

UNITED STATES DEPARTMENT OF EDUCATION

RACE TO THE TOP ASSESSMENT PROGRAM

PUBLIC & EXPERT INPUT MEETINGS

PROCUREMENT

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1 P R O C E E D I N G S

2 (9:03 a.m.)

3 MS. WEISS: Thanks. Good morning. I'm
4 Joanne Weiss. I'm the director of the Race to the
5 Top Fund at the Department of Education, and I
6 want to thank all of you for joining us this
7 morning.

8 Let me start by a quick show of hands of
9 how many people were not here yesterday. All
10 right. I will do -- thank you for the panel, a
11 show of hands here.

12 I will do a sort of quick run through
13 then. And I apologize to the people who were here
14 yesterday and may even have been here on several
15 other days with us and now probably could come up
16 here and give my initial framing presentation for
17 the audience. But I won't make you do that.

18 So let me start by just giving a quick
19 overview of what we're trying to accomplish with
20 this and then talk a little bit more about the
21 questions that we've asked our experts to engage
22 with us in today.

1 So as I think many of you know there's a
2 \$4 billion competition that's called the Race to
3 the Top State Competition that's a competitive
4 grant designed to encourage and reward states that
5 are implementing comprehensive statewide reform
6 across four areas. There is a separate Race to
7 the Top Assessment Competition that's for up to
8 about \$350 million to support consortia of states
9 in implementing common standards by developing --
10 by the Department funding the development of a new
11 generation of common assessments. And it's that
12 second competition that we're here to talk about
13 today.

14 The timeline for the second competition
15 is that we hope to have the notice out by March of
16 this year and proposals will be due in June. And
17 funds for this competition, as with all of the
18 Recovery Act funds, have to be disbursed by the
19 end of September of 2010.

20 So that's sort of the high level timing
21 of what we're trying to accomplish. The goals for
22 this particular program are really sort of

1 threefold. And it's the first bullet up here.
2 We're asking states to think about what it would
3 take to deliver a more effective system of
4 instructionally useful assessments. And to us
5 that means assessments that more accurately tell
6 us what students know and can do across a number
7 of different dimensions that reflects and supports
8 good instructional practice in classrooms and that
9 from the very beginning includes the needs of all
10 students, including English language learners and
11 students with disabilities, to make sure that
12 we're reaching the broadest possible group of
13 students with these assessments.

14 The purpose of the assessments is going
15 to be part instructional improvement, part
16 professional improvement, and part accountability.
17 And we've listed a number of the different
18 requirements down here. The sort of uncomfortable
19 thing about the timing for this program is that we
20 are straddling two different accountability
21 systems. We're currently operating under the No
22 Child Left Behind Act. And you'll see in a minute

1 that we are going to remain compliant with that.
2 We know, though, that during the course of this
3 grant -- the grant is approximately a three-year
4 development grant -- that during the course of the
5 grant we'll be transitioning to a new,
6 reauthorized Elementary and Secondary Education
7 Act. We don't know what the accountability
8 framework of that will look like so we're in this
9 position where we need to make sure that whatever
10 we design can sort of bear the weight of
11 accountability on its shoulders to some degree.
12 And we're trying to sort of flush out in our
13 notice exactly what level of heft that will need
14 to carry. But we're admittedly running a little
15 bit out ahead of the pack on this one.

16 Warning. The clicker has maybe got low
17 batteries today. There we go.

18 So the other requirements -- and these
19 again are -- start out with things that we need to
20 do to be compliant with the current law. We need
21 to cover at a minimum reading, language arts, and
22 mathematics in these assessments. And at a

1 minimum they need to test annually from grades 3
2 through 8 and at least once in high school.

3 We are funding primarily summative
4 assessments, although it has been one of the
5 topics of discussion whether the funding will also
6 be usable for formative assessments. So that's
7 still to be determined. But for sure the funding
8 needs to cover summative assessments, but we are
9 thinking of potentially a completely new type of
10 summative assessment that is not just given once
11 at the end of the year in a multiple choice
12 format. So it might not be given at the end of
13 the year. It might not only be given once during
14 the year. It might not even be one test. It
15 might be a suite of assessments with different
16 designs to accomplish different purposes and meet
17 some of our different goals.

18 We are thinking that these assessments
19 would replace rather than add to the assessments
20 that are currently in use and, of course, there's
21 a number of requirements around the psychometrics
22 for the tests.

1 The goals for these meetings are really
2 threefold. The issue that we faced when we
3 started writing this notice is that the typical
4 process that the Department uses to develop a
5 notice like this is that we would sit in our
6 offices and put together the best notice that we
7 possibly could. We would then put it out for
8 public comment for 30 days, get written input from
9 the public, and then revise the notice. In the
10 process of thinking that through, we realized that
11 because this is such a highly technical
12 competition, and because there are so many issues
13 here around our vision of what assessment looks
14 like today as a country and the directions that we
15 are thinking of moving in terms of the assessment
16 system, that it would behoove us instead of
17 sitting in our offices and doing this, to get
18 public and extensive input from experts at the
19 front end of the process to enable us to write a
20 better notice than we would have otherwise been
21 able to do.

22 Because of timing constraints, we've

1 chosen to do that in lieu of public comments, so
2 we are getting and have over the past few months
3 been getting a bunch of input from experts all
4 over the country. I think when all is said and
5 done we'll have heard from about 40 different
6 experts and we'll have received public comment
7 from -- I want to say about 80 different members
8 of the public. So we've gotten pretty extensive
9 comment publicly in these meetings. In addition,
10 we've got the opportunity for people to submit
11 written input and all the input that people submit
12 is posted on our website, as are the transcripts
13 from all of these meetings and all of the
14 PowerPoints from these meetings.

15 So the goals that we have in general
16 then are to help paint a vision of what the next
17 generation of assessments look like and to provide
18 concrete expert input, both to the Department as
19 we write the notice and to the states who are our
20 guests here at these meetings as they think about
21 what it will take to put together a good
22 application for these grants.

1 The agenda looks like this. From about
2 9:15 to about 10:35 we'll have expert
3 presentations from the folks who are up here with
4 us today, who will introduce themselves to you in
5 a moment. We're actually going to have a slightly
6 longer break for the first break. A roundtable
7 discussion will probably go from about 10:45 till
8 about noon. Then we'll have a quick break before
9 the public speakers. I think we only have one
10 public speaker so we'll still end on time or a
11 little bit early at 12:30 today.

12 So that's what the agenda looks like. I
13 know that when you registered, many of you -- all
14 of you hopefully got index cards. Feel free to
15 jot your questions on index cards if you have them
16 and bring them out to the registration table or
17 give them to any of the Department staff and
18 they'll get them up here to us. And we will try
19 to feed them into the conversations and the
20 roundtable discussion. We'll be doing timekeeping
21 up here, so if you see lights flashing and people
22 talking about how much time they have left, it's

1 because we're all keeping an eye on our clock.

2 We do ask that you please put all of
3 your cell phones on vibrate. And as I said, all
4 the transcriptions for these sessions together
5 with the PowerPoints and any additional written
6 input can be submitted to us and will be posted on
7 our website within a few days.

8 So with that let me start by really
9 thanking the states who are here attending today.
10 We know that you came a long way and at a time
11 that is very, very busy for you. And we really
12 appreciate your continuing interest and attention
13 to the work that's going on here. We hope that
14 it's benefiting all of you.

15 And let me also thank the panelists for
16 joining us today. And let's just start by quickly
17 going around the table and asking each of you to
18 introduce yourselves.

19 MR. RICHINS: Do you want me to start?

20 MS. WEISS: Sure.

21 MR. RICHINS: Hi. I'm Doug Richins of
22 formerly the State Purchasing Director in Utah,

1 and currently providing consulting services to the
2 Western States Contracting Alliance, WSCA, which
3 is a group of -- Western States is really a subset
4 of the National Association of State Purchasing
5 Officials that focuses in on cooperative
6 contracting.

7 MR. BERGER: I'm Larry Berger. I'm the
8 CEO of an education company called Wireless
9 Generation.

10 MR. BURMAN: Good morning. I'm Al
11 Burman. I'm president of Jefferson Solutions in
12 Washington, and I'm a former procurement
13 administrator for the federal government.

14 MR. COLLEY: My name is Mark Colley.
15 I'm a partner at the law firm of Arnold and Porter
16 and I'm practicing procurement law. And I think
17 I'm here mainly because I was the legal counsel
18 for the Algebra II End of Course Multistate Exam,
19 which I think there were a few of the states that
20 are here today that were participants in. So I've
21 actually been through this drill before.

22 MS. WEISS: And I'm Joanne Weiss from

1 the Department of Education.

2 MR. MAESTRI: Good morning. My name is
3 Phil Maestry. I'm the director of the Risk
4 Management Services and the Office of the
5 Secretary here at the Department.

6 MS. WURTZEL: I'm Judy Wurtzel. I'm the
7 deputy assistant secretary for Planning,
8 Evaluation, and Policy Development.

9 MS. WHALEN: Ann Whalen with the
10 Department of Education.

11 MS. WEISS: All right. With that -- so
12 let me turn to the specific topic that we have
13 teed up for today. We have a number of
14 procurement questions that we wanted to understand
15 really from three different points of view. We
16 wanted to understand from the Department's point
17 of view what we should and should not include in
18 our notice in order to make sure that we were
19 providing both the right kind of guidance and the
20 right kind of flexibility to states as states were
21 putting together their applications. We wanted to
22 give states guidance in how to think about the

1 procurement tasks that may be involved here. And
2 we wanted to also have a conversation, as you'll
3 see teed up by one of the questions here, about
4 the problem that we face with this. In fact, this
5 entire session was prompted by a question we got
6 from Larry Berger in a public comment setting
7 where he said that we're in a little bit of a
8 Catch-22 here. Some of the vendors who might have
9 good ideas for states about what they should be
10 doing in their applications can't actually talk to
11 states during the proposal phase because then they
12 would be conflicted out of bidding for those
13 proposals at the backend. And how do we make sure
14 that we have a good marketplace of ideas given
15 some of these procurement conditions?

16 So that's one of the questions that we
17 have that I think is Question No. 2 here.
18 Question No. 1 is really the first question we
19 talked about just making sure that we understand
20 -- because this is a multistate procurement
21 potentially -- what this looks like, what the
22 different state procurement rules might be that

1 might affect how you would design and manage a
2 consortium.

3 And the third question that we have
4 asked people to address is how we should make sure
5 we structure the notice to enable the right kind
6 of competitive process to be used by states in
7 order to do the best possible procurement for any
8 contracts that they need to let under this grant.

9 So those are the three high-level
10 questions that each of our experts has been asked
11 to tee up. And with that I think I am going to
12 turn it over -- turn over the clicker to Doug.

13 MR. RICHINS: Thank you very much. Can
14 everyone hear me okay? Okay. Great.

15 Well, I appreciate the opportunity of
16 being here today and being able to hopefully
17 provide some information that might be helpful to
18 you.

19 I'd first like to compliment the
20 Department on structuring this in such a way that
21 it encourages multistate consortia. I was -- I
22 served as Utah's purchasing director for 23 years.

1 And really the aspect of states joining together
2 in multistate procurements has been something
3 that's really accelerated in the last few years.
4 Probably 20 years ago it was unheard of for states
5 to cooperate in that particular fashion. But --
6 and so this is a much different discussion today
7 than it would have been even five years ago
8 relative to states' knowledge of how to do
9 multistate cooperative purchasing.

10 The bottom part of this slide simply
11 describes what I describe are the advantages to
12 cooperative contracting. One is providing
13 additional leverage into the marketplace.
14 Importantly is the second item as well, and that's
15 really the reduction of administrative cost. This
16 is probably even more important today than it was
17 a year ago. As I worked with various states,
18 their procurement staffs are really being even
19 more downsized today than they were a year ago
20 because of budget cuts and such in state
21 governments. And so this effort would be helpful
22 to states. And rapid deployment is something --

1 the establishment and putting together of a
2 consortium initially is going to take some time.
3 However, after that -- after the contracts are in
4 place, then the expenditure of dollars can be much
5 more rapid because of consortium.

6 It's important from a procurement sense,
7 relative to Question No. 1, there are differences
8 in state laws and so it's very important to have
9 procurement professionals have a seat at the table
10 early on in the establishment. That's critical
11 because they're going to know the ins and outs of
12 their individual state procurement laws. Relative
13 to consortium, there's really, in my view, three
14 different types of multistate purchasing
15 consortium. One is what's commonly known as a
16 piggyback where a particular state or an entity
17 puts a contract in place and then other states,
18 after the contract is in place, simply piggyback
19 onto that contract or purchase on that contract.

20 A second aspect is, and which we believe
21 -- which I believe is the most important, which
22 would be important for this that I'm going to

1 recommend is that you establish what is called a
2 pure cooperative where the partners and the
3 members have input upfront in the development of
4 the solicitation. They join up front; they
5 participate potentially through a sourcing team in
6 the evaluation; and then they're involved in the
7 contract administration. Now, clearly everybody
8 can't necessarily participate in different -- in
9 the same aspect, but in a pure cooperative fashion
10 people are involved up front.

11 And that's important because when you
12 talk about the third type of a cooperative, which
13 is called -- maybe it might be called a third
14 party aggregator where you have some entities that
15 will find a state or find a political entity who
16 puts a contract and then they go out and in
17 essence market that contract. The challenge with
18 that -- and this is the reason that you need to
19 have that legal or the procurement expertise up
20 front -- is that depending on the state laws some
21 states can participate in any of those three
22 different types of cooperatives. Some can

1 participate in -- only in a pure cooperative. And
2 so it's critical that the parties know up front
3 and the states know and those that are developing
4 the consortium understand what their state laws
5 are relative to procurement.

6 Many states have adopted the Model
7 Procurement Code, which is -- originally was
8 suggested by the American Bar Association.
9 There's an important aspect of the Model
10 Procurement Code that provides for cooperative
11 purchasing among the states. We found this as we
12 worked with multiple states. Those states that
13 had developed and adopted part of the Model
14 Procurement Code with that particular aspect were
15 those states that were most likely and able to
16 readily participate in cooperative purchasing.
17 However, over the last number of years almost all
18 states have developed some aspect in their
19 procurement codes that provide for cooperative
20 purchasing. To my knowledge, today there is one
21 state -- and that's the state of Alabama -- that
22 does not permit cooperative purchasing with multi

1 states. There's been some legislation that was
2 proposed I understand in the past that's changed
3 that and that may change in the future.

4 Let me go to the next slide. I think
5 it's important relative to the composition of the
6 consortium that, again, depending on the
7 procurement laws of the state there will probably
8 need to be a Memorandum of Understanding that's
9 going to be generated among those states that's
10 going to articulate exactly how that consortium
11 rolls out and operates. Such things would be
12 articulated in that Memorandum of Understanding
13 exactly who would be the lead entity. And you'll
14 notice that I've designated that. It's been our
15 experience in public procurement that the most
16 successful consortiums identify a lead entity,
17 generally a state, that is going to lead the
18 procurement. Now, that doesn't mean that they're
19 going to do it themselves, but a team is going to
20 be put together. But the lead state is going to
21 be conducting the procurement wholly in compliance
22 with that lead state's procurement laws.

1 And so up front in that consortium it's
2 incumbent upon all of the states that are going to
3 be participating to have knowledge of what that
4 lead state's procurement laws are and to know that
5 as their state participates with that particular
6 state that it will be a valid procurement and will
7 be recognized in their own individual state as
8 well.

9 One of the aspects that will be
10 important in identifying a lead state in my
11 opinion is has this state done something like this
12 before. Do they have an experience in multistate
13 procurement? Or are they going to be learning
14 this as they go along? Clearly if they've had
15 some experience with this before that's going to
16 speak well. And you might think that state
17 haven't, but they have. They have. And, in fact,
18 some of the consortium that we've worked with with
19 the Western States Contracting Alliance --
20 currently in some of the contracts -- and that
21 alliance generally deals with commodity areas, for
22 example, computers, wireless, phone systems,

1 equipment, that type of thing -- but there are --
2 in some of those contracts there are up to 45
3 states that are utilizing those contracts. And so
4 all of those states must have some permissive
5 language in their statutes to permit and allow
6 them to utilize multistate contracts.

7 It's important, I think though, that as
8 the procurement official analyzes and participates
9 in this consortium that they understand that the
10 lead state is going to be fully compliant with any
11 federal requirements that are going to be coming
12 through relative to the grant that they have
13 experience in coming into compliance with those
14 because that's going to be obviously dependent on
15 the flow of the grant money to the individual
16 states as well.

