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PUBLIC COMMENTS BEFORE THE SERVICES ACQUISITION
ADVISORY PANEL

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Madam Chair and distinguished members of the Services Acquisition
Advisory Panel:

I am grateful to be here today so I provide some thoughts and insights that I have on this most topical issue. The comments I am about to make reflect my twenty plus years of government contracting experience. I have worked for a contractor doing onsite work at the Department of the Navy. I was fortunate to go to law school, practice law and then form Centre Law, Centre Consulting and the Federal Contracting Institute. In our Federal Contracting Institute we have trained hundreds of government and civilian employees in all aspects of federal government contracting including performance based acquisitions. So I have seen and heard first hand the problems and issues facing acquisition professionals in implementing performance based contracting.

Performance based contracting is not broken. It is becoming more and more wide spread and as such the number of people that

understand how to properly implement it has not kept pace with the growth of this method of contracting. While it is not a new concept it is one that is still maturing. The most important aspect remains the training of the personnel who are responsible for implementing it. But this is nothing new to contracting. In the 1980's when the Federal Acquisition Regulations were first being developed, one of the core reforms sought then was the training of the professional work force. As contracting has become more sophisticated since that time, the training requirements have commensurately increased but the training provided by the government to its contracting professionals has not kept pace with the need. This has been something that I have heard time and time again as I have met with many contracting officials throughout the federal government.

In my capacity as an attorney, I am frequently involved in negotiations with contracting officers, some of whom are skilled professionals in the field but others of whom are sadly lacking in even the basics of contracting. When individuals without the proper training and experience attempt to implement a performance based contract the results are understandably and expectedly poor. The issue here is not that performance based contracting doesn't work or is flawed as a concept but rather there is trouble consistently implementing it by an inconsistently trained contracting workforce.

I have four observations:

One, not every contract is suitable for performance based contracting. In some cases you have an \$80,000 a year GS

employee monitoring the performance of a \$20,000 a year receptionist. Is this wise use of an already overburdened contracting official?

My second observation relates to the lack of training and my earlier comments. I suggest establishing an interagency resource center on performance based contracting. The Alternative Dispute Resolution working group has done an excellent job of showing how agencies can jointly contribute to a common goal in the area of ADR by linking websites and sharing materials. Take this type of approach and utilize it the performance-based arena. Establish an interagency work group with the goal of designing a central portal to share information and perhaps offer online training with a professional services help desk to assist with drafting work statements.

The third observation I have is that when acquisition professionals are working from limited templates and using only financial penalties and disincentives to enforce the quality assurance surveillance plan then that risk will be priced by the contractor and included in the contract price. An adequate library and resource centre will enable the acquisition team to think in terms of alternative approaches such as the exercise of the option year as an incentive rather than just disincentives. This approach will ultimately save the government money because it reduces the risk to the contractor.

Fourth and finally, the government needs to learn not to create overly burdensome surveillance plans that will ultimately create a

bureaucracy of contractors monitoring contractors for compliance.
Only evaluate what is necessary to accurately measure success.

Thank you for allowing me to share my thoughts with you today.