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General Services Administration  
Regulatory Secretariat (MVCB)  
1800 F Street, NW  
Room 4041  
Attn: Hada Flowers  
Washington, DC 20405

#### **Re: FAR Case 2008-039, Reporting Executive Compensation and First-Tier Subcontract Awards**

Dear Ms. Flowers:

On behalf of the Coalition for Government Procurement, thank you for the opportunity to comment on the interim rule on Reporting Compensation and First-Tier Subcontract Awards. The interim rule amends the Federal Acquisition Regulation (FAR) and implements the Government Funding Transparency Act of 2008 that requires the Office of Management and Budget (OMB) to establish a free public website containing full disclosure of certain Federal contract award information.

The Coalition for Government Procurement (CGP) is a non-profit association of over 330 firms selling commercial services and products to the federal government. Our members comprise small, medium, and large businesses actively engaged in federal business. Our members collectively account for approximately 70% of the sales generated through the GSA Multiple Award Schedules program and about half of the commercial item sales made to the government each year. We are proud to have worked with government decision-makers over the past 30 years towards the mutual goal of common sense acquisition.

The Civilian Agency Acquisition Council and the Defense Acquisition Council (Councils) have requested comments on the interim rule. The Coalition submits the following observations and suggestions for the Councils to consider.

## **Value of Private Executive Compensation to the Government**

The Coalition supports transparency in government acquisition and believes that taxpayers should have access to information about how their dollars are spent on federal contract goods and services. However, we have serious reservations about the value of posting contractor executive compensation on a public website. While the intent of the Government Funding Transparency Act of 2008 may have been to assure accountability in federal contracting, the significance of this information is immaterial in both commercial item acquisition and cost type contracting because there is no connection between executive compensation and the price of specific goods and services to the government. Effective use of competition is essential in assuring that the best value is achieved in federal acquisition, not the otherwise confidential compensation information of a select group of individuals in the private sector.

## **Applicability to COTS Products**

The Coalition does not agree that the intention of the Transparency Act to reduce “wasteful and unnecessary spending” is justification enough to apply executive compensation reporting requirements to commercial off-the-shelf item contracts. As described throughout this comment, we believe that this information is generally held as confidential for good reason and that the required release poses significant ethical and strategic dilemmas for commercial companies that the Councils should not overlook. The highest compensated executives within a company are not necessarily the most highly ranked, and in the case of small businesses, reporting of the top five may not necessarily cover only “executives” as is commonly interpreted. The real world applications of the interim rule could cause significant problems for contractors that are covered, and could discourage their participation in the federal market.

## **Additional Clarification in the Interim Rule**

When the interim rule was released in July 2010, the Coalition distributed a link to its release on [www.regulations.gov](http://www.regulations.gov) and received many questions from member companies. The language as written was unclear in many respects. Companies had questions about exactly who was covered and what specific actions needed to be taken given the phased in timeline for reporting first-tier subcontractor awards and a different time to submit executive compensation. Additional clarification would also be appreciated in terms of the reporting responsibilities that apply to prime contractors vs. first-tier subcontractors. More detailed language in the interim rule would certainly help to clarify for many contractors the specific steps that need to be taken to comply.



## **Disproportionate Affects on Small Business**

Small businesses make up the single largest group of members in The Coalition for Government Procurement. We very much support the federal government's acquisition goals that provide significant opportunities for these firms in the government market and encourage federal agencies to take advantage of the unique capabilities and innovation of small businesses.

The CGP is concerned that the executive compensation reporting requirements disproportionately affect small firms that do a significant amount of government business. As described in the interim rule, the compensation reporting requirement applies to only those prime contractors and subcontractors that derived 80% or more of their revenue from federal contracts, subcontracts, grants, and cooperative agreements in the prior year, AND that amount of revenue from the prior year equals \$25 million or more, AND executive compensation is not publicly available through Securities and Exchange Commission (SEC) filings. Given that many large commercial companies already report executive compensation to the SEC, small businesses focused primarily in the federal market are most affected by the interim rule.

