

STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE  
COMMITTEE ON SMALL BUSINESS  
HOUSE OF REPRESENTATIVES

“CONTRACTING AND INDUSTRIAL BASE II:  
BUNDLING, GOALING AND THE OFFICE OF HEARINGS AND APPEALS”

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Chairman Hanna, Ranking Member Meng, and members of the Subcommittee, thank you for the invitation to appear today and discuss the important relationship between federal contracting and the small business industrial base. The Professional Services Council (PSC) is the leading national trade association representing nearly 400 member companies and their hundreds of thousands of employees across the nation providing professional and technology services to the federal government.<sup>1</sup> Almost half of our members are smaller businesses with revenues below \$60 million.

PSC and our members have significant expertise in the federal acquisition marketplace with a particular focus on the acquisition of professional and technology services. We are strong supporters of a balanced federal policy on small business. PSC has four policy objectives for 2015:

- Improve the federal acquisition and technology workforces
- Enhance the federal services market (“preserve, protect and defend” the market)
- Promote the “industrial base” for services (for small, mid-tier and large companies)
- Rationalize and incentivize the acquisition policy ecosystem (for contracting, compliance, audit and contract administration)

There are specific initiatives that directly touch on these policy objectives that are pending before this committee and PSC has specific recommendations to make. In my testimony I address four important issues in federal contracting for small business for your attention and consideration; they are (1) strategic sourcing; (2) the imbalance in small business goal setting and small business attainment; (3) the importance of improving the quality of existing data collections and what additional information would aid policy considerations; and (4) the challenges of evaluating how the significant changes to the law and regulations interrelate and have, and will continue to have, significant effects on the opportunities for small business participation in federal contracting.

### **Strategic Sourcing**

Strategic sourcing is not suitable for all of the government’s acquisitions. It may be more appropriate for certain commodity purchases but less appropriate for services purchases. When considering the federal government’s move toward more strategic sourcing and its interrelationship with small business contracting goals, it is clear that there are disconnects driven largely by how the federal government measures small business performance in the federal market and the desire to foster a strong industrial base.

In 2013, PSC President and CEO Stan Soloway testified before this Contracting and Workforce Subcommittee about strategic sourcing and its impact on the industrial base. Then, as now, our view of strategic sourcing was centered on supporting an environment of robust competition, high performance, agility, innovation and balanced opportunities for companies of all sizes. In that testimony, we raised the important question of “what are the objectives of strategic sourcing?” and posited two potential answers. The first is “to optimize government operations” and the second is “to optimize

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<sup>1</sup> For over 40 years, PSC has been the leading national trade association of the government technology and professional services industry. PSC’s nearly 400 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. See [www.pscouncil.org](http://www.pscouncil.org).

government operations without impacting current socioeconomic or other acquisition policy goals.” In our view, the latter has emerged as the overarching objective, and the strategies adopted by the government have certainly had a mixed impact on the small business community. At the conclusion of that testimony, we recommended that the federal government better align the number of small business providers and the total dollars expended via small business as part of the overall strategic sourcing strategy. Today, that recommendation is still valid, but it is also clear that improved data collection and analysis is necessary to improve decision-making in the future.

Since we last testified, efforts to increase the use of strategic sourcing of the government’s procurement of goods and services have become more expansive, and the metrics that are used to evaluate small business performance in the federal marketplace seem to demonstrate that small businesses continue to thrive in a “strategically sourced” environment. That data, however, fails to consider certain key factors that should be considered, such as whether there is an equitable distribution among small businesses and a balanced reliance on small businesses for certain categories of work. To that end, additional data analysis and oversight will be necessary to fully assess strategic sourcing’s impact on the industrial base generally and on small business specifically.

#### The Pros and Cons of Strategic Sourcing

The merits of strategic sourcing are sound—buy in bulk quantities from a limited number of dedicated suppliers and benefit from the associated price discounts. Other benefits of strategic sourcing for the federal government include the ability to more rapidly access solutions via existing contracts in lieu of undertaking entirely separate acquisitions, lower acquisition management costs, decreased workload for the overburdened federal acquisition workforce, and simplified data collection and reporting of federal spending. Benefits for the private sector include greater clarity into federal project pipelines, improved opportunities for task order awards—at least for those “pre-approved” contractors—and lower overall bid and proposal costs as the number of multiple-award IDIQ contracts that industry may compete for declines.

