



August 19, 2016

General Services Administration
Regulatory Secretariat Division
ATTN: Ms. Hada Flowers
1800 F St. NW, 2nd Floor
Washington, DC 20405

Re: FAR Case 2015–015 *Federal Acquisition Regulation: Strategic Sourcing Documentation*

Dear Ms. Flowers,

Thank you for the opportunity to provide comments in response to the proposed rule *Federal Acquisition Regulation: Strategic Sourcing Documentation*.

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 General Services Administration (“GSA”) contracts including the Multiple Award Schedules (“MAS”) program. Coalition members are also responsible for many 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 proposed rule implements Sec. 836 of the National Defense Authorization Act (“NDAA”) for FY 2015 requiring regulations providing for a brief analysis in the contract file when a Federal Strategic Sourcing Initiative (“FSSI”) contract is available, but not used. The brief analysis is to address the comparative value, including price and nonprice factors, of the products and/or services offered under the FSSI contract compared to those available under the non-FSSI contract selected.

The proposed rule, as written, is unnecessarily duplicative, adding to already similar documentation requirements for the acquisition workforce covered elsewhere in the Federal Acquisition Regulations (“FAR”). In order to streamline the new requirement, the Coalition recommends that the government leverage the existing requirements found in FAR Part 7, as well as the Exhibit 300 and 53 processes. Further, the new FSSI documentation guidance would be

better placed under FAR Part 7, addressing Acquisition Planning, including the content and documentation to be included in acquisition plans, than under FAR Part 8. The latter concerns Required Sources of Supplies and Services, and thus, is a less intuitive location for the FSSI requirement. Finally, although the proposed rule states that it will not have a significant economic impact on a substantial number of small entities, the Coalition is concerned about negative impacts on small businesses that have not been awarded FSSI contracts.

Opportunity to Streamline with Already Existing FAR and OMB Reporting Requirements

Pursuant to FAR Part 7.102, Federal agencies are required to conduct acquisition planning to, “ensure that the Government meets its needs in the most effective, economical, and timely manner.” FAR Part 7.105 details the specific requirements of the written acquisition plans, which includes, but is not limited to, a documentation of the agencies planned acquisitions with specific attention to contract type selection. Specifically, FAR Part 7.105 (b)(3) requires the agency to discuss the rationale for selecting a particular contract type, including documenting the facts, circumstances, and reasoning that supports their decision.

Further, the Office of Management and Budget (“OMB”) requires Federal agencies to report through the Exhibit 300 and 53 processes justification for their information technology (“IT”) spending. Together, these processes provide OMB with the necessary information to ensure sound planning and management of IT investments across the Federal government. Specifically, “These documents help agencies explicitly align IT investments with strategic and performance goals, and ultimately provide value to the public by making investment and management information more transparent.”¹

Although the rule proposes that the FSSI documentation requirement be placed under FAR Part 8, Required Sources of Supplies and Services, it would be more appropriate to include it under FAR Part 7, Acquisition Planning. This placement would allow for the brief comparative value analysis of the supplies/services offered under the non-FSSI vehicle compared to the FSSI contract to be integrated into the written acquisition plan already required in FAR Part 7.105. In addition, this change would help ensure consistency with other acquisition planning documentation requirements. It would further the goal of streamlining the acquisition planning process by ensuring relevant documentation requirements are located in at a single reference point in the FAR. Finally, for the reasons set forth below, the Council should consider revising the proposed documentation requirements to include a parallel requirement that contracting officers address the rationale for using a FSSI vehicle. Coupled with the analysis associated with the use of a non-FSSI vehicle, and in light of existing regulations, the parallel requirement would

¹ OMB Guidance

https://www.whitehouse.gov/sites/default/files/omb/assets/egov_docs/fy2015_e53_and_300_guidance_final_july2013.pdf

not be inconsistent with the statute. In addition, given the unclear performance of FSSI with regard to small business and projected savings, as well as the absence of a mandate or preference in the statute, the regulations should not create a presumption favoring FSSI.

Impacts on Small Business

The proposed rule states that it is unlikely that the FSSI documentation requirement will have a significant economic impact on small businesses. The rule also states that the, “documentation requirement could indirectly lead to more purchases going to those vendors involved in the FSSI.” The stated rationale is that if the documentation requirement leads to more purchases under the FSSI program, then small businesses on the FSSI vehicles will benefit. The Coalition, however, is concerned that small businesses that hold a Schedule contract, but do not hold a FSSI contract, would be harmed by the proposed rule as contracting officers shift purchasing to FSSI vehicles (with a small number of small businesses) from the Schedules program.

