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February 11, 2011

General Services Administration
Regulatory Secretariat (MVCB)

Attn: Hada Flowers
1275 First Street, NE
Washington, DC 20417

Re: FAC 2005-47, FAR Case 2008-032, Preventing Abuse of Interagency Contracts

Dear Ms. Flowers,

On behalf of The Coalition for Government Procurement, the following comments are provided on the interim rule amending the Federal Acquisition Regulation (FAR) to implement provisions regarding the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 requirements for preventing abuse of interagency contracts. The proposed rule was published in the Federal Register on December 13, 2010.

The Coalition for Government Procurement is a non-profit association of more than 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. Many of our members also are information technology contractors on most, if not all, of the Governmentwide Acquisition Contracts. In addition, our members are contractors on many agency wide multiple award contracts as well as multi-agency contracts. 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 interim FAR rule implementing Section 865 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 is of particular interest to our organization and our members. The recent amendment requires that for Federal Supply Schedule (FSS) orders exceeding \$500,000 the contracting officer must make a determination that issuing an order under the FSS program is the best procurement approach. In making the determination that a FSS order is the best procurement approach the contracting officer must consider: (1) the suitability of the contract vehicle; (2) the value of using the vehicle (e.g. administrative cost savings, lower prices, number of vendors and reasonable access fees); and (3) the expertise of the ordering or requesting agency in placing orders and administering them against the selected contract vehicle. Significantly, this determination is also required for other direct order interagency transactions as well as assisted acquisitions regardless of the dollar value.

The Rule Creates a Presumption Favoring Duplicative, Open Market Procurements

This new FAR requirement, when combined with the lack of a corresponding determination requirement for open market commercial item procurements, essentially creates a presumption in favor of open market procurements. The rule, as currently drafted, will have significant consequences for the acquisition system. Fundamentally, it creates a regulatory framework favoring contract duplication as agencies move to open market procurements where no “best procurement approach determination is required. As such, it could impact strategic sourcing and the executive branch’s current strategy of using the FSS program and other interagency contracts to meet many of its management goals. Finally, the rule creates an incentive to split FSS orders to avoid exceeding the \$500,000 threshold for a determination.

Moreover, the new determination requirement is at odds with FAR 8.002, Priorities for use of Government supply sources. FAR 8.002 instructs that the use of the FSS program is a priority over other commercial sources. To provide clarity and ensure a level playing field in the acquisition planning process, the FAR should be amended to require a best procurement approach determination for open market procurements as well as FSS orders and other interagency transactions. Specifically, FAR 7.105(b), Contents of written acquisition plan, should be amended to include the requirement for a best procurement approach determination for all transactions requiring an acquisition

plan, including open market procurements. The acquisition plan's determination should also take into consideration the priorities already articulated at FAR 8.002.

In a time of increased budgetary pressure, agencies should continue to look first to pre-existing contract vehicles like the MAS program to meet their needs. Indeed, as noted above, the Office of Management Budget has relied on the MAS program for some of its most important procurement initiatives. It would send the wrong message to implement a final rule that creates a presumption in favor of duplicative procurements.

FAR 17.502-1(a)(2)

Among the considerations in determining the best procurement approach regarding direct interagency acquisition is "[l]ower prices, greater number of vendors, and reasonable vehicle access fees." See FAR 17.502-1(a)(2)(ii)(B). The reference to "lower prices" does not provide adequate guidance to contracting officers. Most, if not all interagency multiple award contracts include competitive ordering procedures that can result in lower pricing at the task order level. FAR 17.502-1(a)(2)(ii)(B) should as a factor the prospect of obtaining lower pricing through the interagency contract's competitive ordering procedures as well as the pool of available contractors.

An additional factor that should be specifically listed under FAR 17.502-1(a)(2) is the cycle time to award. For example, the MAS program's streamlined competitive ordering procedures save time and administrative costs as compared to open market procedures. Reducing the cycle time to award while still taking advantage of the MAS's competitive ordering procedures allows agencies to more effectively implement and manage their programs.


FAR 17.502-2(d)

FAR 17.502-2(d) should require that the business-case analysis address whether any other interagency contract vehicles, like the MAS program, meet the servicing agency's needs. Contract duplication increases bid and proposal as well as contract administration costs for Government and industry. In order to reduce duplication, servicing agencies should be required to survey pre-existing interagency contracts to determine whether the contracts can meet their needs.

Further, when conducting the survey, the servicing agency seeking to create a new multi-agency contract should be required to explain why the current suite of interagency contracts does not meet the Government's needs.

The Coalition appreciates the opportunity to submit comments on this interim rule. If you have any questions please do not hesitate to call me at (202) 331-0975 or rwaldron@thecgp.org.

Regards,



Roger Waldron
President