

Senator Barbara A. Mikulski
United States Senate
SH-503
Washington, DC 20510-2003

Via Fax: (202) 224-8858

May 5, 2009

Dear Senator Mikulski:

On behalf of the more than 330 member companies of the Professional Services Council and their hundreds of thousands of employees nationwide, including scores of companies in Maryland and their tens of thousands of employees, I am writing to express our deep concern with your legislation, S. 924, also known as the "CLEAN UP Act." We genuinely respect and share your support for the dedicated civil servants in the federal government. While PSC is the largest organization representing federal contractors, we have long advocated for vigorous efforts to support and empower federal employees. However, we believe any discussion of these issues must be balanced and fact-based. We also believe that you are in a unique position to help foster that balance since Maryland is one of the nation's largest recipients of federal contract dollars and contractor employees are a critical component of Maryland's economic strength, yet many of them could be negatively impacted by your legislation.

Our concerns involve both the assumptions that underpin the legislation and the legislation itself. In the end, both the commentary and the legislation will do little to achieve the important goals the President has set for improving government performance on behalf of the taxpayer – a goal we share and are helping to implement.

As to the underpinnings of your legislation:

- You cite the "debacle" at Walter Reed Hospital as evidence of the failures of the competitive sourcing process. But the facts are quite to the contrary. As congressional investigations showed, the disgraceful conditions uncovered at Walter Reed were in a building that was being maintained by the hospital and its staff, not by contractors. In fact, the contractor did not arrive at Walter Reed until right before the conditions were discovered and had no authority over or responsibility for the building. Furthermore, that building was not even covered under the awarded competitive sourcing contract, although the contractor was subsequently called in by the Army to repair and rehabilitate the uninhabitable facility after the intolerable conditions were uncovered.
- You state that more than 350 jobs were eliminated as a result of the outsourcing but the fact is that the vast majority of federal employees affected by the outsourcing were offered positions by the contractor or accepted other positions at Walter Reed. As Army manning documents show,

the real reductions in force took place only after the facility was placed on the base closure list and were therefore mostly unrelated to the competitive sourcing process.

- You assert that the record of the competitive sourcing process is one of waste and poor performance. In fact, as the Department of Defense (during the Clinton Administration), the Center for Naval Analysis, the Government Accountability Office and many other objective analyses have concluded, the competitive sourcing program generates real savings—30% on average—whether the work is ultimately contracted out or remains in house, principally as the result of the appropriate performance and cost pressures engendered by the competition. Indeed, it is difficult to understand how, at a time when Congress and the Administration are appropriately seeking to enhance competition in government contracts, it is consistent to propose legislation to effectively eliminate competition in significant portions of the government, particularly without offering any alternative means by which equally rigorous analyses can be conducted to achieve the best overall value to the government and performance improvements.

Your legislation focuses on six key elements. We fully agree with including the requirement for agencies to conduct detailed, strategic workforce analyses as well as ensuring that work that is truly “inherently governmental” is performed by federal employees, even though the phrase “inherently governmental” is not a well-defined term. In fact, in the fiscal year 2009 National Defense Authorization Act, Congress directed the Office of Management and Budget to develop a more refined definition of that phrase – an initiative PSC strongly supports and for which we have developed substantive recommendations. However, other portions of the bill are significantly more problematic:

- 1) *Requiring work that meets the definition of “closely associated with inherently governmental” be performed by federal employees.*

There is no logical reason that all work that might be characterized as “closely associated with inherently governmental,” even though this is also not a well-defined term, must be performed exclusively by federal employees. The key is for agencies to carefully and strategically assess their missions and work to ensure that they have adequate internal capability in critical positions to provide the guidance, expertise and management necessary to achieve cost, schedule, and performance goals. Your legislation would strip agencies of their ability to act strategically by replacing it with arbitrary workforce planning that may not be consistent with the agency’s or the taxpayers’ best interests.

- 2) *Encouraging agencies to provide federal employees the opportunity to perform new work, work that was contracted out “without competition,” and work that is contracted but being poorly performed.*

Unfortunately, the ban on competitive sourcing studies across government has eliminated the only process that gives employees the opportunity to compete for commercial activities work. Absent the A-76 process, what competitive process should be implemented to ensure that any decision to insource work will result in meaningful cost and performance improvements? What process will hold whoever is performing the work accountable for their performance? When contractors perform poorly, the most common and appropriate remedy pursued by agencies is to re-compete the work. When commercial companies assess outsourced work to determine if bringing it back “in house” is the right answer, they undergo rigorous analyses to ensure the

decision is the right one. How should agencies do this under this legislation? After all, insourcing for the sake of insourcing is no better as a management policy than outsourcing for the sake of outsourcing.

- 3) *Reforming the A-76 process to ensure that all costs of conducting competitions are considered, charging in-house workforces only for actual overhead costs, abolishing automatic recompetition requirements for in house workforces, and imposing firm time limits on competitions.*

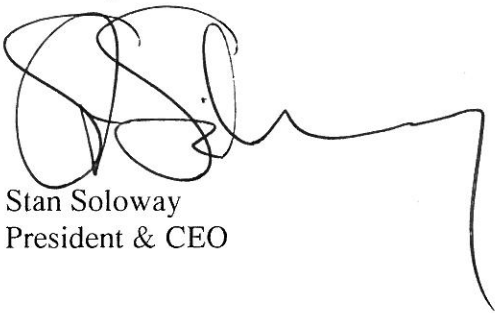
It is not clear what is meant by “actual overhead costs.” Overhead is a well defined accounting term and it is inappropriate for either the government or a company to re-define the term for its own purposes. The government has real overhead costs, just as companies do, ranging from equipment to buildings, short and long term health care and retirement expenses, personnel offices, travel, financial, and other systems. Under the current A-76 policy, government entities are only required to include a flat 10% overhead factor in their bids, even though the government’s overhead costs are substantially greater and even though contractors must include all allocated overhead costs in any bid they submit. How does this provision in the bill “level the playing field,” particularly in light of the A-76 requirement that a minimum 10% savings be achieved to “justify” any outsourcing decision?

Given ongoing Congressional efforts to foster greater competition in government contracting, why is it appropriate or beneficial to the taxpayer to prohibit similar competitive efforts when it comes to the government’s commercial activities? If competition is not available to the agencies for its internal sourcing, what mechanisms exist to ensure that the taxpayers’ interests are continually met?

Our member companies in Maryland, and their thousands of employees, would greatly appreciate the opportunity to meet and work with you to achieve the balance that is so critical to the government and the nation. As such, we hope you will be open to beginning a new, substantive, dialogue with us.

My thanks in advance for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan Soloway', with a long horizontal line extending to the right.

Stan Soloway
President & CEO