TESTIMONY

by Stan Soloway
President
Professional Services Council

before the

SUBCOMMITTEE ON READINESS and MANAGEMENT SUPPORT
COMMITTEE ON ARMED SERVICES

U.S. SENATE

March 19, 2003

Mr. Chairman and members of the subcommittee: thank you for the opportunity to testify today on behalf of the Professional Services Council on the important issues associated with competitive sourcing. PSC is the principal national trade association of the government professional and technical services industry. Our membership includes more than 140 companies of all sizes providing services of every type to virtually every agency of the federal government, prominently including the Department of Defense. We have long believed that a robust partnership between the public and private sectors is essential to ensuring the optimal performance and delivery of government services and to ensuring the highest quality of support to our men and women in uniform. We appreciate the committee holding this hearing and advancing the dialogue on this very important issue.

In the main, PSC does not believe it is appropriate, nor in the nation's best interests, for the government to compete with the private sector for work that is commercial in nature. We believe the government's and the nation's best interests are served when the government focuses its energies on its core competencies. Core competencies are, as you know, those things a company or government agency does best. The term has a different meaning than "core requirements", which, of course, refers to those things that must be done to execute a mission effectively. They are very different terms but unfortunately are often used interchangeably. In simple terms, there are many core requirements that can, and probably should be competed or outsourced, unless they are also core competencies of the organization. This is certainly the norm in the private sector and is a key strategy to achieving optimal performance and efficiency.

Clearly, the private sector is market driven, and interested in expanding opportunities to support the government's mission. In other words, no one denies the private sector's market interests. The federal employee unions have similar self-interests. The coming federal employee retirement wave, the government's continued problems attracting and retaining people, and the enormous budgetary pressures facing every agency of government present the unions with business challenges of historic proportions.

In the final analysis, however, federal sourcing policies must be based solely on the best interests of the government and the taxpayer and should not be driven by the market interests of either the private sector or the federal unions.

While there are many issues involved in competitive sourcing, and time does not allow us to examine all of them, I would like to address two principal questions. First, when and where should the government compete its commercial functions, either through a competition among private sector providers only or through the process prescribed under OMB Circular A-76? Second, what rules should govern the sourcing process itself to ensure accountability, the best possible outcomes, and fairness?

In order to answer those questions, I call the committee's attention to the April 2002 report of the Commercial Activities Panel, which was created at the direction of Congress and was chaired by the Comptroller General. I was pleased to serve on that Panel with Mr. Harnage, two other union representatives, Administration officials, and outside experts.

The Commercial Activities Panel agreed unanimously to a set of ten overarching principles to govern federal sourcing policy and procedures. Those principles were specifically crafted to be taken as a whole and not broken into pieces; and taken as that whole, they provide the answers

to the two aforementioned critical questions. Moreover, the Panel clearly recognized that competition is a positive force and is the key to driving efficiency, innovation and performance. At the same time, the Panel clearly recognized as well that the mere existence of a government bidder does not create, nor is it essential to, ensuring competition. Competition, after all, is the norm in government procurement. Thus, it is wholly inappropriate to assume that public/private competitions are the only true competitions. As such, the real questions before us relate to how to determine when and where the government should be a participant, and then, how to conduct the competitions in a fair, transparent, and accountable manner.

The CAP report is clear in its endorsement of a government sourcing policy based on a strategic process. It also identifies the inextricable link between a strategic approach to sourcing and key related factors such as human capital capabilities; obtaining contemporary and effective solutions for the government; providing all offerors the same rights and same responsibilities; and more. This is both sound management practice and in the best interests of the taxpayer.

The Panel recognized that to mandate public-private competitions for all work, regardless of whether it is currently being performed by federal employees, is inconsistent with smart, performance-based management, and with the sourcing principles the Panel unanimously agreed upon. There are numerous circumstances involving work currently being performed by federal employees in which the government might appropriately opt not to compete, particularly when the activities involved require skill sets, resources, or technology that the government simply does not have and would not reasonably be expected to acquire.