17 The other thing that's important as a
18 lead state is determined is the flexibility of
19 their procurement rules. Not all states have the
20 same degree of flexibility. A system that you're
21 contemplating, in my opinion the ultimate
22 procurement process is going to be best served by

1 a best value procurement process which is
2 typically, depending on the state, is generally
3 called a Request for Proposal Process where
4 considerations in addition to cost are going to be
5 able to be taken into consideration in the
6 evaluation process. Not all states have the
7 ability to use a Request for Proposal Process.
8 And so that would be a key determination -- one of
9 the keys to determination as to which state would
10 be selected as the lead state.

11 It's been our experience as well that
12 after a memorandum of agreement is executed that
13 there's time spent in soliciting and states would
14 indicate their intent to participate in that
15 consortium by signaling -- that the states that
16 would be identified in the consortium would be
17 listed in the solicitation. Some states, however,
18 have procurement laws that are permissive enough
19 that they can join a consortium after. But it's
20 important -- depending on the procurement laws in
21 those states that they may need to put a legal
22 notice in to notify potential suppliers up front

1 that they may be joining that consortium after the
2 fact.

3 I certainly recommend that a sourcing
4 team be developed and that that sourcing team be
5 representative of both subject matter experts and
6 procurement matter experts in the various states.
7 And the sourcing team doesn't necessarily need to
8 be composed to have someone from every state on
9 it. We don't do that in our particular
10 procurements, but knowledge and -- for example,
11 draft RFPs are shared with those other states so
12 that input can be shared in that particular
13 fashion.

14 Again, the bottom of this slide
15 articulates in my view that sourcing team and the
16 composition of that team. It's important that
17 they're really involved cradle to grave. Both
18 from the inception in helping write the RFP
19 through the evaluation of the RFP and then assist
20 the lead state in the administration of the
21 contract as it goes forward as well.

22 Relative to the question about the

1 involvement of potential assessment vendors, I
2 think that the best way to do that is through a
3 Request for Information process, which is a
4 legitimate process that states go out and solicit
5 information, ask for input, and that provides an
6 open opportunity for everyone to participate.
7 Clearly there could be opportunities for public
8 meetings, for industry meetings, prior to the
9 proposal drafting for the same purpose -- to gain
10 that information. Again, you just want to do that
11 in a very open fashion so that you're soliciting
12 and receiving input from all potential suppliers
13 and no one in essence has preference or is locked
14 out in any particular aspect.

15 As well as after the proposal is
16 released, it's my suggestion that a pre-conference
17 be held so that the suppliers can come, have an
18 overview of the project, can also ask any
19 questions, both in written in and in verbal form
20 to make sure that they have a full understanding
21 of the project and the ramifications.

22 Relative to the third question which

1 deals with the differences between a sole source
2 procurement and a competitive procurement,
3 obviously perhaps as a procurement professional
4 I'm always going to argue for a competitive
5 process. And the advantages of the competitive
6 process I guess to me are transparent, but let me
7 just articulate that. It provides a fair
8 advantage to everyone and ensures that suppliers
9 are treated fairly and equitably. It invites
10 innovation. A competitive process invites
11 innovation. It invites people to put great mind
12 power and innovation in proposals that they're
13 going to be submitting. It also provides
14 efficiencies, and the competitive process does
15 that. It provides economies of scale and
16 efficiencies.

17 The last thing I would like to just say
18 because my time is almost running out, but I think
19 it's important within this aspect that the state
20 or the consortium direct -- adopt a flexible
21 procurement process, one that is going to assist
22 them in really looking at the end from the

1 beginning. A process that's going to allow them
2 to do a best value procurement so that they can
3 take into consideration all aspects of the
4 procurement. And one that also may include the
5 ability to solicit best and final offers as they
6 go through because the sourcing team would need
7 that kind of flexibility as they review proposals
8 and make those determinations.

9 And it also needs to be flexible enough
10 -- and this will also depend on the selection of
11 the lead state -- that their contract management
12 system is flexible enough to accommodate change
13 management as the contract is implemented and it
14 rolls forward. One of the things that typically
15 can happen if the consortium allows is that
16 different additional states could potentially join
17 the consortium after the implementation of the
18 contract. And that would result in some change
19 management that could happen within the contract.
20 It could open the contract up for a reduction of
21 costs potentially because of the expansion of
22 additional members and such as well.

1 And so I think that's about -- I think
2 my time is just about done so we'll next move to
3 any questions I guess. Is that how you'd like to
4 do that, Joanne?

5 MS. WEISS: Yes.

6 MR. RICHINS: Yes.

7 MS. WEISS: So do we have any questions
8 for Doug?

9 MR. MAESTRI: I'll start. I do have a
10 question. You mentioned -- I think one of the
11 things that we see as a very difficult issue is
12 how would the states from the consortium
13 standpoint gather information about what kind of
14 potential innovations are out there? And it's the
15 chicken and egg conversation we had before in
16 terms of the vendors aren't going to be able to
17 come and have discussions until there is a
18 procurement process in place -- so for the state
19 to be able to craft an appropriate RFP and know
20 even where to go to look at innovations. And you
21 mentioned the request for information process and
22 I think sometimes we've called it market research.

1 MR. RICHINS: It's a structured market
2 research.

3 MR. MAESTRI: Structured market
4 research. Okay. So from your standpoint,
5 generally across the states out there, is that
6 something that most of them have the flexibility
7 to do or are we going to find that some are going
8 to get in trouble if they go that way, first? And
9 second, do you think that it would be helpful to
10 structure that from a central location rather than
11 by consortium?

12 MR. RICHINS: It actually could happen
13 in a central location where you're bringing people
14 together in that particular fashion. Most -- most
15 -- my sense is that the composition of these
16 sourcing teams are probably going to have some
17 expertise that are very familiar with what is
18 potentially happening in the environment. So the
19 consortium teams are going to not necessarily
20 start from ground zero on that particular aspect.

21 But I also think that the request for
22 information process, which almost -- most of the

1 states can use a process that's similar to that --
2 I think that that type of process would elicit and
3 would bring comments to the front that would
4 assist in at least structuring the openness of the
5 proposal. I think that what you'd want to do is
6 make sure that the proposal is structured open --
7 in an open -- in a fashion that it's going to
8 solicit responses and not necessarily prescribe
9 particular responses.

10 MS. WURTZEL: I'd like to just ask a
11 follow-up clarifying question. The timeline that
12 this process is on is that the federal government
13 will be releasing a notice sometime in March
14 laying out the parameters of this competition and
15 then states will have from March to June to put
16 together their proposals in this consortia format.
17 And so I just want to pref and sort of talk to you
18 about what the options are during that March to
19 June timeline before awards are made to consortia
20 states before sourcing teams might formally have
21 been put into place because the projects will not
22 have formally launched yet.

1 MR. RICHINS: Right.

2 MS. WURTZEL: What are the options
3 during that period that might be different than
4 the options after awards are made and consortia
5 are in place and they have put in place sourcing
6 teams?

7 MR. RICHINS: I guess I anticipated that
8 potentially as part of the grant application
9 process they would actually identify the potential
10 members of the sourcing team so that the
11 Department would be able to analyze some of the
12 expertise that these states would be able to bring
13 to bear because I think that would be helpful to
14 the Department to really see if the -- and be able
15 to potentially measure or forecast the success of
16 those consortiums. So I would recommend that you
17 actually want to see who those sourcing teams
18 might be or at least who they anticipate -- the
19 different type of disciplines they anticipate
20 putting on those sourcing teams.

21 MR. MAESTRI: One of the things that you
22 had mentioned a couple of times was sort of the

1 experience level of purchasing through a
2 consortium. In your observations of the bulk of
3 the -- you described a couple of different
4 consolidated or cooperative purchasing
5 requirements -- activities going on. Were those
6 activities primarily driven from the standpoint of
7 the procurement process trying to look for reduced
8 rates and that type of thing as opposed to in this
9 particular case the cooperative procurement is
10 being driven from the other end, from the program
11 need or the grant award? Is one of those more
12 frequent or more common than the other do you
13 think?

14 MR. RICHINS: Yeah. I think most states
15 will have more experience with the latter in
16 coming together for the purpose of consolidating
17 requirements and being able to leverage the market
18 on a known commodity. But I don't think that
19 precludes the aspect about joining together and
20 collectively soliciting some of the -- I think the
21 challenges are going to be -- with that is anytime
22 you're looking at innovations you're looking at

1 more of the subjective area. You're going to have
2 a wide difference of opinion potentially among the
3 sourcing team, but it's no different than any
4 other procurement process.

5 MS. WEISS: Thanks. I'm going to move
6 us along, so if you would pass the remote down to
7 Mark, I think he's up next.

8 MR. COLLEY: Thank you. Out of a matter
9 of curiosity can I see by a show of hands how many
10 people here are from state procurement offices?
11 That's kind of what I expected. Thank you.

12 I have to tell you I'm impressed though
13 with the Department of Education's recognition
14 that they do have to think about the procurement
15 side of this. As I said, from the Algebra II
16 experience the one thing that I learned was that
17 the most difficult aspects of these assessment
18 cooperative procurement notions is the politics of
19 education in the states, which I had no idea what
20 a third rail that is when I got started in it --
21 how politicized Algebra II could become. It was
22 amazing.

1 But the problem was that in that
2 procurement the states did the difficult heavy
3 lifting of figuring out what the assessment
4 statements should be, what the core criteria of
5 the curriculum should be, what the testing
6 parameters should be, what the agendas would be
7 for the psychometricians to consider. And then
8 they got all that figured out and said, okay,
9 let's go buy it. And they called me.

10 That process of figuring out how to make
11 a purchase across multiple states was not as easy
12 as they thought. And so the one message that I've
13 got here is to be thinking about this early. Doug
14 and I are going to overlap a little bit and I
15 apologize for that. We didn't sort of cooperate
16 this in advance, but I'll blow past the stuff that
17 he said more quickly.

18 The states do need to have the authority
19 to act via consortium. Most of them will. But
20 how they do that is not a common baseline or a
21 universal baseline. There may be some aspects of
22 this that requires some waivers or special

1 approvals. And in fact, from my perspective, the
2 whole concept of a consortium is going to have a
3 lot more impact on the conduct and design of how
4 they might select a vendor or a contractor to do
5 the assessment development and assessment
6 administration planning and things than on
7 managing the design of -- the management and the
8 design of the consortium itself. So there's a
9 little disconnect in my view in terms of the
10 question of what's going to be the most
11 considerable driver of the state procurement
12 rules. So issues like the test design, the
13 selection of the vendor, the procurement
14 requirements of individual states and their
15 particular testing requirements or preferences.

16 One thing we had to deal with in the
17 Algebra II experience was even though you had all
18 the states agreeing on most things, there might be
19 a law or a regulation of this state or that state
20 that was a little off kilter, and it was a
21 mandatory requirement from the lead state
22 procurement system that was adopted. We did

1 follow the lead state model. The WSCA arrangement
2 was really the paradigm for us in terms of
3 figuring out how to go forward with this. But
4 because we had -- because we weren't buying
5 generic products and were in this sort of policy
6 development role through the acquisition, we had
7 to deal with individual issues of -- an
8 accommodation issue of a particular state or a
9 particular procurement requirement of a given
10 state. We had to put the notice out a little bit
11 earlier to be sure that one state's timeline for
12 the procurement having been announced before the
13 selection takes place was, you know, fit their
14 requirement. We had a series of addenda that were
15 added to the RFP for particular states. So the
16 contract that would be issued to the vendor not
17 only had the baseline contract, but the contractor
18 had to meet, for sales to that particular state,
19 these little components.

20 Now, that may not be the same issue here
21 because they're not going to be selling the test
22 to each individual state. There's going to be a

1 consortium of development activity. But you've
2 got to worry about individual requirements and how
3 you accommodate those in the broad cooperative
4 purchase.

5 As I said, most of these issues relate
6 to the surrender of autonomy and control. And
7 that's something that states in their procurement
8 world tend not to give up readily. There are
9 going to be issues about giving technical
10 direction to vendors, changes in modifications.
11 As Doug mentioned, the change management issue.
12 But the reason that this is important is giving
13 early consideration to the relationship and
14 governance issues is going to be critical to the
15 success of this program, particularly given the
16 timelines that you're talking about. Rather than
17 for generic supplies, they're making programmatic
18 decisions, so they've got to overcome the issues
19 about how they're going to manage themselves and
20 make decisions among themselves on some -- what
21 could be some very politically dicey and
22 contentious issues among them.

1 So one of the recommendations that I'd
2 have for your grant application process is make
3 that an element when you're selecting the
4 consortium for the funds. How well have they
5 matured themselves in terms of figuring out how
6 they're going to run the system? Have they
7 assessed the state procurement rules of the
8 different members of the consortia and
9 accommodated their difference? Have they
10 developed to a management construct for deciding
11 how to administer these things? How to make
12 decisions among themselves? What things are going
13 to require a majority vote? What things are going
14 to require a unanimous vote?

15 Doug mentioned the idea of having a pure
16 cooperative, but still having representative
17 members of states. And that may be practical on a
18 technology purchase. I have my doubts whether
19 it's going to work on something, as I said, so
20 politically charged as educational assessment
21 testing that some state is going to just sit back
22 and say I'll let these other states decide how the

1 assessment testing of my kids in my state is going
2 to be conducted. I think every state is going to
3 want a seat at the table for all the big
4 decisions. How do you run that show is going to
5 be -- can be done if there is a spirit of
6 cooperation and if there is a system set up and in
7 place to do that. But it's something to be looked
8 at if the states come for the purposes of this
9 grant and haven't thought through some of those
10 things or don't indicate an awareness or a
11 recognition and having done something about it,
12 that cooperative purchase is not going to go
13 forward with much success, I don't think.

14 Facilitating state access to vendor
15 information and ideas. I really think there may
16 be more paranoia about this than is warranted.
17 The procurement world has advanced, I think,
18 greatly in terms of the need to have interchanges
19 with vendors. The federal procurement regulations
20 were amended a while ago to open up more lines of
21 communications in the same way that you have in
22 commercial purchasing. And so there is a very

1 robust interchange typically with vendors these
2 days. In fact, I think every one of these test
3 vendors has probably not got a marketing
4 department that knocks on your doors regularly to
5 show you their latest and greatest ideas to be
6 sure that your next RFP for an assessment test is
7 flexible enough to let them bid on it. It happens
8 in defense contracting; it happens in every range
9 of technological contracting to the government.
10 All these companies have marketing departments.
11 And the way they market things is to go to the
12 states, go to the federal agencies and talk about
13 what it is that they can do.

14 The issue that really involves the
15 communication with the vendors can be given some
16 fleshed out notions from the organizational
17 conflict of interest rules that we see at the
18 federal levels and at the state levels. And the
19 key to the issue is openness and transparency.
20 Provided everybody is getting a chance to come in
21 and talk about things, and provided the
22 information is being the opportunity to put this

1 information in front of the states, there's not
2 much of an issue. You can do that in very
3 structured ways and it happens a lot in informal
4 ways. The problem becomes when you start to get
5 to the point of actually structuring proposals,
6 evaluating proposals, and writing the
7 specifications. The states have to maintain
8 control of that. If they have an advisory
9 contractor doing that work, that advisory
10 contractor that's actually putting the
11 specifications for the solicitation together can't
12 then come around and bid on it. That same
13 contractor and its personnel can't turn around and
14 also evaluate the proposals that are coming in.

15 So there's some line drawing, some
16 firewalls and mitigation that needs to take place.
17 But as long as those things are something that the
18 government is aware of, that the government has
19 taken some -- had some involvement and oversight
20 in mitigating -- as long as these issues are
21 identified early, the exchange of ideas and
22 information I don't think needs to be hampered too

1 much. And there in terms of your structure, in
2 terms of the solicitation, if you distinguish
3 between these technical advice contractors and the
4 test development contractors, that's one step.
5 You may have consultants who come in to assist the
6 states, education analysts. I don't know, people
7 that are specialists in their particular field,
8 even procurement advisor folks who would come in
9 and help the states work through this consortia,
10 manage the consortia, help them in their test
11 evaluation and solicitation planning. Provided
12 that they're not the same companies that are also
13 going to come in and sell the test development
14 process and get the contract for that work, I
15 think you're probably okay.

16 But that said, you should expect the
17 vendors to have a little bit of reluctance to
18 share the proprietary details. At some point
19 you're going to get to the crown jewels of that
20 company's competitive edge and they're not going
21 to want to bring that forward until they have a
22 contract. And that's just going to be something

1 you're going to have to live with. You can get a
2 lot of information and a lot of innovative ideas
3 and deal with them short of getting into their
4 proprietary knowledge and understanding.

