

**Post-Hearing Question Submitted by
Senator Susan M. Collins
For the Nomination of Paul A. Denett
to be Administrator for Federal Procurement Policy
June 20, 2006**

1. In response to questions from the House Subcommittee on Government Management, Finance and Accountability following the Subcommittee's March 15, 2006 hearing, "OMB's Financial Line of Business Initiative: Are We Ready?", OMB stated that it will "Provide a general deviation [to the A-76 process] for public-private competitions involving the potential migration of 10 or fewer positions." (Emphasis by OMB.) This policy would seem to be a direct contradiction of the May, 2003 revisions to the A-76 circular, which eliminated direct conversions and established streamlined procedures for competitions involving fewer than 65 employees. If OMB allows direct conversions for workloads performed by as many as ten employees, what procedures should OMB implement to ensure that agencies do not abuse the policy by breaking up tasks into groups of people fewer than ten and outsourcing the work without competition?

Answer: I understand that OMB's policy on lines of business migrations is intended to encourage public-private competition, not direct conversions to private sector performance. For example, I read OMB's May 22, 2006 guidance as creating a clear preference for public-private competition, both for financial management activities performed by more than 10 full-time equivalent employees (FTEs) as well as those performed by 10 or fewer FTEs. If, theoretically, OMB changed its policy to allow direct conversions for activities performed by up to 10 FTEs, I would work with OMB's Offices of Federal Financial Management and E-Government and Information Technology to ensure that agencies could not artificially split workloads to outsource work. As far as I know, however, OMB is not considering direct conversions as a general policy.

Post-Hearing Questions
From Senator Joseph I. Lieberman
For Paul Denett, Nominee to be
Administrator, Office of Federal Procurement Policy
June 20, 2006

1. Draft guidance provided by OMB on May 22, 2006 regarding Migration Planning Guidance for the Financial Management Line of Business (FMLOB) refers to the use of a controversial competition process known as “best value.” Section 842 of the FY06 Transportation-Treasury-HUD Appropriations Bill prevents agencies from using this process for all functions with more than ten employees, as does Section 8014 of the FY06 Defense Appropriations Bill. In guidance provided to agencies on April 24, 2006, Deputy Director for Management Clay Johnson wrote, “OMB plans to seek repeal of Section 842(a)...Agencies planning competitions to be announced in FY2007 that may benefit from the use of cost technical tradeoff source selections are encouraged to continue with such planning efforts and to consult with OMB.” The House, though, recently passed the FY07 Transportation-Treasury-HUD Appropriations Bill with no change to Section 842(a). Should this provision remain in place, and if confirmed as OFPP Administrator, will you ensure that OMB and other agencies follow the law (as it is written in Section 842 of the FY06 Transportation-Treasury Appropriations Bill and Section 8014 of the FY06 Defense Appropriations Bill), as regards the use of best value for functions performed by more than ten employees, particularly with respect to the FMLOB initiative?

Answer: If confirmed as Administrator, I will work with OMB’s Office of Federal Financial Management (OFFM) and Office of E-Government and Information Technology (E-Govt) to ensure that competition policies for the migration of financial management systems and services are consistent with the law. Where the law does not allow the use of best value, we will make it clear that affected agencies will not be allowed to use it.

2. When OMB rewrote the A-76 circular in May 2003, it included significant constraints on how the best value procurement process can be used. The A-76 circular, as revised, states that an agency shall not use a tradeoff source selection process for activities currently performed by government personnel, unless several specific procedural safeguards are used. Most importantly, the A-76 circular requires that “(t)he specific weight given to cost or price shall be at least equal to all other evaluation factors combined...” In other words, when a best value procurement occurs under the A-76 circular, an objective factor—cost or price—must be the most significant evaluation factor. However the FMLOB initiative draft guidance issued on May 22, 2006 allows agencies to use FAR Part 15 procedures, which explicitly encourage the use of subjective factors “to consider award to other than the lowest price offeror.” Why did OMB disregard its own A-76 competition rules for the FMLOB initiative with respect to the use of best value procurements? Why should the safeguards that OMB thought were appropriate in the context of public-private competitions generally somehow be

inappropriate for public-private competitions conducted pursuant to the FMLOB initiative?

Answer: I have not been privy to OMB's policy discussions, but it is my understanding that OMB's migration guidance does not abandon the Circular. In particular, its May 22, 2006 guidance states that Circular A-76 applies to migrations involving the potential transition of activities currently performed by more than 10 full-time equivalent employees (FTEs).

3. In the draft guidance for the FMLOB initiative, agencies are encouraged to seek deviations from the A-76 circular. In other words, agencies, with OMB's permission, will be able to make up their own rules for FMLOB competitions through these deviations. If confirmed as OFPP Administrator, please tell us what sort of deviations you would encourage and what sort of deviations you would approve. Please tell us why such deviations should be necessary. Please tell us what criteria you would use in reviewing agencies' requests for deviations.