Similarly, for new work or already-contracted work, the Panel recognized that the government should compete for such work only if there is a compelling strategic reason to do so, and if the government has the existing capacity, resources, skills, and performance history to justify doing so. To do otherwise would be a waste of taxpayer dollars. That recognition is contained in the language regarding principle number seven of the Panel's report, which states: "…the government should not be required to conduct a competition open to both sectors (public and private) merely because a service could be performed by either." The report then states that the circumstances under which a public-private competition is conducted should be "consistent with these principles", prominently including the strategic decision making process.

I might add that, in addition to being contrary to the unanimously adopted principles of the CAP, the unions' continued demand that public/private competitions be mandated across the board is also at odds with the best interests of its own members. After all, the membership's interest, like that of any employee group, lies in job satisfaction, opportunities to grow and develop professionally, rewards for performance, and more. In those cases where the government is not particularly competitive and lags behind the capabilities available in the competitive private sector, it is often in the best interests of the government, and the employees as well, to avoid a public/private competition and to instead compete the work solely among private offerors in a manner that treats the affected federal employees as real assets in the transaction, and rewards them accordingly.

We have seen this model work in several recent cases where the government activity recognized that resource realities, human capital challenges and other factors rendered them relatively non-competitive with the private sector, and where the agency determined it no longer needed to perform the functions in-house. The agencies also recognized, however, that their workforce was one of quality and commitment that deserved to be treated as such.

Thus, in conducting the competitions, the agencies placed the best interests of their workforce near the top of the list of source selection evaluation criteria. As a result, in each of these cases, the affected workforces benefited more from the outsourcing than could have been the case through a complex, lengthy, and contentious public/private competition in which they would have been competing against these very same firms, or if the work had simply been retained in-house.

The reality is that the government is not, cannot, and need not be competitive with the private sector in many areas. Moreover, there is no inherent benefit to having the government perform numerous commercial functions. Consistent with the CAP report's unanimously approved emphasis on approaching sourcing from a strategic perspective, agency managers ought to be given the flexibility to make these kinds of strategic decisions. When they conclude that a public/private competition is not consistent with their mission needs or resources, they should conduct private sector competitions in a manner that offers the affected workforce real benefits, such as we have seen in other similar cases.

Unfortunately, however, the competitive sourcing debate is dominated by histrionics and mythology intended to create palpable fear among the federal workforce and that makes it virtually impossible to explore, and pursue, such innovative approaches. The results of an agency outsourcing initiative, we are told, have been and will continue to be massive federal unemployment, scandalously low wages, and horrendous private sector working conditions.

Never mind that to buttress their campaign for higher civil service pay, federal union leaders correctly point to the "pay gap" between the public and private sectors. Never mind that for wage-grade positions, wages on government contracts are often determined by the government, not the contractor. Never mind that the data show that outsourcing has had a negligible impact on employment for federal workers. And never mind that many private sector unions have noted that private sector employers often offer much more to their employees than the government can offer its own employees. These are inconvenient realities. But to paraphrase one former Senator, while everyone is entitled to his or her own opinion, they are not entitled to their own set of facts. And facts should underpin policy.

The Commercial Activities Panel also unanimously provided important guidance on how to conduct public/private competitions when they are appropriate. Simply put, the Panel's overarching principles state unequivocally that such competitions should treat all offerors the same and fairly, should be transparent, and should take into account both cost and non-cost factors. This common-sense approach is reflected in several of the principles as well as the Panel's recommendation that such competitions be conducted under the tenets of the Federal Acquisition Regulation (FAR).

On the other hand, the existing A-76 by design does not treat all offerors the same. The Panel quite simply would not accept that a small subset of federal procurement—less than 1 percent of all federal procurement—should be handled in such a manner, while the Federal Acquisition Regulation and its principles of fairness, equality, and transparency govern the remaining 98 percent. This is why the panel was inexorably led to its second primary recommendation: that public/private competitions, like virtually all other federal procurements, be governed by the FAR. In addition, because the FAR is the common language of government procurement, the Panel believed that the competitions would be better conducted and more consistently applied than is currently the case under A-76.

