



*The Voice of the Government Services Industry*

**STATEMENT OF**  
**STAN SOLOWAY**  
**PRESIDENT & CEO**  
**PROFESSIONAL SERVICES COUNCIL**

**BEFORE THE**  
**COMMISSION ON WARTIME CONTRACTING**

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## **Introduction**

Co-Chairs Shays and Thibault, and members of the Commission, thank you very much for the opportunity to appear here today and to share the perspectives of the Professional Services Council (PSC) on the significant accomplishments of for-profit development firms working under competitively awarded contracts, a topic on which we have not previously had the opportunity to discuss with the Commission. We also offer our thoughts on the Commission's second interim report issued in February.

As you know, PSC is the nation's largest association of government services contractors and counts among our nearly 350 member companies several dozen firms that provide critical support to U.S. government activities in contingency environments. That support includes logistics, engineering, infrastructure, satellite and information technology support, international development assistance, capacity building and more. As such, the work of this commission is of great significance and importance, not only to the nation, but to our community as well.

We appreciate the extensive opportunities you and your staff have given us to engage in substantive discussions on the important issues at hand. We might not always agree, but those discussions have made clear that we share a common view that support of U.S. contingency operations overseas can and must be enhanced through better coordination, planning, and workforce capacity.

## **Role of Development Firms**

To start, I want to address the role of U.S. development firms working for the Department of State, the Department of Defense (DOD), the U.S. Agency for International Development (USAID) and other agencies in implementing stabilization and counterinsurgency strategies. Testimony and discussion at the Commission's April 11 hearing with non-governmental organizations (NGOs) left your record incomplete regarding the full spectrum of the government's essential development partners. PSC is pleased to help complete that picture and correct any misperceptions about the wide range of expertise and capabilities U.S. development firms bring to contingency operations.

As we said in a letter to the Commission after that hearing, PSC member companies routinely partner with federal agencies and non-profit organizations<sup>1</sup> to implement effective, sustainable U.S.-funded aid projects. Both for-profit and non-profit development organizations are active in all major facets of international assistance including, but not limited to, water and sanitation, health, education, shelter, democracy and human rights, economic development, and nutrition. A federal agency's selection of the most appropriate funding vehicle is spelled out clearly in law and policy. A federal agency's selection of the most appropriate implementing partner to achieve U.S. development goals logically must be driven by considerations such as

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<sup>1</sup> The terms "non-profit organization" and "non-governmental organization" are often used interchangeably. The first term describes any organization that is tax-exempt under certain sections of the U.S. Internal Revenue Code while the latter term describes a narrower subset of tax-exempt organizations that perform work under private philanthropic or religious charters.

experience, technical expertise and an understanding of local cultural and economic dynamics rather than any *a priori* determination that one business model is better suited than another to the successful completion of certain types of development projects. To that end, much of the testimony delivered at the April 11 was incomplete.

Development companies have helped Afghan farmers measurably improve agricultural diversity and productivity. USAID relied on the technical skills and expertise of for-profit implementing partners to establish a network of poultry farms in Helmand Province that now acts as an engine of economic growth. Another contractor trained thousands of Iraqi ministry officials to deliver vital public services. Contracts like these provide tangible results and unquestioned value to the U.S. government, to the host country, and to the people served. These contracts also create jobs both here in the U.S. and in the host country, add to the U.S. tax base, open new markets, and create wealth.

In short, the basic attributes of successful, principled development described in the White Paper “Being Smart About Development in Afghanistan,” which was a focal point of your April 11 hearing, are not unique to NGO practice but are built into project design and execution by for-profit implementers as well. Development firms undertake locally-driven, sustainable, accountable and impartial interventions every day in some of the most dangerous places on earth.

In contingency and stabilization operations, however, NGOs and development firms may differ in their approaches to what constitutes “impartial” program design and execution. When using assistance vehicles—grant and cooperative agreements—the U.S. government funds activities that NGOs or other organizations might also conduct using private or donated funds. As a result, those activities can be portrayed and perceived as operating in the so-called “humanitarian space” apart from local, regional or national political considerations or allegiances. To avoid identification with military or security forces, NGOs often choose not to operate in high threat areas where armed security is essential.

In contrast, the goals of U.S. government development acquisition vehicles, primarily contracts, are to align the development activities of implementing partners with the so-called “three Ds” of U.S. policy—defense, diplomacy and development. In that capacity, these firms do not see an inherent conflict between effective, or “smart,” development, and their association with U.S. and host-country policy objectives. In other words, “impartial” development in high threat conflict areas cannot be completely separated from U.S. and host country development and broader stabilization or counterinsurgency efforts and goals.

## **February 2011 Interim Report**

I also want to focus some of my comments today on several key recommendations contained in your February interim report.

