



**Statement to the  
Acquisition Advisory Panel  
November 18, 2005**

**Stan Soloway, President  
Professional Services Council**

Madame Chair and members of the panel, thank you for the opportunity to appear here today to share the views and perspectives of the members of the Professional Services Council as they relate to the important work of this panel. PSC is the principal national trade association of companies of all sizes providing services of virtually every type to every agency of government. PSC has a long history of leadership on the full array of procurement policy and process issues. My appearance here today represents an extension of our commitment to helping improve the marketplace for services and to foster business processes that result in best value for the government customer.

As this panel is now well into its deliberations, I will focus my remarks on issues and challenges that fall within the purview of one or more of your existing working groups. In so doing, I will simply try to offer a few basic perspectives and a limited number of specific recommendations in each area.

**The Current Procurement Environment**

First, PSC members are deeply concerned about the procurement environment in which we find ourselves today. I think we can all agree that this is as difficult an environment as we have seen in many, many years. The credibility of the process is at low ebb, procurement has increasingly become a surrogate for other political agendas, and the disconnects between the front end requirements and acquisition communities, and the post-award, post-performance oversight communities, are greater than ever. As a result, we have an environment in which government contracting officers are increasingly afraid to make decisions, let alone mistakes.

This situation is both unhealthy and unwarranted. Despite numerous news articles to the contrary, and the often harsh rhetoric from a few in Congress, the sky is not falling. The truth is that in the majority of the cases that have made it into the media or congressional speeches, there has been far more smoke than fire. Unfortunately, allegations are being

thrown about loosely, and all too often inappropriately, and are even finding their way into proposed legislation, let alone the public consciousness.

In fact, the federal acquisition process works well, despite the numerous problems we face. When one considers the more than \$160 billion spent each year on services, the growing complexity and nuance of the work involved, and the rapid pace of change in the technology world, the basic effectiveness of the procurement system becomes a bit clearer.

Also, contrary to what some have alleged, competition is actually strong. For example, price and performance pressures are greater today than they were a decade ago. Since the mid 90s, the number of companies selling services to the government has nearly doubled and the advent of best value, past performance and other basic reforms has changed the way companies in the marketplace bid for and manage their government work. The rise of the GSA schedules, GWACs and other multiple award vehicles have also played an important role, creating a competitive marketplace for contracts that gives customers options that simply did not exist before, and creating even more competitive pressure on the companies and works to the government's benefit.

Thus, I hope that one of this panel's initial and most prominent messages will be one of caution to those who believe the sky is falling, because it is not. I believe that the bulk of the problems that led to the formation of this panel, as well as the bulk of the concerns expressed by the leadership, can be traced to two basic factors: a lack of context and perspective on the realities of government procurement and a lack of meaningful commitment to, and support of, the acquisition workforce.

There is no doubt that we face serious challenges in the acquisition and management of services. There is no doubt that there has sometimes been inadequate discipline in the process, nor is there any doubt that the flexibilities now available to the federal acquisition community require far more aggressive and robust training and professional development than has been the case to date. And there is no doubt that the changing nature of government itself has created an environment in which partnership and collaboration is both more important and more evident than ever before.

### **Focus on the Workforce**

In short, while it would be irresponsible to be sanguine about where things stand, the answer to the challenges we face does not lie in wholesale changes to the acquisition process or structure. The answer does not lie in swinging the pendulum back to the bad old days. It lies in focusing on the real crux of the issue, the people, and in giving them the tools and time needed to do their jobs better.

Trite as it may sound, the issues we face always seem to come back to the workforce and the widely accepted fact that we have too few acquisition professionals in the right places with the right skills. I cannot tell you, nor can anyone, how many acquisition professionals we need today; nor can I assess whether those we have in place are fully

capitalizing on the many tools that can help them do their jobs better and faster. It is clear, however, that we are placing the workforce in an impossible position.

While some acquisition reform was about streamlining processes, other elements were about incorporating significant contemporary business judgments in a procurement process that previously relied on rigid rules and formulas. In other words, acquisition reform was not, as some think, about making acquisition “easier”. On many levels, it is actually harder and more complex than was the case before.

That is why I believe solving the workforce problems go well beyond traditional certification requirements like those DoD currently has and which are now being put in place in the civilian agencies. And it goes beyond the recently created partnership between the Defense Acquisition University and the Federal Acquisition Institute. Both are positive steps forward but alone they will barely dent the problem.