The panel also could not accept that all competitions must be determined on a low-bid basis, the essence of A-76, when common sense dictates that many decisions must involve an array of factors in addition to price, including past performance, technical excellence, management experience, and more. We hear repeatedly that best value contracting is akin to some kind of unconstrained bazaar. In truth, it is nothing of the sort. Rather, it is a process that affords important flexibility to the agencies to meet their specific mission needs within the construct of clearly defined and accountable boundaries. It is a far more rational and appropriate means by which to procure goods and services than the low bid processes of old.

Throughout the government procurement environment, the low-bid, cost-only mentality of the past has been supplanted by a recognition that smart business and smart procurement requires that many factors be considered in any decision. That is what best value is all about, and nothing more. Under the rules of the FAR, best value enables a government acquisition professional to match an acquisition strategy and the relative weights of all factors to the requirement at hand. Moreover, all offerors are told in advance of those relative weights and the contracting officer must have, and follow, specific numeric scores for each criteria involved. It is a process that offers important flexibility but is also carefully bound. It is time to bring this proven, common sense strategy to public/private competitions as well.

Thus, I prefer to associate myself with the comments made by the General Counsel of the American Federation of Government Employees, who, in Congressional testimony, decried the "low bid" mentality that led to the problems with the airlines' contracts for baggage screening. He is correct. I also agree with Senator Kennedy and others who signed a recent letter to the Director of OMB calling for a sourcing process based on "cost and quality". Cost and quality is what best value is all about. A-76, on the other hand, minimizes, and in many ways prohibits, the government's ability to appropriately and fully assess all of the elements that make up a proper definition of the word "quality".

It is also time for the Congress to replace the current provision in Title 10 that limits decisions on public/private competitions at DoD to a cost comparison with specific authority for DoD to utilize best value strategies in its public/private competitions just as DoD, and every other agency, does with the remainder of its procurements.

Finally, the FAR embodies a full array of acquisition strategies and options that enable smart acquisition strategies tied to agency requirements. It is the antithesis of a "one size fits all" approach to sourcing. Unfortunately, A-76 is, again by design, a one size fits all process that limits smart acquisition planning and alternative implementation strategies. It also inhibits performance-based contracting, which this committee, and Congress have long urged become the norm in government procurement.

I have devoted much of my testimony today to the findings of the Commercial Activities Panel because it represents an important and largely successful effort to deal with the real issues associated with competitive sourcing and outsourcing.

Since the CAP Panel issued its report last year, much of the ensuing debate has focused on the President's Management Agenda's (PMA) emphasis on competitive sourcing, as well as the Administration's recently proposed revisions to A-76.

With regard to the President's Competitive Sourcing agenda, it is important to bear in mind that the President's agenda is specifically not an outsourcing agenda. It is, rather, a competition agenda. Moreover, it no longer includes specific numeric competitive sourcing targets that each

agency must achieve, thus addressing one of the principal concerns expressed by some in both Houses of the Congress. The PMA makes no assumptions as to the outcomes of the competitions and virtually ensures that incumbent federal employees will participate in competitions that involve their work. For the reasons I mentioned earlier, PSC is concerned that the Competitive Sourcing agenda actually goes too far in guaranteeing that incumbent federal activities will have a chance to compete, even when sound strategic analyses make clear that such competitions do not serve the government's best interests.

Attached to my statement are PSC's detailed comments on the November 2002 proposed changes to Circular A-76. We are all now waiting for the Administration to release its final revisions to A-76.

I would, however, like to highlight a couple of key issues associated with the proposed revisions.

It is clear that the Administration has made a serious effort to improve an A-76 process that is hopelessly broken. There are many elements of the revisions that represent real improvements. There are, however, a set of continuing problems that must be addressed if the process is to meet the challenge set forth by the Commercial Activities Panel and, in so doing, generate optimal outcomes for the government.

The revisions provide two principal methodologies for the conduct of public/private competitions. The so-called "Integrated Process" comes closest to reflecting the principles unanimously supported by the CAP. Yet, within that process, there are two main areas that need further improvement.

First, its use is limited to information technology requirements. But throughout government, there are many requirements that are sophisticated and complex and which should never be procured in a cost only, low-bid, process. In order to utilize the integrated process for those requirements, government activities will have to go through a convoluted and time consuming approval process all the way to OMB. Further, even the definition of information technology contained in the revisions is too limiting and ignores the fact that there are many solutions that are IT-driven but which would not be classified as information technology procurements under the proposed framework.

