with Sun, but was directed to stop working on the Sun contract. A new contracting officer (the third CO) was assigned, and several months were spent by the third CO in familiarizing himself with the complicated details of the contract and negotiations up to that point. The contract was also extended to August 31, 2006, continuing to use the Interim Discount rate. When the third CO commenced negotiations, he agreed with, and substantially adopted, the negotiating position taken by the second CO. This position included setting a Low Objective (i.e. the minimum discount that would be accepted as fair and

³² This was the second CO, since a different CO was responsible for the original 1997 and 1999 contract negotiations. The second CO handled the extension negotiations until he was replaced in February 2006. The third CO handled negotiations until he was replaced on August 31, 2006. The fourth CO was assigned on August 31, 2006, and awarded the contract on September 8, 2006.

³³ The actual percentages of the different discount rates is being withheld, as these could indirectly disclose commercial trade secrets of Sun and/or its customers. However, a confidential briefing can be provided to the Committee discussing the actual amounts identified. These amounts were provided to the responsible contracting officials of GSA throughout the course of events recited here.

reasonable to the Government) at a substantially higher rate than even the Interim Discount adopted in August 2005, with a target objective higher still.

Despite the abundant evidence of Sun's better discounts to comparable commercial customers at and above the third CO's Low Objective, it became clear by July 2006 that Sun was refusing to offer the Government discounts at the MFC level. This led to a series of briefings that culminated on August 14, 2006, in an Impasse Briefing to GSA senior management, including Commissioner Williams of GSA's Federal Acquisition Service (FAS). At this Impasse Briefing, the third CO and his supervisors informed FAS management about the gap between what Sun was offering and what the CO felt should be a minimum acceptable discount rate. Other issues were also discussed, including Sun's refusal to accept the standard MAS price reduction clause. The CO recommended that the Sun contract should be allowed to expire, and FAS Commissioner Williams approved the recommendation. A week later, on August 24, 2006, the CO sent an email to Sun's lead negotiator "that since SUN did not accept GSA's offer by the 12:00 noon deadline of August 23, 2006, that GSA will be informing Government agencies that the Sun contract expires on midnight August 31, 2006."³⁴

This could have been a success story for GSA and its Government customers had the third CO been allowed to proceed, highlighting the importance GSA gives to achieving best pricing for the Government. But, for the second time in the course of these negotiations Sun complained, and for the second time a contracting officer was replaced. This time, it was the President of Sun Microsystems Federal, Inc., Bill Vass, who contacted the head of FAS, Commissioner Williams, and the suggestion was made that both sides change their negotiating teams, to see if a fresh perspective might not help.³⁵

Shortly thereafter Administrator Doan became aware of the situation, and on August 29, 2006, she called for an emergency meeting to discuss this matter with members of my staff and her staff, including GSA's General Counsel, Chief of Staff, and the Assistant Inspector General for Auditing. That same day the Sun contract was extended two weeks, and two days later the CO was replaced.

One of the more troubling aspects of the August 29, 2006, meeting, was that Administrator Doan did not ask for any briefing, or even allow discussion, on the key issue of the disparity between the discount Sun was offering the Government and the discounts it was offering its other big commercial customers. Instead, her comments were directed at two themes: how the CO was negatively impacted too much by his knowledge of the audits to continue in his role, and that the OIG was threatening to irreparably damage GSA's IT business. She went on to elaborate, in her view, that if GSA did not have the Sun contract, Sun would just take its business to NASA's SEWP contract, and without Sun, the leading workstation server vendor, GSA's IT business could be destroyed. With respect to the CO, she went so far as to state that the CO's awareness of the auditors' recommendations and the potential for litigation over Sun's

³⁴ CO email to Mike Abramowitz [Sun], dated August 24, 2006.

³⁵ Interestingly, while GSA did change its negotiating team, Sun's team, including its lead negotiator, while allowed to stay the same.

past charges must have so stressed him, that she would not believe he was able to continue unless she went and personally interviewed him. At this point both the General Counsel and Chief of Staff jumped in, urging against such a personal interview, and the Chief of Staff volunteered to follow up instead.

That same day the Sun contract was extended an additional 11 days. Two days later, on August 31, 2006, Commissioner Williams personally called the CO and his supervisors, telling them that he and Administrator Doan considered the Sun contract strategically important, and wanted the contract awarded. He asked if the CO could move forward, and when the CO replied he did not see how he could, he was offered the ability to opt out without any negative consequences. After agreeing, a new, fourth CO was assigned. In just five business days (and overtime over Labor Day weekend), the paperwork was done and the new Sun contract awarded on September 8, 2006.

Unfortunately, the contract awarded by the new CO conceded to Sun on both the discount and price reduction issues. It essentially stopped at the Interim Discount rate as the rate going forward,³⁶ although the Interim Discount was only meant as an interim rate by the second CO until Sun's discount practices could be verified and the appropriate discount rate determined. It also included a meaningless price reduction clause, in practice allowing Sun to discount its major commercial customers in the future without having to pass on price reductions to the Government.

While the total financial consequence of this award are not as easy to predict, the findings of the OIG's pre- and post-award audits certainly help scope the impact. The post-award audits performed on the original contracts concluded that Sun had misled GSA with inaccurate and incomplete commercial business practice information, which led to overpayments in the amount of \$27.1 million, with other refunds identified in the amount \$0.4 million.³⁷

The pre-award audit similarly identified issues with Sun's most recent offer, showing that Sun was offering a discount that was substantially lower than those granted to comparable commercial customers. At the time the pre-award audit was issued in January 2006, the cost savings identified amounted to \$18.6 million over the remainder of the contract. A small part of these savings, less than \$1 million, were achieved in a September 2006 award through a slight improvement over the Interim Discount, but this

³⁶ There were slight improvements in the product discounts, as negotiated by the third CO, but the critical maintenance discounts remained essentially unchanged at the Interim Discount level.

³⁷ This is a conservative calculation, basically accepting the Interim Discount rate in calculating direct damages. The calculation would have been significantly higher had the second and third CO's discount rate targets been adopted instead. Also, the calculation does not take into account other factors that might be argued if litigated, or the potential for doubling of the amount of damages under the False Claims Act, 31 U.S.C. 3729. It is also limited to sales to the U.S. Government directly under Sun's two MAS contracts. Since the MAS rate is often considered during negotiations with resellers and by other agency contracting organizations (like NASA's SEWP), it is likely that the total cost to the U.S. Government is significantly higher. Finally, the audit findings had to be qualified due to Sun's repeated inability to provide a verifiable, accurate, auditable database of its commercial and GSA sales; as such, there is an increased possibility that additional review could disclose more monies owed to the Government under Sun's MAS contracts.

in turn was more than offset by accepting a meaningless price reduction clause. As with the post-award audit computations, this calculation is limited to the Sun MAS contract, and does not include an estimate of additional cost savings that could be realized on sales by Sun resellers or sales via other Government contracts.

Thus, the rush to accept Sun's take-it-or-leave-it position has had a real and demonstrable impact, both deflating the potential recovery for Sun's past misrepresentations and increasing the Government's costs going forward. We do not agree, as Administrator Doan appears to claim, that this shows good stewardship of the taxpayers' dollars, or that the reasons put forward by Administrator Doan warranted this concession. Her first position argued that the possibility of an enforcement action was so intimidating as to render the third CO incapable of carrying out his responsibilities as a warranted contracting officer. Fortunately, this is not a view held by the vast majority of COs in GSA.³⁸ It is impossible to have an enforcement action without the assistance of the COs, since their testimony is an essential part to establishing the facts concerning a contract. Without enforcement, experience shows too many contractors will ignore the terms of their contracts. In other words, this is part of the job description of being a contracting officer, and the thousands of professionals who hold these positions understand this. It is also interesting to note that Administrator Doan's concern was not shared by the third CO, who has gone on the record that he was not stressed by considerations of the audit findings or litigation potential during the Sun negotiations.

The OIG is also concerned over matters that threaten the health and efficiency of GSA's programs. However, we do not share Administrator Doan's fear that the loss of one contract with one contractor, Sun, would threaten to irreparably damage GSA's IT business. While Sun is a valued vendor by many Government users, it is still only one of many players in the IT field, and other vendors and contract vehicles are available.³⁹ Nor was it absolutely clear that Sun would walk away from Government business, as evidenced by its clear concern and reaction when told of GSA's planned announcement that Sun's MAS contract would expire August 31, 2006. The concern over business shifting to NASA's SEWP appears parochial and assumes NASA would not, if approached, join with GSA in demanding MFC pricing. Actually, the timing was uniquely ripe for GSA and NASA to join forces, as NASA typically set its pricing in view of GSA negotiated pricing, and was at the same time negotiating its SEWP2 vehicle. This opportunity was raised at a meeting with Commissioner Williams on September 5, 2006, and GSA's Deputy Inspector General even offered to help facilitate the discussion of GSA's audit findings with NASA. However, Commissioner Williams declined, stating he did not think Administrator Doan would agree to discussions with NASA, given her public criticisms against NASA even having the SEWP contract.

³⁸ Not that litigation support is necessarily welcomed, as we have heard anecdotal concerns that some FAS managers are less sensitive to the need to re-balance work loads when one CO is faced with unplanned-for enforcement work. But this is a problem with workload balancing, not the necessary role of litigation support.

³⁹ Administrator Doan was mistaken in calling Sun the leading server vendor. While still a major player, according to Gartner Dataquest, in 2006 Sun was a distant third (at 10.8%) and fourth (at 4.5%) place, for market share in terms of revenues and server shipments, respectively, behind IBM, HP and Dell. See February 22, 2007, Gartner release (available at <http://www.gartner.com/it/page.jsp?id=501405>).

In this process, it does not appear that sufficient concern was given for the fiduciary obligation of GSA to negotiate the best pricing for the U.S. taxpayers. That impact has been direct, and is ongoing. Nor is it clear that sufficient concern was given to the impact on GSA's Government customers. Many of these assume GSA is negotiating MFC pricing, and when it does not, they are ultimately the ones that have to pay the price. Nor was any concern apparent for maintaining a level playing field between competitors, or the consequences to Government procurement practice if this "strategic" exception is given root. Some vendors have more than fifty percent share of the market for types of Government goods or services; are these, too, strategic enough to warrant an exception to MFC pricing? How many small businesses would qualify as strategic, and is it a fair policy to force those that do not to offer MFC pricing, while the large "strategic" businesses are excepted?

In the end, I am concerned that at the core of this matter, Administrator Doan allowed her personal concerns and campaign against IT contracting vehicles at NASA and other agencies to cloud her judgment about the Sun negotiations. But, it is equally disturbing that in order to accomplish this she would justify the removal of a conscientious CO based on a false assumption—that contract audit and enforcement activities can be so stressful to COs as to render them unable to carry out their duties. These are not the types of views we should expect from the Administrator of the Government's premier civilian contracting agency.

The Hatch Act Allegations

The final area of concern involves Administrator Doan's alleged role in encouraging use of GSA resources for partisan politics. The specific allegations were that Administrator Doan, using GSA resources, led a nationwide teleconference on January 26, 2007, with other GSA political appointees, and during the call Administrator Doan asked the participants, "How can we use GSA to better support our candidates in the upcoming election." By candidates, she meant Republican Party candidates. One Regional Administrator was then alleged to have responded by describing an effort to exclude House Speaker Pelosi from an upcoming opening of a courthouse in San Francisco. Also discussed was the opening of a new courthouse in Florida where former President Clinton was to be present. Administrator Doan is alleged to have suggested an effort to get Senator Mel Martinez to attend. Because these activities would have all taken place on Government property, with the expenditure of Government funds (e.g., for the teleconference and contractor supporting the teleconference), the alleged activities represent a potential violation of 5 U.S.C. 7324, the Hatch Act.

After determining that the allegations came from a credible source, the allegations were referred to the Office of Special Counsel, which has primary jurisdiction over the investigation of Hatch Act violations. This referral was also provided to this Committee at its request.

Conclusion

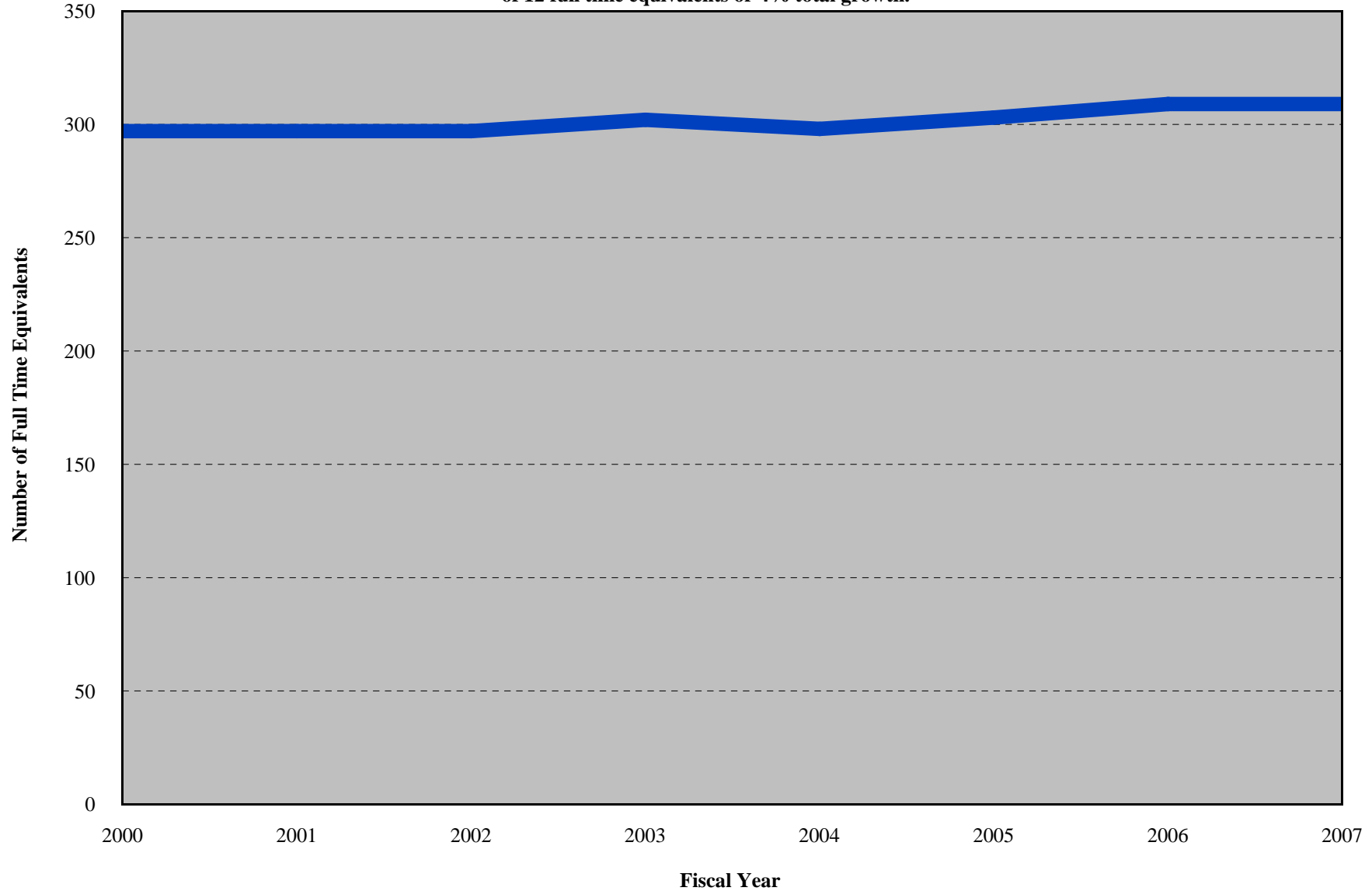
The OIG's audits and investigations have helped to safeguard the integrity of government operations and provide cost avoidance for taxpayers of billions of dollars. For years, the GSA OIG enjoyed good working relations with GSA managers who appreciate the information they receive from our professional audit and investigative work. Many GSA contracting officers have expressed gratitude for the OIG audits that enable them to negotiate best prices for taxpayers. My relations with former GSA Administrator Stephen Perry and Acting Administrator David Bibb were excellent. They were committed to the proper functioning of GSA, and they recognized that independent oversight was a tool for management in achieving that end. I had hopes of a similarly constructive working relationship with Administrator Doan, and I still do.