For example, in FY2015 there were 432 contract holders on Schedule 75 for Office Supplies. 404 of those contractors (or about 90%) were small businesses. On Schedule 75, \$300 million or about 60% of all sales went to small businesses, but OS3, the FSSI vehicles for Office Supplies, only had 23 small business vendors. If office supply sales under the Schedules program shifted to OS3, then approximately 400 small businesses would lose nearly \$300 million in sales.

Our members report that the FSSI program has had a negative impact on small businesses. The Coalition supports further study on the effects of the FSSI program on the small business industrial base. We also recommend that the FSSI comparative analysis and documentation requirement in the FAR be reevaluated following the study’s results.

Increased Transparency of FSSI Savings Estimates

The FSSI documentation requirement is intended to maximize the benefit of the FSSI program, but the case for savings through the FSSI program remains unclear. To date, the government’s FSSI savings analysis has focused primarily on a comparison of the FSSI contract price and the GSA Schedule price, rather than a comparison of the FSSI prices to other pricing achieved as a result of competition. FSSI savings estimates calculated based on discounts from the Schedule are unremarkable because reduced pricing as a result of competition is the basis of the MAS program, and therefore an everyday occurrence.

FSSI savings calculations should cover the Total Acquisition Costs (direct and indirect) to the government, including the administrative costs involved in planning, conducting acquisitions, data collection, and contract management. How the government calculates its strategic sourcing savings should also be transparent to the American public.

FAR Inconsistencies to address in Future Rulemaking

FAR Part 17.5 requires agencies to conduct analysis of procurement approaches to support their determination to conduct assisted or direct acquisitions with another agency. Significantly, when determining whether to conduct a direct acquisition by placing an order against another agency's indefinite-delivery vehicle, FAR Part 17.501(a)(2) states that an agency must, "make a determination that use of another agency's contract vehicle is the best procurement approach." [Emphasis added.] This determination includes an assessment of the contract vehicle's value, *i.e.* the administrative cost savings, lower pricing, and higher volumes that would be achieved when compared to an existing contract, the suitability of the contract vehicle, and the ability of the agency to effectively place orders against the vehicle.

In reviewing the proposed rule, we find the FSSI documentation requirement inconsistent with FAR Part 17.501. In order to comply with Sec. 836 of the FY2015 NDAA, contracting officers have to conduct a comparative value analysis when a FSSI vehicle is available, but not used; and FAR Part 17.501 requires a best procurement approach determination and analysis for Schedule orders exceeding \$500,000, orders through other multi-agency or government wide contracts, or use of another agency's assisted acquisition services. The Coalition recommends that the FAR Council look into this discrepancy in future rulemaking.

Governmentwide Commercial Purchase Card

The proposed rule would amend FAR Part 13.301 to state that, "agency procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under part 8 procedures, when authorized; and to place orders...under other contractual instruments, when agreed to by the contractor." It is important to clarify that governmentwide commercial purchase cards are a method of payment, not a method of procurement. The current language implies that merely using the purchase card satisfies competitive ordering procedure requirements. When placing orders, agencies are still responsible for following applicable competition requirements and procedures in accordance with the FAR. This section should be revised accordingly.

Recommendations

1. Place the *Documentation requirements related to the Federal Strategic Sourcing Initiative (FSSI)* clause under FAR Part 7.1 Acquisition Planning in order to streamline the new requirement with already existing analysis and documentation requirements.
2. Update FSSI savings estimates to account for not only prices paid, but also the Total Acquisition Costs of the FSSI program, and make these calculations transparent to the American public.

3. Conduct a study of the economic impacts of FSSI contract vehicles on the small business industrial base and reassess the FSSI documentation requirement based on the results.
4. Address the discrepancy between the best procurement approach determination and analysis requirements and the new FSSI documentation requirement in a future rulemaking.
5. Revise FAR Part 13.301(b)(2) to clarify that governmentwide purchase cards are a method of payment, and that agencies are still responsible for following applicable competition requirements and procedures when placing orders.

The Coalition stands ready to work with the government to ensure that the procurement process is efficient and effective for both government and industry. Should you have any questions regarding this matter, please contact me at (202) 315-1053 or rwaldron@thecgp.org.

Sincerely,

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

Roger Waldron
President