If you look at any successful corporate enterprise you will see extensive investments in continuing professional development and learning. Yet in the government, particularly in acquisition, that is but an afterthought. The DAU has a budget of nearly \$100 million, which may sound like a lot. But when one deducts from that the amount DAU must pay for student travel and per diem, and then deduct further the costs of delivering basic certification training to a DoD acquisition workforce of over 180,000 people, the bottom line becomes clear: little money remains for continuous learning. Of course, in the civilian agencies not even that initial funding stream is available.

In other words, achieving our collective goals in acquisition, first and foremost requires a commitment to workforce development that is orders of magnitude greater than ever before. Given the central role acquisition plays in the proper functioning of our government, that investment will be well worth it. Unfortunately, we continue to give it short shrift. No matter what policy or rule changes we impose, no matter how we tinker with structures or process, we will continue to experience almost all of the difficulties we experience today unless that paradigm changes.

The use of past performance in acquisition decisions is a good example. It makes eminent sense. Yet the systems required to give contracting professionals the information they need to properly utilize past performance reports are woefully inadequate, and necessary upgrades remain underfunded, thus creating an environment in which the information is either too limited or simply not available.

Likewise, we all agree that in many cases the low bid is not always the right bid for the government. Yet it seems that every time an award is made to other than the low bidder, the entity making the award is vilified for wasting taxpayer money.

## **Government Management Challenges**

Further, our procurement challenges cannot be separated from the government's broader management challenges, in the financial, technology, human resources, and other fields. As the Senate Government Affairs Committee reported just a few years ago, we have a general management crisis in government that is the result of decades of inadequately resourcing professional development and a continual exiting of peak career civil servants. As the data show, this critical demographic in the federal workforce is actually dropping steadily at a time it should be growing. That is the probably the biggest challenge we face across government and nowhere is it more evident than in acquisition. While it is often convenient to talk of contract management as if its problems are unique, the truth is that it is but one of many government disciplines in which management is a significant challenge. Additionally, in high performing companies, strategic human capital management is just that—strategic. It requires careful thought and planning around the entity's mission, the kinds of organic workforce it absolutely needs, and providing the tools, resources and workforce management flexibilities required to achieve those goals. This remains anathema to the government's personnel management philosophies and budgeting and staffing processes.

For these reasons, we applaud the panel's focus on the acquisition workforce. I know you are all too well aware of the critical need to rethink overall personnel practices and policies so that we can ensure the government's access to the people it needs. That is not to say the government does not have a lot of highly talented professionals. It is to say, however, that we clearly do not have enough, are not developing enough, and are losing too many of those very people.

But please do not ignore the workforce's morale and the range of steps that can be taken to better support them in both the short and long term. It's time for credible leaders to call for a halt to the witch-hunt environment and, at the same time, to provide the context and perspective I mentioned before. Today, that kind of overt support for the acquisition workforce is all too often missing.

If that dynamic doesn't change, the government will find it ever more difficult to recruit and retain the quality people it needs and will be powerless to prevent the continued and disturbing exodus from government of the very people it so badly needs.

## **Think Broadly About Acquisition**

It is also important to think about acquisition more broadly than we generally do. Too often, when people think about acquisition, they typically are only thinking about the 1102s or contracting officers, rather than the broad panoply of skills that are essential for effective and efficient management and mission execution, prominently including program management---a critical acquisition skill but one that is too often understated or underemphasized in government. When I was at the Defense Department, the education, training, and career development of the more than 180,000 professionals in the acquisition workforce fell under my office's purview. And of those 180,000, just over 10

percent were warranted contracting officers. In recognition of this integrated nature of effective acquisition, DoD focused a lot of energy on the creation of Integrated Process Teams to manage its major weapons systems programs. That same philosophy is not nearly as evident in DoD's acquisition of services and is almost totally absent in the civilian agencies.

For example, while I will talk later about some of challenges in executing performance based projects, one of the clearest challenges is directly related to this need for a multi-functional management approach. After all, performance based acquisition is not, fundamentally, a contracting exercise. Successful PBSAs require the active involvement of and investment by the customer, financial, legal, contracting, and other functional stakeholders. Yet such management strategies are clearly the exception rather than the norm.

### **Inherently Governmental Functions and the Blended Workforce**

The workforce issues are also inextricably linked to the Panel's deliberations over the definition of inherently governmental functions. When I served on the Commercial Activities Panel, we spent a fair amount of time reviewing and discussing the current definition of inherently governmental as contained in OMB Policy Letter 92-1. We came to the conclusion that we could not improve on that policy letter; that the existing guidance was about as prescriptive as one could or should get.

Nonetheless, while changing the regulatory definitions may not be necessary, the current environment clearly demands that we give more consideration to the larger question of roles, responsibilities and accountability.

