

May 4, 2015

BY ELECTRONIC MAIL

Acting Administrator Denise Turner Roth
General Services Administration
1800 F Street, NW
Washington, DC 20405-0001

Re: Comments on Transactional Data Reporting (GSAR Case 2013-G504), 80 Federal Register, 11620, March 4, 2015

Dear Acting Administrator Roth:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following comments on the General Services Administration (GSA) proposed rule on Transactional Data Reporting.¹ The rule would amend GSA's regulations to create a transactional data reporting clause. The proposed rule would require contractors to report prices paid for products and services delivered during the performance of a federal contract. The proposed rule would create an online reporting system for contractors to report such pricing data. The requirement would apply immediately to GSA's government-wide non Federal Supply Schedules (FSS) vehicles, where transactional data is not already collected through other methods. For FSS vehicles, the reporting clause would be introduced in phases, beginning with a pilot for selected products and commoditized services. The proposed rule is to create a Common Acquisition Platform (CAP), an online marketplace to identify best-in-class contracts issued by GSA or other agencies.²

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration. The Regulatory Flexibility Act (RFA),³ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁴ gives small entities a voice

¹ 80 Fed. Reg. 11620 (March 4, 2015).

² *Id.*

³ 5 U.S.C. § 601 et seq.

⁴ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, Executive Order 13272⁵ requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities. Further, both Executive Order 13272 and the RFA require the agency to include in any final rule the agency's response to any comments filed by Advocacy and a detailed statement of any change made to the proposed rule as a result of the comments.

1. Background

The Office of Federal Procurement Policy (OFPP) recently announced a new vision for Federal procurement purchasing. This new vision is a fundamental shift from managing purchases individually across all procurement units to managing the entire category of purchases across government. This shift is commonly referenced as "Category Management."⁶

Advocacy would like to commend the leadership of OFPP for its forward vision of trying to create a better and more user friendly acquisition environment. The common theme that is echoed by the small business contractors nationally is that the Federal acquisition system is too complex, cumbersome and outdated. Advocacy is mindful of the difficult task OFPP has in trying to balance the need to achieve government wide cost savings and carrying out Congressional mandates to ensure that small businesses are active participants in the federal government's nearly \$500 billion yearly acquisition of goods and services.

GSA has attempted to respond to this new vision of federal procurement by creating the Common Acquisition Platform (CAP). Advocacy commends GSA for its creativity in trying to eliminate where possible duplicative contracts and thus create smarter buying. The essence of this effort is reflected in this proposed regulation on Transactional Data Reporting. However, this effort by GSA is of concern to the federal small business contractors.

2. Advocacy Outreach

Advocacy obtained input about the proposed rule from small businesses and their representatives in the GSA public forum held on April 17, 2015 in Washington DC and in subsequent meetings with several groups that represent small businesses. Advocacy has also been involved in other government discussions regarding the CAP approach. The following comments raised during these events fall into seven categories. Advocacy

⁵ Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking (67 Fed. Reg. 53461) (August 16, 2002).

⁶ GSA, <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifyingfederal-procurement-to-improve-drive-innovation-increase-savings.pdf>, December 4, 2014.

recommends that GSA carefully consider any comments it receives from small business and incorporate those solutions in any final rule.

3. Small Business Concerns

- a. While GSA recognizes that this proposed rule will have a significant economic impact on a substantial number of small businesses, the Initial Regulatory Flexibility Analysis (IRFA) does not provide sufficient data for the public to examine the potential impact of the rule on small entities.
- b. Small businesses are concerned that the IRFA for this transactional data collection and reporting rule does not provide them with a clear understanding of GSA's legal framework for requiring this new system.
- c. Small businesses expressed some of the similar concerns as shared by the GSA Office of Inspector General during the public forum.⁷ The IG stated that the proposed rule under estimates the burden and resources.⁸
- d. Small businesses fear that the proposed rule will have unintended consequence of further reduction of an already reduced federal small business industrial base. Small businesses in this regard point to the negative impact of Strategic Sourcing (SS) on the number of small businesses that are now participating in the federal procurement system. Some postulate that SS has not harmed the small business community citing the actual dollars being awarded to small businesses. However, while the dollars are increasing the actual participation rate of small businesses is decreasing.
- e. GSA will sort the monthly reporting of the transactional data and share it across the federal government but small businesses are concerned that the proposed rule does not contemplate privacy issues nor other proprietary business concerns. Small businesses have concerns about how transactional data will be protected from competitors.
- f. Small business owners are concerned that this new vision of transactional data reporting and utilization will reduce the values added that they bring to an acquisition process. The proposal's new vision and the transactional proposal would seem to place price as opposed to best value as its single most important consideration for contract award. Best value has emerged over the years as a strong federal government benchmark for evaluating and awarding contracts and it allows for small businesses to compete on a more level playing field. While trying to improve the acquisition process, the government should not abandon this long established and proven acquisition tool. Price should not be the sole measure of awarding a contract.
- g. The proposed rule would seem to require contractors to pay a Contractor Access Fee (CAF) fee and an industrial funding fee. The proposed rule is unclear as to how these fees interact with each other.

⁷ Gibson, Brian, <http://www.gsaig.gov/?LinkServID=C82E3F6B-D054-1D53-16D86346751A2527&showMeta=0>, April 17, 2015.

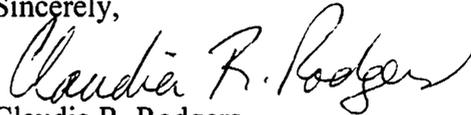
⁸ Id, page 10.

4. Recommendations

1. Because of the economic impact of this proposed regulation on a substantial number of small entities, GSA should extend the comment period for an additional sixty days and conduct field hearings in other parts of the United States.
2. GSA should conduct a more detailed impact assessment of this proposed rule on small businesses. During the April 17, 2015 public forum, Advocacy asked GSA if an analysis had been performed on the impact of this rule on small businesses and GSA's response was to cite the number of small businesses that are on schedule and the dollar amount being awarded to these businesses. However this statement does not delve into the more structural issue of small business commodity pricing. Since most small businesses that are on a GSA schedule are value added resellers and since many of the original equipment makers are also on GSA schedules it is unclear because of the lack of data how GSA will balance the potential conflict of these two types of business entities.

Please feel free to contact me or Major Clark at (202) 205-7150 or major.clark@sba.gov if you have any questions or require additional information.

Sincerely,



Claudia R. Rodgers
Acting Chief Counsel for Advocacy



Major L. Clark, III
Assistant Chief Counsel for Advocacy

Copy to: The Honorable Howard Shelanski, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget