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703-243-2020

April 2, 2007
CODSIA Case No. 02-07

General Services Administration
Regulatory Secretariat (VIR)
1800 F Street, N.W.
Room 4035
Washington, DC 20405

ATTN: Laurieann Duarte

RE: Interim Rule, GSAR Case 2006-G5222, Recovery Purchasing

Dear Ms. Duarte:

The undersigned members of the Council on Defense and Space Industry Associations (CODSIA) appreciate the opportunity to submit comments on the interim rule published in the Federal Register on February 1, 2007.

Formed in 1964 by the industry associations with common interests in defense space fields, CODSIA is currently comprised of seven associations representing over 4,000 member firms across the nation. Participation in CODSIA is strictly voluntary. Many of our member firms are General Services Administration (GSA) Federal Supply Schedule (FSS) contractors.

CODSIA member associations applaud the GSA's efforts to make available to State and local government entities the use of GSA Schedules for purposes of recovery purchasing. In addition to enhancing intergovernmental cooperation, the interim rule will make the acquisition process associated with recovery purchasing more efficient for State and local entities as well as FSS contractors. This is especially critical when considering the significance of recovery purchasing.

While we recognize the value of allowing recovery purchasing on Schedule contracts by State and local government entities, and were, in fact, the proponent of the legislative change, it is important to minimize any additional reporting requirements on recovery purchasing that may lead vendors to decline recovery purchasing orders from State and local buyers. In addition, CODSIA believes that the interim rule as currently written contains inconsistencies with existing regulations and ambiguities pertaining to critical aspects of FSS contract compliance. A summary of these issues associated with the interim GSAR rule pertaining to "Recovery Purchasing" is enumerated below.

1. Transactional Data:

The interim rule indicates that the GSA anticipates a need for specific information regarding recovery purchasing. The rule solicits industry's comments on a contractor's ability to report data elements such as items, quantities sold, prices, and State or local government placing the

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orders. In addition, the GSA has solicited industry's perspective on the best way to capture this type of data.

We believe the anticipated reporting requirements under recovery purchasing would result in additional administrative costs to contractors. The requirement to report detailed line item information pertaining to select purchases is not one which is currently imposed on FSS contractors. Further, the requirement to report line item detail information for select purchases is not a common commercial practice.

The imposition of new reporting requirements would require contractors to enhance existing systems to capture and report specific elements of data for transactions that represent a subset of total contract activity. To do so, contractors would have to differentiate state and local recovery purchases from all other contract activity. This would be especially difficult for contractors who accept from State and local government entities orders for both recovery purchasing and cooperative purchasing under Schedule 70.

We believe the increased administrative burden and costs resulting from the additional reporting requirements anticipated in the interim rule may lead contractors not to accept recovery purchases from State and local buyers. We believe that the State and local buyers, not contractors, are best suited to provide the anticipated transactional data.

2. Scope of Use Recovery Purchasing vs. Cooperative Purchasing

Changes made to the GSAR and contract clauses do not appropriately take into consideration situations in which a Schedule contractor may accept both "cooperative purchasing" and "recovery purchasing" from State and local buyers.

Within the interim rule, Paragraph (d) of the new Alternate I to GSAR clause 552.238-78 Scope of Contract (Eligible Ordering Activities) appears to suggest that a contractor can not accept both cooperative purchasing and recovery purchasing, as the alternate paragraph (d) substitutes the very paragraph that allows cooperative purchasing. This does not appear to be the GSA's intent in publishing the interim rule or the intent of the respective Acts, which authorize each type of purchase.

CODSIA believes the rule should be modified to include changes to the GSAR to clarify the scope of use of both recovery purchasing and cooperative purchasing and to clearly indicate that the acceptance of one type of purchasing does not preclude the acceptance of the other. This could be accomplished by adding an Alt II clause applicable when recovery purchasing is used.

3. Industrial Funding Fee and Sales Reporting

Paragraph (c) of both clause 552.238-79 Use of Federal Supply Schedule Contracts by Certain Entities – Cooperative Purchasing and clause 552.328-80 Use of Federal Supply Schedule Contracts by Certain Entities – Recovery purchasing provide instructions pertaining to reporting sales pursuant to Clause 552.238-74 Industrial Funding Fee and Sales reporting. Neither set of instructions is written to accommodate reporting requirements in circumstances where a contractor may accept both cooperative purchasing and recovery purchasing.