Answer: I am not sufficiently familiar with the details of the FMLOB initiative to speak to this question. However, if confirmed as Administrator, I intend to work closely with OFFM, the Office of E-Govt, and customer agencies both to understand the basis for any requested deviation and to ensure that any approved deviations are both consistent with the requirements of law and general principles of fairness.

4. Under the FMLOB initiative, several agencies will be designated shared service centers and vie against contractors to take over financial management functions from other agencies. It is my understanding that shared service centers sometimes already contract out this work. If confirmed as Administrator, will you ensure that if that shared service center will ultimately have that work performed by a contractor, any function performed by more than ten employees will be subject to an A-76 public-private competition before that work is moved to a shared service center?

Answer: If confirmed as Administrator, I will carefully review this issue. Based on my reading of the May 22, 2006 guidance, I believe OMB's policy creates a strong preference for public-private competition as a precursor to migration to a shared services center -- i.e., non-competitive migrations to shared services centers are not encouraged.

5. Many agencies already contract out at least parts of their financial management function. How will already contracted out financial management work be included in the FMLOB initiative? Does OMB's guidance ensure that federal employees will have opportunities to compete through the A-76 circular to bring that financial management function back in-house if they can do it more efficiently? If not, would you support issuing new guidance to ensure that it includes competitions for financial management work that is already contracted out?

Answer: If confirmed as Administrator, I will carefully review the matter with OFFM

and the Office of E-Govt, which also share jurisdiction over the issue. I understand that agencies who have been designated as shared services centers have expertise, an ability to leverage technology, and other resources to achieve best value for the taxpayer. These attributes should make the shared services centers and their employees a strong competitor for performance when work currently performed by the private sector is recompeted.

**Post-Hearing Questions for the Record
Submitted to Paul A. Denett
From Senator Mark Dayton**

“Paul A. Denett to be Administrator for the Office of Federal Procurement Policy”

June 20, 2006

1. OMB rewrote the OMB Circular A-76 to prohibit direct conversions without special permission from OMB because, according to the Bush Administration's first OFPP Administrator, agencies had abused the process and made decisions that were not in the interest of taxpayers. She also said that agencies had in the past broken up and directly converted larger functions in order to take advantage of this loophole. Pursuant to its Financial Management Lines of Business (FMLOB) initiative, OMB has decided in its guidance to allow agencies to convert functions performed by up to ten employees to contractor performance without any public-private competition. What do you think of that decision? What do you think of OMB's decision to sanction all direct conversions in those situations, instead of asking agencies to justify such direct conversions on a case-by-case basis? The Administration calls its general approach to contracting out "competitive sourcing". What is competitive about giving work performed by federal employees to contractors without benefit of public-private competition?

Answer: I have not been privy to OMB's policy discussions, but I understand that OMB's policy is intended to encourage public-private competition, not direct conversions. For example, I read OMB's May 22, 2006 guidance as creating a clear preference for public-private competition, both for financial management activities performed by more than 10 full-time equivalent employees (FTEs) as well as those performed by 10 or fewer FTEs. If confirmed, I will review this matter with the Office of Federal Financial Management (OFFM) and the Office of E-Government.

2. Under what circumstances is it appropriate for the federal government to rely on no-bid contracting procedures?

Answer: Our acquisition laws enumerate a limited number of circumstances where agencies may make award without soliciting offers, the most prominent being unusual and compelling urgency (emergency situations). I think the exceptions currently recognized in law are appropriate, but we must make sure that their use is justified and approved by accountable officials, so that no-bid contracting is the rare exception and not the norm. We also should strongly consider recompeting emergency awards.

3. Should there be a limit on the size of task orders issued on a no-bid basis pursuant to a

blanket purchase agreement (also known as an "indefinite delivery, indefinite quantity" contract)?

Answer: I am hesitant to endorse a hard limit on the size of "no bid" task orders, since there may be circumstances where sole source task orders, even in a larger size, may be justified. A sole source task order award may be justified under a multiple award contract, for example, where orders are so integrally related that only one contractor can reasonably perform the work. If confirmed, I plan to confer with the Chief Acquisition Officers (CAO) Council and the Federal Acquisition Regulatory Council (FAR Council) to discuss the types of improvements that might be made to current policies for task order contracts to ensure competition is used more consistently. If confirmed, I will also carefully consider the recommendations submitted to Congress and OFPP by Acquisition Advisory Panel on this issue.

4. Will you commit to ensuring that full and open competition is and remains a priority for all contracting and procurement staff across the federal government?

Answer: Yes, if confirmed, I will ensure government-wide acquisition policies continue to reflect the statutory requirements for full and open competition. I will also work to ensure the effective use of authorities that Congress has provided agencies with over the years to facilitate more efficient use of marketplace competition, such as multiple award contracting.

5. Over the last six years, controversial defense and intelligence contracts have been awarded through an interagency contracting office at the Department of the Interior, resulting in reduced oversight and a greater potential for contract abuse. Under what circumstances should contracts be issued on an interagency basis?

