



STATEMENT
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CONGRESSIONAL FORUM: INNOVATION THROUGH
FEDERAL GOVERNMENT CONTRACTING

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Introduction

Ranking Member Cummings and Congressman Connolly, thank you for hosting this congressional forum today and inviting PSC and other industry stakeholders to provide statements. The issues of how the government acquires services, including information technology and cybersecurity improvements and efficiencies, continue to challenge the federal government and industry. Although gains have been made, it is crucial that Congress and the executive branch continue addressing the current and future obstacles in these areas and that the government use innovation to remedy such challenges. While others today will focus specifically on IT and cyber challenges, my comments will focus on the role the federal acquisition process plays in fostering innovation, particularly in the area of services, so that the challenges in these and other areas can be addressed.

For more than 40 years, PSC has been the leading national trade association of the government professional and technical services industry. PSC's more than 350 member companies represent small, medium, and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and more. Together, the association's members employ hundreds of thousands of Americans in all 50 states.

Advances in technology have been developing at a rapid pace. Government leaders have been wise to recognize that such advances can improve how the government operates. Hence, the government has ensured that investments have been made that allow federal agencies to tap into these advances to meet their mission needs. Much of that occurs through the federal acquisition process that enables the private sector to deliver cutting-edge, effective, and efficient solutions to meet important government challenges.

The biggest challenge today is the nation's fiscal environment. The budget environment will result in reduced funding across many different federal programs and activities. However, the budget situation also creates opportunities for greater innovation, but only if the government makes sound policy decisions that foster the ability of the private sector to innovate. What we can address are potential pitfalls that the government should avoid to ensure that the effects of necessary budget reductions are not exacerbated by shortsighted policy decisions.

As the government makes tough decisions about what it must invest in, it must also be cognizant of how it invests. In terms of the federal acquisition process, this means that government must buy smarter and not focus solely on short-term savings in lieu of more strategic, longer-term benefits and its return on investments.

Beyond the budget constraints, the federal contracting community is concerned about a number of trends we are witnessing across government acquisitions. The federal acquisition system is an integrated ecosystem with multiple independent and dependent variables. Rarely does any single action provide the full explanation for the government's or the industry's action. However, we do know that several current government initiatives are having an effect on the marketplace. For example, the use of lowest-price technically acceptable (LPTA) contract awards where such an approach simply does not make sense and the implementation of initiatives that would drive commercial companies out of the federal marketplace, effectively decreasing competition for government contracting opportunities. Other related issues include shorter contract periods of performance, particularly for services contracts, increased compliance responsibilities, and, at least in the Defense Department and the Intelligence Community, a heavy focus on contractor labor rates and margins.

Lowest-Price Technically Acceptable

The federal government's use of the LPTA standard for evaluating bids for the purchase of commodities is undergoing a troubling expansion driven by a singular focus on price. While LPTA is an appropriate evaluation technique for the government to use, its misapplication to complex solutions can lead to reduced quality and reduced mission capabilities where value-based decisions may produce greater benefits and long-term cost savings to the government. Likewise, when companies are not rewarded for developing key capability discriminators and the competition is about being adequate and cheap rather than high quality and high value, it becomes increasingly difficult, if not impossible, for companies to invest in research and development, workforce development or continuous training for the government's benefit.

While government acquisition leaders have emphasized the importance of using LPTA appropriately because of the risks to the government of its misapplication, too many statements suggest that LPTA is now the default option for contracting personnel and that a justification is necessary to use any other approach. In the field, this message is translated as a mandate to use LPTA except in the most extraordinary of circumstances. As a result, contractors are eliminating best-value solutions from their submissions in order to achieve a passable technical solution offered at the cheapest price. This leaves little room for factoring in innovation throughout the life of a contract. In short, it creates a "race to the bottom" environment.

A recent example where LPTA is being applied in a questionable manner is the Navy's Next Generation Enterprise Network (NGEN), the follow-on to the current Navy-Marine Corps Intranet (NCMI) network. Under the last draft RFP, this 10-year, \$4.5 billion requirement requests proposals for assisting the government with the operation and maintenance of the network, providing technology upgrades as directed by the Navy, and ensuring that security standards that evolve over time are integrated into the network. This draft RFP indicated that the

Navy planned to make an LPTA award.¹ PSC raised our concerns with this evaluation factor to the Navy.

