June 2, 2014

General Services Administration
Regulatory Secretariat (MVCB)
1275 First Street NE
Washington, DC 20417

ATTN: Hada Flowers

Re: Proposed Rule - Federal Acquisition Regulation (FAR) Case 2013–022 Extension of Limitations on Contractor Employee Personal Conflicts of Interest

Dear Ms. Flowers:

Thank you for the opportunity to provide comments on the above referenced FAR case.

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 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 for more than 30 years towards the mutual goal of common sense acquisition.

The proposed rule would broadly expand the limitations of FAR 3.11 on contractor employee personal conflicts of interest. Limitations that now apply only to performance of functions closely associate with acquisition would also apply to

- the performance of *all* functions that are closely associated with inherently governmental functions and
- Contracts for personal services

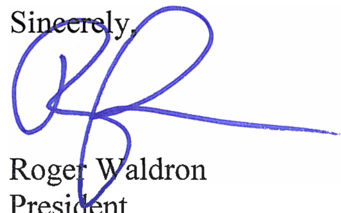
The Coalition is concerned that the proposed rule woefully lacks the clarity that contractors need to reasonably comply. Key terms such as "closely associated" with inherently governmental functions are not defined. Further, regulatory coverage on inherently governmental functions may be impacted by FAR Case 2012–001, Performance of Inherently Governmental Functions, and Critical Functions, which is still pending. Lack of clarity and changing federal requirements increase the risk and cost to contractors of doing business with the government.

In particular, the proposed rule would create significant ambiguity for contractors that sell commercial items and that may engage personal services contractor employees. For example, medical equipment manufacturers sometimes utilize healthcare professionals who work at Veterans Health Administration (VHA) facilities to provide education to customers about the manufacturer's products or otherwise engage such individuals in routine customer service. Under some interpretations, the VHA professional may qualify as either performing under a personal services contract or performing "functions closely associated with inherently governmental functions" due solely to their access to patient medical records; such records might be covered by the terms "confidential business information" or "other sensitive information." See FAR 7.503(d)(11). The VHA professional might similarly be considered to be covered by the prohibitions of the rule if their routine efforts on behalf of Veterans would be construed as "planning activities." See FAR 7.503(d)(2). Because of the ambiguities, it is certain that federal officials will make varying interpretations. From time-to-time scientific exchange might include necessary exchanges of value, such as the provision of a medical journal reprint which might otherwise be construed as a "gift." To include healthcare professionals in non-acquisition functions in the prohibitions under the rule may severely hinder scientific exchange necessary for appropriate care for our nation's veterans, service members, and their families. The difficulty in applying these restrictions is exacerbated by the concern that many healthcare professionals serving at VA facilities do so on a part time basis and engage in private practice for the majority of their week.

The federal register notice states that the personal conflicts of interest rule does not apply to the acquisition of commercial items. In view of the substantial compliance risk imposed by this proposed rules we suggest that this exclusion be highlighted in the text of the rule. Specifically, the definition of covered employee should specifically exclude professional service employees and subcontractors of commercial item contractors. At a minimum, the rule should be revised to clarify under what conditions a commercial item manufacturer may engage with professional services contractor employees who use the manufacturer's products to provide education about the items or otherwise engage in routine customer service without falling afoul of the conflict of interest prohibition.

The proposed rule implements a section of the National Defense Authorization Act (NDAA) for Fiscal Year 2013. The federal register notice states that the Secretary of Defense issued a data call to military departments and defense agencies requesting feedback on whether expansion of existing FAR provisions was necessary to the best interest of the department. It is not clear that a similar assessment was made for civilian agencies. In view of the potential compliance burden of the rule, the government should consider expanding the personal conflict of interest limitations exclusively with respect to defense agencies.

Sincerely,



Roger Waldron
President