5 In terms of the competition, assume that
6 it's going to be competitive. Most of the states
7 require it as a matter of law. So they're going
8 to have their state practices. Doug mentioned the
9 ABA Model Procurement Code, which I would
10 recommend to you as a basis for -- you know, it's
11 a template that you could look to to sort of
12 assess whether the state processes that they've
13 proposed to follow under the consortia is
14 appropriate or not. But I would say that this
15 should be something that shouldn't worry the
16 Department very much for very long. If they've --
17 the particular methodology or procedure that a
18 state is going to use to then go out and
19 competitively acquire services of a vendor -- if
20 all the states have agreed upon it, that's a
21 pretty good check for you -- that they will have
22 adopted some methodology that is going to be open

1 and fair and transparent and that all the states
2 find acceptable and meets their legal test.

3 But I think in your application process
4 you ought to think about asking for a description
5 of the procurement process the consortiums agreed
6 to follow and make that part of the selection
7 criteria which will force the states in the
8 consortia to resolve their differences in the
9 procurement systems in advance.

10 Again, the timing issue here. If you've
11 got the early involvement by the procurement and
12 legal authorities of each state involved in this
13 planning process, that's going to be really
14 essential. We found, for instance, in the Algebra
15 II experience, one of the problems was that the
16 education group would be gung ho to go forward
17 with this and then they turned to a procurement
18 official in the administrative office of the state
19 or to some attorney general's lawyer and they
20 would have no idea what you were trying to do.
21 And it was talking about giving up autonomy. It
22 was doing things that was out of the box. And we

1 had long negotiations and it took a lot of time to
2 sort of work through these issues. You could get
3 approval, but if you do that sort of effort in
4 advance, the likelihood that you can meet these
5 timelines that you've established is going to be
6 far more likely to be successful.

7 In terms of being -- accommodating the
8 challenges that the states might encounter, this
9 is the tension that you've got here in terms of
10 how you -- how much direction the grant giver --
11 the department -- is going to give versus how much
12 flexibility and autonomy the states are going to
13 have and the consortias (sic) are going to have to
14 identify and exploit various innovations. So,
15 it's a question of how you structure the criteria,
16 addressing things like concerns and objectives
17 rather than specific requirements. For instance,
18 there are various state laws or different state
19 issues with regard to what may be an appropriate
20 technology or what might be something that -- an
21 accommodation. The different states are going to
22 have different legal requirements about what they

1 do or don't do, so the required characteristics --
2 when I looked at the materials for this Race to
3 the Top, when you talk about the design of the
4 assessment system they appear to relate a lot to
5 what vendors will do rather than necessarily what
6 the consortia will do.

7 So it's the tension of deciding between
8 what's going to be a shall requirement in the
9 guidelines where the consortium shall have an
10 assessment that does A, B, and C versus the
11 objective requirements or the desired requirements
12 -- the things you might prefer -- but within a
13 framework that says to the consortia it may be
14 something that isn't exactly the way we would do
15 it, but we're prepared to look at what you're
16 proposing.

17 The question for the agency and I think
18 for the states is going to be how much of these
19 criteria flow down and become mandatory elements
20 in terms of the selection of the vendor. For
21 example, in setting up an RFP for a vendor, you're
22 going to have a set of evaluation criteria and

1 that may relate to the process, to pricing issues,
2 to how the tests are going to be structured. And
3 depending on what the consortia thinks are the
4 most important considerations in terms of that
5 vendor selection versus what the Department may
6 think is the most important set of selection
7 criteria, how you're going to weight those
8 different things in evaluating various vendors,
9 those are some very dicey and can be very highly
10 politically charged issues. But the question is
11 whether the Department is going to say, well,
12 these have to be the criteria and in this order of
13 importance in terms of your assessment of a vendor
14 versus letting the states have that flexibility to
15 generate that kind of decision-making on their
16 own. And whether you're going to have them tell
17 you what that criteria is going to be and the
18 weighting that's going to be applied in the test
19 -- in the grant application. Or whether or not
20 you're going to leave that to the states to
21 continue their deliberations on in the consortia
22 process after the grant gets awarded. That's just

1 a tension that needs to be decided.

2 This is the last slide. I sort of
3 introduced this topic, but I suspect that it's
4 going to become a more fulsome discussion later.
5 One issue is the ownership of the intellectual
6 property. Traditionally, the government owns what
7 it pays for. Many of the test vendors and
8 developers are likely to come to the table with a
9 set of proprietary technologies or proprietary
10 approaches and then overlay on top of that what
11 the government is paying for with its funds, which
12 is the development of particular test items or
13 particular testing approaches. If the items don't
14 work with any other kind of technology then the
15 proprietary technology that that vendor has, the
16 ability to use that elsewhere may become quite
17 limited.

18 So questions of licensing rights. Are
19 the technologies going to be available? Are the
20 test items and test processes going to be
21 developed in some sort of an open architecture
22 that can be run on a variety of different systems

1 and arrangements? Those are the kind of things
2 that need to be sure that are considered in the
3 grant application, but also in the contract that
4 ultimately gets issued to a vendor so that you can
5 work around those limitations and acknowledge that
6 they may be there because that may drive which
7 vendors are going to bid and which vendors are not
8 going to bid.

9 And I'm over my time as I say to the
10 courts usually. Thank you.

11 MS. WEISS: Questions? I wrote down a
12 whole bunch. I'm not even sure which ones to go
13 into at the moment. Do you guys have some that
14 you want to --

15 MS. WHALEN: I just had a very simple
16 question with a lot of other very complex
17 questions running around in my brain. But you
18 talked about ensuring that the state has the right
19 people relinquishing control and autonomy to be
20 part of the consortium. Can you give some
21 examples of who those right people are and what
22 evidence we should be looking for as part of our

1 application that that process has successfully run
2 the gates?

3 MR. COLLEY: It's the difference in my
4 mind between the program side and the acquisition
5 side of the state government. So if it's just the
6 Department of Education who has been involved in
7 this and they haven't brought in to bear some
8 recognition or approvals by the legal authorities
9 that would be involved that vary state to state --
10 there may be some attorney general's office or
11 other law department inside of a state procurement
12 shop. If they haven't brought in the folks that
13 are responsible for signing off on the procurement
14 activities of a state -- sometimes that's
15 centralized within a state and so you'll have the
16 equivalent of a General Services Administration at
17 the federal level, an administrative body in the
18 state that does all the state procurement. The
19 state goes to that procurement shop and they run
20 the acquisitions of various RFPs. And if you
21 don't have -- and they may have the law office
22 that's got to sign off on something.

1 The state education chiefs and their
2 enthusiasm for this type of program is essential,
3 but they may have to, you know, exercise some
4 political clout to be sure that the other offices
5 who aren't accustomed to doing something that's
6 quite like this where the state education
7 assessment is -- and the determination of how it's
8 going to look and how it's going to be developed
9 -- it's not completely in the state control and
10 the state may not be the sole owner of the test
11 vehicles and so on. It's a little out of the
12 ordinary. And just getting them -- it's not
13 impossible, but some state offices are, you know,
14 if you've worked through the federal bureaucracy,
15 believe me, you're working through that
16 bureaucracy multiple times with multiple states.
17 And it's the same process of kind of working the
18 system and being sure that the boxes are checked
19 and that that state has the full authority
20 approval within its state to move forward in this
21 consortium and participate in the way that they've
22 designed the consortium to operate.

1 MS. WURTZEL: So are you talking about
2 looking for sort of a signature on whatever the
3 MOU is for consortium members that somehow
4 indicates that the procurement officers and
5 lawyers have been involved in looking at the MOU
6 and signing off on it?

7 MR. COLLEY: Yes.

8 MS. WURTZEL: Is it that kind of thing?

9 MR. COLLEY: Some kind of, you know, you
10 can structure this in an infinite variety of ways,
11 but some sort of an assurance that the legal
12 hurdles that a state has to go through in order to
13 execute on this type of a program have already
14 been cleared. The Ts have been crossed, the Is
15 have been dotted, and the state procurement
16 officials and the state legal officials have said
17 that this Department of Education of that state
18 can participate in this way in this consortium
19 and, you know, has the appropriate legal approvals
20 and authorities to go forward on that basis.

21 So some of that may be solved by nothing
22 else than having whatever the consortium

1 management document is going to be -- the
2 Memorandum of Understanding, the participation
3 agreement. You can give it any kind of name you
4 want. But being sure that all the states that are
5 participating in the consortium have had that
6 document approved and cleared. And that's sort of
7 a ticket of entry to be in the consortium so that
8 you know that they're not going to turn around,
9 get the grant money, and then have to go through
10 the time consuming process of being sure that all
11 the states have the authorities already in place
12 to move forward.

13 MS. WHALEN: So just a quick follow-up
14 to that. Would you expect something different
15 from if the consortium went with the lead state
16 model? Would you expect different evidence from
17 the lead state who is lead on procurement
18 obviously?

19 MR. COLLEY: I think you would expect a
20 marginally different -- you know, that the state
21 has agreed to sort of act as the lead state. The
22 lead state model -- and this is what Doug was

1 talking about -- there's, I think, a little bit of
2 a difference in this type of a procurement than
3 one in which you are buying something -- not
4 disparaging it, but is a more generic product. If
5 it's telephones or industrial supplies of some
6 sort, there's not quite so much concern by
7 individuals, other states, that might buy off of
8 that contract what the specifications are going to
9 be; what the criteria are going to be for
10 selecting a vendor. These are all very highly
11 charged issues when you get into this area of
12 educational assessment. And so the lead state is
13 going to have to have authority to act as the lead
14 state and may actually get some funding to do that
15 out of the grant, but the other states, to the
16 extent that they are engaged in the approval
17 processes and the selection -- source selection
18 decision-making and the management of decisions
19 and vendor direction as the contract proceeds,
20 they need to have the same kind of authority to
21 have that sort of participation.

22 MS. WEISS: Okay. We have more

1 discussion time coming so let's pass it over to
2 Allan. I think he's next.

3 MR. BURMAN: Thanks very much, Joanne.
4 And good morning, again.

5 I've kind of agreed with everything I've
6 heard so far so I know this is a very strange
7 meeting in some respects. But I think you are
8 going to get the same message from pretty much all
9 of us in terms of what to do and what to think
10 about in this process.

11 I, for the most part, have been focusing
12 on federal government procurement for many years.
13 And I ran the office in the White House that set
14 the policies for doing this for a number of years
15 as well. But most recently I've been working with
16 the General Services Administration, who have
17 what's called a schedules program where they have
18 many different vendors who are, in effect, on
19 prequalified lists. And federal agencies make
20 great use of those schedules. And it's very easy
21 to buy off of them because they already have a
22 contract.

1 Well, what they're doing now is looking
2 at ways in which they might bring that same kind
3 of breadth of offering to the state and local
4 marketplace. And so we've been talking to people
5 in various states and counties and municipalities
6 about how to make that work and the value
7 proposition and the benefits of it. And so some
8 of the comments that I will be making here reflect
9 the kinds of issues that we've encountered in
10 trying to make that happen. And in doing that
11 effort we've looked at a number of the various
12 consortia that have been established over time to
13 try to do similar kinds of things in this
14 marketplace, like WSCA, as Doug mentioned.

15 And so there are people out there who
16 have gone through that process, who have the
17 experience, who have worked together, who have
18 developed the governance models. It seems to me
19 the more that you can look at how well they've
20 done that and that experience, that gives you some
21 confidence that people have been there, done that,
22 and know how to do it and will know how to do that

1 for your purposes.

2 One of the major concerns here, of
3 course, is that if you're doing this you've got
4 time constraints and you've got the Recovery Act
5 that's pretty critical to making this -- to making
6 this happen. And there are some basic elements of
7 the Recovery Act that you really do need to take
8 into account. And that is that you need to make
9 sure that you disperse these funds quickly,
10 responsibly. Competition is critical;
11 transparency is critical. So I think a lot of the
12 kinds of considerations that you would be looking
13 at from a federal government standpoint in terms
14 of what's important to make sure that these funds
15 are used well and properly, I think you're going
16 to have to be thinking about those same
17 considerations in terms of somebody then bidding
18 on this and doing this. So, I think it would go
19 without saying that competition is going to be
20 something that's a basic element in the process.

21 If there's any kind of a ground rule in
22 terms of federal procurement, in terms of what

1 makes things go well and what makes things don't
2 -- not go well, if you look at many IG reports, if
3 you look at government accountability office
4 reports, getting the requirements right up front
5 is probably the number one critical issue in the
6 process. And ensuring that the people that you're
7 going to be dealing with understand that and can
8 demonstrate that in what they're presenting to you
9 I'd say is very, very critical; making sure that
10 they have the understanding of what it is that
11 you're trying to do. So I would just say getting
12 -- addressing that point, good upfront planning
13 and a demonstration that they've done the planning
14 and thought through the process and how things are
15 going to work will give you a certain level of
16 confidence that what you're going to be deciding
17 on is going to be something that's going to be
18 successful in the long run.

19 Now this is just -- these are just some
20 of the examples of things that we've encountered
21 in our analysis on the various states. Frequently
22 they will have a senior centralized procurement

1 authority, but they also will delegate authorities
2 to others. Different states require different
3 levels of competition. There are frequently
4 orders of precedence in terms of what a state can
5 use, how it goes -- does something -- who it goes
6 to first. Whether or not you need to have instate
7 vendors who are critical to the procurement.
8 Preference programs, in general. All of those
9 things are things that you want to make sure that
10 if it's a new consortium and they're putting
11 something together solely for this purpose, that
12 they've thought through those kinds of
13 considerations and have taken those into account.
14 And so you have an expectation that those issues
15 are something that you can understand that they've
16 already been thinking through and that the
17 structure of the consortium is such that they
18 won't start down a path and all of a sudden find
19 that they really can't get to where they are
20 aiming to go.

21 Let me see. So, clearly allowing some
22 flexibility. This lead state approach, as Doug

1 mentioned and as Mark mentioned, that's been the
2 one that we've seen as the most successful
3 approach for making things happen; allowing some
4 ability for states to come in later or allowing
5 ability for states to apply state-specific kinds
6 of requirements so that vendors could address
7 those; ensuring that whoever is coming in with
8 this consortium approach has identified those
9 sorts of things for you. I think those are things
10 that you want to be looking for. One of the other
11 problems that we've run into in this is federal
12 terms and conditions -- I mean, you can have a
13 laundry list of terms and conditions that for the
14 federal government goes on forever. Frequently,
15 you don't even identify what they mean. A
16 drug-free workplace, for example, are things that
17 become complicated. So, again, looking at the
18 terms and conditions, trying to make those as easy
19 as possible in terms of somebody bidding on this
20 makes a lot of sense, as well.

21 So, next in terms of going from the
22 question of the consortium and the complexities

1 have tried to make the consortia operate
2 effectively, ensuring that all of the states can
3 participate effectively. The second issue that
4 you've been looking at is the whole question of
5 innovation. The market research, as Phil
6 mentioned. That seems to me what gives you the
7 best opportunity to see who's out there, who can
8 offer what. And there are very specific
9 techniques that are identified in the Federal
10 Acquisition Regulation. And I noted in my slides
11 here Part 10 of the Federal Acquisition Regulation
12 gives you a laundry list of activities that you
13 might consider as a way to try to make sure you
14 can get good information about who's there.

15 I do think there is an issue about the
16 willingness of vendors to reveal a lot of
17 proprietary information upfront because that is,
18 after all, what allows them to be -- that gives
19 them a discriminator in terms of bidding. And so,
20 but I agree with Mark that you can get a lot of
21 information through either formal processes or
22 informal processes of having these kinds of

1 discussions. And I also agree in terms of
2 organizational conflict of interest issues, again,
3 address the issues up front. Make sure you
4 understand who can talk to whom under what
5 conditions and then what then can they do
6 subsequently with regard to a procurement so that
7 people have thought that through, laid it out.
8 And so there's a clear understanding in advance on
9 how to proceed. I would recommend that would be
10 something else that you would be looking at.

11 Here are some specific recommendations
12 on some of the things that consortia might do.
13 It's interesting. When we were dealing with the
14 various states and their ability to make use of
15 the GSA program, when we go to the procurement
16 office folks in many of the states they'd say, oh,
17 no, we can't use that program, or, no, we can't do
18 this. But there was sort of a cultural knee-jerk
19 reaction saying you can't do something when, in
20 fact, in a follow-through effort it was quite
21 clear that they could, in fact, do that. And so,
22 the other question is kind of the culture of being

1 able to work together and ensuring that they
2 understand that there are opportunities to be able
3 to work together and get an advantage from that
4 kind of leverage of a number of states addressing
5 this application process.

6 Probably one of the most challenging
7 aspects of this effort is going to be how do you
8 acquire the best vendors to get the job done and
9 meet the requirements that you're setting out for
10 it. And the federal government has adopted an
11 approach that has been in use really for now going
12 on almost 20 years in terms of sophisticated
13 services contracting that is a performance-based
14 approach to procurement. And it's, again, it's a
15 best value kind of an approach. But how that
16 works is the person who is going to be acquiring
17 the service will be identifying the basic
18 objectives, what they're looking for, what they
19 want to have accomplished, but they won't be
20 providing detailed descriptions on exactly how
21 that's going to be achieved or how someone is
22 going to get there. So the elevator language for

1 a performance-based kind of procurement is tell a
2 contractor the results you want, not how to do the
3 work. But then be sure that you can measure it.

