



September 10, 2014

Ms. Hada Flowers
General Services Administration
1800 F Street NW., 2nd Floor
Washington, DC 20405

Subject: FAR Case 2013–002 Expanded Reporting of Nonconforming Items

Dear Ms. Flowers,

The Coalition for Government Procurement is pleased to submit comments in response to the above referenced proposed FAR case.

The Coalition is a non-profit association of firms selling commercial services and products to the Federal Government. Our members collectively account for approximately 70% of the sales generated through the GSA Multiple Award Schedules program and about half of the commercial item solutions purchased annually by the Federal Government. Coalition members include small, medium and large business concerns. The Coalition is proud to have worked with Government officials over the past 35 years towards the mutual goal of common sense acquisition.

The proposed rule addresses an important objective – to mitigate the threat that counterfeit items pose when used in systems vital to an agency’s mission. The rule, however, imposes significant new monitoring and reporting requirements that will pose particular challenges for commercial firms and small businesses. The rule would require that contractors:

- Report to the Government-Industry Data Exchange Program (GIDEP) within 60 days after the contractor becomes aware that: (1) an item is counterfeit or suspect counterfeit or (2) an item contains a major or critical nonconformance that is (a) a common item and (b) constitutes a quality control deviation from a lower level subcontractor that resulted in the release of nonconforming items to more than one customer
- Report to the contracting officer within 30 days from when the contractor becomes aware that any end item, component, subassembly, part, or material contained in supplies purchased by the contractor for delivery to or for the Government is counterfeit or suspect counterfeit.

- Screen GIDEP reports to avoid the use and delivery of items that are counterfeit or suspect counterfeit items or that contain a major or critical nonconformance.
- Retain in its possession any suspected or confirmed counterfeit items.

As drafted, the proposed rule applies to all items and must be flowed down to subcontractors and suppliers at every tier. These subcontractors and suppliers will invariably include entities that have no direct relationships with the government. Because of the broad applicability of the rule, the process of merely communicating its provisions to those required to comply will be significant.

- The rule assumes that a contractor has an inspection system or quality program sufficient to accomplish the required monitoring and reporting. The proposed rule is intended to build on the contractor inspection systems already required by the FAR. These assumptions may not be reasonable for commercial item contractors. In such contracts, FAR generally allows reliance on a contractor's existing commercial quality assurance system. Even for contractors that have compliant systems, those systems are likely to require enhancement due to the new definitions and requirements to be imposed by the rule.
- The proposed rule appears to assume that contractors are widely familiar with reporting to GIDEP. Many entities covered by the rule do not currently use the database.

The proposed rule estimates 3 burden hours per report will be imposed on contractors. This very low estimate seems to ignore the significant time and costs associated with training, implementation and the risks of liability.

In order to accomplish the government's objectives, while limiting the costs and risks of liability on federal contractors we recommend that the government exempt commercial item contractors, their subcontractors and suppliers from the initial applicability of the rule. Such an approach would allow the government to clarify some of the ambiguities of the rule, and develop best practices for reporting prior to considering a broader expansion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Waldron', with a long horizontal flourish extending to the right.

Roger Waldron
President