We believe that the GSAR should be amended to accommodate unique sales reporting requirements for contractors who may accept both cooperative purchasing and recovery

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purchasing orders under their Schedule contracts. In addition, we believe that requirements for all aspects of sales reporting and IFF payment should be removed from clauses 552.238-79 and 552.238-80 and more appropriately be included in clause 552.237-74.

4. Definition of State and local government entities:

Paragraph (d) of Alternate I to GSAR clause 552.238-78, which applies to recovery purchasing, contains an expanded definition of State and local government entities, which does not exist in the original paragraph (d) of the clause pertaining to cooperative purchasing by the same entities.

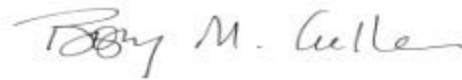
CODSIA believes that a standard definition of State and local government entities should be used for both recovery purchasing and cooperative purchasing. Further, we believe the definition of State and local government entities should be removed from GSAR clause 552.238-78 and more appropriately placed within Part 502 of the GSAR or in a separate definition section within Part 538 of the GSAR.

We appreciate the opportunity to comment on this interim rule. If you have any questions, please contact Susan Tonner at the Electronic Industries Alliance at 703-907-7792.

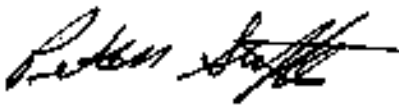
Sincerely,



Dan Heinemeier
President, GEIA
Electronic Industries Association



Barry M. Cullen
President
Contract Services Association



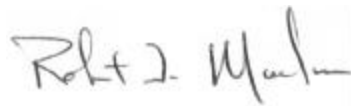
Pete Steffes
Vice President, Government Policy
National Defense Industrial Association



Alan Chvotkin
Senior Vice President & Counsel
Professional Services Council



Bruce Josten
Executive Vice President, Government Affairs
U.S. Chamber of Commerce



Robert T. Marlow
Vice President – Acquisition Policy
Aerospace Industries Association

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ATTACHMENT

Detailed CODSIA Comments on February 1, 2007 Interim Rule on Recovery Purchasing

Transactional Data Requirements:

The interim rule indicates that the GSA anticipates a need for the reporting of specific information regarding recovery purchasing. The rule solicits industry's comments on a contractor's ability to report data elements such as items sold, quantities sold, prices, and State or local government placing recovery purchasing orders. In addition, the GSA has solicited industry's perspective on the best way to capture this type of data.

The rule does not clarify the purpose for which the data would be required or the frequency of reporting. In order to adequately address the GSA's request for industry comments, it would be beneficial to understand the intended purpose or use of the transactional data.

CODSIA believes that the reporting requirements, such as those anticipated by the GSA, would impose additional requirements above and beyond those already required under the schedule program. Further, the requirement to report line item detail information for select purchases is not a common commercial practice.

The ability to report on the elements of data outlined in the interim rule would impose additional administrative requirements and costs on contractors who choose to accept recovery purchasing. We believe that this fact, alone, may deter contractors from accepting recovery purchasing.

Most commercial companies utilize advanced integrated Enterprise Resource Planning (ERP) systems designed to meet financial reporting requirements. These systems are often designed to comply with accounting requirements under Generally Accepted Accounting Principles (GAAP), where the primary focus from an accounting perspective is revenue and profit margin. Typically, these data points are monitored at an entity or business unit level and not at a transactional line item level.

In order to report on the specific data elements identified by the GSA, many contractors would need to modify existing systems and data reporting capabilities. The type of data most suitable to meet the GSA's need appear to be sales order or invoice data. However, to the extent that such data is available, it would not necessarily be at the line-item level of detail anticipated by the GSA. Specifically, contractors who sell products and or services on solutions, bundled and/or fixed-price basis, would have difficulty generating line-item pricing data.

Further, we believe that meeting the anticipated reporting requirements would be especially difficult for contractors who accept cooperative purchasing under the Schedule 70 contracts. Contractors accepting both cooperative purchasing and recovery purchasing would need to be able to 1) identify the State and local buyers' intent for use and 2) distinguish within their purchasing and accounting systems those purchases specifically made by State and local entities for recovery purposes.

Under the paragraph (c) of the new GSAR Subpart 538.7102, the State or local government ordering activity is responsible for ensuring that products or services purchased from Schedule contracts are used for purposes authorized by Section 833 of Public Law 109-364. Considering

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that the responsibility for ascertaining appropriate use is placed upon the buying entity, we believe that the State and local buyers, not contractors, are best suited to provide the anticipated transactional data.