4 And I would suggest that here when
5 you're particularly looking for innovation, new
6 ideas, new approaches, to try to meet some of the
7 needs that you've established, inviting that kind
8 of an approach would allow then some flexibility
9 in terms of different kinds of vendors, maybe
10 vendors that have not been ones that ordinarily
11 have been in the marketplace. And when you stress
12 innovation as an evaluation criterion, that this
13 is something that you're going to be looking at in
14 terms of what they're presenting and how it
15 differs and what are the benefits of what they're
16 proposing, that again gives you an opportunity to
17 measure potential benefits across a wide spectrum
18 of vendors who may have different ideas on how to
19 meet the need.

20 It becomes complicated in terms of the
21 evaluation process. And so, again, having a
22 sourcing team established that defines the

1 evaluation criteria, clearly weights them,
2 establishes the kinds of things that you're going
3 to be looking for and ensuring that you can get an
4 effective best value kind of result out of the
5 process, to me that seems like that would be an
6 effective way to take advantage of some of the
7 innovation that you're looking for.

8 And I've got a couple of slides in here
9 that just kind of give some details on what are
10 the basic elements of creating a performance-based
11 procurement where you are identifying the outcomes
12 -- the business outcomes that you're looking for
13 and then you're identifying what are the
14 performance measures that you're going to
15 evaluate.

16 The other advantage of an approach along
17 these lines is you can modify this over time and
18 it's an effective way to look at how people are
19 proceeding over time as well. It's a complicated
20 process, so it probably requires some effort to
21 get expertise in terms of putting it together, but
22 we've seen it work with a number of different

1 agencies. And it's been a very effective approach
2 where you've taken the time upfront to be thinking
3 through the requirements and then establishing the
4 framework. So I think that would be my
5 recommendation in terms of how best to proceed.

6 And there's the framework that one would
7 look. This is the framework that's used on the
8 federal government side, but I think it'd be the
9 same kind of framework that would apply in a
10 procurement along these lines.

11 And I'll be happy to take any questions.

12 SPEAKER: I have a question.

13 MS. WEISS: I'm sorry, you guys need to
14 write your questions down on index cards. And
15 Mark right here will grab it from you and bring it
16 up to us.

17 Judy?

18 MS. WURTZEL: So my question is
19 following up on your description of
20 performance-based. If we were going to adopt that
21 recommendation, what evidence -- first, is it that
22 states would have the capacity to carry that out?

1 And two, what would we want to ask from states
2 about what their proposals are for how they're
3 going to carry out their contracting that we would
4 want to review to make sure they have the capacity
5 to do it?

6 MR. BURMAN: You clearly need to make
7 sure that they had both the people in place to lay
8 out the objectives. So you would be looking at
9 how do those objectives comply -- compare to what
10 you're looking for. What performance measures
11 have they already adopted that would be critical
12 to getting an effective assessment instrument from
13 the vendor? What would their plan be in terms of
14 monitoring the contractor's performance? What
15 incentives might be structured to see that you
16 are, in fact, getting a good result? There are a
17 whole series of the basic elements of the approach
18 that you would want to have a level of confidence
19 in that they have the knowledge to follow through
20 and do it. Because that is one of the
21 complications of this approach. It's very
22 effective if it's done well. It forces upfront

1 planning. It requires teamwork. It requires
2 collaboration between procurement people and
3 program people in getting outcomes. But it's a
4 time-consuming effort up front.

5 MS. WEISS: So the question that we had
6 was a little bit more color on how you monitor
7 these performance- based contracts. If you're a
8 state, what's the process?

9 MR. BURMAN: The process that you would
10 follow is you would establish what's called the
11 Quality Assurance Surveillance Plan that's
12 developed right at the very beginning of the
13 process. And in effect, what that plan does is
14 it's the government's description on how it's
15 going to ensure that it's getting the results that
16 it's looking for. And so you are looking at that
17 plan. And that plan is being developed at the
18 very beginning of the process.

19 So, for example, are you using some
20 surveys in terms of satisfaction of the various
21 people making use of the process? Are you doing
22 random checking in terms of the kinds of results

1 that are being proposed? There's a variety of
2 things that you can use that would be a way for
3 you to ensure that the results are being achieved.
4 I mean, it's very much in line with a
5 performance-based approach kind of across the
6 board for management.

7 MS. WEISS: So we got one other question
8 that obviously we'll be addressing more completely
9 in our notice. But since you do have expertise in
10 federal procurement, if you could just clarify a
11 little bit more about the contractual obligations
12 and requirements under ARA, particularly some of
13 the transparency stuff. Just so people have a
14 little bit better idea of the additional rules
15 they'd have to comply with because this funding
16 would be coming through the ARA.

17 MR. BURMAN: There are a whole series of
18 rules under the Recovery Act that would require
19 you to identify who receives the award, what the
20 benefits are in terms of jobs, the lower level
21 funding, who's taking advantage of that funding.
22 It's basic reporting requirements that you would

1 find from the website. And the other requirement,
2 of course, is that the funds need to be obligated
3 by the end of the fiscal year.

4 MS. WEISS: That won't be true for the
5 grants that these folks are letting.

6 MR. BURMAN: Okay. On the contract side
7 that is a requirement.

8 MS. WEISS: But, yeah, there's a number
9 of transparency requirements and you can find them
10 on the website. And we can even figure out how to
11 just republish that website so people can take a
12 look at it. But it's mostly around transparency,
13 I think.

14 Okay. Let's go to Larry.

15 MR. BERGER: Good morning. My name is
16 Larry Berger and I'm the CEO and co-founder of
17 Wireless Generation. Wireless helps more than
18 200,000 teachers assess 3 million students in all
19 50 states. Our most recent product uses formative
20 assessment data to provide students with optimized
21 curricula based on their individual needs. And
22 we've also helped to create the country's largest

1 and most comprehensive instructional improvement
2 system for the New York City Public Schools. And
3 right now we're working with several researchers
4 to invent a more curriculum- driven approach to
5 summative assessments that we hope will contribute
6 to the Race to the Top Assessment Program.

7 Not that procurement discussions aren't
8 already thrilling, but I promise to disagree with
9 a lot of what my admittedly more knowledgeable
10 colleagues have said today. I think there's a
11 vast disconnect between the sorts of procurement
12 recommended today and aspirations of this program.

13 Robert Mislevy characterized "the test
14 theory" that dominates educational measurement
15 today as the application of 20th century
16 statistics to 19th century psychology. The
17 mechanically scored multiple choice bubble sheet
18 test dates to 1937; the No. 2 pencil to 1870. The
19 Race to the Top Assessment Program is our moment
20 to race into the 21st century with an updated
21 understanding of how we learn with data that
22 matter and with technologies that are poised to

1 deliver fundamental changes in teaching, learning,
2 and assessing. The program invites meaningful
3 innovation on numerous dimensions of assessment:
4 New and better items, item types, and approaches
5 to test construction; assessments at different
6 times of year, more often, more embedded; new
7 relationships between common standards curriculum
8 and assessment; new affordance for assessing
9 special populations and new technological
10 platforms for all of the above.

11 Innovating on so many fronts at once
12 creates exponential rather than simply additional
13 levels of difficulty and complexity. For this to
14 be the practical, large-scale breakthrough that we
15 seek, all of these complex elements will need to
16 be woven together seamlessly into something that
17 teachers are eager to use. So the Race to the Top
18 and the states who will lead it are seeking to buy
19 something that does not yet exist. Something that
20 has not yet been designed. We may, therefore,
21 need a new kind of procurement that creates a
22 space in which this kind of design can happen.

1 While I'm not an expert on procurement
2 law, I do spend my days working with educators and
3 education agencies trying to expand the boundaries
4 of educational design. From this I have become
5 convinced of what I call the 50-hour rule, which
6 asserts that you need a team -- in this case a
7 team of teachers, principals, scholars,
8 administrators, designers, engineers,
9 statisticians, and user interface experts -- to
10 put in at least 50 hours shoulder-to-shoulder at
11 the whiteboard defining the needs, shaping a
12 vision, prototyping the solution, before you
13 really understand the top towards which you could
14 be racing and the path you want to take there.

15 The 50-hour rule is informally confirmed
16 by my observations of the leading innovation
17 efforts in education, including the CERT Program
18 at the national academies; the Design, Educational
19 Engineering and Development Program that Tony Bryk
20 is leading at the Carnegie Foundation for the
21 Advancement of Teaching; and the Peer Effort at
22 the Institute for Learning.

1 The timing of this need for
2 collaborative design runs up against the
3 procurement problem that I raised during an
4 earlier public meeting and that hangs over this
5 whole process: That the procurement rules in some
6 states seem to work against doing collaborate
7 design with state agencies. Depending on widely
8 varying and uncertain state law, the work one
9 might do to generate ideas with the state might
10 preclude one from doing further work should the
11 state obtain federal funding and solicit bids.
12 This is a policy problem that threatens both the
13 success of the federal government's program and
14 state education goals. In some cases it's not
15 just a matter of when these 50 hours could happen,
16 it's a matter of whether they can happen at all.

17 There are, as my co-panelists have
18 discussed today, ways to solicit information in a
19 procurement process. And those are certainly
20 helpful. But none of the methods easily fits the
21 intensity of the collaboration between the private
22 sector, the public sector, the research sector,

1 and the technology sector that this moment calls
2 for. Mr. Colley said in passing something that
3 seems entirely central to why we have a much
4 bigger problem here. I think he said -- I found
5 sort of chilling the statement -- "You just have
6 to live with the fact, with vendors failing to
7 share their most innovative ideas." How can this
8 be the right solution to the problem we have? And
9 I would go further to say even the vendors' most
10 innovative ideas as they stand right now aren't
11 adequate to the amount of innovation that is being
12 called for.

13 So, I have only one slide today. It
14 addresses the question at the heart of my
15 testimony: When could the 50 hours of
16 collaborative design take place in the Race to the
17 Top program? So, I tried to put out an outline of
18 what it seems is going to happen in the course of
19 the Race to the Top program. And my question is
20 when do we actually -- when might we be able to do
21 this work? My humble proposal is that we might be
22 able to do this by creating a modified kind of

1 procurement that I'll call an RFC, a Request for
2 Collaboration. You might think of it as a kind of
3 design bake-off. Here's how it could work.

4 A state or states would issue the RFC
5 and potential partners would respond by submitting
6 sketchbooks or other summaries of their initial
7 design ideas, accompanied by a description of
8 their organizational capacities. On the basis of
9 those submissions, the state or each consortium of
10 states would short-list a small number of likely
11 candidates and go through the 50-hour
12 collaborative design process with each. The
13 results of those sessions would then help inform
14 the selection of partners to do the implementation
15 work, assuming the resulting proposal wins Race to
16 the Top funding.

17 Participation in multiple 50-hour
18 processes is a lot of time for a busy state, but
19 it's a tiny fraction of the overall time a state
20 invests in its assessment program. And the time
21 spent will be immensely valuable as a way to
22 expand the thinking that all of us in this room

1 need to do.

2 The slide I've prepared illustrates when
3 the RFC might take place. The RFC could happen
4 here, right at the very beginning of the process.
5 This would make sure that states really understand
6 their options and have clarified their need before
7 joining a consortium. Or it could happen here,
8 after states have defined their needs and have
9 affiliated with other states based on those needs,
10 but in time to shape a breakthrough vision and
11 pick external partners in time for them to be
12 included in the proposal to the feds. Or it could
13 happen here, as I think has been the main version
14 of this suggested, after states have defined their
15 vision in some other way.

16 It's this third one that I'm dubious
17 about. It worked for earlier consortia when there
18 wasn't as much demand for breakthrough design
19 innovations. As Mr. Colley's excellent paper
20 describes, people sort of knew what they were
21 looking for in an end of course Algebra II
22 assessment. Sure, there was room for design

1 innovation, but it wasn't a whole new category of
2 assessment and software that was being created.

3 I think that doing it at this point
4 would be too late in the process to achieve the
5 aspirations of the Race to the Top assessment
6 program. I think we want it to happen as early in
7 the process as possible. There's a lot of
8 complexity in handling that first slide that we
9 could talk about -- the first flag -- but the
10 second flag, I think, is the promising place to do
11 this. And I believe that doing so offers a way to
12 arrive at clarity, transparency, and deep
13 collaboration. We need much greater clarity for
14 innovators about how states expect their
15 procurement rules to apply. We need transparency
16 so that the formation of consortia is not a result
17 of backroom deals, but instead takes place in an
18 open marketplace of ideas. And we need a model of
19 procurement that allows time and opportunity for
20 collaboration so that innovation and design can
21 remain at the heart of this race.

22 Now, I have a few more minutes and I

1 just wanted to ask the chair if I can have
2 permission to tell the only procurement joke that
3 I could find in my remaining minute.

4 (Laughter)

5 MS. WEISS: Jokes are not permitted in
6 this gathering. No, you may proceed with your
7 joke.

8 MR. BERGER: So, and I'm going to try to
9 strip this joke of all of its ethnic origins, so
10 bear with me.

11 So there's this very wise and pious man
12 who lives in a small village and he has been
13 devoting his life to goodness and to doing the
14 right thing. And every week he goes to the church
15 and the synagogue and the mosque just to make sure
16 he's got all his bases covered. And he says his
17 prayers, but he does say at the end, you know,
18 I've taken this vow of poverty, but it sure would
19 be great if you could arrange for me to win the
20 lottery. And he does this every week and he's
21 continuing to live this very good life. And he
22 says, but, you know, please, is there any chance

1 that this could be the week that I win the
2 lottery?

3 Finally, he's an old man. He's lived a
4 blameless life and he's on his deathbed and he
5 realizes he may be praying for the last time. He
6 says, please, is there any chance I could win the
7 lottery?

8 And a voice comes out of the heavens
9 saying buy a ticket.

10 And so the question at hand is you can
11 have lots of aspirations about what it is that you
12 want to have happen, but you've got to figure out
13 a way to buy it.

14 Thanks.

15 MS. WEISS: Oh, my gosh. I don't even
16 know where to start with questions, so I'm totally
17 turning it over to you guys.

18 MS. WURTZEL: So I don't know where to
19 start either. So I'm going to -- after our break
20 we're going to have our roundtable, so I don't
21 want to move to there. But I actually want to
22 invite Doug, Allan, and Mark to ask clarifying

1 questions of Larry.

2 If you were going to say you want to be
3 able to have the kinds of conversations that Larry
4 described where that second flag is, what more do
5 we need to know about what those conversations
6 would look like and entail? What has to happen
7 for them to be effective to be able to think
8 through or have states think through or us think
9 through what needs to happen to make that possible
10 -- or if it's possible?

11 MR. COLLEY: Well, I don't necessarily
12 have a question, but I guess since I feel like I'm
13 entitled to a small rebuttal. And again, it's
14 only to note that I actually don't have anything
15 to disagree with what Larry said at all. All
16 that's been suggested here is that we have a
17 different type of procurement. But between the
18 two and three, the flag, now there's going to be a
19 procurement for a team. And if I understood your
20 proposal correctly, vendors would make submittals.
21 They've got to be told what to submit. There's
22 got to be some sort of an equivalent of an RFP, an

1 RFI, an RFC. So, they've got to have instructions
2 and there's got to be a process put in place to
3 select them. And as I understand it there was
4 going to be a session with each of them. I didn't
5 hear that all of the people were going to come in
6 a room together and that Larry and his company
7 were going to put their source codes and patents
8 on the table and disclose them to all of their
9 competitors until after they're selected to be
10 part of the team.

11 And so that's -- when I say there's
12 going to be a limit to how far vendors are going
13 to be willing to share their crown jewels until
14 their selected -- if it's either selected as the
15 contractor after the federal government awards the
16 money or when they're selected as a team for the
17 vendor, they are then going to be nondisclosure
18 agreements and cooperation agreements among the
19 vendors. And then they might share. But I've
20 never encountered a notion that procurement rules
21 and processes stifle innovation. This country has
22 some of the most innovative products in the world

1 being purchased by some of the most -- you know, I
2 work on a lot of defense procurement products, a
3 lot of which are very top secret. I can tell you
4 there's more innovation going on in the
5 procurement system in this country than anywhere
6 else you could imagine.

7 So, it's just a question of where you're
8 going to apply these rules and structures. The
9 one question I guess I would have for Larry is is
10 there an assumption that the states are going to
11 conduct at their own funding and with their own
12 resources the RFC process and then come to the
13 federal government for funding for a grant? Or
14 would there be some expectation that the
15 government -- the federal government would apply
16 some grant money to the consortia to actually go
17 out and select their teams?

18 MR. BERGER: Yeah, so obviously I don't
19 know exactly how to design it. I do think that
20 the industry would be willing to put in its time
21 in an RFC context on spec that they would win. So
22 I don't think there's a need for there to be grant

1 money available to support that process.

2 The question of whether state capacity
3 to participate in that requires some sort of
4 startup grant I think is a good question. I think
5 in some sense what just happened in Race to the
6 Top is a good example in which the cost at the
7 state level was probably quite substantial. In
8 most cases, a few hundred thousand dollars spent
9 to be -- with outside contractors to be able to
10 prepare proposals. In some cases, philanthropies
11 stepped in to do that. In other cases, states had
12 to dig down deep to do it.

13 And I think one good thing is while
14 there isn't an existing budget with which states
15 fund Race to the Top proposal writing, there in
16 some sense is a budget and a set of expenditures
17 around the ongoing improvement of a state's
18 assessment system. And it feels to me this could
19 be a big accelerator of that improvement process.

20 MR. BURMAN: If I could -- could I just
21 comment on that, Joanne?

22 MS. WEISS: Yeah.

1 MR. BURMAN: One of the complications in
2 that process though, Larry, would be ensuring --
3 if you're looking for a fully competitive effort,
4 then presumably you want to let whoever on the
5 vendor front thinks that they might have an
6 opportunity to bring something new to the market
7 -- to the table -- to be able to participate. And
8 so, it would almost seem to me like you would need
9 some kind of a two-step process that would allow
10 you to take a quick look at a number of vendors to
11 see -- and have some criterion or set of criteria
12 that would say, yeah, you've passed this hurdle
13 and now the three of you -- we can do this kind of
14 further effort with -- or otherwise, you know,
15 when you think about the timeframe that would be
16 involved, it wouldn't be -- if you just excluded
17 people on arbitrary grounds, it wouldn't be
18 competitive.

19 MS. WEISS: Okay. I'm going to hold a
20 halt to this because we're clearly getting into
21 our roundtable and say let's take a break till
22 10:45. So a little more than 10 minutes we'll be

1 back here. Let's leave this slide up because I
2 feel we're not quite done with it, and we'll
3 return to it shortly. And we're going to be
4 joined up here in the roundtable by two of our
5 participants from yesterday's panel because we
6 realize there is so much crossover between the
7 consortium management question and the procurement
8 question. So, Mike Cohen from Achieve and Marc
9 Tucker from NCEE are going to join us up here for
10 the roundtable discussion when we get back from
11 the break.

12 So, thank you. And we'll see you back
13 here in 10.

14 (Recess)

15 MS. WEISS: Great. Marc and Mike, do
16 you want to just do a quick introduction of
17 yourselves and then we'll get started.

18 MR. TUCKER: Marc Tucker, president of
19 the National Center on Education and the Economy.

20 MR. COHEN: Mike Cohen, president of
21 Achieve.

22 MS. WEISS: Great. Thank you. So,

1 let's dive back into our picture here. And let me
2 just ask the question in a different way because I
3 felt like we were all going -- we were talking a
4 little bit as ships passing in the night this
5 morning about the different phases here. And I
6 think part of it is understanding of the timing
7 and what happens in what order. And part of it is
8 understanding of the level and depth of
9 conversations that at least Larry and his
10 question, and, in fact, a number of states in the
11 cards that they passed me all had very similar
12 questions about this.

13 So, what we were assuming in our timing
14 is that after we made the award -- Larry's Step 4
15 here -- that that's when the procurement process
16 would really start in earnest. And the reason for
17 that is that the procurement process is long and
18 we don't have time -- states don't have time to do
19 it prior to being granted an award, and in many
20 cases can't do it prior to being granted an award
21 anyway.

22 So the procurement process itself, I

1 think, has to happen after the award is granted.
2 So in a minute we're going to come back and ask
3 you just to tighten up some of your
4 recommendations to us on what questions we should
5 ask around procurement in the application to make
6 sure that people have their act together. I think
7 you gave us a lot of good advice on that this
8 morning and we just have a couple more questions,
9 I think, about that.

10 But before we go there I think the
11 question that is on the table is not even a
12 question about the proprietary nature of a
13 particular vendor's expertise. It's saying that
14 if the states want to take advantage of the
15 expertise that's in the vendor community as
16 they're developing their proposals and their
17 applications, is there a way that they can take
18 deep advantage of that expertise as part of their
19 application development without then disqualifying
20 all the people they spoke to from being able to
21 participate in the bidding at the backend? Are
22 there real barriers? Can they do what Larry is

1 proposing or not? Why? Why not? What are the
2 barriers? And if there are barriers, what are the
3 potential ways around those that we might help
4 facilitate in order to just get the right kind of
5 innovative ideas out there at the proposal stage,
6 not just the contracting stage?

7 MR. BERGER: Can I just throw in
8 something that Allan said to really help clarify
9 what is the distinction about the nature of that
10 collaboration? And that was just that most of the
11 existing things, like an RFI or a bidder's
12 conference involve a highly choreographed, we tell
13 you a bunch of information, and you ask for formal
14 questions on note cards. But it's largely a
15 one-way street in one direction. Or in an RFI,
16 it's largely a one-way street in the other
17 direction. People send in what they can do, but
18 they don't actually know what you're trying to
19 accomplish.

20 The thing I'm talking about -- I think
21 the crucial moment is that I'm saying there needs
22 to be a way for states to help vendors come up

1 with the solution. To say, no, I don't quite mean
2 that; I do mean this. And then potentially to
3 have enough back and forth that together they say,
4 oh, actually, I didn't mean any of the things I
5 thought because we just came up with a third idea
6 that was way more exciting because we were able to
7 have the give and take. And all breakthroughs in
8 design it seems to me happen from exactly that
9 back and forth. And I think at the heart of did
10 that happen or not, my 50 hours is just a proxy
11 for was there a way in which that exchange really
12 took place with enough time that we felt we
13 understood each other. And in doing that, not
14 only did we get a better idea, we also may have
15 found the partner that we can work with. And I
16 think it's both of those things that I'm hoping to
17 find a way into the selection process.

18 MR. BURMAN: The government can use, and
19 has used from time to time, a due diligence
20 process where you would be able to speak with
21 individual vendors with regard to a procurement.
22 It gets a little bit dicey because you have to be

1 very careful that you're not acquiring information
2 from one vendor and passing it on to another
3 vendor. But you frequently would do something
4 along these lines if you might have an incumbent
5 who has been doing something for a long time,
6 trying to make sure that every vendor has a full
7 understanding of what you're looking for, making
8 sure that they have a good knowledge of what --
9 where you're trying to go. I mean, there are ways
10 that this can be done given those limitations
11 about proprietary data. But again, it's not
12 doing, as Larry was saying, like a 50-hour
13 collaborative effort together. It's really more
14 of a conversation that's a private conversation
15 with a single vendor. I mean, that's a way to at
16 least allow some more give and take without the
17 vendor necessarily being afraid that its special
18 knowledge is going to be then handed off to
19 somebody else.

20 MS. WEISS: And again, I just want to
21 make sure that we're -- I mean, I hear the
22 proprietary knowledge question and I think that

1 will be something that it's going to be incumbent
2 on the vendor to make a decision for itself. I'm
3 more putting myself in the states' shoes here. So
4 help me get into the states' shoes, not the
5 vendors' shoes for a minute. And if I'm a state
6 and I'm trying to come up with the most -- with
7 the best possible assessment design and what's
8 being called for is -- I think as Larry rightfully
9 described it -- a level of innovation that in this
10 country we have not done at any level of scale.
11 And I'm trying to do a project like this that
12 needs to be taken to scale.

13 I want to tap into the expertise of
14 vendors who have the knowledge to do this kind of
15 work at scale. A lot of the expertise for this is
16 in the vendor community, not in the research,
17 academic, or state community at the moment.

18 So if I want to get a winning proposal
19 and I want to get a bunch of great ideas from
20 people who are in the vendor community and might
21 turn around at the backend and bid, how can I do
22 that during my application development stage if

1 I'm a state?

2 MR. COHEN: I don't' know the answer to
3 that, but I don't think we're defining the problem
4 clearly enough.

5 MS. WEISS: Okay.

6 MR. COHEN: Yeah. As I listen to Larry,
7 right, Larry, your point is there is insufficient
8 expertise either in the vendor community alone or
9 in the states alone that only by a collaborate
10 process could they share enough expertise with
11 each other for the state to know whether this
12 vendor or that vendor has what it needs. All the
13 discussions --

14 MS. WEISS: I don't even think it's
15 about expertise. I think he's describing a
16 collaborative process that by together -- people
17 coming together with needs and ideas and solutions
18 come up with better things than any of them would
19 if they were sitting in their cubicle writing the
20 answer to the other one on paper alone.

21 MR. COHEN: Right. And everything that
22 I've heard and everything I know about the ways in

1 which government agencies get information, it is
2 as Larry described. It's not quite entirely a
3 one-way street, but there's -- but the intent
4 behind those RFIs and other mechanisms is not to
5 produce a shared understanding of a solution to a
6 problem. It's to produce -- it's for one side of
7 the table or the other to have a better
8 understanding of what the other side of the table
9 needs without generating new ways of thinking as a
10 result of the interaction. That's the fundamental
11 difference I'm hearing between the typical
12 mechanisms and what Larry is arguing for.

13 MR. TUCKER: The problem, at least as I
14 see it, is that when you're trying to do what I
15 think we all are trying to do here, the vendor is
16 all too likely to say when the requirement comes
17 out, you framed the problem wrong. There is an
18 entirely different way of framing this problem
19 which opens up possibilities that you haven't even
20 considered when you wrote your RFP. I'm now dead.
21 Either I can't bid at all because this isn't what
22 I can do or I don't want to bid because this is so

1 misconceived. And so it's a problem on the one
2 side of saying I wish to hell there was a way of
3 talking to the folks who are writing this
4 requirement so that together we can come up with a
5 requirement which reflects the possibilities.
6 It's more like that.

7 We've all been in this position more or
8 less at various times and it is the choreographed
9 nature of the interaction -- I think that was the
10 word Larry used and I've often thought of it that
11 way -- that makes it very hard to do that. It is
12 no problem at all when what you're doing is
13 purchasing a test that looks just like the tests
14 that have been made for 20 years. Anybody can
15 write that; anybody can respond to it. And
16 somebody who has got a totally different idea
17 about what testing ought to do and how it ought to
18 be done can't even play in the game.

19 MR. BERGER: That's exactly it.

20 MS. WEISS: And can I maybe just draw a
21 quick analogy. For this process that we at the
22 Department are going through right now to write

1 this RFP, we were supposed to go through it as I
2 described at the beginning of the meeting, in a
3 very different way that was sort of a one-way
4 here's what we think; a one-way back -- here's
5 what we think back -- and then reconcile. And we
6 thought that wasn't going to get us where we
7 needed to go so we put together a new process that
8 is a public process and complies with all of the
9 requirements that we have for transparency and
10 openness and access. But it looked different in
11 order to help get us to a different initial place.
12 Now it's certainly far from perfect, but it's, I
13 think, better than what our current -- so is there
14 something that we can think of from a procurement
15 point of view that would let us address this
16 problem that I think the practitioners and states
17 are probably feeling pretty acutely?

18 MR. COLLEY: Sure. No, this isn't a
19 problem.

20 MS. WEISS: No, that's good. So help us
21 because we don't -- that's great.

22 MR. COLLEY: I always -- people look at

1 the procurement process as some sort of, you know,
2 black box and some sort of a set of handcuffs that
3 prevents doing things flexibly. And that's not
4 the case at all.

5 Allan talked about this in terms of
6 performance- based requirements. I mentioned it
7 in my slides about, you know, sort of whether you
8 have things as mandatory or aspirational
9 requirements.

10 So, let me actually back up. From my
11 perspective I think you've got to decide what it
12 is that this agency wants grant applicants to come
13 to the table with.

14 MS. WEISS: Right.

15 MR. COLLEY: Do you want them to -- I
16 had understood that what you were looking for the
17 consortia to come with was a consortia and a plan
18 and an approach to figuring out how to spend the
19 money and what to buy and what kind of an
20 assessment product to deliver.

21 The alternative is to have the consortia
22 come to the table for the grant application with a

1 vendor or vendor team and they design and the
2 innovation of the technology that they propose to
3 use.

4 MS. WEISS: And here's the bind. We
5 don't have time to do the second.

6 MR. COLLEY: That's my understanding.

7 MS. WEISS: So how --

8 MR. COLLEY: But that, I think, is what
9 Larry is talking about. Is actually having the
10 team selected based on a collaborative process
11 with the states over what kind of innovative
12 approach they want to take and have that come
13 forward as part of the consortia application. If
14 you don't have time for that, the key thing to do
15 in your grant application is to define the
16 requirements for the process that you expect the
17 state to go to which may include the kind of
18 process that Larry is talking about in terms of
19 how they select their teams; the kind of
20 performance-based standards that's Allan's talking
21 about; the kind of objective criteria that the
22 states are going to say here's how we're going to

1 measure our vendors and the kind of assessment
2 we're going to be looking for the and the kinds of
3 things we're going to take into account. And the
4 process can very much be we're going to
5 (inaudible) the set of criteria to the vendors and
6 we're going to bring each of the vendors in and
7 we're going to go through a collaborative
8 decision-making analysis with them and have what
9 would be called another federal procurement
10 process, sort of an integrated product process
11 team. And you may have different people dealing
12 with different vendors, or you may have to have
13 various, you know, constraints put in place or
14 agreements put in place so that proprietary
15 information isn't shared across lines, but that
16 proprietary sharing between an individual vendor
17 and the state can easily take place in that kind
18 of a robust dialogue environment. And use that as
19 part of your criteria for how you're going to
20 select the team of vendors that you then assemble.

21 Now, that's, I think, the legal
22 theoretical construct that you could put in place

1 and look for. And tell states that you're looking
2 for that kind of an approach in their consortia.
3 And then you're going to need the states to come
4 in and say our consortia has looked at this model.
5 Here's how we're going to do it. We've cleared
6 this with our state procurement people. We've
7 concluded that our state laws will allow this to
8 happen. We've gotten the waivers. We've gotten,
9 you know, the procurement offices to sign off on
10 it, what have you, so that you can be assured that
11 that kind of a process will be employed as they go
12 out to decide how to spend the money that you're
13 giving them.

14 The problem is that there's a
15 theoretical and a practical. And we were talking
16 about this at the break just a minute ago, but,
17 you know, every state has got its own procurement
18 rules. Every state has got its own culture.
19 Every state procurement office, you know, has its
20 culture and you can drill down to the individual
21 state procurement staffer who has been given the
22 portfolio to work with the Department of Education

1 on this procurement. And they may be somewhere on
2 the spectrum of how tightly wound they are in
3 terms of their willingness to talk to vendors
4 versus how they understand the procurement process
5 and how flexible they're willing to be. And what
6 kind of direction they've gotten down from the
7 top.

8 And every state has a different set of
9 laws and regulations on these things because every
10 state has had different procurement scandals. You
11 know, some governor went to jail in 1974 over this
12 and so there's a whole body of regulations in that
13 state on this particular problem that doesn't
14 exist in any of the other states. Well, you've
15 got to deal with that. But my point is that from
16 the grant application process, what you need to
17 know is that the state have recognized -- in the
18 consortia have recognized that and have figured
19 out a way to deal with that. And have sort of
20 overcome the hurdles or addressed the hurdles.

21 If there is one message that I can walk
22 away from this meeting with people taking from me

1 is that the procurement process can be made very
2 flexible and adaptive and do what you want it to
3 do as long as you can communicate what it is you
4 want it to do. And then get everybody to sign off
5 on it ahead of time. It's when you come at it
6 with something new and don't check the boxes that
7 you run into hurdles and problems.

8 MR. BURMAN: And could I just add a
9 point on Mark's point because one of the issues --
10 I was discussing this with Larry as well -- is you
11 have to end up with a fair result where a vendor
12 -- if you're doing the kind of collaboration that
13 Larry is talking about and there are three vendors
14 and you're jointly working with the government to
15 come up with something, somehow you have to
16 establish upfront on what basis you're going to
17 make a decision as to who wins and who loses and
18 why. And you're going to have to be able to
19 demonstrate that to the losers, or to the press,
20 or to anybody else so that they would understand
21 that hey, they were given a fair shot.

