



September 23, 2011

Defense Acquisition Regulation System

Attn: Ms. Amy Williams

OUSD (AT&L) DPAP/DARS

Room 3B855

3060 Defense Pentagon

Washington, DC 20301-3060

Re: DFARS Case 2011-D013, Only One Offer

Dear Ms. Williams,

On behalf of The Coalition for Government Procurement, the following comments are provided on the proposed rule amending the Defense FAR Supplement (DFARS) to address acquisitions using competitive procedures in which only one offer is received. The proposed rule was published in the Federal Register on July 25, 2011.

The Coalition for Government Procurement is a non-profit association of approximately 300 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 (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 over the past 30 years towards the mutual goal of common sense acquisition.

The Coalition believes that the General Services Administration (GSA) is vested with the exclusive statutory authority for the pricing policies and procedures governing contracts and orders under the Federal Supply Schedules (FSS). The proposed rule does not indicate that GSA has delegated to the Department of Defense the authority to prescribe the policies and procedures for the negotiation of pricing under the FSS program. As such, the pricing policies and procedures for FSS contracts and orders

outlined at DFARS Part 208 and 215 are beyond the scope and authority of the DFARS.

The proposed DFARS rule addresses acquisitions using competitive procedures in which only one offer is received. The proposed rule would provide that with some exceptions, the contracting officer must resolicit for an additional period of at least 30 days if the solicitation allowed fewer than 30 days for receipt of proposals and only one offer is received. If a period of at least 30 days was allowed for receipt of proposal, the contracting officer must determine prices to be fair and reasonable through price or cost analysis or enter into negotiations. The proposed rule would amend several DFARS Parts, including DFARS Parts 208 and Part 215.

Specifically, the proposed rule would amend DFAR 208-405-70 to provide that for orders exceeding \$150,000, if only one offer is received, the contracting officer must follow the procedures at DFARS 215.371. Further, orders must include 252.215-70WW, Notice of Intent to Resolicit and 252.215-70XX, Only One Offer. As applied to FSS orders, proposed DFARS 215.371 would establish new requirements for the negotiation of prices under FSS contracts and FSS orders. DFARS 215.371 calls for the use of FAR 15.402 and 15.403 to determine what cost or pricing data may be required in case of only one offer. In addition, DFARS 215.371 directs the contracting officer to include FAR 52.215-20 in the solicitation for an FSS order and use the clause to identify the data for purposes of determining whether the price is fair and reasonable.

Title 40, U.S.C., Chapter 5, Property Management (formerly Title II of the Federal Property and Administrative Services Act of 1949) and the Competition in Contracting Act (CICA) (41 U.S.C. 259(b)(3)) provide GSA with the exclusive statutory authority for the management of the FSS program. The proposed DFARS provisions directly affect the FSS pricing policies and procedures set forth, pursuant to GSA's exclusive authority, in General Services Acquisition Regulation (GSAR Parts 515 and 538). In particular, GSA 515.408, Commercial Sales Practices Format sets forth the data submission requirements for the negotiation of FSS contract pricing. GSAR 538.270 provides the analytical framework for determining contract prices and rates fair and reasonable under the program. Any modifications of these regulations, as contemplated by the DFARS rule, must be approved by GSA and incorporated into the GSAR.

The proposed regulations are also unnecessarily duplicative. Under the FSS program, GSA has already determined that the prices for products and the rates for

services are fair and reasonable. See FAR 8.404(d). In addition agencies must seek price reductions from the fair and reasonable contract prices for orders exceeding \$150,000. See FAR 8.405-4. In addition, for services based on a statement of work, agencies are responsible for considering the level of effort and labor mix and making a determination whether the total price is fair and reasonable. See FAR 8.405-2(d). The FAR and GSAR create a framework for the effective and efficient procurement of goods and services at fair and reasonable prices.

The Coalition appreciates the opportunity to submit comments on this proposed rule. If you have any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Regards,

A handwritten signature in black ink, appearing to read 'RWaldron', with a long horizontal line extending to the right.

Roger Waldron
President