But strategic sourcing has a number of negative consequence that must be fully understood and considered. First, strategic sourcing could result in less competition at the task order level. While this is a benefit to those companies that have a “seat” on the master contract, the diminished competition could hamper the government’s ability to quickly access innovative solutions. Second, strategic sourcing will affect the industrial base as fewer companies are awarded contracts and the rest are potentially shut out from competing for work under the contract for years. Third, as larger task orders are set aside for smaller firms, the performance risk for the companies and the government increases significantly. Finally, there is uncertainty regarding how the federal government manages its strategic sourcing initiatives in a way that recognizes and complies with existing contracting consolidation and bundling laws and regulations.

PSC is a strong proponent of well-designed strategic sourcing as well as establishing and maintaining a strong industrial base, not just for small businesses, but for businesses of all sizes. In recent years, we have witnessed a number of individual initiatives that increase the use of strategic sourcing and small business participation across the federal government. In many cases, these efforts actually complement each other. For example, as a result of statutory changes, the Federal Acquisition Regulation was amended in 2012 to clearly provide authority for contracting officers to reserve or set aside all, or parts, of multiple award IDIQ contracts for small businesses, overriding the previous standard of providing a fair opportunity for all contract holders. As a result of those legislative and regulatory changes, contracting officers now have greater flexibility to make set-aside decisions at the task order level.

Additionally, several contracts that have been dubbed as “strategic sourcing” vehicles have actually had two parallel contracts awarded—one that resulted from full and open competition among entities of all sizes, and another that restricted competition to small businesses. GSA’s Alliant and Alliant Small Business and OASIS and OASIS Small Business are two examples.

It is important to note that even the unrestricted version of these contracts encouraged small business participation and that small businesses have received awards under them. It is also important to note that these contracts typically contain significant small business subcontracting requirements. Yet, as will be discussed later in this testimony, subcontracting data is woefully inaccurate. Hence, improved data collection and analysis will be critical in helping stakeholders understand the comprehensive, longer term effects of the government’s small business and strategic sourcing contracting policies.

#### The Growth of Strategic Sourcing Vehicles and the Effect on the Federal Supply Schedules

Historically, GSA and many federal agencies have relied on the GSA Federal Supply Schedules (schedules) to provide a competitive market for vendors to offer their goods and services to the federal government. Small businesses have historically fared well under the schedules programs, receiving nearly 35 percent of the dollars awarded via the schedules. But the opportunities under the schedules is evolving and shrinking as spending through the schedules declines and as new Blanket Purchase Agreements established under specific schedules have further consolidated the number of companies that can compete for certain goods or services. Also of significance is that GSA has or is creating new multiple award IDIQ contracts that may further reduce the amount of work that flows through the schedules. GSA’s OASIS contract, and the current GSA/OPM initiative to create the Human Capital and Training Services (HCaTS) contract, are two examples where GSA is creating new contract vehicles that will impact the market opportunities for companies to compete for work under the schedules program. As stated above, these vehicles offer small business opportunities, but only to a limited number of companies who successfully compete for both the base contract and then task orders under those contracts, compared to those firms that compete for orders placed under the schedules.

While PSC does not object to the creation of these contracts, their potential impacts should be more fully understood. For example, both OASIS and HCaTS will offer professional services that are already available under a number of existing GSA schedules, including MOBIS, PES, AIMS and FABS.<sup>2</sup> The stated intent of these new multiple-award IDIQ contracts is to provide a better and more flexible vehicle for government agencies to procure an integrated combination of services that would ordinarily have to be purchased individually via the schedules or through stand-alone awards. However, the oversight community will need to pay special attention to these vehicles to ensure that they are truly being used for integrated solutions, and not siphoning opportunities that are or should be more appropriately ordered from the individual schedules. If, in fact, individual services are procured via the OASIS or HCaTS awards in lieu of the schedules, then agencies will functionally be excluding many businesses, including small business, from competing for work they have previously been eligible to compete for.