Finally, to preclude situations in which parties agree to recovery purchasing orders, only to later discover that they are unable to meet associated reporting requirements, we believe a clear delineation of purposes, context and format of data requirements be clarified prior to allowing recovery purchasing orders to be accepted under Schedule contracts.

Scope of Contract Use - Recovery Purchasing and Cooperative Purchasing:

Cooperative purchasing and recovery purchasing are intended to allow State and local government buyers to utilize Schedule contracts for distinct purposes. Cooperative purchasing is authorized pursuant to Section 211 of the E-Government Act of 2002 (Pub. L 107-357) and recovery purchasing is authorized pursuant to Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub L. 109-364). However, we do not believe it is the intent of either Act to preclude a Schedule contractor from accepting both cooperative purchases and recovery purchases from State and local government entities.

However, the interim rule changes made to the GSAR and contract clauses do not adequately take into consideration situations in which a schedule contractor may accept both "cooperative purchasing" and "recovery purchasing" from State and local buyers. Instead, the regulations and clauses, as written in the interim rule, appear to suggest that a contractor cannot accept both cooperative purchasing and recovery purchasing.

The interim rule implements a new regulation at GSAR 538.7104, entitled "Solicitation provisions and contract clauses". Paragraph (b) of GSAR 538.7104 instructs the contracting officer to insert Alternate I to clause 552.238-78 Scope of Contract (Eligible Ordering Activities) in FSS solicitations containing products and services determined by the Secretary of Homeland Security necessary to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical or radiological attack.

However, Alternate I paragraph (d) replaces elements from 552.238-78 (d), which are intended to accommodate cooperative purchasing. The use of the Alternate I, as written in the interim rule, seems to indicate that the acceptance of recovery purchasing would preclude cooperative purchasing - thereby making the two mutually exclusive.

CODSIA believes the rule should be modified to include changes to the GSAR to clarify the scope of use of both recovery purchasing and cooperative purchasing and to clearly indicate that the use of one type of purchasing does not preclude the use of the other.

Industrial Funding Fee and Sales Reporting:

The new GSAR 538.7104 Solicitation and contract clauses instructs, in paragraph (c), the contracting officer to insert the new clause 552.238-80 Use of Federal Supply Schedule Contracts by Certain Entities - Recovery Purchasing. The new clause 552.238-80 is similar to the clause 552.238-79 Use of Federal Supply Schedule Contracts by Certain Entities – Cooperative Purchasing.

Paragraph (c) of the new clause 552.238-80 instructs contractors, for Industrial Funding Fee (IFF) and Sales Reporting purposes, to report two dollar values for each Special Item Number -

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(1) the dollar value for sales to entities identified in paragraph (a) of clause 552.238-78 and (2) the dollar value for entities identified in paragraph (d) of clause 552.238-78, Alternate I.

Paragraph (c) of the clause 552.238-79 also instructs contractors to report two dollar values for each SIN as well - (1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities), and (2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238-78.

Independently, clause 552.238-79 and 552.2328-80 do not address IFF and Sales reporting requirements for contractors who accept both cooperative purchasing and recovery purchasing orders from State and local government entities. Together, paragraph (c) of both clauses appear to contradict one another.

CODSIA recommends that the GSAR be amended to accommodate unique sales reporting requirements for contractors who may accept both cooperative purchasing and recovery purchasing orders under their Schedule contracts. In addition, to avoid inconsistencies and ambiguities, we believe that requirements for aspects of sales reporting and IFF payment should be removed from GSAR clauses 552.238-79 and 552.238-80 and more appropriately be included in clause 552.237-74 Industrial Funding Fee and Sales Reporting.

Definition of State and local government entities:

Alternate I paragraph (d) of GSAR clause 552.238-78 provides an exhaustive elaboration on the definition of *State and local government entities* as it specifically relates to recovery purchasing. The same elaboration does not exist in the original version of paragraph (d) of the clause which applies to cooperative purchasing, despite the fact that the definition of *State and local government entities* appears to be the same for both cooperative purchasing and recovery purchasing purposes.

There is nothing in the respective Acts to indicate that a unique definition of State and local entity would exist for either type of purchasing. As such, we recommend that the same definition of State and local government entities be used for "cooperative purchasing" and "recovery purchasing". In addition, we further recommend that the definition of the term State and local government entities be moved from GSAR clause 552.2328-78 and more appropriately be included in GSAR Part 502 Definitions of Words and Terms or in a separate definition subpart to Part 538 of the GSAR.