Answer: I believe it is appropriate for a customer agency (i.e., the agency with the requirement) to consider the use of another agency's contract when doing so will help the requiring agency achieve better value than it expects to receive by contracting for the need directly. However, whenever a procurement crosses organizational boundaries, the customer agency and the servicing agency (i.e., the agency whose contract is being used) must each have a clear understanding of their respective roles and responsibilities. For example, the parties must understand who will be responsible for ensuring a pending order is within the scope of the underlying contract and who will be responsible for administering the order once it is awarded. I believe this clarity will help to minimize undue risk so that agencies can achieve maximum benefit from interagency contracting.

6. Will you commit to ensuring transparency in interagency contracting?

Answer: Yes. I believe agencies need improved access to accurate and timely information so that they can exercise sound business discretion and make informed decisions about when interagency contracting makes sense. If confirmed, I intend to work with the General Services Administration and the agency Chief Acquisition

Officers to improve information about interagency vehicles. I am pleased OFPP has already begun to collect data on interagency vehicles, as this will help the acquisition community to better understand how they are currently being used.

7. Will you commit to ensuring that all federal procurement and acquisition offices have the necessary staff to complete their mission?

Answer: If confirmed, ensuring the professionalism and adequacy of the federal acquisition workforce will be one of my top priorities. I will work closely with agencies to ensure that their acquisition offices are properly staffed to meet mission needs. Through my leadership of the Federal Acquisition Institute, partnership with the Defense Acquisition University, and with the support of the Acquisition Workforce Training Fund, I am committed to providing the acquisition workforce with training and development opportunities that will enable agencies to meet their mission goals efficiently and effectively. If confirmed as Administrator, I will ask agencies to develop short- and long-term human capital plans that focus exclusively on the acquisition workforce so that our training curriculum provides the type of support the next generation of acquisition professionals will need to generate maximum value for the taxpayer.

8. Will you commit to ensuring that all federal procurement and acquisition offices can operate free from undue political interference, seeking the best value for the taxpayer dollar?

Answer: Yes. I strongly agree that contracting officers must obtain the best value for American taxpayers without undue political interference.

**Post-Hearing Questions
From Senator Daniel K. Akaka
For Paul Denett, Nominee to be
Administrator, Office of Federal Procurement Policy
June 20, 2006**

1. In the pre-hearing questions [#38] you were asked whether work performed by federal employees should be contracted to private companies without competition, and if so, under what circumstances? You responded that in general, “considering alternative solutions from both sectors through competition would seem to be the best way to ensure agencies maximize value.” Would you please provide us with a more detailed response to that question, specifically, do you or do you not believe that work done by federal employees can be contracted out without giving the employees the opportunity to compete for the work?

Answer: I support the general principle of public-private competition and giving employees the opportunity to compete for work, as opposed to having work directly converted to private sector performance without any consideration of federal sector performance. In the case of the financial management lines of business (the context of the initial question), I believe federal shared services centers will enable federal employees to demonstrate their capabilities to perform for the taxpayer.

2. Without adequate training and resources, federal employees who form Most Efficient Organizations to compete for jobs are disadvantaged. What steps will you take to provide training and resources to federal employees who enter into public-private competitions?

Answer: If confirmed, my staff and I will work individually with agencies and their resource management offices in OMB to understand if there are any special resource needs in light of the complexity and pace of competitions planned by the agency and its demonstrated ability to conduct competitions. I understand that OFPP has been working with the Federal Acquisition Institute (FAI) on training videos and other educational materials on competitive sourcing and I intend to ensure that these efforts continue. Based on data indicating that federal employees win more than 80 percent of the work competed, it appears that federal employees are being given the resources and support they need to compete effectively for the opportunity to serve our taxpayers.

**Questions from Senator Olympia J. Snowe
or the Nomination of Paul A. Denett
to be Administrator for Federal Procurement Policy
June 20, 2006**

1. Mr. Denett, in a March 24, 2006 article in *Federal Computer Week*, former Clinton-era Administrator for Federal Procurement Policy Steven Kelman described you as his “conscience,” and suggested that you would continue his unfinished policy agenda from the 1990s if confirmed to the position of the Administrator for Federal Procurement Policy. Mr. Kelman claimed to base his endorsement of your candidacy on his personal and professional knowledge of you. Over the years, Mr. Kelman made numerous statements to the press advocating reductions in oversight of government contracts, reductions in contracting based on full and open competition, opposition to the Congressional and Presidential initiatives against contract bundling, and arguing that small business contractors are able to do business with the government mostly because they prey on procurement inefficiencies. I would like to give you the opportunity to establish that you will exercise the duties of your office with independence from outside parties and with fidelity to the President’s Small Business Agenda. Please provide:

A. A particularized description of any incidents and subjects of advice or recommendations on Federal acquisition policy or personnel matters which you have either sought or received from Mr. Kelman publicly or privately since the time you commenced the application process for this nomination until now.

