

February 11, 2019

Lesley Field
Administrator (Acting)
Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President
Washington, DC 20503

RE: Federal Acquisition Regulation (FAR) Case 2018-016, Lowest Price Technically Acceptable Source Selection Process

Dear Administrator Field:

On behalf of the member companies of the Professional Services Council,¹ I am writing to request that, in your capacity as Chair of the Federal Acquisition Regulatory Council, you act expeditiously to issue and finalize FAR regulations that establish uniform, governmentwide restrictions on the use of the Lowest Priced Technically Acceptable (LPTA) source selection process. We believe consistent limitations on LPTA across federal defense and civilian agencies will yield improved outcomes and create greater efficiency for both government and industry.

Section 880 of the Fiscal Year 2019 National Defense Authorization Act (NDAA; P.L. 115-232) directs revisions to the FAR that would prohibit federal civilian agencies from using LPTA unless six defined criteria are met. It also directs agencies to avoid, to the maximum extent practicable, using LPTA for acquisitions that are predominately for:

- (1) 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;
- (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.

Similarly, Section 813 of the FY17 NDAA (P.L. 114-328), as amended by Section 822 of the FY18 NDAA (P.L. 115-91), prohibits the Department of Defense (DoD) from using LPTA unless eight defined criteria are met, and requires DoD to avoid using LPTA for the acquisition of the same categories of services and equipment specified in Section 880 of the FY19 NDAA, although it omits health care services and records, and telecommunications devices and services.

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.

On December 4, 2018, the DAR Council published a proposed rule in the Federal Register to implement the DoD LPTA restrictions established in the FY17 and FY18 NDAs.² PSC submitted comments to DoD on the proposed rule on February 1, supporting the rule as proposed, but recommending the addition of the phrase “health care services and records, telecommunications devices and services” in the DoD final rule, to provide uniform coverage at DoD with that proposed for civilian agencies in the FY19 NDA.³

We went on to urge DoD to work closely with the FAR Council to harmonize any FAR and DFARS rules governing restrictions on LPTA. Thus we write now to ask that you work with DoD to implement government-wide Paragraph (a) of the new DFARS limitations as expeditiously as possible. By separating the limitations provided in section 813 of the FY17 NDA, as amended, from the prohibitions provided in sections 814, 832, and 892 of the FY17 NDA, as amended, the FAR Council can easily apply the restrictions on LPTA use to services contracts government-wide.

The majority of PSC’s nearly 400 member companies operate in both DoD and numerous civilian agency 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 government-wide.

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. We applaud Congress and DoD for taking steps to limit the inappropriate use of LPTA, and look forward to your urgent action to uniformly apply these restrictions across government.

PSC looks forward to continuing to work with you as the regulations are 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

² Available at: <https://www.govinfo.gov/content/pkg/FR-2018-12-04/pdf/2018-26306.pdf>

³ Available at: <https://www.pscouncil.org/Downloads/documents/Advocacy-Policy%20Docs/PSC%20DFARS%20LPTA%20Proposed%20Rule%20Comments%2002-01-19.pdf>