



March 22, 2016

General Services Administration
Regulatory Secretariat Division (MVCB)
Attn: Ms. Hada Flowers
1800 F Street, N.W., Second Floor
Washington, D.C. 20405

Subject: FAR Case 2015–012, Contractor Employee Internal Confidentiality Agreements

Dear Ms. Flowers:

Thank you for the opportunity to provide comments in response to the proposed rule amending the Federal Acquisition Regulation (FAR) to implement new requirements related to *Contractor Employee Internal Confidentiality Agreements*.

The Coalition for Government Procurement (“The Coalition”) is a non-profit association of firms selling commercial services and products to the Federal Government. Our members collectively account for a significant percentage of the sales generated through the GSA Multiple Award Schedules (MAS) 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 for more than 35 years towards the mutual goal of common sense acquisition.

The Contractor Employee Confidentiality Agreements proposed rule implements Section 743 of Division E, Title VII of the Consolidated and Further Continuing Appropriations Act, 2015. The statute prohibits the use of funds appropriated for a contract, grant, or cooperative agreement with an entity that requires employees or subcontractors of such entity to sign internal confidentiality agreements or statements otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse.

The Coalition supports the intent of Section 743 and the FAR Council’s proposed rule to provide appropriate protection for employees looking to report waste, fraud, or abuse. These comments provide recommendations for the implementation of the rule to ensure that the rule protects employees who come forward to report waste, fraud, or abuse, while ensuring that contractors are not unduly burdened with compliance with the rule.

The Coalition is concerned that the rule would require contractors to create a compliance program, which monitors aspects of a contractor’s business in both the public and private

sectors. To lessen the burden of this proposed rule, the Coalition recommends that the FAR clauses be modified so that its scope is limited to fraud, waste, and abuse *related to the execution of government contracts*. This change would make the burden of compliance with the proposed rule more manageable.

The Coalition supports the efforts of the government to protect whistleblowers. However, contractors are concerned that this rule does not acknowledge that contractors have a legitimate interest in protecting their privileged and confidential information. The Coalition recommends that the FAR Council add language to the proposed clauses that acknowledges the ability of contractors to protect this information.

Many contractors utilize subcontractors to provide goods and services, which are not directly related to the fulfillment of a government contract. The Coalition recommends that the proposed rule be clarified so that it does not require compliance of subcontractors who do not directly work on a government contract with the prime contractor. For example these subcontractors may include vendors who provide cafeteria or landscape services, but do not work directly on a government contract. This clarification would ensure that subcontractors working under a specific government contract are still held to appropriate standards, without requiring prime contractors to develop an expansive compliance program that encompasses every subcontractor that they do business with commercially that does not operate under a government contract. We believe that requiring prime contractors to build a compliance system of such a broad scope would be immensely burdensome and beyond the intended scope of the rule.

The Coalition fully supports the intent of this proposed rule and hopes that the FAR Council will consider these recommendations. We believe that the recommendations will reduce the potential burden of the rule, while ensuring that the appropriate protections are in place for employees of contractors who wish to report waste, fraud, or abuse under government contracts.

Thank you for considering the Coalition's comments in response to the proposed rule on confidentiality agreements. If there are any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Sincerely,

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

Roger Waldron
President