I received a very, brief congratulatory phone call from Dr. Kelman when I was nominated. I have not sought any advice or recommendations on Federal acquisition policy or personnel matters from Dr. Kelman since I left the government over five years ago. I have attended a few sessions of the Partnership for Public Service/Private Sector Council's Acquisition Innovation Forum comprised of twenty-plus business and government acquisition leaders to explore ways to better administer contracts. Dr. Kelman attended those meetings and led some of the group discussions.

B. A description of your vision of a sound acquisition system, and how it is different or similar to, Mr. Kelman’s philosophy on contract bundling and small business contracting, contract oversight, competition in contracting, and other matters.

I will let Dr. Kelman speak for himself on what his position is on these issues. I strongly support an acquisition system that is results-oriented, fair, efficient, and transparent. I am also a strong supporter of small business and an advocate for increased competition in our acquisition system. We need to strengthen contract administration to ensure we get what we are paying for in a timely manner.

2. Mr. Denett, an October 15, 2004 article in the *Government Executive* magazine indicates

that, as procurement chief at the Interior Department, you were personally and substantially involved in development and oversight of the Interior Department's contracting practices which contributed to the abuse of prisoners at the Abu Ghraib prison in Iraq by a private contractor. Specifically, the article states that you were instrumental in creating the Interior Department's National Business Center (NBC) and that you oversaw the transfer of certain contracts from the Army Intelligence to the NBC as part of the Clinton-era acquisition-reform initiatives. The article also states that you were responsible for oversight of GovWorks, another procurement organization of the Interior Department which operates on a fee-for-service basis. I would like to give you the opportunity to clarify this matter for the record.

- A. In the article, you admit that there was "too much looseness" in the NBC's administration and oversight of military contractors, but contend that the problem was an isolated incident. However, reviews by the Inspector General of the Interior Department and the Government Accountability Office concluded that the problems at the NBC included systemic problems with the inherent conflicts of interest in fee-based procurement organizations. NBC and GovWorks are both currently placed on the GAO's high-risk list. What are your views on these conclusions of the GAO and the Interior Inspector General?

I continue to believe that interagency contracting and assisted acquisitions offer important benefits, including the efficient delivery of services -- a point acknowledged by the GAO itself. I appreciate, however, that we are missing opportunities for savings because of unclear lines of responsibility between customer agencies and servicing agencies, weak performance measures and sloppy contracting. If confirmed, I will ensure that our acquisition officials give greater attention to this area of acquisition so that interagency acquisitions and fee-for-service operations offering acquisition assistance achieve the full potential of their value.

- B. In report No. 06-399, the GAO found that GovWorks has also abused small business contracting laws by awarding a sole-source contract to a company which was later determined by the SBA to be large. Do you believe there are any systemic steps that should be taken to prevent these kinds of abuses in the future?

I understand that SBA is undertaking a comprehensive review of its policies related to size standards, including rules governing how frequently contractors must recertify to their size status as small businesses. If confirmed, I look forward to working with SBA and reviewing its revised policy to ensure that programs designed to facilitate opportunities for small businesses are, in fact, helping small businesses.

3. Mr. Denett, you currently serve as Vice Chairman of the Procurement Roundtable. On March 13, 2006, the Procurement Roundtable submitted to the White House Acquisition Advisory Panel in the Office of Federal Procurement Policy a policy statement which

recommends sweeping changes to performance-based contracting rules. These changes would create a new “relational” contracting model that permits Federal officials to reduce competition and permits Federal contractors to substantially take over management of government programs when the government officials are unable to adequately define their programs’ future needs and missions. If implemented, some fear that these changes would create a legal foundation for symbiotic relationships between large government programs and large government contractors with little accountability.

A. What are your views on the position of the Procurement Roundtable?

I resigned from the Procurement Roundtable several months ago. At the time of my resignation, I was serving as one of several Vice-Chairs. My primary focus was devoted to identifying and rewarding contracting officers who achieved great results through an award program. I do not recall the specifics of the position paper on performance-based contracting that was submitted to the Acquisition Advisory Panel by the Procurement Roundtable. However, I understand the Procurement Roundtable is revisiting its recommendations on performance-based contracting.

B. Reviews of contracting practices at the Interior Department by the Army and the GAO blamed the Abu Ghraib procurement scandal in part on the ability of a private contractor to write the terms of the contract. What is your view on delegation of such inherently governmental responsibilities to private contractors?

I am not familiar with the details surrounding the negotiation of this particular contract, including the specific responsibilities that were assigned to the contractor. I would strongly agree, however, that only contracting officers should be vested with the authority to make binding decisions regarding the terms of a contract.

4. Mr. Denett, the Small Business Working Group of the White House Acquisition Advisory Panel in the Office of Federal Procurement Policy issued a set of policy recommendations for Congress and the Executive Branch. What are your views on these recommendations?