### Contractors as “the default option” (2/24/11 Report, Section I)

In a broad context, the real issue facing the government is not the role of, or myths about

“over-reliance” on, contractors. Rather, it is developing sufficient organic capacity to oversee and manage its contingency operations. Thus, on some levels, the very title of your report may be a bit misleading. It seems highly unlikely that the government could or should develop an organic workforce to do the bulk of the tasks currently performed by contractors. Doing so, as evidenced by numerous analyses from the Congressional Budget Office, Government Accountability Office and others, would be prohibitively expensive. Moreover, the vast majority of work performed by contractors in a contingent or post-conflict environment is work that fluctuates constantly in both scope and pace. And that is precisely the kind of work that most obviously lends itself to temporary, not permanent, capabilities. As such, rather than focusing on an over-reliance on contractors—a term open to misinterpretation—we should focus instead on appropriately resourcing the critical organic skills needed to oversee and manage contingency and post-conflict operations, including the use of contractors.

That is why we strongly share your view that inadequate attention has been paid to the organic workforce capabilities required to effectively manage and oversee contingency operations and all they entail.

There is clearly a compelling need for the Defense and State departments, as well as USAID, to enhance their key workforce capabilities in both numbers and knowledge. We believe this is the single most important element of your report and could have the greatest impact on improving mission outcomes. Indeed, five years ago, we proposed in Senate testimony the creation of a government staffed Contingency Contracting Corps that would be available for deployment for both disaster relief and overseas operations in conflict environments. The Defense Department has already established a Civilian Expeditionary Workforce (CEW), comprised primarily of DoD civilian employees, covering a wide range of job functions, including contracting, finance and logistics. Of significance is that participation in the CEW is voluntary.

Regarding security, companies often operate at great risk when implementing U.S. policy initiatives abroad and some have suffered the tragic loss of valued employees, including U.S. citizens, host-country residents and third-country nationals. Without regard to how an entity organized for business purposes, the safety and well-being of employees is always a major consideration in determining how to execute a project. Development projects, and much of the other work in such areas, must take place “outside the wire” of secured compounds. Given these hard realities, we do not agree with the Commission’s assertion that federal agencies and their implementing partners rely excessively on private security contractors. We agree that war should not be “privatized” and that security policy and operations should be under the control and oversight of government personnel.

In fact, legislation enacted in the last few years, coupled with DoD, State and USAID policies and contract clauses relating to roles and responsibilities, have imposed significant controls on the use of private security directly supporting U.S. government activities and its contractors. In addition, in testimony before this Commission last year and elsewhere, PSC has offered numerous alternatives for both DoD and others to consider in addressing some of the management issues that are legitimately raised about the use of private security firms, including

using a risk-based approach. But under the extraordinary dangers and challenges faced in Afghanistan, Iraq, Pakistan and elsewhere, an organization's use of private security for protection of its employees and facilities is often the only prudent and practical business approach available.

Contingency Contracting as a Critical Function (2/24/11 Report, Section II)

We concur with the general premise in the Interim Report that contingency contracting should be considered as a critical function for DoD. We intentionally avoid using the term "core" to avoid any implication that these functions are to be performed exclusively by military or federal employees. As such, to the extent that the Interim Report highlights the importance of the Defense Department maintaining a well trained, forward-deployed workforce focused on contingency contracting, we support it. We also support the government taking actions to ensure that the role of operational support contracts are fully integrated into the plans, education and exercises DoD conducts. We believe this integration is already a responsibility of the DoD contingency contracting officer and is embedded in the department's policy requirements, including coverage in DoD Joint Publication 4-10, various DoD Instructions, and the August 2010 Defense Contingency Contracting Officer's Representative (COR) Handbook, but we welcome any clarification and elaboration of this responsibility. We also support the thrust of the Commission's Recommendation 13 on training for contingency contracting.

While there are many obvious differences between disaster relief and contingency operations, there are also significant similarities and our view has been, and remains, that the creation of such a government-wide cadre of skilled professionals, with special training in the unique challenges of a conflict environment, would best serve the taxpayers and the mission. And as your report recognizes, the training involved cannot be generic. It must be aligned with mission complexity and the scope of requirements.

Further, we share your view that contingency missions must also specifically include planning for, and with, the contractors who will be supporting the military, diplomatic, or development requirements. As the Special Inspector General for Iraq Reconstruction, among others, detailed in several lessons learned reports, the combination of enhanced resources and workforce training with dramatically improved planning and coordination are key to improving performance.

Interagency Structures (2/24/11 Report, Section III)

Several of the Commission's recommendations address how the executive branch should organize to best implement its missions. While we generally don't take a position on how the executive branch should be organized, we question whether State and USAID need to establish full-time contingency contracting offices, as the Commission's Recommendation 9 provides. Similarly, we have questioned the need for a permanent IG office for contingency operations, although we have fully supported the audit and investigative work of the SIGIR, the SIGAR and the other oversight activities of involved federal agencies.