Second, the integrated process does appropriately open the door to the use of best value contracting. However, one of the most important criteria in source selection is past performance and, under the integrated process, no past performance assessment of the government is permitted. Thus the revisions create both a problem of bidder equity as well as an enormous evaluation headache for the government.

To address these issues, PSC has made several recommendations. Either the integrated process needs to be made more broadly available or the approval for its use should be devolved to the agency leadership. OMB is a policy organization and should not micromanage individual acquisitions. Nor does OMB have the manpower to do so in an efficient manner. Likewise, the definition of IT must be broadened to include the full array of complex solutions being sought by the government. Until such time as the government creates the kind of internal performance tracking system that it has for contractors, the source selection teams should be encouraged to substitute for past performance information a risk analysis that includes realistic assessments of a variety of performance risk factors. This can be done fairly and openly and would help ensure not only a more level playing field, but also a better outcome for the government, whether the work goes to contract or stays in house.

The phased-process presents a whole different set of problems. Although the revisions refer to it as a "FAR-based" process, in too many critical ways it is not, and it continues to reflect some of the real weaknesses of the current A-76 process that the Commercial Activities Panel decided was fatally flawed. One glaring problem with the phased process if not addressed, will perpetuate a wider range of problems.

Under the phased process, there are two steps to a procurement. In the first phase, all bidders, including the government, undergo a technical evaluation to determine their ability to meet the minimum performance standards called for in the request for proposals. All bidders respond to the same RFP, must submit their bids on the same timeline, and are evaluated at the same time. All of these represent significant improvements over the current A-76.

The second phase of the competition involves only bidders that have been deemed to be technically acceptable in the first phase. These bidders then move into a cost shoot-out where the low bid wins. It is here that the process falls apart.

The competition is prohibited from moving into the second phase until the government is deemed to be technically acceptable. In other words, regardless of the government's technical competency in any given area, it must be made technically acceptable and thus included in the cost shoot out. In cases where the government's capabilities are on par with or even greater than the private sector's, this is not a big problem. But in those cases where the government's capabilities do not match up, it is an enormous problem. The end result will be a lowering of the performance requirements to whatever level the government can achieve. Whether or not that level represents an optimal performance, the performance requirements will be determined by the government's capabilities. Of course, since the second phase is a cost-only shoot-out, no other bidder can or will bid beyond the stated minimum performance requirement, since doing so guarantees one will lose.

Further, the very use of cost shootouts inhibits innovation and creativity and limits the government only to those solutions that meet minimum, rather than optimum, performance standards. Ironically and unfortunately the Phased A-76, like the current A-76, will make performance based contracting impossible.

Thus, our recommendation is to eliminate the Phased approach altogether. The Integrated Process, with its true reliance on the principles and tenets of the FAR, offers the complete suite of acquisition strategy options, including a low price/technically acceptable approach for those activities for which a procurement might appropriately focus almost solely on cost. It is thus more than adequate to enable the government to match its acquisition strategy to the requirement and to ensure a fair, balanced, and accountable process.

Mr. Chairman, this is a difficult and highly contentious issue. I urge this committee to continue to assess the substance and not be swayed by the rhetoric. The imperative to greatly optimize the efficiency and performance of our government has never been greater. And it is our collective responsibility to the taxpayer, to our men and women in uniform, and to the millions of citizens who rely on the government for a wide array of services, to ensure that the government is taking full advantage of the many innovations available today in the competitive private sector.

Moreover, sourcing decisions are not judgments on the quality of the people involved. Rather, they are strategic decisions designed to not just improve, but to optimize performance through

real competition, and to thus better serve the customer. It is patently clear that the government can do all of that, and, at the same time, not only protect, but also improve, the status of the affected government workforce. I urge this committee to support such initiatives and to support conducting public/private competitions under the proven and well established procedures of the Federal Acquisition Regulation.

I thank you again for the opportunity to appear here today and for the Committee's continued interest in and leadership on this very important issue.