I understand the Acquisition Advisory Panel has made preliminary recommendations, but has not completed its work on these issues. I believe it would be inappropriate for me to comment on the draft recommendations at this time. If confirmed as Administrator, I will carefully review the final Panel recommendations when they are submitted to OFPP.

5. Mr. Denett, if confirmed as the Administrator for Federal Procurement Policy, you would be responsible for ruling on disputes between Federal agencies and the Small Business Administration concerning small business prime contracting and subcontracting goals established under the Small Business Act. Please describe in detail the legal and policy

principles which will bind your decisions on what prime contracting goals and what subcontracting goals are appropriate, and on whether these goals should ever be commingled.

I am not familiar with the specific legal authorities that govern the Administrator's decisions on resolving such disputes. I will learn and apply them, if confirmed. However, I am committed to the overarching principle of providing maximum practicable opportunities for small businesses.

6. Mr. Denett, less than a month before your nomination was officially announced, your employer ESI International received a contract from the GSA's Federal Acquisition Institute (FAI) to provide training for the acquisition workforce. The Office of Federal Procurement Policy has substantial responsibilities for management of the FAI. Some have suggested that the award of this contract presents a conflict of interest. I would like to give you the opportunity to respond. Please describe your past and your intended future involvement with that contract.

ESI was one of three companies that received a competitive award for contract training from GSA. ESI does contract training for nearly every government agency and many private companies. If confirmed, I will recuse myself from any decision or activity on the GSA/FAI contract with ESI.

**Post-Hearing Questions Submitted by
Senator Robert F. Bennett
For the Nomination of Paul A. Denett
to be Administrator for Federal Procurement Policy
June 20, 2006**

1. Mr. Denett, Section 1423 of the Services Acquisition Reform Act created an Acquisition Advisory Panel in the Office of Federal Procurement Policy. The Panel's working groups have been working hard to prepare reports with recommendations on critical areas of acquisition policy, such as interagency contracting, small business, commercial practices, federal acquisition workforce, and performance-based services acquisitions. Please list the recommendations from each of these working groups that you believe Congress should consider as top priority for enacting.

I understand the Acquisition Advisory Panel has made preliminary recommendations on several subjects, including performance-based acquisition, small business, and interagency contracting. The Defense Authorization Act of 2006 extended the deadline for the Panel to submit its recommendations to Congress and OFPP until this summer. Therefore, I believe it would be premature for me to comment on the draft recommendations or prioritize them at this time. If confirmed as Administrator, I will carefully review the final Panel recommendations when they are submitted to Congress and OFPP.

2. Mr. Denett, as you know, increasing competition by reducing contract bundling is one of President Bush's top priorities. Speaking in March 2002, President Bush stated that contract bundling occurs whenever agencies "only let huge contracts with massive requirements, and they tend to go to the same group of large corporate bidders." However, the GAO, the Inspector General of the Small Business Administration, and the White House Acquisition Advisory Panel have all recognized that agencies are applying inconsistent, unduly technical, and varying definitions of contract bundling in order to avoid anti-bundling restrictions. For example, many agencies claim that "new work" is not subject to anti-bundling restrictions. Would you support strengthening the legislative definition of contract bundling in line with the definition articulated by the President in order to correct these problems?

I strongly support efforts to increase opportunities for small businesses and was pleased to recently read that the government is contracting with small businesses in record numbers. I think an effective bundling policy is an important component for ensuring strong small business participation. If confirmed, I will review the effectiveness of current bundling policies to determine if changes are needed and, if so, whether legislation is an appropriate option. I will also see that OFPP continues to work closely with SBA and the procuring agencies to identify the best strategies available for increasing small business access to federal procurement.

**Post-Hearing Questions Submitted by Senator Lieberman on behalf of Senator Kerry,
Ranking Member Senate Committee on Small Business and Entrepreneurship
For the Nomination of Paul A. Denett
to be Administrator for Federal Procurement Policy
June 20, 2006**

1. The President has stated his intention to end the practice of contract bundling. Since the time of his announcement, this practice has actually increased. What is your plan for reversing this trend? In your opinion, how do bundled contracts uniquely affect small business?

I would like to see small businesses compete for as many federal contracts as possible. I believe our goal should be to guard against unjustified contract bundling, which can reduce contracting opportunities for small businesses. SBA recently announced that, for the first time in history, small businesses received a record-breaking \$79.6 billion in federal prime contracts, \$10 billion more than the previous year. If confirmed, I will ensure that OFPP continues to work closely with the Small Business Administration (SBA) and the procuring agencies to build upon this success.

2. Concerns remain that the Federal Procurement Data System is still not equipped to accurately assess federal procurement statistics as they apply to small business contracting. What is your plan to ensure that data collected by the Federal Procurement Data System is accurate and appropriately reflects the federal contracting marketplace with regards to meeting the 23 percent small-business contracting goal?

