

2013-G504-19

Miller  Wenhold Capitol Strategies, LLC  
GOVERNMENT AFFAIRS AND GRASSROOTS ADVOCACY

## facsimile transmittal

To: Regulatory Secretariat  
ATTN: HAOA Flowers

Fax: 202-501-4067

From: Paul Miller

Date: 5-5-15

Re: GSAR Case 2013-G504

Pages:

CC:

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Confirm Receipt: \_\_\_\_\_

We tried filing online 5-4-15, but the system  
could not allow. We are having to fax.



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March 30, 2015

Ms. Hada Flowers  
General Services Administration  
Regulatory Secretariat Division (MVCB)  
1800 F Street, NW  
2<sup>nd</sup> Floor  
Washington, DC 20405-0001

RE: GSAR Case 2013-G504

Dear Ms. Flowers:

On behalf of our over 1,000 small business partners, we are submitting the following comments in response to your March 4, 2015 *Federal Register Notice* requesting comments on the General Service Administrations (GSA) GSAR Case 2013-G504 dealing with proposed transactional data requirements.

In the early 1990's the Federal government came up with the idea of contract bundling as a way for the government to get best value through bulk purchasing. Today, small businesses still feel the effects of contract bundling. Contract bundling looked great on paper, but upon implementation, the negative effects were felt and are still felt by small businesses today. It has taken small businesses nearly 15-years to undue the negative impacts contract bundling had on their ability to compete for government contracts.

The 1990's and contract bundling have been replaced today by Federal Strategic Sourcing (FSSI). Again, on paper it has been built up as a program that will save the government money, allow for best value purchasing, and provide GSA with the data collection it says it wants and needs. We don't deny that FSSI has been a successful tool for a limited number of vendors. We will also admit that GSA has done a lot to ensure those dollars are going to small businesses. We would even agree, to a much lesser degree, that FSSI has saved the government money. The concern we have with FSSI is at what cost has this savings occurred? Is it a short-term savings that GSA is realizing that will only cost the Federal government more in the long run when there are so few vendors willing to bid on these contracts that those who have them know they can demand higher prices from the government?

This leads us to this request for comment. Our industry looks at GSA's plans to implement transactional data requirements as another extension of the current FSSI program. We support all efforts to make the procurement process easier for vendors to maneuver. However, we do not

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support GSA's efforts to implement new transactional data requirements because of the negative impacts it will have on businesses of all sizes.

On April 17, 2015, GSA held a forum to discuss its plans. GSA stated at the outset that the meeting was for them to listen to commenters. All of us in attendance at this forum would have been better served had GSA not just listened, but spent the time diving deep into this issue making it more of a collaborative effort. Through our industries experience with both contract bundling and more recently with FSSI, we have found that GSA listens, but has not been all that receptive to working more closely with industry on their concerns. Before these transactional data requirements go into effect, we would like to ask GSA to spend more time sitting down with industry directly to address their concerns. Not just listening, but working with industry on addressing real issues we have with what's being proposed.

One of those areas of concern for us is the sharing of this data. GSA said during the April 17 forum that vendor's information and pricing will be shared with GSA, contract officers and possibly others they deem appropriate. We wonder how GSA plans to keep a vendor's data confidential when it is being passed around to such a large group. GSA said during the forum that they have policies in place that would allow them quickly to identify any person who shares a vendor's data to a competitor. That is all well in good, but by that time the information is out and cannot be pulled back. This may not seem like a big issue for GSA, but for industry, it has us very concerned. We have to ask the question, why does GSA need to go to such lengths to grab a vendor's data? Shouldn't GSA be in a position to collect what agencies are spending on goods and services today? Why is GSA requiring industry to share sensitive data that will likely make its way to the public domain and with no recourse for the vendor?

This leads us into our next concern. Is GSA planning to eliminate the current GSA Schedule program? With the rules governing FSSI and now these data requirements, it seems like just another step closer for GSA to eliminate the Schedule program altogether. Can you share with us your plans in this area? It seems to us GSA's efforts to place products and services into categories, which would be run like separate businesses is just another way of saying this new program will replace the current Schedule program. According to GSA each category will be run by a government team, whose goals are to drive down prices. This places to high of a price on government personnel to cut costs and show savings at any cost without looking at the bigger picture. This type of approach will force the government into bad deals with vendors ill equipped to handle their needs, thus causing the government to spend more on the same product at the end of the day. We have seen the effects FSSI drive to cut costs has had on small businesses and entire industries. This effort by GSA appears to be just another way to speed up that process.