22 And when you start dealing with

1 collaboration, then you have interdependencies.
2 And when there are interdependencies, someone can
3 argue, well, I did it this way because you told me
4 to do it this way and now you're saying that's why
5 I lost. I mean, I'm just suggesting that there
6 are some complications in the process that have to
7 be thought through very clearly to go down this
8 path. Maybe you could pay each vendor to do a
9 mini project and they'd be paid to do it and three
10 vendors would be selected to do it. And then
11 potentially from that you could then move on. I'm
12 trying to think of another way in which you might
13 be able to get some benefits from this, but I
14 think it's the openness, the transparency, the
15 competition, the understanding why you lost kind
16 of issue that becomes important here.

17 MS. WEISS: So I understand this idea
18 and I think it's a good one and it may be where we
19 end up. Let me just put another idea out there
20 and see whether it's feasible to do because I
21 think that the process that was potentially being
22 described was that there is still a wide open

1 competition at the backend that the collaboration
2 at the frontend is so that the consortium is
3 putting together an application to the Department.
4 The process that you described, I think, would
5 have the Department judging the efficacy of a
6 process that we hoped would lead to an outcome. I
7 think what we're asking is is there a way to have
8 part of that process happen during the application
9 process so that when we're reading the application
10 we're actually judging the design. That design
11 will then go out to competitive bid to anybody who
12 wants to bid on it and probably as an amalgam of
13 things that the state learned from a variety of
14 these different 50-hour conversations that they
15 had.

16 So, another question. So where you
17 ended up may be where we have to go. But another
18 question would be is there a way to enable states
19 to have these 50-hour conversations during the
20 application process? Or not.

21 MR. COLLEY: Well, I just had a
22 clarification. So are you suggesting that that

1 50-hour happens with each one of the potential
2 suppliers on a one-on-one basis or is that a
3 collaboration where you've got all the suppliers
4 together?

5 MR. BERGER: I may have breezed through
6 that detail and I think it is a source or some
7 confusion.

8 My suggestion, and it is partially
9 baked, is the idea that there would be some sort
10 of very quick and sort of simple initial phase of
11 competition. My modest proposal was you get a
12 sketchbook and an organizational capability
13 statement or to truly capture the sense of
14 innovation you get the front and back of a napkin
15 to draw what it is that is important so that there
16 is something you can do very quickly, in the first
17 10 days after this hits the street in March, so
18 that states could then be choosing some manageable
19 number -- I'll throw out three -- parties that
20 they would be collaborating with in that much
21 deeper way. So states would be setting aside some
22 version of 150 hours to do that work. But I think

1 it would enormously invaluable.

2 And I will say that in my naiveté about
3 what can and can't be done, I was hoping that that
4 was -- that an RFC was actually a mode of
5 selection or at least it was a lot of the way down
6 the road to selection to get at this issue of I
7 want to know that if I build really great ideas
8 into your proposal, those aren't just out there
9 for my direct competitor to bid on at the next
10 phase, but that those are actually -- if those
11 ideas are the winning ideas, that there's a chance
12 for me to work at the next phase on my ideas. Or
13 there has been at least a preliminary selection
14 that gives me reason to hope that I get to work at
15 the next stage, whether the logistics of that take
16 a little longer to unfold so that it does end up
17 happening afterwards. And my precedent for this
18 is the selection of this data system process in
19 New York City was an intensive six-week
20 competition of three different vendors doing
21 essentially what I'm describing simultaneously
22 with an award at the end of it.

1 And so I think it's doable in the
2 timeframe imagined. And I'll just throw out there
3 as an example of what's at stake here, suppose
4 someone had a really great idea for assessment and
5 at the heart of it was a really powerful search
6 engine. To me it's game changing if Google is on
7 that team and Google helped them come up with how
8 that search engine is going to really work. As
9 opposed to we think there should be a search
10 engine here, but we don't really know how they
11 work because we're not allowed to get enough
12 information about that. I mean, I use that as
13 sort of a fanciful example, but I think it really
14 is different. If it's going to be delivered on a
15 snazzy device -- if Apple is helping you figure
16 out what that device is, that matters, it seems to
17 me, in evaluating a proposal. And I'd love to see
18 that what gets submitted over -- in the summer has
19 the process, the team, and the big ideas all woven
20 together. But I admit that that's a big departure
21 from the timeframes and the processes that
22 procurement usually happens on.

1 But I have to imagine that in wartime,
2 et cetera, somehow we figured out how to get
3 Boeing to make 20,000 planes a month during World
4 War II. And it probably wasn't a year-long
5 procurement process. And so I just wonder if
6 there is something we can do to really radically
7 accelerate this. And in some ways my 50 hours is
8 sort of an effort to say I believe at the end of
9 50 hours it's going to be really clear. Like,
10 that you could actually make a decision at that
11 point, not then start a long process of
12 quantitative evaluation. You could be evaluating
13 at the end of each day, such that at the end of
14 the process you'd actually know.

15 MS. WEISS: So my question is different
16 from yours because I'm actually much less
17 concerned about how to give a vendor a leg up in
18 the beginning of the process. I'm much more
19 concerned with how to get the best innovative
20 ideas to states so that they know what they're
21 trying to build and bid on and then have sort of a
22 fair and open process for competing and winning

1 that work.

2 MR. COLLEY: I think, again, it depends
3 on your definition of what you want the states to
4 bring to the table as part of their grant
5 application. If you're looking for them to bring
6 the innovative ideas that they have developed,
7 whether in some sort of --

8 MS. WEISS: Right. And we were.

9 MR. COLLEY: Okay.

10 MS. WEISS: The way we had been thinking
11 about it is there's some level -- I mean, you're
12 not in a detailed specification by any means, but
13 there is definitely sort of a vision and detailed
14 description of what it is you're building on the
15 assumption that the consortium even needs that in
16 order to know whether they're all philosophically
17 aligned and hanging together and this is what they
18 want to go build.

19 MR. COLLEY: Right.

20 MS. WEISS: So my intent, my goal, is to
21 try to get -- is to try to create an environment
22 within which states can get -- and consortia of

1 states can come together and get the best possible
2 sort of vision and design.

3 MR. COLLEY: Well, I think you've got to
4 recognize the limitations on what you're going to
5 be able to force to happen because the states are
6 going to be limited by their state laws.

7 MS. WEISS: Right.

8 MR. COLLEY: So you can invite what you
9 want them to do and it's going to be up to the
10 states to then work out through their state
11 procurement systems what they can do and what they
12 can't do.

13 What I'm suggesting is that if you
14 invite them to come forward with conceptual ideas,
15 the state procurement systems, I think, are
16 flexible enough or can be rendered flexible enough
17 to allow this kind of dialogue to take place.

18 MS. WEISS: After they win an award.

19 MR. COLLEY: No, before they win the
20 award.

21 MS. WEISS: Before.

22 MR. COLLEY: If you want them to bring

1 that forward. And the way you do that is we
2 talked about -- for a guy that doesn't know
3 procurement law or claims to, you've come up with
4 a pretty sophisticated procurement system. But
5 it's not unique. You know, these design
6 arrangements of picking vendors and doing down
7 selects among different groups happens all the
8 time in various procurement models. The key is
9 that if you want -- if you decide you're thinking
10 about using servers and you want to bring a Google
11 in, you've got to let the other server vendors
12 also come in and show what their innovative ideas
13 are. And Apple or the different device users have
14 to be able to come in and show what theirs are.
15 And the state's, you know, going to sort of select
16 a broad base. But it's not going to be written so
17 that we are using Apple unless that selection
18 decision is made at that time. If the competition
19 is set up that way, you know, you could make --
20 that makes the RFC at the frontend. And then the
21 vendor is then bringing the vendor or the state --
22 the consortia is bringing -- let me start over.

1 The consortia would then be bringing the vendor to
2 you as part of the grant application.

3 If the vendor -- the ultimate vendor
4 selection -- is going to be put off till later,
5 but you've kind of gotten some great ideas from
6 Apple, Apple is going to have to take the risk
7 that it's going to be better executing on those
8 ideas in a competition than, you know, the other
9 device maker when it brings its product to the
10 table and tweaks it to make it do even better than
11 what Apple's device would do for that idea or that
12 concept. So, you know, reaching out and getting
13 ideas and putting them into a solicitation,
14 provided their not so vendor-specific, provided
15 the specifications aren't written around a
16 particular vendor's approach so that really you've
17 as a practical matter excluded any meaningful
18 competition, you could do that.

19 MR. RICHINS: I might say that
20 conceptually you could, depending on the state,
21 but when you're dealing with a collaborative,
22 you're probably going to get some people that

1 won't have a comfort level with that, too. And so
2 that may alter the composition of the
3 collaborative.

4 MR. COLLEY: That was my theoretical
5 versus practical comment.

6 MS. WEISS: Mike?

7 MR. COHEN: Yeah. Just to build on this
8 last point because Mark, you were very helpful to
9 us even though we were buying a known type of
10 product. In working with each of the 9 or 10,
11 however many states we had at the time, with their
12 procurement offices and their state education
13 agencies to help them understand that they had the
14 flexibility that they did. Right? You had read
15 their laws and statutes in advance; we had hooked
16 you up with the right people; and you sort of held
17 their hand and walked them through that because
18 you had to get through the culture and some of the
19 unique requirements in each state. That's not an
20 insignificant process. That's where the
21 difference between what can be done in theory and
22 what it's going to take in practice is important.

1 Which I think simply means that states that want
2 to go down that road in that manner shouldn't
3 underestimate the level of legal advice they're
4 going to need. And it's probably not going to
5 come from the State Education Agency attorneys.
6 It's going to have to get someone outside that who
7 knows procurement in a different way and sees a
8 broader set of possibilities than what they
9 typically deploy.

10 MS. WEISS: Were you going to say
11 something, Phil?

12 MR. MAESTRI: I was going to ask if you
13 thought there would be a difference. One of the
14 things that I keep hearing over again is the
15 challenge that we would face with the different
16 states' procurement rules. And if this was
17 structured such that the grantee was not
18 necessarily every state, but, you know, say a lead
19 state and the other states were members of this,
20 the funds then don't flow to the states and then
21 back. So if the states themselves are not
22 expending their own funds do their procurement

1 rules all apply or could they consolidate under
2 one state -- the funds flow through that state and
3 the only that state's rules apply?

4 MR. COLLEY: I would have to think that
5 if the states are -- that's a really interesting
6 question that I haven't really thought about too
7 much before this minute so I'm going to qualify my
8 answer by saying that it's off the top of my head.

9 I'm working under the assumption that
10 the grant is going to be given to some legal
11 entity. It has to be. It's going to be either
12 given -- and my guess is that a joint state
13 cooperative may not be, you know, there's
14 constitutional principles involved here now in
15 terms of state compacts and things. But that's
16 where the lead state model has come into play so
17 much so that if the funding is coming through that
18 lead state, then that lead state's laws are going
19 to be the procurement laws that would control the
20 expenditure of those funds. It's the other states
21 that are coming onboard to agree to operate under
22 that.

1 The thing that's a little bit different
2 here is that in most cooperative purchases, you
3 know -- Doug, chime in here -- the states are
4 spending their own money.

5 MR. RICHINS: Right.

6 MR. COLLEY: And they're making
7 acquisitions. And they're worried about applying
8 their laws consistently and variations between
9 them. I'm -- if it's the federal money that
10 they're spending, I assume that they're going to
11 still assume that that money is in their pocket.
12 And so their procurement operations are going to
13 have to be in compliance. But I'm -- maybe it's
14 more flexibility than there had been.

15 MR. RICHINS: I think what Phil is
16 talking about, at least in my knowledge, would be
17 plowing new ground. Because I'm not aware of a
18 model where all of the money has gone to a lead
19 entity on behalf of everyone else. It's as Mark
20 talked about. They've cooperated together on the
21 procurement and then executed a master agreement.
22 And then the individual states that are

1 participating will sign on what we call a
2 participating addendum that may have one or two
3 additional requirements that their individual
4 statutes also require. But they're then making
5 the procurement with their own money or with -- it
6 could be federal money, but the federal money has
7 flowed to that state.

8 MR. COLLEY: But my impression is, I
9 guess, that this process is not going to end up
10 with something that would be executed with each
11 individual state. At the end of this process it's
12 not going to be the grant funding paying for this
13 test to be run in Missouri and Kentucky and
14 Mississippi. It's going to be -- the end of
15 result of this is going to be a test that's now
16 available for people to run using other funds. So
17 the states are going to be managing the consortia
18 to develop the test, but they're not actually
19 going to end up with something in their hands that
20 they have paid for.

21 MR. TUCKER: But there's two different
22 issues here. It strikes me there are two

1 different issues here. One is how you build the
2 test. And then the other is how it gets paid for
3 once it's produced, which is to say what you've
4 all been talking about is how the federal
5 government's money gets used to build a product.
6 Right? It is produced by a vendor in response to
7 a requirement that is set by a group of states.
8 So, at least in my mind conceivably, the product
9 could be built through contracts with a single
10 state which gets its money from the federal
11 government advised by others. I can't imagine
12 there's a problem in that.

13 The problem -- and the state that's
14 actually making the contract would agree to be
15 advised by these states in some way that's set
16 forth in a memorandum of agreement. The problem
17 that I was just referring to is is that doesn't
18 obligate any of those states to buy the tests or
19 even to use them.

20 MR. COLLEY: Right.

21 MR. TUCKER: That's a second procurement
22 problem. So if an arrangement hasn't been made in

1 advance for these states to purchase those tests,
2 they would presumably have to compete their
3 requirement under each of their individual state
4 laws, which means that there's no guarantee that
5 the test that was produced with the federal money
6 would be used by the states that participated in
7 the consortium.

8 So it's not one problem to be solved
9 here.

10 MR. COLLEY: Correct.

11 MR. TUCKER: There are two.

12 MR. RICHINS: I think the ideal is I
13 would look at that from a procurement sense as you
14 would probably want to contractually establish
15 what the costs of those tests are going to be in
16 that procurement so that that would be part of the
17 contract then that the individual -- the
18 participating states could then be able to be
19 utilized because then the procurement has done --
20 so has happened for both the original of the test
21 and the production of the test. Maybe I'm --

22 MR. TUCKER: But then you have to have

1 the formal consortium at the beginning with all
2 the bells and whistles that you specified.
3 Because each state would then, according to its
4 procurement laws, would have had to agreed in
5 advance to the product and the price. Right?

6 MR. RICHINS: Well, you would have the
7 consortium in place. And depending on their
8 procurement laws they would then, you know, that
9 would articulate how much involvement they would
10 have to have in the team.

11 MR. TUCKER: I was really getting to
12 Phil's question. That is, I can see very easily
13 how you can set this up so you can make the
14 building of the test real easy because you
15 wouldn't have to involve the other states. But if
16 you want them committed in advance to buying the
17 product, then your solution has to be invoked
18 because each state is then making a procurement
19 decision.

20 MR. RICHINS: Right.

21 MR. TUCKER: Right.

22 MR. COHEN: This goes back to the

1 conversation we had yesterday about the importance
2 of having at least some states in a consortia
3 actually committed to using the test that they
4 help --

5 MS. WEISS: Right.

6 MR. TUCKER: That's my point.

7 MR. COHEN: -- develop. I think Marc is
8 absolutely right. If you think of this simply as
9 a development effort -- I can't imagine any reason
10 why the lead state couldn't just issue an RFP with
11 Larry's approach or any other approach and
12 basically select someone to build the test. But
13 that doesn't take care -- that approach alone
14 wouldn't do what we figured out how to do in
15 Algebra II, which is to get all the other states
16 committed to at least have an opportunity to
17 purchase the test without having to go through
18 state by state by state separate procurements.

19 I think you can combine the two. I
20 assume you can combine the two, but it's a more
21 complicated approach it seems to me.

22 MS. WEISS: So let me ask a slightly

1 different question. We got a question from the
2 audience about whether the Department could
3 develop a pilot project that we fund and then the
4 best projects would go forward. And the answer to
5 that is, no, we can't do that under the way the
6 statute is written and in the timeframes we have.
7 But it does beg the question whether there is some
8 role that the Department could play in the
9 pre-award period that is different from the role a
10 state might be able to play. In other words,
11 could we host some event? Is there some role we
12 could play that would take it off the state and
13 procurement's back and have some kind of public
14 something where we invited states and vendors in
15 to have -- is there something there that we could
16 do to help?

17 MR. TUCKER: Good question. In a way,
18 the problem is creating a marketplace of ideas.

19 MS. WEISS: Right.

20 MR. TUCKER: Which is not functioning
21 very well at the moment.

22 MS. WEISS: Right.

1 MR. TUCKER: The states don't really
2 have a very -- what shall I say -- a very complete
3 idea of what the options are. They are more or
4 less at the mercy of people coming to them with
5 their own ideas which is very idiosyncratic. So
6 the question -- restating your question, is there
7 a way to create a more orderly marketplace of
8 ideas so they have a better sense of what the
9 options are from which they might choose?

