PSC PROFESSIONAL SERVICES COUNCIL
The Voice of the Government Services Industry

April 12, 2012

Honorable Howard "Buck" McKeon
Chairman

Honorable Adam Smith
Ranking Member

Committee on Armed Services
United States House of Representatives
Washington, DC 20515

Dear Chairman McKeon and Ranking Member Smith:

On behalf of the member companies of the Professional Services Council (PSC), I am writing to bring to your attention our opposition to Section 802 of H.R. 4310, the fiscal year 2013 National Defense Authorization Act, introduced on request on March 29, 2012. Section 802 would provide the Department of Defense (DoD) with authority to enter into multi-year, no-bid contracts with federally funded research and development centers (FFRDCs). DoD submitted this legislative request on March 28, 2012.

PSC is the national trade association of the government professional and technical services industry, serving as the voice of the government contracting industry for 40 years. PSC's more than 350 member companies represent small, medium, and large businesses that provide federal agencies with services of all kinds and employ hundreds of thousands of Americans in all 50 states. Many of our members perform the same type of work that is now assigned to FFRDCs.

Section 802 would amend Section 2367 of title 10, United States Code, to add three provisions: (1) providing new authority for DoD to enter into a multi-year contract with any FFRDC; (2) mandating that each sponsorship agreement or applicable contract between DoD and an FFRDC include certain provisions relating to the orderly termination or non-renewal of an agreement or contract, a requirement already provided for in the Federal Acquisition Regulation (FAR);[1] and (3) permission (but not a mandate) for each sponsorship agreement or applicable contract to include certain discretionary items that the parties might negotiate covering expenses incurred at the end of a sponsoring agreement or contract.[2]

PSC has significant concerns with the growth of the work assigned to FFRDCs that can be performed by the private sector and we strongly oppose the request for multi-year authority. The

[1] See FAR 35.017-1(c)(2) for this current requirement with respect to sponsorship agreements; "no-bid contracts" that assign and fund work by an FFRDC are not explicitly covered in FAR 35.017 but FAR 35.017-1 recognizes that the sponsoring relationship may take many forms, including contracts.

[2] This requirement is not covered in FAR 35.017.

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request for items (2) and (3), while not objectionable, is already required in part by the FAR and should have already been taken into account in the no-bid "contracts" that assign and fund work for an FFRDC.

With respect to the multi-year authority, and although not elsewhere addressed in law, FAR 35.017-1(e) already constrains the business relationship between the sponsor agency and the FFRDC. It provides:

> "The term of the agreement will not exceed five years, but can be renewed, as a result of periodic review, in increments not to exceed five years."

While the sponsorship agreement may extend for five years, the department therefore concludes that it should have the authority to enter into a multi-year contract for work under that sponsorship agreement for more than one year, without limitation. The key distinguishing difference between a multi-year contract and a multiple year contract is that a multi-year contract buys more than one year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first. But the department inappropriately conflates the two issues and fails to address the long-standing congressional requirement that multi-year contracts demonstrate significant savings over another period of performance.[3]

Furthermore, in 2009, the president issued a memorandum "reforming government contracting" to save billions of dollars a year of taxpayers' money in part by ending "unnecessary no-bid and cost plus contracts" and strengthening "oversight to maximize transparency and accountability." This provision runs counter to the president's initiative.

In addition, FFRDCs were established by the government during and following World War II to meet the national security research and development needs of the war and following World War II to continue technology advancements during the Cold War. In short, the government did not have the internal scientific, systems engineering or research and development expertise and capabilities, so it went to private industry and academia to find this expertise and established the FFRDCs where this expertise and capability would be used by the government. Over the years, concerns also arose about real or perceived conflicts of interest among private sector providers.

However, Congress passed the Weapon Systems Acquisition Reform Act of 2009 ("WSARA;" P.L.111-23), which was signed by the president in May 2009 and implemented through acquisition regulations issued by DoD.[4] Following the implementation of WSARA, many

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[3]For example, 10 U.S.C. 2306b**,** the "standard" multi-year authority for the acquisition of property, requires such multi-year contracts to demonstrate "substantial savings." Furthermore, DFARS 217.170 specifically requires that, before awarding a multi-year contract, including a contract for services, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis, and directs the agency to not award the multi-year contract unless the analysis shows that the multi-year contract will result in the lower cost (10 U.S.C. 2306b(l)(7); section 8008(a) of Pub. L. 105-56, and similar sections in subsequent DoD appropriations acts). This DFARS provision is available at: http://www.acq.osd.mil/dpap/dars/dfars/pdf/r20120330/217_1.pdf.

[4] See DFARS 209.571, available at: http://www.acq.osd.mil/dpap/dars/dfars/pdf/r20120330/209_5.pdf.

defense industry prime contractors divested themselves of businesses elements of their companies that may have put them in a potential organizational conflict of interest position between performing support services functions and being a program provider.

Furthermore, since the Department of Defense and the Air Force established systems engineering FFRDCs in the 1940s, the basis for their establishment—a lack of systems engineering capabilities in the private sector—has changed. It is no longer the case that systems engineering expertise is not prevalent in private industry.

In an era when defense budgets are constrained, and with the possibility of sequestration looming to further reduce the deficit, it is no longer prudent to award contracts without meaningful competition, without appropriate transparency into cost or price, and without inspecting the justification for sole-source awards to FFRDCs. We believe it is time for there to be a competition for many of the services now assigned to FFRDCs and, as the president said, to "open the contracting process" and "maximize transparency and accountability."

We also request an opportunity to meet with you to discuss the department's legislative proposal that we oppose and the importance of increasing congressional oversight and fundamentally changing the way the Department of Defense does business with systems engineering FFRDCs. It is time for real competition for the purchase of systems engineering services versus a sole-source purchase of services based on a protected relationship that no longer provides "unique capabilities" to the department.

Thank you for your attention to this request. If you or your staff have any questions or need more information, please do not hesitate to contact me or Alan Chvotkin, PSC's executive vice president and counsel.

Sincerely,

Stan Soloway
President & CEO