OASIS is too new a vehicle for any meaningful analysis of its effect on small business, but anecdotally, the overall impact on small business does not appear to be negative. PSC shares this committee’s concern that, while small businesses may be winning an appropriate dollar value of work under these

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<sup>2</sup> GSA has announced that they are beginning to consolidate at least seven of the 10 stand-alone professional services schedules, including MOBIS, PES, AIMS and FABS, into a single schedule called “Professional Services Schedule” (PSS). GSA does not initially plan to integrate the existing IT Schedule (Schedule 70) into PSS. GSA’s work is already well underway with a goal of completing the integration and the transition to PSS by the end of 2015.

vehicles, the number of small businesses winning such work may actually be in decline. We are also concerned that certain industries may be underrepresented in the federal marketplace while others enjoy the benefit of significant amounts of set-aside work. As such, it is important to collect information about the number of small businesses that are benefiting from the government's strategic sourcing initiative as well as how strategically sourced federal dollars are being awarded across the multitude of NAICS codes. In fact, it is important to examine this data and overall small business participation in the federal marketplace more broadly.

### **Imbalance in Small Business Goal Setting and Small Business Attainment**

The Small Business Administration negotiates biennially with the federal agencies on their small business attainment goals. This negotiation includes prime contract award goals for the federal agencies and subcontracting goals to be achieved by federal prime contractors. It is understandable that, when SBA is negotiating with agencies, some departments and agencies have larger procurement budgets or greater opportunities for making prime contract and subcontract awards to small business than others. But what we have seen is that an agency's historical achievement is a good indicator of its future goals, without taking into account how an agency's buying actions might have changed or that what an agency is acquiring is changing. While SBA is agnostic about how an agency achieves its goals, we have seen how agencies have skewed their performance to focus on some of the "low hanging fruit" within their business opportunities and not looked across their entire enterprise for meaningful small business participation opportunities. As a result, agencies are, in effect, picking winners and losers in the small business market—and in the larger agency industrial base market—through these goal attainment decisions.

For example, several components of the Department of Defense spend a large amount of money on major weapons systems. While it is unlikely that small businesses are capable of acting as prime contractors on these opportunities, their participation in these markets is not, and should not be, zero or near zero. Yet, some defense agencies wall off these weapons systems procurements from their small business prime contracting achievement objectives and focus exclusively on other sectors of their business opportunities where there are large numbers of small business competitors to help them achieve their prime contracting goals. If you are a small business in this sector, you may benefit from the aggressive agency action to set aside awards for small businesses, but only so many small businesses can win this work. However, if you are "other than small" in this sector, an entire market may be shut off from you because of the amount of set-asides that are issued. Similarly, if you are a small business that works in one of the sectors that the agency has walled off, you may not see any set-asides in that walled off sector and find it difficult to compete in the full and open marketplace.

In the goal setting process, SBA and the agencies must evaluate not only top-line small business goals, but also analyze and comment on changes in the agency's business base and addressable market. In fact, consideration should be given to setting not only prime contracting and subcontracting goals, but also target goals for services and commodities to be sure that one segment of an agency's market is not drawing a disproportionate share of the agency's attainment efforts.

### **Data Quality Regarding Total Small Business Participation**

In order to make informed decisions about federal contracting small business policies, better data that captures the full participation across the federal marketplace is necessary. While federal small business prime contracting expenditures in the aggregate are fairly accurate—at least to the same level of accuracy as any other contracting data generated—there is significantly less visibility into small business participation at the subcontracting level. This data is not insignificant since it is essential to have a clear

picture of how successful small businesses are at the subcontracting level in order to make appropriate decisions that could either expand or contract small business opportunities in the federal market.

To be clear up front, PSC is not recommending that federal agencies should receive credit against their small business prime contracting goals for any subcontracting that is performed by small businesses. However, increased pressure has been shifting from the federal agencies to prime contractors to offer substantial subcontracting opportunities to small business subcontractors. It is not uncommon for primes to have a 40 percent or greater small business subcontracting requirement on the awards they receive from the federal agencies.<sup>3</sup> In addition, prime contractor compliance with their small business subcontracting plans is part of the prime contractors' past performance record. As such, primes make a concerted effort to offer ample subcontracting opportunities for the work they are awarded from the federal government. The experience that small businesses receive through the performance of such work is also extremely helpful in preparing small businesses to serve the federal market as prime contractors.