Contingency Competition (2/24/11 Report, Section IV)

Three of the Commission's recommendations (20, 21 and 22) address the use of past performance information. PSC has long supported the government appropriately using relevant past performance information in future source selection decisions and strongly supports ensuring that this information be shared only within government offices with a need to access the information. We supported the creation of the government-wide Past Performance Information Retrieval System (PPIRS) and strongly encourage federal agencies to ensure that contracting officers complete contractor past performance reports on a timely basis. However, we oppose the Commission's Recommendation 20 that would preclude a contractor from appealing an adverse agency performance assessment. These contractor scorecards must be accurate and not merely reflect the contracting officer's perspective. Both the government and the contractor share an interest in having current and accurate information in PPIRS. While we believe that there are a very limited number of appeals of adverse agency performance assessments, protecting this element of fundamental due process is essential to ensuring that both the government and the contractor have confidence that fair treatment is provided throughout the acquisition process. Similarly, while we can appreciate that there may be very limited circumstances when performance ratings might be released even before providing a contractor with an opportunity to provide any comment, we are concerned that the Commission's Recommendation 20 could be read as creating a blanket exemption from such procedural protections.

We have also been strong supporters of providing robust competition opportunities for contingency contracting but also firmly believe that a focus on competition must also take into account the realities of working in a contingency and high-risk environment. For example, while we support the portion of Recommendation 16 that calls on agency competition advocates (or others) to determine the feasibility of breaking out major subcontract requirements from omnibus support contracts, based in part on the factors identified in the recommendation, we do not believe that it logically follows that the determination to break out work should automatically lead to the use of any particular contract type for that work.

Similarly, Recommendation 17, that requires always limiting the period of performance of contingency support contracts to one year, fails to take into account the significant ramp-up and phase-out periods, the cost and performance risk to the government from such an approach, or the impact on competitors to execute the work in that period of time. In our view, the government's planning and ultimate acquisition strategy decision should determine the most appropriate period of performance for any such support contracts, based on a wide range of factors, not just time. In our experiences, shorter periods of performance may actually reduce competition for follow on work. In addition, Recommendation 18 focuses on the wrong solutions to mitigate the occurrence of and consequences of single offers, even during an open competitive process, as contrasted with the policies and procedures for sole-source award.

Enforcement (2/24/11 Report, Section V)

There are a number of other recommendations contained in your report with which we have serious concerns. Overall, we are concerned that the report reflects a presumption that

additional punitive authorities and processes are necessary. We strongly disagree. With regard to the recommendations on suspension and debarment, we are concerned about the underlying implication that suspension and debarment procedures are inadequate and that suspension and debarment should be virtually automatic in a broad array of circumstances. As we pointed out in a letter to the commission two months ago, suspension and debarment are as much, if not more, about how a company or grantee responds to problems as it is whether a problem, even a significant one, has actually occurred. Particularly in volatile contingency environments, deviations from “normal” processes are inevitable.

Some believe that suspension and debarment are tools for punishing contractors for misdeeds. In fact, the suspension and debarment policies and processes, and any resulting affirmative suspension and debarment finding, are established solely to ensure that federal agencies conduct business with companies that are responsible to carry out the requirements of the specific contract for which they are being considered. Subpart 9.4 of the Federal Acquisition Regulation, which governs suspension and debarment, specifically states: *“The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the government’s protection and not for purposes of punishment.”*

As PSC advised the Commission previously, these tools are designed to protect the government’s business interests. New requirements and tools have recently been developed to assist contracting officers and suspension and debarment officials with their work. Those developments should be allowed to be fully implemented and evaluated before determining whether further broad reforms are necessary and what those appropriate reforms might be. In lieu of unneeded, unbalanced reforms, adherence to existing requirements governing contractor past performance and the Excluded Parties List System (EPLS) can have a significant impact on correcting problems, such as awarding contracts to companies that have been suspended or debarred. Suspension and debarment policies and procedures should foster, not undercut, the professional judgment exercised by contracting officers and suspension and debarment officials.

Also with regard to enforcement mechanisms, we have supported appropriately targeted legislation to expand the scope of coverage of the Military Extraterritorial Jurisdiction Act (MEJA) to cover civilian agency contractors operating overseas in contingency operations. Such a bill passed the House (HR 2740) in 2008 although there were a number of concerns the administration and members of Congress raised with the legislation in that form. However, we don’t share the Commission’s premise that “U.S. government's limited jurisdiction over criminal behavior and limited access to records, have contributed to an environment where contractors misbehave with limited accountability.” In fact, while there may be shortcomings in the realm of criminal jurisdiction, there are a range of administrative remedies that can be, and often are, implemented.

Finally, Recommendation 31 addresses strengthening the authority for civilian agencies to withhold contract payments for inadequate business systems. We do not believe there is a gap in authority for civilian agencies to withhold contract payments, as evidenced in numerous cases in Iraq and Afghanistan. Nevertheless, PSC has worked extensively with DoD, including the Defense Contract Audit Agency and the Defense Contract Management Agency, on the

development of an appropriately structured business systems rule that spells out the key attributes of each of the major business systems and that addresses appropriate administrative actions and remedies that are available to the government when significant deficiencies are found. DoD has issued two iterations of a proposed rule on this important business matter and may be close to finalizing a new version of the rule.

### **Conclusion**

Again, thank you for this and the previous opportunities PSC and our member companies have had to engage in substantive discussions with the Commissioners and staff. We look forward to future opportunities to continue that dialogue as the Commission completes its work this summer. I look forward to your questions.