Commercial Items Changes

Competition in the federal contracting marketplace is a key driver of efficiencies and lower prices. Hence, the government should undertake initiatives to increase competition to the maximum extent practicable. Increasing competition has been a theme repeated in this administration's contracting reform efforts and DoD's 2010 "Better Buying Power" initiative. However, a recent Defense Department legislative proposal to change the governmentwide definition of "commercial items" would erect barriers for commercial firms to sell their goods and services to the government and would actually drive competition out of the federal market.

Specifically, the legislative proposal would radically narrow the definition of "commercial items" so that items that are "of a type" sold, are "to be offered for sale," or are not "sold in like quantities" in the commercial market would no longer qualify as "commercial items." As Congress properly recognized during the development of the 1994 Federal Acquisition Streamlining Act (FASA) and the 1996 Federal Acquisition Reform Act (FARA), the inclusion of these terms in the commercial items definition is essential to providing federal agencies with flexibility to procure items and services from the commercial sector in a streamlined manner, using commercial procurement techniques under FAR Part 12, with minimal government-unique terms and conditions, even though the items or services were not exactly the same as those being offered in the commercial marketplace. Exacerbating the problem is that vendors providing advanced IT enhancements and cybersecurity solutions—the needs that have been discussed here today—would be the ones most directly affected by the DoD proposal.

Prior to these changes, many commercial companies refused to do business with the federal government because of the unique government administrative and other requirements, many of which bear little similarity to the generally accepted standards under which the commercial sector operates. In the first two decades after enactment of FASA and FARA, the government honored its stated preference for the use of commercial items and limited the imposition of government-unique terms and conditions. Today, however, we risk a return to the government imposing those insurmountable barriers. For example, on April 5, 2012, the FAR Council published a proposed rule that identifies at least 58 government-unique contract clauses that are either mandatory for inclusion in FAR Part 12 procurements or that the contracting officer must proactively exclude from such procurements.² Only a few of these clauses are "game-changers"

¹ On May 9, the Navy released the final RFP. We have not had an opportunity to determine whether LPTA remains the primary source selection evaluation factor.

² Available at <http://www.gpo.gov/fdsys/pkg/FR-2012-04-05/pdf/2012-8053.pdf>.

by themselves but the cumulative effect of adding many of them to commercial procurements could be enough to keep commercial item providers from bidding for opportunities.

If the flexibilities provided by Congress in the 1990s remain available to government agencies, it means that agencies would be able to rapidly and efficiently access information technology, cyber protection, and national security solutions while infusing broad new competition and new competitors into the federal market. In an irony of this marketplace, the government is layering additional government requirements on commercial item providers while also seeking to circumvent these constraints to fulfill critical mission needs. Nowhere is this choice more starkly highlighted than in the Defense Department's proposal to provide new authority for the rapid acquisition of commercial capabilities to protect against and respond to cyber attacks and intrusions against government networks.

The DoD proposal to change the definition of commercial items represents a long stride backward from the benefits gained through FASA and FARA and seeks to serve as a solution to a problem that has largely been addressed through other means and that can further protect the government's interest through a greater focus on federal acquisition workforce training.

On April 19, 2012, PSC sent a letter to the House Armed Services Committee and others in opposition to this proposed legislative change.³ In addition, on May 9, PSC joined with eight other associations that comprise the Acquisition Reform Working Group, and whose members include a wide spectrum of commercial product and services providers, in a letter to the Congress also opposing this change.⁴

Opportunities Exist

Since its peak in 2009, federal contract spending is on the decline and we expect the decline to continue for the foreseeable future. Reduced spending means fewer opportunities to win government work and greater competition for the opportunities that remain. An environment of greater, more robust competition has been a goal for the federal government's acquisition leaders and is one that we share. But greater competition means that companies will have to do a better job of differentiating themselves from their competitors. For those companies that are able to offer innovative solutions, the federal market will continue to entice them. However, if the government counters by making short-sighted policy and procurement decisions that will NOT reward innovation, then neither the government nor the private sector will benefit. In our view,

³ A copy of the PSC letter is available at [http://www.pscouncil.org/PolicyIssues/Legislation/Authorization/Letter to HASC on FY13 DoD Commercial Items Proposal.aspx](http://www.pscouncil.org/PolicyIssues/Legislation/Authorization/Letter_to_HASC_on_FY13_DoD_Commercial_Items_Proposal.aspx).

