



Subject: DHS-2012-0050  
HSAR Case 2010-001  
Contractor Billing and Subcontractor Labor Hour Rates Under Time and Material  
Contracts

The Coalition for Government Procurement (Coalition) appreciates the opportunity to comment on the above referenced 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 General Services Administration's (GSA's) Federal Supply Schedule (FSS) 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 Department of Homeland Security (DHS) proposes to amend its Homeland Security Acquisition Regulation to require contracts for time and material or labor hours (T&M/LH) to include separate labor hour rates for subcontractors, prime contractors and each division, subsidiary and affiliate thereof. The proposed rule would also require a description of the method that will be used to record and bill for labor hours for both contractors and subcontractors. In effect, DHS proposes to eliminate the flexibility currently contained in the FAR (52.216-29(c)) that allows fixed hourly rates to be established using either separate (for each prime contractor, subcontractor, and division, subsidiary, or affiliate labor category) or blended rates or a combination thereof.

The effect of this rule is to require that a prime contractor sell any labor which it might acquire from subcontractors or affiliates to DHS at the prices it actually pays those sources for their labor. This approach fails to appreciate the level of resources required to engage and administer work involving a mixed set of labor sources and to do business generally. Assuming the prime is still held accountable for the subcontractor performance, this approach provides no benefit for retaining that responsibility and associated risk. This would be contrary to customary business practices.

Further, our members report that this rule could potentially pose significant additional administrative burden on contractors. Most contractors do not have in place or use a bidding and proposal process such as that which would be mandated by this proposed rulemaking. Contractors would incur significant administrative burden and costs to change existing processes and procedures. The impact of these changes would be more detrimental to small businesses which do not have the sophisticated accounting systems that would allow the tracking of numerous different labor rates for the same labor category. Additionally, a pure pass through of subcontractor rates could be inconsistent with a company's DCAA disclosed estimating methodology, thus requiring a revised disclosure statement and revision of its indirect pool structure. These are time consuming and expensive undertakings.

Not only would the DHS approach add significant administrative workload for contractors, the added training and implementation workload placed on DHS' contracting workforce could also be substantial. We expect that even the time to evaluate proposals will increase because the Government will have to evaluate an increased number of labor rate sets from each offeror. With Government resources currently stretched thin, this added burden would further slowdown the procurement process. The additional administrative burden for both the government and industry is difficult to rationalize given the fact that DHS's requirements for non-commercial services of this type are relatively small.

The proposed rule states that the

“... purpose of these procedures is to ensure appropriate labor hour rates are paid under T&M/LH contracts and orders. The procedures are intended to eliminate unintentional windfall payments to the prime contractor that might otherwise result from work performed by lower labor rate subcontracts or affiliates that is billed at a higher prime contractor labor hour rate.”

DHS is apparently looking for procedures that keep hourly rates low. The unintended consequence of the rule, however, may be exactly the opposite. If adopted in its current structure DHS risks a reduction in the number of competitors if qualified and responsible contractors choose not to pursue these types of business opportunities. Fewer competitors could well result in increased prices to DHS. Another unintended consequence is a reduction of the use of small

entity subcontractors. Frequently small businesses use this type of work to gain experience and are willing to further discount rates to primes because their business development costs are lower and the prime's administrative costs are covered in the discount. This proposed rule could discourage the use of subcontractors and teaming agreements, both small and large, and push for more in-house work to reduce the added administrative burden and costs that would be incurred by this change.

The Coalition appreciates the opportunity to submit comments on the Contractor Billing and Subcontractor Labor Hour Rates Under Time and Material Contracts proposed rule. Please let me know if you have any questions.

Sincerely,

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

Roger Waldron

President