It requires us to think in terms of the three tiered nature of government work: first, what we might call governance---setting policy, committing government funds, awarding contracts or otherwise legally binding the government—all of which is clearly inherently governmental; second, areas like contract management and administration, technology assessment, program management, and the like--less clearly inherently governmental functions but clearly areas in which the government must maintain a robust residual capability to ensure that it meets its responsibilities for cost, schedule, performance, and more; and finally, those activities that can be performed either internally or externally.

Of course, this tiering is nothing new. What is different is the degree to which that middle category of government work is tilting increasingly toward contracting. As the government shifts, inexorably and likely irreversibly, to being the manager of service delivery rather than the actual deliverer of those services, this trend will continue.

This is not an innately negative change, although some seem to perceive it as such or characterize it as such for their own purposes. Instead, it simply creates a reality to which we must adjust. It requires us to manage our acquisition and other organic government assets differently than we did in the past and to strategically focus those limited assets where they are most needed. It requires us to recognize the changing nature not only of

the supplier base but also of the way in which needed support is delivered to the government and how government can and must optimize its delivery of services to its citizens. We cannot isolate the government from the dynamics of the marketplace. Rather, the government has to adjust to those dynamics. Managing those new realities is a matter of training, guidance and resources, not rules and regulations.

In simple terms, then, the real issues are not about redefining inherently governmental or about drawing rigid bright line tests. Rather, they about thinking realistically, communicating those realities clearly to decision makers and policy leaders, and making sure that, where necessary, we have the proper controls in place to protect the government's equities.

They are clearly unique challenges associated with managing blended workforces, which are becoming more and more common throughout government. This is an area in which PSC has just begun to do some of its own work, since our member companies are well aware of the challenges presented. It is also an area that agencies, such as HHS have begun to think about. As our internal discussions on this fundamental issue progress, we would be happy to provide the panel with additional thoughts and even specific recommendations.

### **Aligning Acquisition and Oversight**

It is also our hope that the Panel will find a way to help bridge the disconnects between the acquisition and oversight communities that I referenced earlier. Today, any number of the procurement issues that have found their way into the media or before the Congress, are directly related to this unfortunate and troubling misalignment. Some oversight entities, the GAO for example, are genuinely focused on critical management challenges and have become valued partners in the many important efforts to improve government performance. Others, however, remain rooted in what we believe are old ways of thinking about business relationships, profit, and priorities. This is particularly true of elements of the audit community which seem to fundamentally disagree with many of the procurement reforms of the last decade. Regrettably, that disconnect has served to unfairly and inappropriately feed the fires of skepticism surrounding federal procurement.

Oversight is, of course, a critical government responsibility. But it is not always going to look precisely the same in every circumstance. In Iraq, we learned that some of our traditional perceptions about oversight simply were not executable in a wartime environment or one in which one of our other policy objectives was to engage and build the local economy. Frankly, some of those same challenges are emerging in the aftermath of Hurricane Katrina.

But this disconnect plays out as well in more routine procurements. They are manifested in excessive audit demands or demands for access to records--sometimes exceeding what the law would seem to allow; challenging prices even under competitive fixed price awards; the handling of subcontractor billings, even when those billings reflect the exact

pricing that was contained in the initial bid, and more. In addition, in recent testimony before a Senate subcommittee, the counsel to the GSA Inspector General called for a return of post-award, incurred cost audits for task orders awarded under the GSA Schedules. Indeed, in that testimony, she said “defective pricing is alive and well at GSA”. Unfortunately she offered no good evidence to back up such a dramatic claim and, based on other ongoing policy debates, I suggest that the very definition of defective pricing would be a matter of significant debate.

In other cases the disconnects have arisen when government acquisition professionals make a business judgment only to have that judgment later challenged somewhere in the oversight community. This is particularly true when someone doesn’t like the answer or the outcome, or simply doesn’t agree with the rules as they are written.

I am often amazed at the increasing number of cases in which PSC member companies are caught up in a fundamental conflict between a contracting officer and an auditor or IG investigator. This kind of second guessing can get ridiculous. In one case the agency auditors were unsure whether a company had properly categorized and billed for its workforce. The contracting officer believed the company had made appropriate judgments and was satisfied. However, the auditors were less sure. So five auditors took a vote. The vote was 3 to 2 against the company’s judgment and they thus challenged the company billing! That case is indicative of the kinds of untenable positions the government acquisition community often finds itself facing. And, of course, the headline the next day would be that the company involved was gouging or overcharging—whatever that means—the government.

Our list of disconnects could go on for some time. Suffice it to say that we believe this is one of the most fundamental and difficult issues we face today and the Panel’s leadership in addressing it, on some meaningful level, will be of great value. Here too, while you might not be able to solve the problem, identifying it, and making at least some recommendations toward its resolution will be very important.