The Federal Procurement Data System (FPDS) is the primary source for critical acquisition data, and as Administrator, if confirmed, I will ensure that OFPP continues to focus on the accuracy and completeness of FPDS. My understanding is that the Small Business Goaling Report recently published by SBA accurately reflects agency small business achievements as reported to FPDS. We will work closely with GSA and the agencies to ensure that FPDS is timely and accurate.

3. In 2005 the Inspector General of the Small Business Administration released a series of reports which detailed the extent to which large businesses were fraudulently receiving small business contracts. How do you plan to prevent large companies from winning small business contracts, and from being counted toward the 23 percent small-business goal?

My understanding is that SBA is developing a final regulation to address these concerns. If confirmed, I will work closely with SBA to develop and publish the regulation as soon as possible. I think it is totally unacceptable for companies to misrepresent themselves. SBA must aggressively address this fraudulent behavior.

4. Currently, contracts performed overseas are not included in the calculation to determine the percentage of small business contract dollars. Do you support the inclusion of federal contracts carried out overseas in the determination of whether or not an agency has met its goal.

Historically, we have used overseas procurement to promote development of viable economies and infrastructure in foreign countries that are important to our national interests and defense. I believe applying numerical goals to overseas procurements may restrict our ability to promote such development. However, if confirmed, I will work with the State Department to re-examine the further use of small business overseas.

5. Small businesses are all-too-often relegated to a subcontractor role. Do you have any plans to ensure the timely payment of small business subcontractors? Additionally, would you support any initiative to place more weight on a prime contractor's evaluation by, and treatment of their subcontractors? Do you have any reforms that will ensure more small businesses are considered for prime-contracts and not only subcontracts?

SBA recently announced that small businesses received a record-breaking \$79.6 billion in federal prime contracts. I am very pleased to see that small businesses are receiving more prime contracts. With regard to subcontracts, timely subcontractor payment should be part of a contractor's subcontracting plan and subject to SBA and contracting officer oversight. My understanding is that the Federal Acquisition Regulation (FAR) was amended to include small business subcontracting in the evaluation of a prime contractor's performance. If confirmed, I will work with SBA and the procuring agencies to ensure that small businesses continue to receive a growing number of prime contracts.

6. It's becoming a common practice to seek out contractors that will help an agency meet a number of goals, i.e.: small business, woman-owned, minority company. Do you support limiting the number of government-set goals one small business can be counted toward? If so, how would you limit that?

I think small businesses compete more successfully in the federal marketplace when they are allowed to qualify for several small business programs. I do not see a practical and fair way to limit the number of government goals for which a small business can qualify. If confirmed, I am willing to work with Congress and SBA to examine this issue.

7. Agencies that currently do not meet the 23 percent goal for small business contracting do not face consequences that deter this behavior. What enforcement or penalty do you envision for agencies that fail to meet the 23 percent small-business goal? How active do you envision your office will be in enforcing procurement policies with non-compliant agencies?

If confirmed, I plan to use the Chief Acquisition Officers Council and the SBA Procurement Advisory Council to strengthen support for SBA efforts to make the government-wide small business goaling process more effective. I believe agencies must be held accountable for meeting the statutory small business goals.

8. Steven Preston has recently been nominated and stands waiting for confirmation to be Administrator of the Small Business Administration. One of the great failings of Mr. Preston's predecessor was his failure to address the Administration's inability or unwillingness to meet small business contracting goals. How do you plan to work cooperatively with SBA in ensuring a fair, accessible federal marketplace for small businesses? What actions will you take to ensure that the Administration's commitment to awarding 23 percent of all federal contracts to small businesses is met?

The Administration recently announced that small businesses received a record-breaking \$79.6 billion in federal prime contracts. I believe we can build upon this success by promoting greater cooperation between agency procurement and small business offices. If confirmed, I will work closely with the Chief Acquisition Officers Council and SBA's Procurement Advisory Council to ensure greater cooperation.

9. Establishing goals for small business contracting is important but goals mean nothing without a commitment to meeting them. Please list your top five goals for improving the federal contracting marketplace for small businesses and your plan for meeting these goals.

Providing maximum opportunity for small businesses is good public policy. Throughout the years, I have been a strong supporter of small business, and if confirmed, I plan to continue that support. As a senior procurement executive at several large agencies, I successfully met or exceeded my small business goals. If confirmed, I plan to meet regularly with key SBA officials, raising the visibility of small business programs and finding more effective ways to ensure that small businesses have access to the federal marketplace.

**Post-Hearing Questions Submitted by
Senator Norm Coleman
For the Nomination of Paul A. Denett
to be Administrator for Federal Procurement Policy
June 20, 2006**

1. As you know, Congress enacted the Brooks Act, Public Law 92-582, in 1972 to require the use of qualification based procedures when acquiring the services of architects and engineers.

- a. Will you work to ensure that the Brooks Act requirements are followed at each of the federal departments and agencies?

If confirmed, I will remind agencies of their responsibilities under the Act, and I will ensure that policy issued by OFPP is consistent with the Brooks Act requirements.

