

Council of Defense and Space Industry Associations
4401 Wilson Blvd. Suite 1110
Arlington, Virginia 22203
codsia@codsia.org
www.codsia.org

CODSIA Case 2019-005

July 30, 2019

Defense Acquisition Regulations System
ATTN: Kimberly Bass
OUSD(A&S) DPC/DARS
3060 Defense Pentagon, Room 3B941
Washington, DC 20301-3060

Re: Defense Federal Acquisition Regulation Supplement (DFARS) Case 2017-D038,
"Contractor Purchasing System Review (CPSR) Threshold"

Dear Ms. Bass:

On behalf of the undersigned member associations of the Council of Defense and Space Industry Associations (CODSIA),¹ we are pleased to submit comments on the DFARS proposed rule "Contractor Purchasing System Review (CPSR) Threshold" published in the *Federal Register* on May 31, 2019. The rule proposes to increase the threshold for conducting CPSRs from the current \$25 million government-wide threshold provided in FAR 44.302(a) to \$50 million for DoD only. We support the rule.

CODSIA recognizes the value of this rule from the Defense Contract Management Agency's (DCMA) perspective. As noted in the Supplementary Information in the *Federal Register* notice, DCMA conducts the preponderance of CPSRs within DoD. If the increase is put into effect, based on 2014 data noted in the accompanying Initial Regulatory Flexibility analysis, it would reduce the number of defense contractor firms subject to the increased CPSR threshold by approximately 20 percent (approximately 45 each year over the three-year CPSR cycle) while only reducing the value of contract dollars covered by a CPSR by 2 percent.

However, DoD does not indicate whether these statistics are for DCMA only or whether they cover CPSRs conducted across all of the military departments and defense agencies. We suspect that the number of affected contractors is considerably higher and that the value of contract dollars left outside the CPSR threshold is also higher.

Contractors below the threshold are not precluded from review. The DCMA Instruction permits a review of contractors "meeting the purchasing system threshold or considered eligible due to identified risk factors" (emphasis added). Increasing the threshold will permit DCMA to allocate more of its resources to contractors with "identified risk factors", rather than low risk contractors above the threshold.

¹ CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues at the suggestion of the Department of Defense. CODSIA consists of seven associations – Aerospace Industries Association (AIA), American Council of Engineering Companies (ACEC), Associated General Contractors (AGC), Information Technology Industry Council (ITI), National Defense Industrial Association (NDIA), Professional Services Council (PSC), and U.S. Chamber of Commerce. CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

Council of Defense and Space Industry Associations
4401 Wilson Blvd. Suite 1110
Arlington, Virginia 22203
codsia@codsia.org
www.codsia.org

CODSIA Case 2019-005

Additional Considerations

There are two other areas implicated by the change in this rule that are not addressed in the Supplementary Information. The first concerns the cybersecurity reviews that DCMA is tasked with performing. In its June 14, 2019 design, DCMA uses CPSRs to evaluate a contractor's compliance with the NIST standards and the DFARS "-7012" cybersecurity clause. For those companies who would no longer be subject to CPSRs, what mechanism will be used to provide oversight of cybersecurity compliance?

Second, many solicitations issued by DoD and non-defense agencies require as a responsive element of bidding that the contractor demonstrate that it has a current "approved" purchasing system. A contractor who receives regular CPSRs by DCMA or another agency, with a "satisfactory" rating, meets that test. DoD should consider the potential implications for small businesses and on competition for cost-reimbursement or certain IDIQ contracts from this CPSR threshold change when developing contract requirements in the future. We also await further implementation of the DoD Cybersecurity Maturity Model Certification (CMMC) being developed by DoD and evaluating how it will relate to this CPSR change.

Initial Regulatory Flexibility Analysis

The Initial Regulatory Flexibility (IRF) analysis, also included in the Supplementary Information, cites 2014 data for the proposition that increasing the threshold would result in 133 firms no longer meeting the CPSR threshold, for an annual (over three year period) reduction of 45 firms, with 35 of them being large businesses and 10 being "small entities." We are submitting separate comments raising questions about the completeness of this initial "Reg Flex" analysis.

Thank you for your attention to these comments. If you have any questions or need any additional information, please do not hesitate to contact Alan Chvotkin, Executive Vice President and Counsel of the Professional Services Council, who serves as our project officer for this case. He can be reached at (703) 875-8148 or at Chvotkin@pscouncil.org.


Sincerely,



John Luddy
Vice President National Security
Aerospace Industries Association



Eminence N. Griffin
Senior Director, Government Affairs and
Counsel
Information Technology Industry Council



Wesley P. Hallman
Senior Vice President for Policy
National Defense Industrial Association



Alan Chvotkin
Executive Vice President and Counsel
Professional Services Council