

May 21, 2018

The Honorable Pete Sessions
Chairman
Committee on Rules
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jim McGovern
Ranking Member
Committee on Rules
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Sessions and Ranking Member McGovern:

On behalf of the nearly 400 member companies of the Professional Services Council (PSC), I am writing to convey PSC's position on several amendments that have been filed with the Rules Committee for consideration during the debate on the Fiscal Year 2019 National Defense Authorization Act (H.R. 5515).

PSC *supports* the following amendments:

Amendment #1, filed by Rep. Young: This amendment would require the Department of Defense to expedite compliance with existing statutory requirements regarding the reciprocity of security clearance and access determinations. The Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) and subsequent guidance should have increased the use of reciprocal recognition of clearances between and among agencies, but implementation has fallen far short of need. Reiterating the need to immediately meet the IRTPA requirements would send a strong signal that Congress intends for agencies to prioritize and meet reciprocity requirements.

Amendment #141, filed by Rep. Krishnamoorthi: This amendment would require the Secretary to identify existing regulations that prohibit small businesses from entering the federal marketplace. Overregulation and government-unique requirements serve as significant barriers to entry for many businesses, and disproportionately impact small companies who would otherwise look to support the government. Removing these barriers should be a priority for DoD and Congress, as increased participation increases competition.

Amendment #305, filed by Rep. Connolly: This amendment would direct the Administrator for Federal Procurement Policy to develop a definition and plan for measuring Procurement Administration Lead Time (PALT). This amendment mirrors a provision in the FY18 NDAA that directed the Secretary of Defense to define and measure PALT within DoD and expands the provision government-wide. All federal agencies have a responsibility to ensure that they solicit and acquire goods and services from contractors in the most effective and efficient manner. Uniformly defining PALT, consistently capturing these data, and publicly reporting it will significantly benefit all agencies and stakeholders, particularly if it becomes the basis for structured efforts to reduce PALT. Since Sec. 866 of the FY18 NDAA will be implemented through the existing government-wide Federal Procurement Data System – Next Generation in which all federal agencies already capture their procurement information, government-wide implementation of this provision would be seamless and conducted with minimal cost and effort.

Amendment #324, filed by Reps. Beyer and Meadows: This amendment would prevent improper use of “lowest-price technically-acceptable” (LPTA) evaluation factors for certain services in the civilian agencies. This amendment mirrors provisions in the FY17 NDAA that limited LPTA for procurements with well-defined requirements and objectives in the Department of Defense and expands the criteria government-wide. While LPTA has a role in the acquisition toolbox, the default to low price irrespective of capability is particularly ill-advised for professional, knowledge-based and IT services. Taxpayers benefit when the government has the flexibility to obtain the best value from a contract and when innovative solutions can be leveraged to improve outcomes and mission results.

Amendment #531, filed by Rep. Thornberry: This amendment would require the DoD to track the progress of small businesses who participate in the SBIR/STTR program. PSC supports Chairman Thornberry’s goal of retaining innovative companies in the federal contractor community and determining whether the SBIR program is effective in leveraging innovative technologies into programs of record. This amendment will increase transparency into the SBIR/STTR program and provide information that may increase its effectiveness—while also promoting small business growth.

PSC *opposes* the following amendments:

Amendment #198, filed by Rep. Lowenthal: This amendment would require the Secretary of Defense to advise the Departments of State and Homeland Security, and the Central Intelligence Agency, in establishing and authorizing a Pricing Office Director in each agency. PSC opposes using the NDAA to “direct” the organizational design of other departments or agencies and to specify who is to run a pricing office—even if meritorious. Further, in light of the Administration’s ongoing mandate for each federal agency to develop and implement reorganization plans appropriate for its own organization, this amendment has the effect of overriding that process before it reaches its conclusion.

Amendment #226, filed by Rep. Lee: This amendment would reduce the allowable compensation of all DoD contractor and subcontractor employees for the fiscal year. This amendment, like much of the rhetoric on contractor compensation, is misleading and reflects a stark misunderstanding of the rules and realities of today’s government contracting environment. The Congress has previously rejected establishing compensation caps at the levels proposed in this amendment, which would decrease the ability of federal agencies to access the kind of high-end skills and talent they need to execute their increasingly complex missions.

Amendment #254, filed by Reps. Schakowsky, Lee, and Speier: This amendment would prohibit DoD from contracting for security service or training from a nongovernmental entity that has business interests that conflict with the national security interests of the United States. Without clear definitions and additional guidance, the amendment’s implementation may be unworkable and have unintended negative consequences.

Amendment #309, filed by Rep. Ferguson: The amendment would prohibit any company participating in the GSA established e-commerce portals as a provider from also participating as

a supplier. This language is not only unworkable and would limit competition, but it appears to be designed to halt implementation of the e-commerce marketplace Chairman Thornberry proposed and championed in Sec. 846 of the FY18 NDAA. Sec. 846 is designed to allow the government to purchase commercial items quickly and easily—bringing commercial practices into government, not creating a new government-unique marketplace. Additionally, we believe it would be ill-advised to preclude GSA from exploring options and accessing providers, as excluding any providers will limit competition and likely increase prices. In fact, GSA’s implementation plan highlights that a key theme from the town hall meeting and public comments is that “Marketplaces need to be open to all suppliers selling to the Government.”

Amendment #413, filed by Reps. Velázquez and Norman: This amendment would establish a 25-member E-Commerce Portal Advisory Committee to advise the GSA Administrator on implementation of Sec. 846 of the FY18 NDAA. PSC understands that there are concerns regarding the e-commerce portals implementation but opposes this amendment as written because it is unnecessary at this stage, as GSA is conducting extensive outreach to stakeholders and utilizing the full resources of the government and commercial sectors.

Amendments #441 and #443, filed by Reps. Ellison, Pocan and Grijalva: These amendments would prohibit federal agencies from contracting with any person who discloses, via the Federal Awardee Performance and Integrity Information System (FAPIIS), certain Occupational Safety and Health Act (OSHA) or Fair Labor Standards Act (FLSA) violations, respectively. Entirely circumventing long-standing and proven suspension and debarment procedures included in the Federal Acquisition Regulation (FAR), these amendments act as an automatic, de facto, debarment of federal contractors. The FAR now requires consideration of the seriousness of the contractor’s acts or omissions and any remedial measures or mitigating factors, including, but not limited to, whether the contractor had effective standards of conduct and internal control systems in place at the time the event occurred, and the degree to which the contractor cooperated with the government agency during the investigation. These factors and established processes would be nullified if either of these amendments were adopted.

As you may be aware, PSC has also joined a May 21, 2018 letter to your committee from the Acquisition Reform Working Group.

Thank you for your consideration of PSC’s position on these important issues. We would be glad to provide any additional information that you might need or answer any questions you may have on this legislation or any area of future concern.

Sincerely,



Alan Chvotkin
Executive Vice President and Counsel

CC: House Armed Services Committee Chairman Mac Thornberry and Ranking Member Adam Smith