Unfortunately, however, the recent investigative efforts of the OIG show that, parallel to the Administrator's campaign to reduce oversight, the Administrator demonstrated a disregard for the rules governing contracting that oversight is meant to detect. In sum, the Administrator may have both violated basic rules of conduct for an agency head and worked to pare back the mechanisms for uncovering such violations. What may explain both is a lack of respect for both the law and law enforcement. My sincerest hope is that this is not the case.

Independence and objectivity are the hallmarks of a successful Inspector General. I have worked hard to give effect to these principles since I became Inspector General at GSA. That is why Congress and the President enacted the Inspector General Act. I was honored to be nominated by the President and confirmed by the Senate in the summer of 2005 to continue this good work. I pledge to you that I will continue to do my duty for the people of the United States. Thank you.

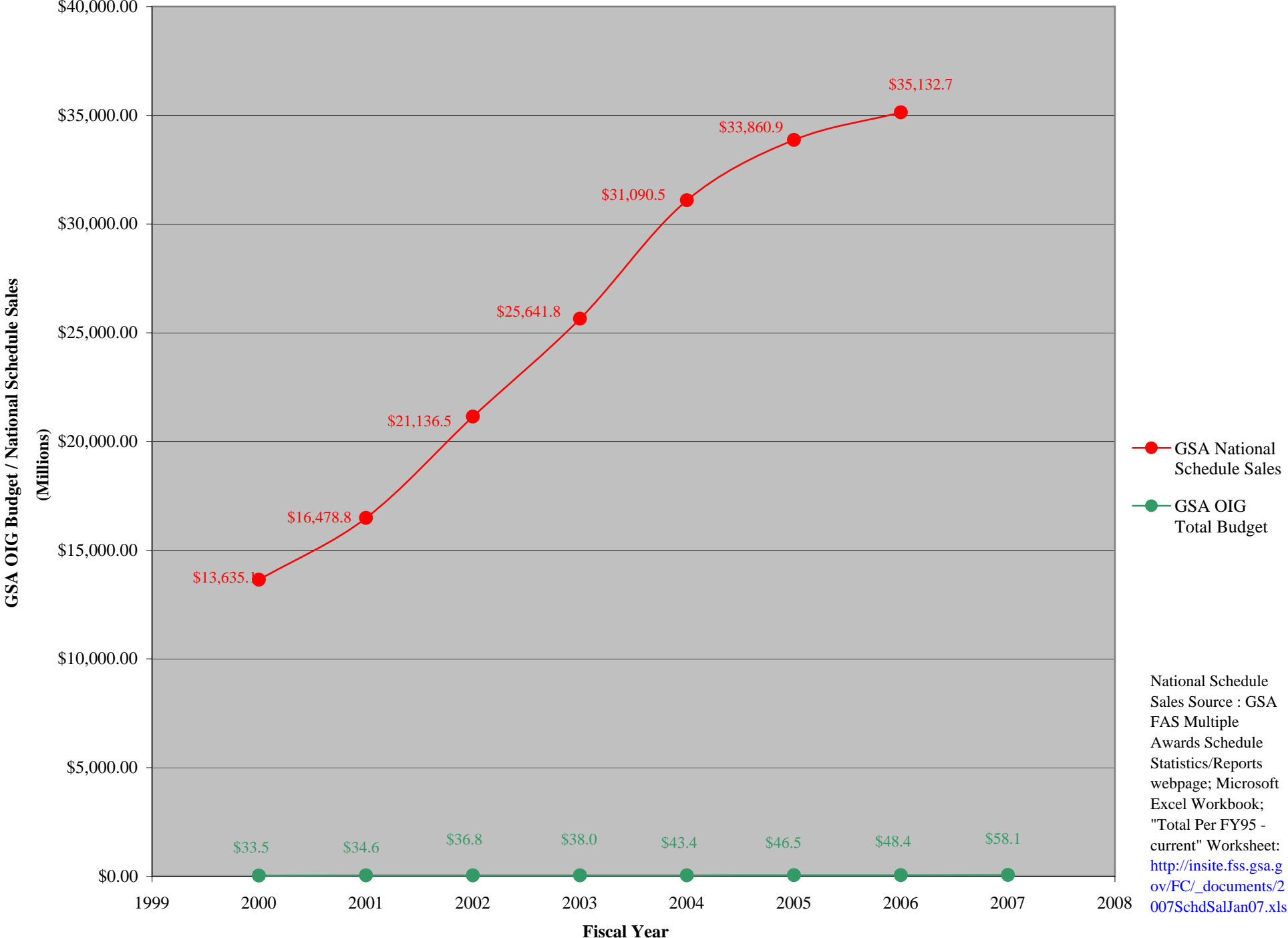
Full Time Equivalents Authorized by Appropriation, GSA Office of Inspector General, Fiscal Years 2000-2007

