

February 1, 2019

Defense Acquisition Regulations System
Attn: Ms. Carrie Moore
OUSD (A&S) DPC/DARS
Room 3B941
3060 Defense Pentagon
Washington, DC 20301-3060

RE: DARS-2018-0055, Defense Federal Acquisition Regulation Supplement: Restrictions on Use of Lowest Priced Technically Acceptable Source Selection Process (DFARS Case 2018-D010)

Dear Ms. Moore:

On behalf of the member companies of the Professional Services Council,¹ I am pleased to respond to the Department's proposed rule published in the Federal Register on December 4, 2018 to implement sections of the National Defense Authorization Acts (NDAA) for Fiscal Years 2017 and 2018. These provisions established much needed limitations and prohibitions on the use of lowest price technically acceptable (LPTA) source selection criteria for certain DoD services contracts. PSC supports the rule as proposed with one addition as discussed below.

Section 813 of the National Defense Authorization Act for Fiscal Year 2017 (P.L. 114-328), as amended by Section 822 of the FY18 NDAA (P.L. 115-91), prohibits the Department from using LPTA unless eight defined criteria are met. It also specifically requires DoD to avoid, to the maximum extent practicable, using LPTA for acquisitions that are predominantly for:

- (1) information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, or other knowledge-based professional services;
- (2) personal protective equipment; or
- (3) knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq.

PSC acknowledges that LPTA has a place in the acquisition toolbox and, when appropriate, can achieve desired outcomes. However, applying LPTA to complex professional or IT services where higher-level technical capabilities and innovation are often sought, and where the contracting requirements are often difficult to accurately define, is particularly ill-advised. LPTA misuse can produce subpar results and increase long-term costs to the government. Promoting value and reducing long-term costs were key reasons Congress enacted this mandate.

¹ PSC is the voice of the government technology and professional services industry, representing the full range and diversity of the government services sector. As a trusted industry leader on legislative and regulatory issues related to government acquisition, business and technology, PSC helps build consensus between government and industry. Our 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 trade association's members employ hundreds of thousands of Americans in all 50 states.

The FY17 NDAA required a Defense Federal Acquisition Regulation Supplement (DFARS) revision to implement the changes within 120 days of enactment, by April 2017. While PSC is disappointed by the delay in meeting the statutory deadline, we are pleased that this implementing rule has been proposed. As the November 13, 2018 Government Accountability Office (GAO) report on implementation of the law (GAO-19-54: DOD Should Clarify Criteria for Using Lowest Price Technically Acceptable Process) showed, the regulations are necessary before contracting officers are required to comply with the Section 813 limitations. Accordingly, we urge you to finalize and issue the final regulation as expeditiously as possible.

Additionally, Section 880 of the FY19 NDAA included similar restrictions on LPTA criteria for services contracts at the civilian agencies. This language is nearly identical to Section 813 of the FY17 NDAA as amended, with the exception of the below highlighted specific services:

“information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, **health care services and records, telecommunications devices and services**, or other knowledge-based professional services;”

The majority of PSC’s nearly 400 member companies operate in both the Department of Defense and civilian agencies markets. Inconsistency between the FAR and DFARS can impose unnecessary, costly and burdensome requirements on the contractor community. Harmonization between the FAR and DFARS—where applicable and appropriate—allows federal contractors to operate more efficiently and effectively.

Accordingly, we urge you to include the phrase “health care services and records, telecommunications devices and services” in the Department’s final rule, retain the two-paragraph structure you have laid out in the proposed rule, and work closely with your FAR Council counterparts as this rule is finalized.

By separating the limitations provided in section 813 of the FY17 NDAA, as amended, from the prohibitions provided in sections 814, 832, and 892 of the FY17 NDAA, as amended, the FAR Council can easily apply the restrictions on LPTA use to services contracts government-wide. Thus, we will be sending a separate letter to the Office of Federal Procurement Policy (OFPP) Acting Administrator to encourage her to work with the Department to implement Paragraph (a) of the new DFARS section limitations government-wide as expeditiously as possible.

PSC looks forward to continuing to work with you as the final regulation is issued and implemented. If you have any questions or need additional information, please do not hesitate to let me know. I can be reached at (703) 875-8059 or at chvotkin@pscouncil.org.

Sincerely,



Alan Chvotkin, Esq.
Executive Vice President and Counsel