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The goal of the Federal government should be to foster innovation and competition not stifle it in favor of outdated models and practices that simply don't work today. The Federal government should not be putting in place programs that try to operate like the private sector. GSA has to understand that the private sector and Federal government are very different. Just because FSSI works in the private sector doesn't mean it can and will work effectively in the federal marketplace. This is a model the qualified private sector companies will agree to participate in and a model that will only cause prices to rise in the long run.

Under FSSI requirements and with these proposed transactional data requirements, GSA is adding additional costs on to vendors for work the government should be responsible for collecting. We continue to see GSA push more and more of data collection onto the private sector without allowing them to increase prices to cover these costs. Instead, GSA continues to force vendor's hands by requiring them to lower their prices.

In the private sector our businesses compete for their customers based on a number of factors, including price and customer service. In the government market today the trend is moving away from what we would call qualified vendor's who have successful track records in both the private sector and Federal marketplace to a system that is solely dependent on lowest price. This is a system that only costs the government more in the long run. GSA should do more to foster competition, which will mean more long-term savings, than creating models that eliminate real competition in favor of doing business with fewer and fewer vendor's. This is why the Schedule program is so important. With the Schedule program GSA and agencies get real competition GSA says it wants. We will agree the Schedule program needs to be cleaned up and vendors who are not meeting thresholds are replaced with new vendors trying to get on Schedule and sell to the Federal government. For our industry that's not possible as Schedule 75 has been closed for five years now with new vendor unable to apply.

These new transactional data requirements should concern every vendor doing or looking to do business with the Federal government because it gives GSA broader control of what you sell your products to the government for. These new transactional data requirements seem like nothing more than legalized price fixing in our opinion. When our small businesses win contracts with GSA it's because GSA has accepted their pricing. In the past, vendors holding contracts with the government were given opportunities to apply for or request price increases. With FSSI we have seen those opportunities all but go away. Instead, these new requirements, and those being implemented as part of FSSI, allow GSA to go in the opposite direction and instead of vendors having the opportunity to increase prices, they are being forced to lower their prices even more. These new requirements put GSA in a position of telling vendor's that in GSA's opinion your price is not in a range that is competitive. You are then told you can either lower your price or lose your contract. This seems like a very heavy handed way for the government to be operating. Shouldn't the market dictate what's competitive and not GSA, who has very limited knowledge and understanding of industry practices and the true costs that go into selling these items? Wouldn't an easier way for GSA to get the best price be for them to allow for more competition? Those vendors who price their products and services too high won't get the business and those who are competitive will.

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During the forum a question was asked whether the data being collected by GSA would include a vendor's commercial accounts. GSA responded that it would not. We are concerned that GSA could at some point require vendors to provide this data for their best customers under the guise that GSA wants to make sure the government is truly getting best value and pricing from vendors. We would like GSA to make it very clear to all vendors that they will not today or in the future require data from their commercial customers.

We would urge GSA to slow this process down and spend more time talking with and working with industry on these new requirements. GSA should not be in the position of dictating prices of goods and services. If it continues to do so, it will find itself without a qualified pool of vendors to do business with. No vendor is going to want its competitive data shared with the public or its competitors. No vendor is going to be willing to lose money just to hold a contract with the Federal government.

Our industry is very concerned by these new requirements and what it means to vendors. We are concerned that we will find our private data in the hands of our competitors. And, our biggest concern is that these new requirements are nothing more than a mandate giving GSA the power to control prices eliminating competition from the equation.

For these reasons, we oppose GSA's transactional data requirements and urge GSA to step back and work with industry on a better long-term solution that achieves their goals without eliminating competition. I would be happy to talk with you further about our concerns. I know our industry welcomes the opportunity to work closer with GSA on a better approach that doesn't continue to hurt small businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul A. Miller". The signature is stylized with a large, sweeping loop at the end.

Paul A. Miller