### **Risk and Risk Management**

I would also like to recommend that you address another major issue in services contracting: risk and risk management.

Take for example the Panel’s focus on Performance Based Services Acquisitions. In addition to the need for an IPT-approach to PBSAs, our view is that the problems with PBSA can often be whittled down to three simple elements:

1. the government often cannot adequately define its existing processes and systems so as to enable the creation of an appropriate baseline against which to measure actual performance by the contractor;
2. the government has not invested adequately in the workforce responsible for executing the PBSA mandate, so they often do not have the tools and resources necessary to evaluate divergent solutions; and

3. because innovation by definition involves significant risk-taking, and the government has not shown much tolerance for mistakes or failure, the workforce is too often actually incentivized to avoid real innovation.

Nonetheless, there are mandates for using PBSA across government—many of which we in industry applauded when they were adopted and which we continue to support. But because of the implementation challenges, we often see square pegs being pushed into round holes and, perhaps most disconcertingly, inordinate risks being placed on the contractor, whether through an inappropriate focus on fixed price contracts or reliance on performance metrics that all too often hinge on the government's ability to provide data or insight it simply doesn't have.

This risk-shifting and/or poor risk recognition and management is evident elsewhere as well, including share in savings contracts. In some cases, the biggest challenges come down to ineffective base lining. That problem could be addressed through the use of initial contract periods focused on a collaborative diagnostic exercise, to be followed by an execution phase. But such strategies are rare. In others cases, the government's continued and often unhealthy focus on profit rather than on performance and real value virtually guarantees that the risks notwithstanding, reward will not follow. That is not a healthy balance and is actually turning industry off to the very kinds of innovative contracting that companies enter into everyday in the commercial sector.

The advent of Sarbanes Oxley, under which companies must clearly and publicly identify much broader categories of business risk affecting them, hasn't helped matters. Likewise, even seemingly small matters like the growing use of cascading set asides amount to a risk and cost-shift, since it requires companies to risk their precious bid and proposal resources even in cases where proposals might never be evaluated. In the end, it really amounts to industry conducting the very market research the government should be conducting.

We thus hope this Panel will focus some of its report on the important area of risk identification and management. There is often very little understanding of the ways those important factors affect companies, their bidding strategies and their ability to optimize performance. Moreover, this is an area that cries out for greater communication among decision makers and policy leaders who, regrettably, are often less familiar with these issues yet are responsible for generating the policies that govern procurement and general government management.

### **Small Business**

Finally, I would like to offer a few comments with regard to small business issues. First, let me be clear: nothing I am about to say should be misconstrued to in any way suggest a lack of support for robust small business policies and practices. Indeed, over two thirds of PSC's member companies have less than \$100 million in revenue and many of them are small businesses. Moreover, our most recent research suggests that over 90% of federal services contractors have gross annual revenues of under \$100 million. Clearly,

small business, and “smaller businesses” play an essential role in our economy and our industry.

That said, this Panel could help open the door to what would certainly be a difficult, but nonetheless important, national discussion about the purpose and effectiveness of our small business policies and programs. Our federal procurement system looks at the marketplace in a binary manner: companies are small or other than small. Yet the reality is that the marketplace is diverse and multi-layered---and that diversity and layering is clearly in the government’s best interest since it helps ensure a robustly competitive marketplace.

With no specific policy prescription or answer in mind, we believe the time has come to ask some fundamental questions:

- Is our goal to create small businesses or to foster the development of sustainable enterprises?
- The governmentwide goal for small business primecontracting is 23%. Is it good for the government or the marketplace that most agencies have set goals substantially higher, sometimes twice or more as high? As but one example, the Department of Housing and Urban Development claims that fully 72% of its prime contract dollars went to small business in FY 2004. On one level HUD deserves great credit for its small business success, but one must ask whether the department is being shortsighted and creating an unhealthy market dynamic
- Is it time to return to the old system of a government-unique size standards? After all, the objective evidence suggests that in most key areas, the gap between commercial and government market realities has actually grown, not narrowed. And as a result PSC has specifically recommended this approach in its comments on SBA’s proposed size standards revisions.

We believe this is an essential time for this particular dialogue. Industry consolidation is an unavoidable reality and all indications are that over the next few years we will see a fundamental restructuring within the government services sector. It thus behooves the government to get out a little ahead of that curve and carefully assess how ITS supplier base is likely to change and what those changes mean.

### **Conclusion**

Again, let me extend my personal thanks and that of the association to the Panel both for the hard work you are doing and the opportunity to be with you today. We look forward to a continued dialogue with you and to your final report. We need leadership. We need context. We need objective observations. You are ideally suited to provide all three.

