



# Acquisition Reform Working Group

May 16, 2016

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

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

Dear Chairman Sessions and Ranking Member Slaughter:

On behalf of the Acquisition Reform Working Group (ARWG)<sup>1</sup>, we are writing to express our views regarding a number of amendments proposed for consideration during the House floor debate on the National Defense Authorization Act (NDAA) for FY 2017 (H.R. 4909).

*ARWG supports the following amendments:*

**Amendment #20 filed by Congressmen Don Beyer and Rob Wittman** - this bipartisan amendment would encourage the Department of Defense (DoD) to avoid the use of Lowest-Priced Technically Acceptable (LPTA) source selection evaluation criteria for inappropriate contracts, such as when procuring complex information technology services or other knowledge-based services. This amendment would institutionalize DoD’s own internal guidance

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<sup>1</sup> The Acquisition Reform Working Group (ARWG) is comprised of the Aerospace Industries Association; Associated Builders and Contractors, Inc.; American Council of Engineering Companies; Financial Executives International’s Committee on Government Business; Information Technology Alliance for the Public Sector; National Defense Industrial Association; Professional Services Council; The Associated General Contractors of America; The Coalition for Government Procurement; and the U.S. Chamber of Commerce. We represent thousands of small, mid-sized and large companies and hundreds of thousands of employees that provide goods, services and personnel to the government.

on the appropriate use of LPTA, and it coincides with LPTA language included in the Armed Services Committee's report accompanying the bill.

**Amendment #179 filed by Congressmen Jim Langevin and Joe Wilson** – this bipartisan amendment would expand on existing statutory employee exchange programs between the private sector and government, which serve as a valuable tool that allows each sector to learn about the processes, procedures, and best practices of the other sector while preventing conflicts of interest.

**Amendment #182 filed by Congressmen Richard Hanna and Derek Kilmer** – this bipartisan amendment would provide much needed resources to the small business community to help them understand cybersecurity threats and undertake appropriate actions to eliminate and respond to cyber incidents.

**Amendment #215 filed by Congressmen Sam Graves and Mark Takai** – this bipartisan amendment would encourage more efficient and competitive utilization of design-build acquisition for design and construction services by reasonably limiting use of the one-step design-build procurement process. This reform will help increase competition and opportunities for all construction industry businesses, especially small businesses, to win Department of Defense design and construction contracts.

*ARWG opposes the following amendments:*

**Amendment #273 filed by Congressmen Raul Grijalva and Keith Ellison** – this amendment seeks to repeal Section 1095 of the HASC reported bill. The amendment would subject companies seeking to do business with the federal government to an unfair, duplicative, unnecessary, and costly Executive Order, which would have detrimental impacts on both the DoD and industry if applied to the DoD.

**Amendment #307 filed by Congressmen Raul Grijalva and Keith Ellison** – this amendment would establish a DoD-unique set of poorly defined and arbitrary “model employer standards”, which would have to be met by private sector companies to be eligible to bid for DoD contracts. The amendment also would require the automatic debarment, without consideration or due process, of any DoD contractor that falls short of such “standards.”

**Amendment #45 filed by Congresswoman Jackie Speier** – this amendment would redefine the statutory definition of inverted U.S. corporations and, simultaneously, prohibit them from operating on military installations. The amendment is contrary to U.S. international obligations contained in the World Trade Organization's Government Procurement Agreement and in numerous U.S. free trade agreements. Additionally, prohibiting inverted U.S. companies from

bidding on DOD contracts who are in full compliance with U.S. law undermines the principles of “full and open competition” and best value for the taxpayer.

**Amendment #113 filed by Congressman Alan Grayson** – this amendment would eliminate current procedures and due process rights for contractors by requiring an automatic debarment of any contractor that has been convicted of, or merely indicted or charged with, violating any criminal offense in connection with a federal, state or local contract or has had a civil judgment against them. Contractors would also be automatically debarred if they have been notified of any delinquent tax liability that remains unsatisfied. Current law and the Federal Acquisition Regulation (FAR) already contain thorough procedures for handling instances of contractor criminal activity and tax delinquency. Adjudication of such instances already must be reviewed by government suspension and debarment officials who are expected to use their professional judgment based upon all of the facts at their disposal to determine whether a suspension or debarment to protect the government’s interest is warranted. This amendment improperly undercuts that process and could run counter to the government’s own interests.

**Amendment #116 filed by Congressman Alan Grayson** – this amendment requires, with limited exceptions, that cost or price be assigned equal importance to all other evaluation factors when DoD evaluates contractor proposals. ARWG opposes this amendment because it limits the department’s flexibility to effectively use important cost/technical trade-off evaluation strategies and structure evaluation criteria in the manner they deem most appropriate for the mission to be accomplished. Cost or price is important, but mission accomplishment can be even more important and must be acknowledged accordingly.

**Amendment #42 filed by Congresswoman Jackie Speier** – this amendment would significantly and inadvisably reduce the scope of the term “commercial item” for federal procurement purposes and would unnecessarily prevent agencies from using streamlined procurement processes for a subset of items and services, which currently qualify as being “commercial.” In our view, this amendment directly contradicts long-held policy objectives of the Armed Services Committee, the Defense Department, and the Administration.

**Amendment #161 filed by Congressman Ken Calvert** – this amendment requires DoD to report information about DoD civilian and contractor head counts. Much of the information about contractor head counts is already reported by contractors and is publicly accessible. Yet this amendment seeks additional information that does not currently exist, such a General Schedule levels of contractor personnel, and information about total contractor personnel devoted to weapons systems acquisitions. GAO has recently questioned the value of continuing to collect the existing information in its current form. Nothing in this expanded data collection provision would improve public data or government decision-making.

**Amendment #333 filed by Congressman Alan Lowenthal** – this amend would require the Secretary of Defense to coordinate with certain non-defense agencies regarding the creation of new position within those non-defense agencies that has not yet been authorized to be created by statute or otherwise. Furthermore, the functions to be performed by the new position are functions that are already the responsibility of others within the agencies. This amendment is unnecessary.

Thank you in advance for your consideration of ARWG's position on these important issues. Please do not hesitate to contact Roger Jordan of the Professional Services Council staff at 703-875-8117 if you have any questions or need additional information.

Sincerely,

Aerospace Industries Association  
American Council of Engineering Companies  
Associated Builders and Contractors, Inc.  
Financial Executives International's Committee on Government Business  
Information Technology Alliance for the Public Sector  
Professional Services Council  
The Coalition for Government Procurement  
The Associated General Contractors of America  
U.S. Chamber of Commerce

CC: The Honorable Mac Thornberry  
Chairman  
Committee on Armed Services

The Honorable Adam Smith  
Ranking Member  
Committee on Armed Services