This committee's past work has recognized the lack of accurate small business subcontracting data. In an effort to improve subcontracting data reporting, the committee worked closely with the House and Senate Armed Services Committees to enact legislation in the fiscal year 2013 National Defense Authorization Act that tasked the Office of Advocacy within the Small Business Administration to lead an independent assessment of the small business industrial base that includes an analysis of barriers to accurately capturing data on small business prime and subcontracting data. In June 2014, that report was published and it highlighted a number of challenges to collecting accurate subcontracting data via the government's eSRS and FSRS reporting systems.<sup>4</sup> Challenges included the inability to accurately identify the appropriate NAICS code assigned to subcontracts, not all contracts requiring the reporting of subcontracting information, and the inability to drill down into subcontracting that occurs beyond the first tier. Again, to this committee's credit, language was included in the fiscal year 2014 National Defense Authorization Act that would permit prime contractors to report subcontracting beyond the first tier, but that statutory language has not yet been implemented in regulations or contracts.<sup>5</sup>

PSC strongly believes that without meaningful data that can be used to provide an accurate picture of total small business participation, government risks making ill-informed small business contracting decisions that could place significant risks on small business contractors and could damage the broader industrial base. On the positive side, the enactment of the Digital Accountability and Transparency (DATA) Act could be a driver for better information, and PSC looks forward to working with this committee and the appropriate oversight committees as the implementation of the DATA Act continues.

### **Challenge of Fully Evaluating the Effect on Small Business of Laws and Regulations**

There has been more small business legislation addressing federal procurement matters enacted in the past five years than at almost any time in the last two decades. Many of these proposals have been enacted to address specific problems that have been identified in the federal contracting marketplace while others have been adopted to level the playing field for small businesses in federal procurement. In

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<sup>3</sup> Subcontracting requirements have been typically based on the percentage of total dollars subcontracted, not on the total value of the contract. That measure was changed by Congress but final rules have not yet been issued.

<sup>4</sup> Evaluation of the Small Business Procurement Goals Established in Section 15(g) of the Small Business Act, June 2014, available at <https://www.sba.gov/sites/default/files/files/rs423tot.pdf>.

<sup>5</sup> Section 1641 of the fiscal year 2014 National Defense Authorization Act, available at <http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT86280/pdf/CPRT-113HPRT86280.pdf>.

the past, this committee has held hearings to address the slow pace of regulations to implement statutory changes, whether by SBA in amending its own regulations or by the Federal Acquisition Regulatory Council in amending the FAR. Occasionally, provisions have been enacted affecting only one agency, such as the Department of Defense or the Department of Homeland Security, and those agencies are responsible for issuing regulations to incorporate the changes within their agency-specific FAR supplements.

When forced to comment on rules in piecemeal fashion, it has been a challenge to understand the impact of all of the regulatory actions on the federal acquisition marketplace and on small business opportunities. For example, one recent rule on small business subcontracting encouraged the use of joint ventures that are “not populated.” A separate regulation on HUBZones provides an advantage for HUBZones that use a “populated” joint venture. Neither rule would typically provide an opportunity to comment on the inconsistencies between these two rules. The Small Business Administration’s contracting rules are typically finalized before the FAR rules are published, but occasionally the pattern is reversed or the FAR rules are issued on an interim basis and put into effect before the entire regulatory landscape is visible. These rolling regulatory issuances create a challenge for analysis and commentary on the impact of any single rule on the overall regulatory scheme and how they will affect the market. Notwithstanding congressional interest (and sometimes direction) that implementing rules be issued within a reasonable period of time, we are still waiting for some final rules for key provisions of the 2010 Small Business Jobs Act.

### **Recommendations**

PSC offers the following recommendations. First, more needs to be done to improve the data reporting to track federal prime and subcontracting data. This is, without a doubt, a significant challenge that will require close coordination between industry and government. Second, careful attention must be paid to ensuring that opportunities of the appropriate size are being set aside. In the goal setting process, SBA and the agencies must evaluate not only top-line small business goals, but also analyze and comment on changes in the agencies’ business base and addressable market. In fact, consideration should be given to setting not only prime contracting and subcontracting goals but also target goals for services and commodities to be sure that one segment of an agency’s market is not drawing a disproportionate share of the agency’s attainment efforts. Agencies must also take the steps necessary to fully implement and then comply with both the bundling and the consolidation reporting requirements that have been enacted in recent years. Finally, the viability of conducting past performance assessments of first-tier subcontractors should be thoroughly explored.

Thank you again for the invitation to provide PSC’s views on these important issues. We look forward to continuing our long-standing work with this Committee on these issues. I would be pleased to answer any questions you may have.