10 MR. RICHINS: It seems to me that you
11 could. The challenge gets back to the issue
12 that's been raised previously. Within that
13 marketplace, are the suppliers really going to be
14 forthright in being collaborative where within
15 that marketplace their competitors and such are
16 participating and hearing and fully involved in
17 that marketplace?

18 MR. BERGER: And let's play it so
19 there's the problem what if they don't. There's
20 also the problem what if they do.

21 MS. WEISS: Who is the "they?"

22 MR. BERGER: Sorry. If the vendors

1 aren't forthcoming with their best ideas or if
2 they are. My concern here is so Marc Tucker goes
3 to that event and captivates a bunch of states
4 with the idea of reinventing 10th grade and then
5 using the International Baccalaureate, which is so
6 clearly identified with him. And then there's the
7 bid that inevitably gets called the Marc Tucker
8 bid. Everyone knows what it is and there's really
9 only one serious competitor for it. Or, all the
10 bids are sufficiently generic that you can't tell
11 who is who, in which case they are generic and we
12 haven't solved the problem that we have.

13 MS. WEISS: So is that a no?

14 MR. COLLEY: I think you could certainly
15 have some kind of a forum or dialogue that would
16 allow for the free exchange of ideas. I think it
17 would not be the collaborative --

18 MS. WEISS: Right. It wouldn't be 50
19 hours long per person, that's for sure.

20 MR. COLLEY: That kind of a
21 collaboration can take place, but it's going to
22 have to be in an open way. And by open I don't

1 mean that it has to be public and disclosed to
2 everybody, but everybody has got to have a chance
3 to play. Anybody that wants to come forward and
4 engage in the collaboration so that their ideas
5 and their collaborative generation of ideas go
6 into the soup from which the RFP -- the
7 solicitation would ultimately be generated -- has
8 got to be allowed to play.

9 MS. WEISS: All right. That's what I
10 see, too. The back of the napkin idea for picking
11 your favorite three is very unkosher.

12 MR. COHEN: What I heard Marc say
13 basically is it doesn't really matter who calls
14 the meeting of the states and the vendors. The
15 same rules and limitations would apply whether the
16 Department calls it or whether a consortia calls
17 it or whether 50 individual states call it 50
18 times over. There's an efficiency issue there.

19 MS. WEISS: Yes. But not a legal issue.

20 MR. COHEN: Right. The ground rules are
21 the same, I think.

22 MR. RICHINS: In my mind the real

1 question gets to how much detail the Department
2 wants to see in those grant applications.

3 MS. WEISS: Right.

4 MR. RICHINS: Because that's really
5 going to --

6 MS. WEISS: Right.

7 MR. RICHINS: -- depend where that flag
8 is going to be moved.

9 MS. WEISS: Right. Okay. All right.
10 Let me move to a different question and ask for
11 the purposes of this question the two people that
12 we just invited up here, to recuse yourselves from
13 this conversation, Marc and Mike, because I have a
14 question that we didn't really talk about this
15 morning, but it occurred to me as one of you was
16 presenting, which is yesterday, and in fact,
17 throughout these meetings it's been pretty clear
18 that to have a really successful consortium
19 requires likely some third-party management
20 organization that's going to come in and really
21 help organize and do project management, convene,
22 move forward, have some content expertise even and

1 just keep the consortium going rather than having
2 a lead state play that role. For a variety of
3 reasons it seems like it might be best practice to
4 have a third party do it.

5 My question is if a state -- if a
6 consortium wants to have a third party do it, is
7 that third party subject to all these procurement
8 rules and so you can't pick them until after the
9 award has been made? Or that was something we
10 thought was one of the sort of key indicators of
11 success for the evaluation of a grant. So we were
12 assuming that they came in at the front end as
13 part of the consortium. Is that a reasonable
14 assumption to make? Is there a difference between
15 a consortium manager and a vendor procurement?

16 MR. RICHINS: Maybe I can take one shot
17 with that.

18 SPEAKER: That would be Doug.

19 MR. RICHINS: I'm not sure -- I'm not
20 sure that a third-party entity is necessary since
21 this is in essence a single procurement.

22 MS. WEISS: It's not. No, it's a very

1 complex project of which there will be one or more
2 vendors.

3 MR. RICHINS: But what I mean is it's
4 ultimately going to, as I understand it, it's
5 really relative to this project. It's not putting
6 a consortium together that's going to work on this
7 project and then another project, and another
8 project, and another project. It seems like if
9 that was the case where there's going to be
10 multiple projects, then, yeah, you'd probably want
11 to be looking at a consortia. But I would think
12 that potentially it could happen with a lead state
13 environment.

14 MS. WEISS: So go with my -- so you're
15 right. It could happen that way. But it could
16 also happen another way. So if it happens the
17 other way, can you help me understand what the
18 procurement issues -- are there procurement
19 issues?

20 MR. RICHINS: And I'll take a shot and
21 then turn it to Mark.

22 Most states can do cooperative

1 procurement with another state. Most state laws
2 do not allow cooperative procurement with another
3 nongovernmental entity.

4 MS. WEISS: And so I'm not talking about
5 -- so maybe I'm not -- maybe my question isn't
6 clear or maybe I don't understand your answer.

7 MR. RICHINS: Or maybe I'm off on
8 understanding.

9 MS. WEISS: But so what I'm saying is
10 we've got a consortium of states. We've got
11 vendors to whom they will be -- from whom they'll
12 be procuring services at some point. And we've
13 got a consortium manager who in the education
14 world typically tends to be a nonprofit
15 organization of some sort that's helping to manage
16 the work of the consortium. Is that organization
17 or entity an entity that can come in at the
18 frontend in cooperation with the consortium to put
19 in their application or are they subject to all
20 the same procurement issues that we've been
21 talking about all day?

22 MR. COLLEY: Just to fill my legal role

1 here the reason I think is it depends.

2 MS. WEISS: Thank you. Next question.

3 MR. COLLEY: I'll try and elaborate on
4 that just a little bit. The -- I think the bulk
5 of the money that we're talking about getting
6 spent here is going to be spent by the test
7 developer in all likelihood would be my guess.
8 And that the management of the consortium will be
9 an important advisory and assistance role, but not
10 probably as elaborate.

11 Many states -- I'm not sure that all of
12 them do -- would be, I think, more flexible in
13 giving a sole source-type contract award to a
14 professional services vendor that could come in
15 and provide that kind of assistance. There are
16 some state schedule-type equivalents for legal
17 services or consulting services or accountant
18 services. Sometimes those are competed, but -- or
19 if you're on a schedule with a state you could get
20 in that way. But very often these professional --
21 those type of professional consulting services are
22 highly specialized and, you know, a waiver from a

1 system or falling under some sort of sole source
2 procurement requirement would allow you to do that
3 without having to go through all of the same
4 burdens of a more fulsome, competitive
5 procurement. There might be some mini procurement
6 or some other selection process, but that's going
7 to depend on, again, you know, the state laws
8 within the consortium and their ability to
9 overcome that as a hurdle in making that sort of
10 --

11 Now, the one thing that does happen is
12 -- at the federal level it's the system
13 engineering --

14 MR. BURMAN: SETA.

15 MR. COLLEY: The SETA contractor. I'm
16 trying to remember what the acronym words were,
17 Systems Engineering and Technical Advisory (sic)
18 contractors. If you're playing that role you then
19 are going to be precluded from bidding to do the
20 vendor role.

21 MS. WEISS: Oh, definitely. Right.

22 MR. COLLEY: But as long as that line is

1 maintained, getting the SETA contractor onboard
2 will have to adhere to some sort of procurement
3 process if they're spending the money, but it is
4 much more likely to be the possibility of doing
5 that in a much more slimmed down or sole source
6 type of way I think is more likely than for the
7 big vendor contract.

8 MR. BURMAN: I guess the money on
9 getting them onboard though would come out of the
10 award? So -- or would they use their own funds --
11 the states use their own funds in advance to try
12 to get someone to assist them in that process and
13 then follow whatever rules there are so they're
14 out from under your requirements? I'm just not
15 sure how the --

16 MS. WEISS: My assumption was there was
17 not necessarily any money exchanged prior to a
18 grant being awarded. But if a grant was awarded
19 then they would be compensated out of those grant
20 funds.

21 So my question really was when we're
22 writing the notice, is it appropriate or not for

1 us to ask questions about not only how are you
2 managing your consortium, but what entity is
3 managing your consortium? Or are those questions
4 we should stay away from because that procurement
5 needs to come later? Because it is sort of a --

6 MR. COLLEY: No, I think one of the
7 points I made in my slide -- I think it's
8 important for you to ask how they're set up to
9 manage the consortium.

10 MS. WEISS: Right. How I think.

11 MR. BURMAN: I agree.

12 MS. WEISS: And the question is can we
13 ask --

14 MR. COLLEY: Well, but if you're going
15 to do it with the aid and support of an
16 administrative support contractor, that ought to
17 be a part of the answer. And then, you know, part
18 of that answer has got to be we've already
19 selected them or we've already engaged them, or
20 here's the process that we're going to follow, or
21 we've checked all the boxes to get somebody
22 onboard after this contract, you know, whatever it

1 is.

2 And then you might compare two different
3 grant applications. If somebody has come in with
4 an administrator and somebody hasn't, that might
5 be, you know, a piece of information that you'd
6 use in assessing which consortium wins.

7 MS. WEISS: Do you guys have follow-on
8 questions to that?

9 So I'm going to change the subject then
10 and talk -- go back a little bit to some of the
11 stuff that a number of you mentioned. In fact, I
12 think Doug, Allan, and Mark all mentioned it in
13 your applications. And it's the question of what
14 is the information that we ought to ask in our
15 notice upfront in order to make sure that the
16 procurement process had been thought through
17 properly at the frontend.

18 And so, you know, Doug, you had some
19 ideas about making sure that we ask questions --
20 that the -- there's questions about the approach
21 that people should take to procurement and how
22 flexible the approach is. There's questions about

1 -- anyway, let me just sort of open it up and let
2 you guys just try to give us a little advice about
3 in our notice what are the appropriate questions
4 to ask and what should we stay away from and let
5 it be the states' job when they're letting the
6 contract?

7 MR. RICHINS: I'll just take an initial
8 shot at that.

9 I think that you would want to ask them
10 about how they're going -- how the lead state is
11 going to be selected and designated. And frankly,
12 I think it would be up to them to proffer those
13 reasons why they're selecting who they're going to
14 be selecting.

15 MS. WEISS: Do you think the lead state
16 hasn't been selected before -- do they -- I guess
17 from something that had been said earlier I was
18 thinking that they would actually know who the
19 lead state was when they gave us the application.

20 MR. RICHINS: I think that it could
21 happen at that time or it could not. It just
22 depends on if their consortium has matured to that

1 point and they've already made that determination
2 then they would certainly submit that.

3 I would think that -- I would -- if I
4 was in their shoes I would have that and submit
5 that information. And also submit as many of the
6 sourcing -- the composition of the sourcing team
7 as well because that's going to give the
8 Department a lot more concrete application to be
9 able to then judge the potential success of the
10 project.

11 MR. COHEN: Joanne, if they don't know
12 who the lead state is, what entity is submitting
13 the application and the request for funds? I
14 don't know how --

15 SPEAKER: That's a good point.

16 MR. COHEN: I don't know how they'd send
17 you an application if they hadn't figured that
18 out.

19 MS. WEISS: All right. So let's assume
20 we know the lead state. So you would also ask for
21 the sourcing team. So go through sort of like
22 what are the things that you think would be the

1 sort of critical success factors that if we asked
2 upfront our reviewers would have a good chance of
3 picking somebody who actually had the capacity and
4 skill to deliver on --

5 MR. RICHINS: I would ask about their
6 experience. If the lead state or the members of
7 the consortia have had any experience in doing
8 multistate procurements. And if any of the team
9 members that are on the project have had any
10 experience in doing multistate procurements.
11 Obviously, you're going to also want to know about
12 some of the background of the sourcing team
13 members -- if they're appropriate subject matter
14 experts. And their background. They potentially
15 haven't done multistate procurements, but
16 obviously they've probably been involved in
17 selecting and working in this environment. So you
18 want to know those particular factors, as well.

19 MS. WEISS: And then is there stuff we
20 should ask about the process they're going to go
21 through? So keep going. Like, what's the
22 conflict of interest? Like, there were a bunch of

1 things that came up that we're trying to sort of
2 understand what's appropriate for us to ask at the
3 application stage.

4 MR. RICHINS: I would think that it
5 should be mature enough at that point that they
6 would be able to tell you -- either to tell you
7 the procurement process they anticipate using or
8 they could at least tell you one of the reasons
9 that they selected -- that this lead state was
10 selected was because of the flexibility in their
11 procurement processes. And the team is
12 potentially looking at utilizing one of these
13 processes. And then you can see the flexibility
14 that hopefully will drive to a solution that's
15 going to provide collaboration and a best value
16 result.

17 MR. BURMAN: Those are pretty much the
18 evaluation criterion you would use for a federal
19 government RFP, as well. You'd look at a
20 management plan; you'd look at personnel -- key
21 personnel and who they are; the experience level
22 of those personnel; past performance along the

1 lines of what Doug was saying. Have they done
2 this before? Where have they done it? How has it
3 worked out? Can you get any information from
4 somebody about that? The technical approach that
5 they're going to follow. And I clearly think
6 given the complexity and the need -- the interest
7 in getting innovative approach is that, you know,
8 a best value approach would make sense in terms of
9 the procurement. And so have they done it before?
10 How have they done it? What do they see as the
11 problems or issues that they may encounter in
12 trying to do this effort? I mean, you could go
13 into more detail. What are the risks? What's the
14 mitigation efforts? I mean, you can -- I don't
15 know. Maybe that's going too far, but I think you
16 do want to get as good a feel as possible about
17 whether they're going to be able to pull this off
18 in the timeframe that you're dealing with, so.

19 MR. COLLEY: I think you want to
20 establish at that frontend some sort of a generic
21 criteria that you're awaiting. And you might
22 define it as something like we're looking for

1 evidence that gives us confidence that you're
2 going to be able to run a successful program. And
3 all of these kinds of things are items underneath
4 that that you'd be asking for. So, and you want
5 to know how mature and how evolved the consortium
6 thought process has gotten to in terms of their
7 understanding of how this is going to be managed.

8 Now, Mike and I have debated this over
9 time, and as a matter of full disclosure, Mike and
10 I worked together on the Algebra II project, which
11 I don't think is a big secret here, but there was
12 a lot of tension between, you know, the lawyers
13 sitting here wanting everything buttoned down and
14 the policy folks wanting to be leaving it a little
15 bit looser so that people would not be frightened
16 away by so much process. So that tension, I
17 think, exists in this type of world. But asking
18 for the consortia to come forward and identify the
19 systems it expects to use and that you've gotten
20 buy-ins from all of the state entities that need
21 to be signing off on this -- that the states --
22 you know, some sort of indication of the resources

1 they plan to bring, like the sourcing team
2 members.

3 If you have, you know, what's going to
4 be the governing document among the state?
5 Whether you call it a participation agreement or
6 an MOU among the states or whatever it is so that,
7 you know, how are their decision- making processes
8 going to be facilitated? Do they select the
9 vendor, direct the vendor, make decisions about
10 what they do or don't want to do? What happens if
11 the lead state has to resign? What happens when
12 new states want to come onboard? How do they
13 manage these processes? And sort of the more that
14 you have -- as I said before, I think we're all in
15 agreement, the more that you have those things
16 thought out ahead of time, it reflects that people
17 have given that kind of consortium management some
18 thought and you're more likely to get a good
19 result.

20 So, I mean, you've got a lot of
21 different suggestions from all of us here, but
22 they all sort of go back to that same issue of how

1 confident you are that the consortium members have
2 thought through these issues.

3 MS. WEISS: Right. Right.

4 MR. BERGER: Can I ask?

5 MS. WEISS: Yeah, go ahead.

6 MR. BERGER: This is a clarifying
7 question just because I don't understand. To the
8 extent that I know of what a few state chiefs are
9 doing, it seems that right now they're in the mode
10 of signing every MOU that comes across their desk
11 because they don't know the rules of the game.
12 And so they're saying since one of these might win
13 and I don't actually know other than the names of
14 the states what I'm signing on for, I want to be
15 on all of these because one of them might get
16 money. And I'm wondering, A, will that be
17 permitted? So when you get a state plan from a
18 lead state, what if it comes with 20 states that
19 are signed on, but those 20 are also signed on to
20 others, too? And how does that sort of game
21 theory work?

22 MS. WEISS: Yeah. That's the type of

1 question that we will answer in our notice.