- b. What do you perceive to be as the current benefits of the Brooks Act?

The Brooks Act was passed to give the government a formal process for identifying contractors that had a good record of performance. The purpose of the Brooks Act Qualification Based Selection (QBS) procedures is to ensure that the Government can streamline the negotiation process and more quickly award a contract if the price is determined to be fair and reasonable.

- c. What can be done to strengthen the implementation of the requirements of the Brooks Act?

I am unfamiliar with any specific issues related to the implementation of the Brooks Act. But, if confirmed, I would be glad to work with Congress and the agencies to ensure that Brooks Act requirements are followed.

- d. How will you deal with those agencies that seek to avoid the requirements of the Brooks Act?

Again, if confirmed, I will remind agencies of their responsibilities under the Act and ensure that policy issued by OFPP is consistent with these requirements.

**Post-Hearing Questions Submitted by
Senator Lincoln D. Chafee
For the Nomination of Paul A. Denett
to be Administrator for Federal Procurement Policy
June 20, 2006**

- 1) If confirmed as the Administrator for Federal Procurement Policy, you would be responsible for providing effective government contracting policies for all business, including small businesses.

Please name and describe in detail the top three policy initiatives related to small business contracting programs on which you intend to exercise leadership, if confirmed.

Providing maximum opportunities for small businesses to compete for government contracts is good policy, and if confirmed, I will ensure that agencies make this part of their mission goals. If confirmed, I will promote small business interests through the exercise of my statutory responsibilities, the development of acquisition workforce skills (i.e., helping agencies meet their small business goals), and my support of the Administration's acquisition priorities (i.e., reducing contract bundling).

- 2) I am advised that Dr. Steven Kelman, who previously occupied the office to which you are now nominated, gave interviews to trade press and published an endorsement in *Federal Computer Week* in support of your confirmation. In these interviews, Dr. Kelman's expressed confidence that you will "help the contracting community fight back against the current atmosphere" of increased oversight.
 - a. Do you agree with Dr. Kelman that you should help contracting officials "fight back" against the atmosphere of increased oversight once confirmed? If so, what specific steps do you plan to undertake?

While I do not know the context of the quote, I fail to see a need for contracting officials to "fight back" against appropriate contract oversight. Our country faces many challenges in the aftermath of September 11, recent hurricanes, and the war to fight terrorism. Taxpayers are paying special attention to the government's response to these events, and agencies are placing increased demands upon their acquisition personnel. I plan to focus on improving the skills of the acquisition workforce, specifically in contract administration, through increased training and development efforts. This will improve the quality of the acquisition process and reduce the need for increased oversight.

- b. Prior to your nomination, the Bush Administration undertook several initiatives to promote competition and fight cronyism in government contracting, including the creation of the Procurement Fraud Working Group, the initiative against the

award of bundled contracts, and initiatives to improve accountability in multiple-award contracting. Will you continue these initiatives?

If confirmed, I will ensure that OFPP continues to promote competition, transparency, and accountability through policies that protect the integrity of the acquisition process. I support the initiatives undertaken by the Procurement Fraud Working Group, which was established by the United States Attorney for the Eastern District of Virginia. Additionally, I will continue the Administration's emphasis on maximizing contracting opportunities for small businesses, and if confirmed, I will ensure that small business interests are protected from unjustified contract bundling. Finally, I understand that OFPP established an interagency working group to improve the management and use of interagency contracting, including various types of multiple-award contracts. That group is tasked with developing guidance to address the roles and responsibilities of interagency contract managers and their customers. If confirmed, I will see that OFPP continues these and other important initiatives that improve the acquisition process.

- 3) I am advised that in his published endorsement of your nomination in *Federal Computer Week*, Dr. Kelman called you a champion of field contracting offices and a “strong advocate” of “streamlining.”

However, some critics have noted that many of the acquisition reforms from the 1990's that have worked to streamline the acquisition process have resulted in decreased competition, exclusion of small businesses, increased cronyism, waste of taxpayer funds, loss of transparency, “Balkanization” of procurement practices among field contracting activities, and other problems ailing the Federal procurement system.

- a. What is your view of such criticisms of the 1990s policies of acquisition reform?

I believe that early acquisition reform efforts were necessary to improve the acquisition process and ensure that the government delivers value for taxpayers. I believe that the federal acquisition system is dynamic and should be continuously examined and improved to reflect current business practices and promote competition, transparency, efficiency, integrity, and small business success.

- b. You previously served as the Vice Chair of the Procurement Executives Council in the 1990s, during the time of major acquisition reforms. Please advise the Committee what specific acquisition reforms you have advanced while in that position.

