



November 23, 2018

General Services Administration
Regulatory Secretariat Division
ATTN: Louis Mandell
1800 F Street N.W., 2nd Floor
Washington, D.C. 20405

Subject: [FAR Case 2017-010; Docket No. 2017-0010, RIN 9000-AN54] Federal Acquisition Regulation: Evaluation Factors for Multiple-Award Contracts

Dear Ms. Mandell,

Thank you for the opportunity to provide comments in response to the proposed rule, *Federal Acquisition Regulation: Evaluation Factors for Multiple-Award Contracts*.

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 the General Services Administration’s (“GSA”) contracts, including the Multiple Award Schedule (“MAS”) program. Coalition members include small, medium, and large business concerns that account for more than \$145 billion in Federal Government contracts. The Coalition is proud to have worked with Government officials for more than 35 years towards the mutual goal of common-sense acquisition.

As currently set forth, the proposed rule would allow the Department of Defense (“DoD”), the National Aeronautics and Space Administration (“NASA”), and the Coast Guard to award multiple-award task order contracts for services without considering price or cost as an evaluation factor. Contracting officers are to consider price and cost under such contracts as evaluation factors at the order level. The Coalition has long supported the establishment of so-called “unpriced” contracts, which drive competition for agency specific service requirements at the task order level. Our members agree that, if appropriately implemented, this new capability will streamline the procurement process, enhance competition, and empower the Federal government to leverage technology and improve its efforts to meet end mission goals. The Coalition, however, is concerned that the proposed rule unnecessarily limits the application of its reforms, and thus, reduces the government’s ability to maximize its effectiveness.

The proposed rule implements the requirements set forth under Section 825 of the Fiscal Year (“FY”) 2017 National Defense Authorization Act (“NDAA”), which limited the application of this new authority to DoD,

NASA, and the Coast Guard. The application of this authority, however, was expanded to civilian agencies by Congress earlier this year with the passage of the FY 2019 NDAA. Section 876 of the FY2019 NDAA allows civilian agency heads the discretionary authority to not include price or cost as an evaluation criterion when awarding services under IDIQ multiple award and Federal Supply Schedule (FSS) contracts that are acquired at an hourly rate. This proposed rule provides an opportunity to expedite the implementation of Section 876. The Coalition recommends that the scope of the proposed rule be expanded to include civilian agencies consistent with Section 876 of the FY 2019 NDAA.

By expanding the proposed rule to cover all civilian agencies, the government would realize even greater efficiencies and savings. Specifically, offerors for multiple award and FSS contracts for services would no longer be required to submit cost or price information with their proposals. The elimination of this process at the contract level would result in time and cost savings for both contractors, and contracting officers who would be required to evaluate such information prior to contract award. It is much more efficient for contractors to submit price and cost information at the order level, as suggested in the proposed rule, when the specific service requirements are known.

The opportunity for greater efficiencies and costs savings associated with expanding the scope of the proposed rule is particularly apparent in the context of GSA's Multiple Award Schedules ("MAS") program. Specifically, GSA would also significantly reduce proposal costs for contractors, especially small businesses, associated with the Price Reductions Clause ("PRC") if pricing for services was no longer required to be awarded a Schedule contract. The PRC is an outdated, anti-competitive compliance requirement that does not align well with how commercial solutions are typically offered. Fundamentally, the PRC restricts the ability of contractors to compete in the private sector. Due to the constraints of the PRC, contractors are either discouraged from providing discounts to commercial customers or they may choose not to participate in the government market. As a result, MAS contractors forgo competing for private sector requirements to the extent the transaction impacts PRC compliance.

The PRC also increases risk for Schedule contractors given the complexities involved in monitoring compliance. In terms of cost, in 2012, the Coalition found that companies annually spent an estimated 1,200 hours, at an average cost of \$126,000 to \$135,000, complying with the PRC.¹ The PRC is not only costly, but its effectiveness is also in question. As provided by GSA in its 2016 final rule, *General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting*:

"GSA recently analyzed modifications issued between October 1, 2013 and August 4, 2014 under nine of its FSS contracts, including Schedule 70 (Information Technology), Schedule 874 (Mission Oriented Business Integrated Solutions (MOBIS)), Schedule 66 (Scientific Equipment and Services), Schedule 84 (Total Solutions for Law Enforcement, Security,

¹ These findings are from the Coalition's 2012 survey of MAS Schedule contractors about the number of hours and costs involved in PRC compliance on an annual basis. Respondents were asked to estimate the number of hours, as well as the costs associated with training, compliance systems, negotiations, and audits related to the PRC. The Coalition conducted the survey in response to GSA's Information Collection 3090-0235.

*Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response), Schedule 899 (Environmental Services), Schedule 738 II (Language Services), 874 V (Logistics Worldwide), Schedule 871 (Professional Engineering Services), and Schedule 00CORP (The Consolidated Schedule). **GSA found that only about 3 percent of the total price reductions received under the price reduction clause were tied to the “tracking customer” feature.** The vast majority (approximately 78 percent) came as a result of commercial pricelist adjustments and market rate changes, with the balance for other reasons. This finding supports attempting a different means of making better pricing available.”*

Given the cost and time burdens associated with PRC compliance, we recommend that the FAR Council take immediate action to implement Section 876 of the 2019 NDAA by expanding the scope of the proposed rule beyond DoD, NASA and the Coast Guard to include GSA and other civilian agencies.

Overall, by expanding the proposed rule’s application, the government would eliminate the cost and time burdens of pricing services at the contract level. For the MAS program, the benefits would be even greater because PRC compliance and the need to submit commercial sales practices would also be eliminated. This would radically reform the current pricing strategy for services to be more consistent with commercial practices, increase competition, and reduce barriers to the Federal marketplace for new entrants.

Finally, the Coalition requests that the FAR Council provide additional clarification regarding the inclusion of language limiting the proposed rule’s application to multiple-award task order contracts that exceed the Simplified Acquisition Threshold (“SAT”). Considering that the legislation provides no such restriction, the Coalition is unsure why the requirement was included in the proposed rule.

Thank you for the opportunity to provide public comments in response to the proposed rule. If there are any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Sincerely,



Roger Waldron
President