Small businesses face numerous hurdles in federal procurement due to an abundance of unique regulatory requirements and limited internal resources. The executive compensation reporting requirement gives small firms one more reason to be reluctant about pursuing the federal market. Employee compensation in the private sector is generally held confidential. The release of this information, especially in a small business environment, could pose significant ethical and strategic challenges for companies that they may be unwilling to take. Discouraging small firms from doing business with the federal government would certainly be an unfortunate unintended consequence of the interim rule for federal agencies that are attempting to meet the small business contracting goal of 23 percent.

In addition, government buyers will lose out on the innovative solutions offered by commercial small business. Many in the Administration and Congress are already concerned about the government being a second class user of technology. Adding a plethora of government-unique rules to commercial item acquisition will only make this more likely as innovators are driven to the sidelines. The government loses more from this rule than it could possibly gain through enhanced "transparency".

## **Applicability to Corporate Subsidiaries**

The executive compensation reporting requirement for the subsidiary of a publicly traded company should be able to be satisfied by SEC filings for the parent company. While this is implied by the interim rule's waiver of the reporting requirement if the public already has access to this information, it should be made explicit. The compensation paid to management employees of subsidiary companies is closely held information not publicly disclosed and is considered competitively sensitive.

## **Reporting Responsibilities**

The Coalition recommends that prime contractors and first-tier subcontractors report separately, rather than requiring the prime contractor to be responsible for both. There are a number of reasons why we believe this would be more effective.

First, it is possible that a first-tier subcontractor could also be a competitor. Requiring the subcontractor itself to report the information into the Federal Funding Accountability and Transparency Act Subaward Reporting System at [www.fsrs.gov](http://www.fsrs.gov) would avoid the situation where a subcontractor would be required to disclose sensitive compensation information to a potential competitor.

Secondly, requiring prime contractors to be responsible for subcontractor reporting causes unnecessary complications. In cases where the prime itself is not required to report executive compensation, it is not clear whether the prime would still be responsible for tracking the eligibility and reporting for its subcontractors. In addition, whether the prime contractor is responsible for ensuring that the subcontractors report is yet to be clarified. It is possible that despite the contractor's best efforts, they may fail to obtain executive compensation from unwilling first-tier subcontractors. Many prime contractors believe that it is unduly burdensome to require them to obtain this information.

Finally, it should be noted that a contractor's inability to report a subcontractor's executive compensation could potentially result in delays in the supply chain and an inability to fulfill GSA orders through no fault of the prime contractor. Even when prime contractors receive executive compensation from required subcontractors, the accuracy of these disclosures can not be guaranteed and prime contractors should not be held responsible as such.

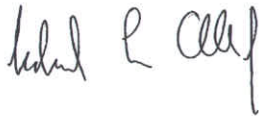
We also recommend that if the Councils determine that reporting for subcontractors should be conducted by prime contractors, that their ability to collect this information should not be reflected in past performance.

**Recommendations in Summary:**

1. Provide an exception for commercial off-the-shelf (COTS) products.
2. Clarify the language in the interim rule so contractors better understand the compliance requirements and exact steps that need to be taken.
3. Address burden of executive reporting for small businesses.
4. Add verbiage clarifying that if a parent company is not required to report executive compensation because it already files this information with the SEC, then the waiver also applies to its subsidiaries.
5. Separate reporting requirements for prime contractors and first-tier subcontractors rather than requiring the prime to report for both.
6. Ensure that prime contractors that are not able to obtain subcontractor executive compensation information are not penalized in past performance.

The Coalition for Government Procurement sincerely appreciates the opportunity to provide comments on the interim rule. We would be pleased to provide further information to the Councils at anytime.

Regards,

A handwritten signature in black ink, appearing to read "Larry Allen".

Larry Allen  
President