The primary focus of the Procurement Executives Council (PEC) was to leverage reform initiatives to improve the efficiency of agency procurement operations. The PEC often took the lead in developing and promoting the use of best practices. As Vice Chair of the PEC, I established a strategic plan to:

- **Create an acquisition workforce of mission-focused business leaders;**
- **Optimize technology as a key business enabler;**
- **Lead collaboration to achieve desired business results;**
- **Integrate socio-economic programs in the federal procurement system; and**
- **Transform the acquisition system for better business results to include the use of performance measurement and incentive contracting.**

4) In March 2002, President Bush announced his Initiative Against Contract Bundling. The President's official Small Business Agenda states that reduction in contract bundling saves taxpayer dollars by promoting competition. However, I understand that the President's Initiative Against Contract Bundling has been criticized by former Administrator for Federal Procurement Policy Steven Kelman.

a. Please describe in detail your views on contract bundling.

I understand that this Administration has taken affirmative steps to ensure that small businesses have maximum opportunities to compete for federal contracts. I also understand that agencies have a special responsibility to justify the use of bundled contracts. If confirmed, I will ensure that small business interests are protected from unjustified contract bundling.

b. What specific actions would you undertake to ensure that efforts to obtain discounts through strategic sourcing do not result in contract bundling?

I understand that agencies include small business representatives in their strategic sourcing governance structures to ensure small business interests are represented as agency buying strategies are developed. I understand that OFPP will review agency performance each year through the annual strategic sourcing progress reports. If confirmed, I will ask agencies to baseline small business spending for each commodity or service considered for strategic sourcing and to report against that baseline each year.

c. Reports by the Government Accountability Office and the Inspector General of the Small Business Administration indicate that the progress of this Initiative is inadequate. What specific policy and personnel actions would you undertake to improve the Initiative Against Contract Bundling?

Some procuring agencies are doing a better job than others in their efforts to increase small business access to federal procurement opportunities. More agencies need to identify best practices and SBA needs to promote these practices. If confirmed, I will ensure that OFPP supports this through its active involvement with SBA's Procurement Advisory Council and its leadership of the Chief Acquisition Officers Council.

- d. Would you commit to working to place the Initiative Against Contract Bundling on the President's Management Agenda?

The Administration needs to focus on the initiatives that are currently on the President's Management Agenda. However, I understand that SBA plans to place greater emphasis and visibility on the Government-wide small business goaling process. This could effectively accomplish objectives that are similar to the contract bundling initiative, e.g., increasing access and procurement opportunities for small business. If confirmed, I will support SBA in these efforts.

- e. If confirmed, would you commit to appointing, in consultation with Congress, an Associate Administrator in your office to oversee the Initiative Against Contract Bundling?

I understand that the OFPP staff has considerable expertise in small business issues. In addition, OFPP developed the Administration's contract bundling strategy and chaired the interagency working group that developed the regulations to implement the strategy. If confirmed, I will ensure that OFPP continues to take a leadership role in implementing the Administration's strategy.

- 5) Writing in *Federal Computer Week*, the former procurement chief Steven Kelman stated that your tenure as the Administrator would be very different from the tenures of two of previous Administrators.
 - a. Please compare the differences and similarities between the Federal procurement policies of the George W. Bush and the Clinton Administrations.
 - b. Please advise what specific Clinton Administration initiatives you intend to continue pursuing, if confirmed.
 - c. Please advise what specific George W. Bush Administration initiatives you intend to continue pursuing, if confirmed.

The acquisition improvement efforts of various administrations have institutionalized the need to examine continuously the acquisition system to ensure that it promotes good business practices. For example, the Bush Administration's Small Business Agenda promotes increased small business access to procurement opportunities by creating an environment where small businesses can flourish. If confirmed, I plan to continue to focus on increasing small business opportunities. Additionally, I will pursue OFPP initiatives in competitive sourcing, strategic sourcing, emergency contracting, interagency contracting, and acquisition workforce development.

- 6) On May 15, 2002, the *Government Executive Magazine* described former procurement chief Steven Kelman's view on small business participation in government contracting as follows:

Some small businesses are having trouble getting a foot in the government door because the federal procurement process has improved, Kelman said. "The problem is that too many small businesses selling to the federal government basically developed a market niche by exploiting the dysfunctional procurement process," according to Kelman. The faster and less burdensome the process became, the more problems cropped up for small businesses, he said.

- a. Do you agree with Dr. Kelman's position that many small businesses can succeed in the Federal marketplace primarily by exploiting the dysfunctional procurement process?
- b. Do you agree with Dr. Kelman's position that better procurement process will naturally create obstacles for small business?

I do not wish to speak for Dr. Kelman on these issues. However, I understand that the federal government is contracting with small businesses in record numbers, and I strongly support these and additional efforts to increase opportunities. SBA recently released figures that indicate that, for the first time in history, small businesses received a record-breaking \$79.6 billion in federal prime contracts, \$10 billion more than the year before. Improving the federal acquisition system improves the process for all contractors, regardless of size. It was my responsibility as a senior procurement executive and will be my responsibility as Administrator, if confirmed, to ensure that agencies remain strong stewards of public funds while maximizing small business opportunities.