2 MR. BERGER: Okay.

3 MS. WEISS: But not right now.

4 MR. BERGER: Okay. But I guess I would
5 say I think it does potentially open
6 opportunities. If you allow the sort of
7 promiscuous MOU signing approach, then it does
8 potentially allow states to see something about
9 what's unfolding pos-award before they finally
10 commit to one or the other of them. Does that
11 make sense? So if I'm signed up for two of them
12 and one of them starts doing thrilling stuff and
13 the other doesn't, then I now have a moment where
14 I can make a decision based on something. Whereas
15 right now I still -- the thing I'm getting lost in
16 is I don't understand what makes me choose one of
17 these other than the names of the states and the
18 quality of the people they can field to do
19 sourcing.

20 MS. WEISS: So let's just also be sure
21 to sort of know that this next proposal is the one
22 we're talking about, not the current Race to the

1 Top proposal.

2 MR. BERGER: Yeah, yeah. No, I --

3 MS. WEISS: And so the next proposal is
4 where you're actually coming together and putting
5 together applications and putting them in and
6 designing -- deciding your design.

7 MR. BERGER: Right.

8 MS. WEISS: And there'll be a whole lot
9 more information.

10 MR. BERGER: I see.

11 MS. WEISS: Right? With this next one.
12 There will be designs. There will be work that
13 you're actually signing up to do and be part of.
14 And so --

15 MR. BERGER: Right. Okay.

16 MS. WEISS: Other questions that you
17 guys have that have been sparked by this? Mike
18 and Marc, anything from this morning that came up
19 that you want to ask about or --

20 MR. MAESTRI: I'd like to get back to
21 something you said this morning. Also, what you
22 were talking about, providing some level of proof

1 or assurance that the legalities have been
2 satisfied in terms of whether there are multiple
3 procurement rules involved or whether they are
4 conflicts of interest issues. What we use a lot
5 of times in a grant application package is a set
6 of assurances where they are signed and someone
7 makes an assurance that these things have
8 happened.

9 What's your opinion of the value of that
10 and what kinds of assurances would you recommend
11 in this sort of different environment that we
12 would look at?

13 MR. COLLEY: I think those are very
14 valuable, mainly because as a matter of sort of
15 administrative process, very few government
16 officials will sign a certification that something
17 is authorized as a matter of state law on an
18 official government document unless it really has
19 been. And that usually means that, you know,
20 someone will ask can I sign this? Have I met
21 these -- do we satisfy these criteria? And then
22 they will hand it to their agency lawyer who will

1 then hand it to -- go to the higher legal
2 official. And it will go through some sort of
3 chain of approval before it gets signed off on.
4 And the kinds of things I think you're looking to
5 get assurance on is that this state can
6 participate in this mix.

7 Now, the dynamic here is a little bit
8 different because you're not spending state money;
9 you're spending this federal money, but
10 ordinarily, you know, states get grant money all
11 the time and they spend grant money using their
12 own procurement systems. If you give a grant to
13 build a sewage treatment plant somewhere they go
14 through the usual process to select a contractor
15 to build it. They view it as that same kind of
16 funding, plus some additional overlays usually
17 that the federal, you know, some extra links or
18 ties -- strings that are attached to the federal
19 grant.

20 But the interesting dynamic here is what
21 kind of legal authority is going to be required
22 from just individual consortium members to be on

1 the consortium team. And, you know, participate
2 in the development and the management and the
3 decision-making of that test development process.
4 And that may, you know, in some states be less or
5 some states be more, but I think you want to ask
6 them have the, you know, state legal authorities
7 been complied with? Yes, this state does have
8 approval to participate in the way that we're
9 describing in our proposal and the legal
10 authorities have been approved and confirmed and
11 it's legal under the laws of the commonwealth of
12 whatever and, you know, so on.

13 And so as long as you've got some, you
14 know, I had suggested before if you could get the
15 participation agreement actually signed and
16 delivered, that's going to -- you know, that's a
17 certain level of commitment and approval that's
18 demonstrated by that. You know, you've got --
19 here's the signature page of the 10 states in the
20 consortium who have all signed up for this. But
21 it may be something simpler like just some sort of
22 a certification that says we've gone through the

1 processes in our state and I, on behalf of the
2 state of whatever, I confirm that, you know, we
3 have legal authority to participate in the way
4 described in this application and so on.

5 So, yeah, I think it's a very important
6 thing to have.

7 MS. WEISS: So for our last question,
8 which is a biggie so we'll just get -- I don't
9 know. I don't know how far we'll get in it. But
10 I want you to come back to the issue that you
11 touched on, Mark, in your presentation around IP
12 issues. We've had two different sets of
13 recommendations that have come before us in the
14 past few -- couple of months about IP issues. And
15 I have no doubt that there are even other
16 permutations on this.

17 But what I would love to know is whether
18 you're got recommendations or thoughts about under
19 what circumstances one approach or the other
20 approach may be better. And the two approaches
21 are, first of all, the content items that are
22 developed are basically developed to a standard.

1 There are a couple of standards -- technology
2 standards out there for developing items. So the
3 items are developed to a standard. So the items
4 are -- and the items are made freely available to
5 any technology provider and the innovation happens
6 at the technology platform level. And we don't
7 fund it. We just create a marketplace for it by
8 providing all of the content. That's option one.
9 So it's kind of open source content.

10 The other option is open source platform
11 where the technology is open source. And I'm
12 wondering whether you can just help us understand
13 whether one or the other -- what the advantages or
14 disadvantages might be to either of those. Or if
15 there are other permutations you can tell us, too.

16 MR. COLLEY: Well, I'm not an expert at
17 all on the platform technologies that assessment
18 tests are running on. So with that caveat, the
19 first model where you've got open source content
20 strikes me as one that -- well, it's going to
21 depend on what you want in the end.

22 MS. WEISS: Right.

1 MR. COLLEY: And I've said this before,
2 I think. You know, ordinarily the government gets
3 what it pays for, but it doesn't necessarily get
4 -- it doesn't usually get free reign over what it
5 doesn't pay for. So it depends on what you're
6 paying these test vendors to develop. If they are
7 bringing to the table technologies and innovations
8 and intellectual property that they have developed
9 on their own nickel and that's their competitive
10 sauce that makes them -- differentiates them in
11 the marketplace, they're not likely to turn that
12 over to the government in any setting other than
13 for their performance of the contract that they're
14 getting paid to perform that they won in a
15 competition.

16 And so the more that you can have things
17 developed to open standards and open -- whether
18 it's open source or open source platforms, the
19 broader the competition is going to be down the
20 road. So, my concern with an open source item --
21 if you're just developing the items, I am aware
22 enough that there are vendors that will have some

1 pretty unique technologies for how you're going to
2 test or conduct an assessment. And sometimes the
3 items that they're developing are only going to be
4 suitable for a particular type of technological
5 platform to operate on. You can -- here's the
6 kind of question we've developed and it will work
7 on our system, but it may not work on anybody
8 else's system. But if you've done it in such a
9 way where it can run on anybody's system or
10 anybody's system can pretty much adapt to it, then
11 you've opened up the competition for who is going
12 to take that test and administer it in the next
13 phase, which I take it is not what's being funded
14 here, but it would be, you know, funded down the
15 road.

16 If you actually have an open
17 architecture or an open source code or some other
18 kind of technology base that's also a standard
19 against which people can operate, it seems to me
20 that on the one hand you've then opened up the
21 number of vendors that might be able to come in
22 and use those items on different kinds of

1 platforms, but you may have also on the flipside
2 shut out some innovation that is only available
3 through proprietary systems. And, you know,
4 that's a tension that is in the industry. And it
5 depends on how much of a -- again, the problem
6 here is what the marketplace is directing to the
7 vendors. If the vendors feel like the only way
8 they can sell their product is to do it in this
9 open environment, and that's the only thing that
10 anybody's going to buy so they're sort of stuck
11 with going that way, that's one environment.

12 If, on the other hand, they feel like,
13 well, you're developing this thing on an open
14 basis, but I've actually got a slicker product
15 than you're going to develop under this consortium
16 and I'm going to go out later and market that to
17 the individual states -- the individual states not
18 having any obligation to buy this test -- that
19 vendor may just not play and say, well, if it's
20 going to be -- if my proprietary system can't come
21 into the game because I'm not going to be willing
22 to turn over the inner workings so that everybody

1 else can use it, my competitors can use it, I'm
2 done.

3 And I don't know that there's a solution
4 to that tension. You know, it's part of the
5 competitive marketplace to have intellectual
6 property be a key to that competition. It's just
7 a question of how far you want to go in insisting
8 that this be available to all vendors versus
9 letting an individual vendor dictate how its
10 product that it's developed under this money be
11 used later.

12 There may be some other ways around
13 that. There may be -- you may be able to shackle
14 the product with some sort of licensing rights
15 obligation that they're going to make that it has
16 to run on our system, but we will make it
17 available at our best price or at our most
18 favorite customer price. Or there's some other
19 linkage so that even though they're not going to
20 give up the source code they will license it to
21 anybody that wants to use it. So there may be
22 some other solutions out there. But I don't have

1 the solution -- the one-size-fits-all solution for
2 all of that.

3 I haven't answered your question. I've
4 just probably left you with the same quandary.

5 MS. WEISS: No, no, no. But those are
6 -- I mean, asking -- making sure that we've got
7 the questions -- that we understand the questions
8 is helpful.

9 MR. COLLEY: I mean, you --

10 MR. BURMAN: No, the only point I was
11 going to make is the same thing, Mark, that what
12 you -- the hazard is you keep somebody out who
13 might have the best thing going by going on that
14 open source approach. And so I guess knowing
15 who's out there, what they have, and what might be
16 something that would be something that would be
17 innovative and great would be nice to have that
18 knowledge as you're making that decision.

19 MR. BERGER: And, again, I don't know
20 how such notices are drafted. But it seems like
21 the aspiration, which is show us how in the vision
22 you're crafting there are marketplaces of

1 innovation that will be created and where in your
2 system you see that happening seems like that's a
3 worthwhile goal. And then you might imagine that
4 consortia would have different views of where they
5 want that marketplace to happen, whether it's in
6 the items, in the technology, or just some sort of
7 open architecture that enables lots of things to
8 plug in, but doesn't actually open source
9 anything.

10 I don't know how you would score those
11 variants, but at least it forces that issue onto
12 the table from the point of view of good public
13 policy that the states will have to live with,
14 too, not just in the use of your federal money.

15 MS. WEISS: Well, thank you. We're just
16 about out of time. I just want to make sure that
17 Doug, Larry, Al, and Mark, if you've got any
18 closing thoughts, questions, things that you wish
19 you'd told us and haven't had a chance to yet.

20 MR. COLLEY: I had one note down and
21 it's just -- it was a reference earlier and I
22 think Larry sparked this comment for me about

1 getting the different vendors together. And one
2 thing you might want to be including in your
3 objectives here are the questions about asking for
4 what kind of teaming and subcontracting
5 arrangements the vendors would have or the kind of
6 flexibility that the states would allow for
7 multiple vendors to join together to support a
8 particular state's consortium approach. Because
9 you can get multiple, you know, flexibilities, you
10 know, rubbing the two sticks together.

11 But that led me to think also about the
12 Department of Energy -- Department of Education's
13 sort of minority contracting goals. And I'm
14 assuming that there'll be something in the grant
15 application about what kind of, you know, hitting
16 some targets or what kind of minority
17 subcontracting activity might take place here
18 which has always been one of the federal policies
19 that, you know, spending those monies on. So, I
20 mean, you've got your own grant application goals
21 and that's going to need to be -- that seems to be
22 included in the application process for the

1 consortia and flow down to the individual states
2 to implement those federal policy goals as well.

3 MS. WEISS: Thank you.

4 MR. BURMAN: The only thing I would say
5 -- I think it's great that you're doing this
6 process because the more that these kinds of
7 questions come out in advance and people think
8 about them, I think the better you're going to get
9 a good result. So I compliment you on that.

10 MS. WEISS: Thanks, Doug. Anything
11 else? Larry?

12 MR. BERGER: Just that I think what's
13 happened with the first round of Race to the Top
14 has been fascinating evidence of the fact that a
15 new approach to how you define requirements can
16 set in motion an unprecedented amount of
17 fundamental changing of the rules in state
18 legislatures about how things get done. And I
19 wouldn't -- I would try to keep as much of that
20 ambition in place for this. I know you've got
21 less time for everything to happen in, but I do
22 think the country has shown a willingness to

1 change fundamental rules once it hears that the
2 Department wants to do something big and bold and
3 that some of that is competitive and requires
4 playing the game differently. And I encourage
5 that again.

6 MS. WEISS: Thank you. Well, thank you
7 all so much for taking your time and sharing your
8 thoughts with us. I didn't know procurement could
9 be so fun. So thank you. But we've learned a
10 lot. I mean, I know all of us on this side of the
11 table have learned a lot so we thank you very,
12 very much for sharing that with us.

13 And we are going to take a five-minute
14 break and come back here for our public speaking.
15 And whoever has signed up as a public speaker,
16 please, can you just raise your hand, Mark?
17 Please come see Mark and he will get you set up.
18 And we'll get the podium moved in and we'll
19 reconvene in about five minutes. Thanks.

20 (Recess)

21 MS. WEISS: Folks, let's come have a
22 seat.

1 Okay, thank you. I think most people
2 here know the drill for public speakers. And I
3 know you do, Susan, because I have seen you at
4 several of our meetings. So, I think Susan is our
5 only public speaker today. So we will start the
6 timer and turn it over to you. Thank you.

7 MS. SANDLER: Thank you. My name is
8 Susan Sandler and I'm representing my family's
9 foundation, the Sandler Foundation. And I'm also
10 here representing a group of foundations that have
11 a common interest in balanced assessment, and that
12 group includes the Ford Foundation, the Hewlett
13 Foundation, the Nellie Mae Education Foundation,
14 as well as the Sandler Foundation. And you've
15 heard from one of us yesterday, Nick Donahue, and
16 I believe that Charlie Toulmin is speaking on
17 January 20th. And we are also finding and
18 reaching out to additional foundations that share
19 this interest.

20 So, as you know, I've had the
21 opportunity to sit in on a number of these
22 meetings and it really has been a pleasure to see

1 government at work. This grant competition
2 creates an opportunity to dramatically improve an
3 area of education which has such huge leverage and
4 ripple effects on the rest of the system. And I'm
5 very appreciative of the Department of Education
6 for taking up this issue and for the very
7 thoughtful approach with which you are pursuing
8 it. And I've also been very heartened by the
9 large number of states that are expressing
10 interest in dramatically improving assessment to
11 reflect best practices.

12 So, our group of foundations has a
13 couple of very simple recommendations. One is
14 that the one or more consortia that would be
15 funded speak fully to the range of standards. And
16 by this I mean that the assessments that they
17 would develop would address both basic academic
18 skills, as well as more complex and challenging
19 skills such as planning, transferring knowledge,
20 all the things that we've been hearing a lot about
21 at these meetings. And also that the consortium
22 or consortia that get funded have a systemic

1 approach to assessment where they look at how
2 summative assessment interfaces with curriculum
3 standards, formative assessment, and professional
4 development.

5 We are hoping that you do go ahead and
6 fund such consortium or consortia. Many of us are
7 then looking forward to providing various kinds of
8 technical assistance and support to those efforts.

9 We have been thinking a lot about what
10 an RFP should look like. And I actually submitted
11 today with my comments a draft of a document that
12 lays out some thoughts on that. And what we tried
13 to do in that document is think about what are the
14 core principles related to balanced and systemic
15 assessment and how that would translate, both in
16 the area of what are the criteria that bidders
17 should meet if they were to be able to carry out
18 that kind of assessment, and what is the
19 information that they should provide in a proposal
20 that would demonstrate that they have a good plan
21 in place. We are fleshing out this document
22 further and plan to submit a revised draft to you

1 by the 20th.

2 The last thing that I wanted to mention
3 is that one of the foundations in our group is
4 funding a project that is estimating costs of the
5 kind of balanced assessment system we're talking
6 about that has strong performance elements. And
7 this project has a very sophisticated modeling
8 approach based on a comprehensive analysis of
9 testing costs in a number of states and is
10 aggressively reviewing opportunities for cost
11 savings. So the goal is to come up with
12 information that's realistic about how this kind
13 of assessment can be carried out in an affordable
14 and sustainable way. And it will be completed
15 shortly.

16 Thank you very much.

17 MS. WEISS: Thank you. We look forward
18 to receiving the cost document. And thank you for
19 writing the RFP for us. We appreciate that.

20 That was a joke for the transcript.
21 Thank you very much, everyone, for joining us.
22 And we will leave you to your travels and wish you

1 a safe journey and possibly see you again next
2 week if you're coming back then. And otherwise,
3 thank you very much for spending your day with us
4 today. I hope it was valuable for you. Thanks.

5 (Whereupon, at 12:08 p.m., the
6 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby
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