⁴ A copy of the ARWG letter is available at [http://www.pscouncil.org/PolicyIssues/AcquisitionPolicy/AcquisitionPolicyIssues/ARWG Letter to HASC on FY13 DoD Commercial Items Proposal.aspx](http://www.pscouncil.org/PolicyIssues/AcquisitionPolicy/AcquisitionPolicyIssues/ARWG_Letter_to_HASC_on_FY13_DoD_Commercial_Items_Proposal.aspx).

the inappropriate use of LPTA and the improper narrowing of the definition of commercial items will do just that.

Federal Acquisition Workforce

For those of us that follow federal acquisition policy, much has been said about the need to ensure that the federal acquisition workforce is appropriately resourced and highly trained. Although more must be done on this front, gains have been made. The austerity challenge poses both threats and opportunities to build on the capabilities of the federal acquisition workforce. The biggest threat is that, as the government rebalances its total workforce, draconian reductions to the federal acquisition workforce will occur—whether by commission or omission—wiping out recent gains in this area. Defense recognized this threat years ago and, as part of their total workforce reduction efforts, made it clear that the acquisition workforce is exempt. Such guidance has not been uniformly adopted by the civilian agencies.

If acquisition workforce levels and skills can be maintained, an opportunity exists to build on its experience. The declining budget means that contracting personnel will, theoretically, be responsible for awarding and providing oversight over fewer contracting dollars, thereby increasing the time and effort that can be spent on effectively managing the dollars for which they are responsible. However, the acquisition workforce challenges can NOT be solved simply through a numbers game. Training is essential and declining budgets and management decisions also threaten prior investments in that area.

Collaboration

In order to spur innovation in an age of declining budgets, collaboration and communication between government and industry is critical. Unfortunately, the trend has been for federal government acquisition professionals to move away from meaningful communication with industry. In the best of budgetary times, this has significant consequences. In today's declining budget scenario, these consequences are multiplied. Hence, it is absolutely critical that Congress and the administration encourage better communication between government and industry at every possible opportunity. The "myth busters" campaign initiated by former Office of Federal Procurement Policy Administrator Dan Gordon was a good start. However, OFPP's message was not universally adopted by rank and file acquisition personnel. PSC is hopeful that the second round of "myth busters" OFPP released on May 7 will be more effectively implemented.

Importantly, acquisition personnel must understand that collaboration can benefit them. If industry has a clear understanding of agencies' needs and contract requirements, then they are more likely to bid on an opportunity, and to bid in a way that delivers the right solutions to the government at a fair price. Thus, the government will foster greater AND better competition.

Such improvements are more difficult to attain when the government is not communicating effectively with its vendors and industry is left to guess what the government needs.

Communication is not just a beneficial tool during the contract solicitation phase. Government program managers and acquisition personnel should be communicating to identify concerns and efficiencies throughout the life of a contract. Such collaboration will only lead to greater performance success, innovation and cost savings to the taxpayer. Again, industry too often experiences government decisions made in a vacuum, whereas an open and frank conversation with private-sector partners would lead to better, bilateral solutions.

Conclusion

Without question, challenges remain in the federal acquisition environment. The budget poses the biggest threat. However, spikes and declines in federal budgets are not unprecedented and both the government and industry have been able to manage their way through difficult times in the past. What is important today as we continue down this difficult path is that we do not make decisions that make the situation worse. We must focus on spurring innovation, competition, and collaboration, not reducing it. We must avoid eviscerating the gains made in the federal acquisition workforce and we must not allow our efforts at acquisition workforce training to atrophy.

Mr. Connolly and Mr. Cummings, thank you again for hosting this important forum today and inviting PSC to participate. I look forward to answering your questions.