Between Fiscal Year 2000 and Fiscal Year 2007, the number of full time equivalents authorized by appropriation for the GSA Office of Inspector General has varied from 297 to 309. Over the period from Fiscal Year 2000, that translates into an increase of 12 full time equivalents or 4% total growth.



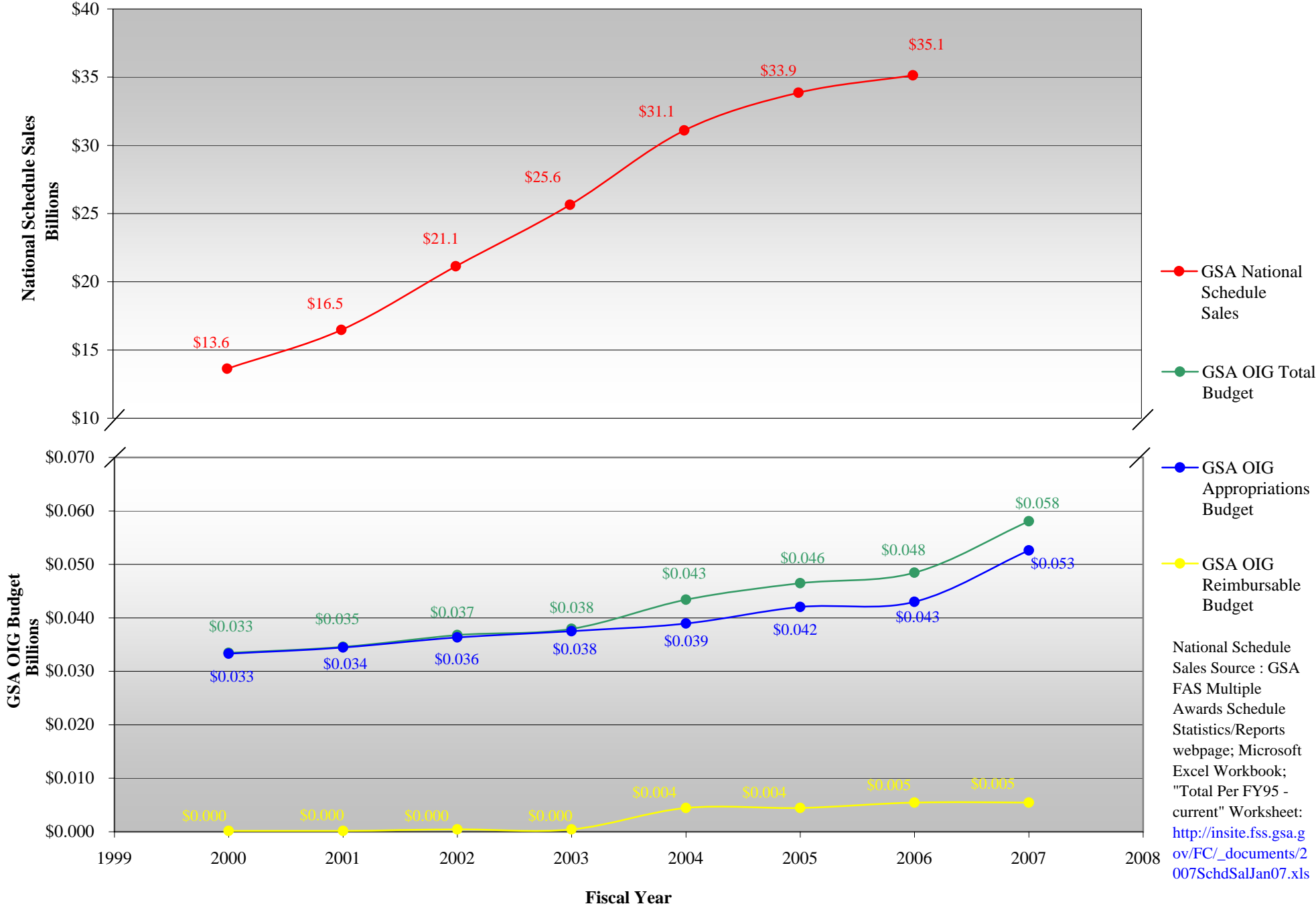
Note: Data for FY2007 represents the OIG's budget request.

**GSA Office of Inspector General Budget Fiscal Years 2000-2007
and National Schedule Sales Fiscal Years 2000-2006**



National Schedule Sales Source : GSA FAS Multiple Awards Schedule Statistics/Reports webpage; Microsoft Excel Workbook; "Total Per FY95 - current" Worksheet: http://insite.fss.gsa.gov/FC/_documents/2007SchdSalJan07.xls


GSA Office of Inspector General Budget Fiscal Years 2000-2007 and National Schedule Sales Fiscal Years 2000-2006





U.S. GENERAL SERVICES ADMINISTRATION
Office of the Inspector General

February 20, 2007

TO: Lurita Doan, Administrator
FROM: Brian D. Miller, Inspector General 
SUBJECT: Your private attorney's letter of February 16, 2007,
refusing access to GSA documents

Late Friday, February 16, 2007, we received the above-referenced letter from your private attorney, Michael Nardotti, which among other things informed me of your refusal to turn over agency documents to investigators of GSA's Office of Inspector General ("OIG"). This refusal was in response to my formal request of February 16, 2007, which was in turn necessitated by your failure to respond to an earlier request on February 7, 2007, by OIG's Assistant Inspector General for Investigations.

I am deeply disappointed by your refusal and urge you to reconsider this decision. This refusal is a violation of both federal statute and agency regulations. Coming from the Administrator, it also has the potential for chilling cooperation throughout GSA with the Office of Inspector General. The Inspector General Act of 1978 requires your cooperation, stating "Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation." 5 U.S.C. App. §3(a); *see also* §6(a)(1)-(6) and (b)(2). The GSA Administrative Manual similarly requires, "OIG auditors, investigators, and attorneys have unrestricted access to all records, reports, reviews, documents, papers, and materials available to GSA and pertaining to agency programs and activities. ... All GSA employees are required to cooperate fully with OIG investigative special agents." GSA Administrative Manual (OAD P 5410.1), ch. 9, §§ 4 and 24.

In addition to your own conduct, I am concerned that your actions are impeding cooperation from other senior agency officials. OIG's Acting Deputy Assistant Inspector General for Investigations made the first request for these documents on February 2, 2007, directed to GSA's Acting General Counsel. At that time he was informed by the Acting General Counsel that the documents were in the process of being prepared by the Office of General Counsel for production to Chairman Waxman -- so it would have been very easy to make a copy for OIG. However, instead of making the documents available, the Acting General Counsel said he would have to pass the request along to you. When we did not hear back from him, we repeated the request on February 5, 2007. GSA's Acting General Counsel then informed us that the Office of General Counsel no longer had access to the requested documents, that they were delivered to you and private attorneys representing you in your individual capacity for review in your Office, and a formal request would need to be sent to you.

I find it extraordinary that any part of the documents that your private attorney characterizes as "sensitive" would be made available in your offices to non-governmental persons such as your

private attorneys, while career investigators of GSA's OIG are prohibited access. Whether or not it is intentional, your refusal to turn over the requested GSA documents also has the practical impact of impeding OIG's investigators from conducting their investigation and providing timely responses to our Congressional oversight committees.

Finally, your reliance on a PCIE complaint for not complying with a valid investigative request is misplaced. You are obligated to follow the law, and the filing of multiple complaints does nothing to relieve you of that obligation. Moreover, based on what I know I am confident that the statement your private attorney identified to OIG investigators as leaked was not disclosed by anyone from GSA OIG, except to other government officials having a legitimate interest in the investigation. Thus, I fail to see any legitimate reason to slow down, let alone stop, the timely completion of OIG's investigation.

I encourage you to reconsider this course of action and produce these documents by Thursday. To do otherwise will constitute a continuing violation of the Inspector General Act.

Attachment: M. Nardotti Letter of February 16, 2007

cc: Lennard Loewentritt, Acting General Counsel