December 2, 2019

Lois Mandell  
Regulatory Secretariat Division (MVCB)  
2nd Floor  
General Services Administration  
1800 F Street NW  
Washington, DC 20405

Re: FAR Case 2018-016

(Submitted electronically at http://regulations.gov)

Dear Ms. Mandell:

Women Impacting Public Policy (WIPP) a national, nonpartisan organization advocating on behalf of women entrepreneurs, submits the following comments in response to the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) solicitation for comments on the proposed rule to amend the Federal Acquisition Regulation (FAR) to implement a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019.

The rule specifies the criteria that must be met in order to include lowest price technically acceptable (LPTA) source selection criteria in a solicitation and requires procurements predominantly for the acquisition of certain services and supplies to avoid the use of LPTA source selection criteria, to the maximum extent practicable. FAR 15.101-2 describes the LPTA source selection process as appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. WIPP believes narrowing the use of this criteria will be beneficial to women-owned small business contractors, as well as the small business contracting community at-large. Prior to the enactment of a final rule this year amending the Defense Federal Acquisition Regulation Supplement (DFARS) to limit usage of LPTA, these contracts were widely used. In November 2018, the Government Accountability Office estimated that about 26 percent of DoD’s contracts and orders valued at $5 million or more in Fiscal Year 2017 were competitively awarded using the LPTA process.¹

Utilization of LPTA limits the ability for many small businesses to competitively bid in the federal marketplace. When delivering products or services, small businesses cannot compete in

a “race to the bottom” with larger companies that have greater resources and can bid at a lower prices. If small companies are able to competitively bid, often the margins are so low that holding multiple contracts that utilized LPTA is unsustainable.

In discussions with our members, they gave numerous examples of the problems with LPTA for small, women-owned businesses. While these difficulties are not necessarily specific to women-owned, we hope the Council will find them instructive. One practice that agencies appear to utilize is using LPTA but issuing change orders to obtain services that go beyond those covered by the initial contract. Our members see this practice as a “work around”—claiming LPTA but not using it.

Small companies struggle to win bids because they are not strictly a pass through for lowest cost products. This is also especially true for small manufacturers. While their products could potentially provide the government greater value – longer lasting, better made, responsive customer service – competing with foreign made products on the sole basis of price is impossible. Choosing the product based only on price will also increase the lifecycle cost of the procurement, as the goods procured at the cheapest price will most likely have to be replaced frequently.

Another challenge our members cited with LPTA criteria is requirements that are not well defined. Absent specific criteria, small companies find difficulty in accurately bidding competitively for these contracts. Best value is defined in FAR 2.101 as “the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.” Not only is this a problem for small contractors, under this scenario, the government will not receive best value.

Additionally, the emphasis on price for professional service contracts can result in incentivizing reductions in employee compensation or unpaid overtime. One such example is a call center LPTA contract. The same employees will get paid less and less because the bidders use the previous contract pricing and bid lower resulting in lower wages for workers. In addition, our members feel that larger companies are much better equipped than small companies to bid on contracts using LPTA. Large companies have greater resources which allows them to adjust other contracts and personnel to offer competitive bids.

This is not to say that LPTA has no merit. One of our members pointed out that LPTA can sometimes to beneficial to small companies. LPTA can limit the latitude of a contracting officer to choose the incumbent or a joint venture with the incumbent as one of the partners, thus giving other small businesses a greater opportunity to compete.

Furthermore, WIPP also recognizes the importance of the proposed rule’s singling out of following categories in which the government should avoid using LPTA to the maximum extent practicable: 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; personal protective equipment; or, knowledge-based training or logistics services in contingency operations or other operations outside the United States. The government will get greater value in these procurements by engaging in the tradeoff process instead of just seeking the lowest price.

In conclusion, we quote from the Professional Services Council 2018 letter to Assistant Secretary of Defense for Acquisition Kevin Fahey. “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.” Women-owned businesses compete successfully for federal contracts when given the opportunity. We encourage the FAR Council to adopt policies, such as this rule, that encourage participation by women-owned firms.