

February 25, 2005

Via Facsimile and E-mail

General Services Administration
Regulatory Secretariat (VIR)
Attention Laurieann Duarte
1800 F Street
Washington, DC 20405

RE: General Services Administration Acquisition Regulation (GSAR); Access to the Federal Procurement Data System- Next Generation (FPDS-NG), GSAR Amendment 2004-04, GSAR case 2004-G509, 69 Federal Register 77662, December 28, 2004.

Dear Ms. Duarte:

The Office of Advocacy submits this comment letter to the General Services Administration (GSA) in response to the above-referenced Notice of Interim Rulemaking. These comments reflect the views of small entities expressed during a meeting held by the Office of Advocacy on February 7, 2005.

I. Advocacy Background

Congress established the Office of Advocacy (Advocacy) under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed here by Advocacy do not necessarily reflect the views of the SBA or of the Administration. Section 612 of the Regulatory Flexibility Act (RFA) requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA).¹ The RFA requires agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities, and to consider regulatory alternatives that will achieve the agency's goal while minimizing the burden on small entities.²

On August 13, 2002, President George W. Bush enhanced Advocacy's RFA mandate when he signed Executive Order 13272, which directs Federal agencies to implement policies protecting small entities when writing new rules and regulations.³ Executive Order 13272 instructs Advocacy to provide comment on draft rules to the agency that has proposed the rule, as well as to the Office of Information and Regulatory Affairs (OIRA)

¹ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

² See generally, Office of Advocacy, U.S. Small Business Administration, *A Guide for Federal Agencies: How to Comply with the Regulatory Flexibility Act (2003)*.

³ Exec. Order No. 13272 § 1, 67 Fed. Reg. 53461 (Aug. 16, 2002).

of the Office of Management and Budget.⁴ Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

II. Advocacy urges GSA to further examine the economic impacts of the rule on small entities.

GSA issued this interim rule under the good cause exception of the Administrative Procedure Act (APA), citing the existence of urgent and compelling reasons to publish an interim rule prior to the opportunity for public comment. Publishing a proposed rule under APA notice and comment rulemaking triggers the need to comply with the RFA. Although this is an interim rule that is not subject to notice and comment, GSA still solicited comments from affected entities and provided a certification statement pursuant to the RFA.

Advocacy notes that GSA certified under section 605(b) of the RFA that the rule would not have a significant economic impact on a substantial number of small entities; however, GSA should have provided a factual basis to support its decision to certify the rule under the RFA. Advocacy regularly advises agencies that a factual basis should at a minimum identify the small entities affected by the rule, describe the impact on those entities, and explain the agency's reasoning in support of the certification.

This interim rule may contain negative economic impacts on a substantial number of small entities. The Federal Procurement Data System (FPDS) is the primary database of the Federal Government for information relating to Federal procurement. GSA's goal for FPDS is to provide greater transparency into government contracting (69 Federal Register 77662). However, the FPDS is less than user friendly and data searches do not always yield the desired results. Advocacy offers the following examples to illustrate the above-mentioned negative economic impacts.

During an Advocacy procurement roundtable on February 7, 2005, comments were received from several small entities that have attempted to access data using the methods for public use as outlined in the interim regulation. These methods are file transfer protocol, pre-written queries and ad hoc queries, and direct web services connection. Comments received indicated that the use of the file transfer protocol method has very limited functionality and data reliability. The ad hoc and prewritten query methods require small entities to interface directly with the help desk personnel of FPDS-NG. These methods have hidden cost and time constraints that are not reflected in the interim regulation.

⁴ E.O. 13272, at § 2(c).

⁵ *Id.* at § 3(c).

One user attempted to access data on the FY 2004 year-end summary. The FPDS-NG web site states that the data is available for downloading, and the public user was directed to a “zip” file. Upon extracting the zip file, the user found out that the underlying format was “XML,” accessible using only specific software. After downloading the software and installing it, the file still could not be read. The public user spent approximately one half hour on the telephone with the FPDS-NG help desk to see what else could be done to open the file. The information in the downloaded file was still not available and the technician suggested that queries could be run if needed.

Direct web services, the primary focus of this interim regulation, require a \$2,500 hook up fee. To date, FPDS has not specified what the purchase amount includes or what is needed in terms of software. Small entities using direct web connections are able to get federal public procurement data more easily than the non users. FPDS functionality problems and timely and accurate accessibility problems prevent the small entities not using the web services from getting the same level of service and data. Consequently, if small entities are in need of public procurement data, they must subscribe to the direct web service or retain the services of a direct web service company. The current iteration of the interim rule creates cost burdens to small entities, specifically non direct web users, that may be unintentional but are nevertheless substantial. A more detailed analysis on the impact on small entities may be required before the final rule can be certified. Advocacy is available to assist GSA in its analysis of the rule's impacts on small entities.

III. Federal Procurement Quality Data

Reliable, timely and quality data is a keystone in the decision-making process. Small entities especially rely on public data to make marketing and other resource allocation decisions. Yet they do not have the requisite financial resources to retain specialty marketing companies. This was highlighted during Advocacy’s procurement roundtable on February 7, 2005. While the new FPDS may appear to be moving in the right direction, small entities believe that the system must be adjusted to achieve the following:

1. The summary data should be free. The downloading of the FPDS-NG data has limitations at this time. Thus FPDS should make the data available in alternative formats (e.g. Compact Discs, etc...)
2. FPDS-NG should provide edit checks to make the data more reliable.
3. Year-end summary reports should be available for cross-comparisons with agencies and for fiscal years. This will enable small businesses to better manage their resources for getting business, and will enable them to more efficiently effectuate policy corrections.
4. Data certification is essential for data validation; agencies should provide a timely certification of their data submission to FPDS-NG.
5. Since FPDS-NG is a major component of the President’s E-Government initiative, it is critical that this system have a more efficient and seamless interface with other similar E-Government systems. These systems should reduce paperwork burdens on small entities and they should increase the reliability of the data. As an example, Advocacy has been told by small entities that some of the

small business data in the Central Contract Registration system (CCR), another E-Government initiative, is not reliable. Yet, it is our understanding that FPDS-NG interfaces with CCR for some of its small business data.

6. Advocacy suggests that FPDS put together a more thorough user guide for all four modes of access.

The Office of Advocacy looks forward to working with GSA and other appropriate agency representatives to ensure timely, accurate and reliable procurement data. Please feel free to contact Major Clark of my office regarding this letter. His telephone number is 202-205-7150.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Major L. Clark, III
Assistant Chief Counsel for Procurement

cc: The Honorable David Safavian, Administrator, OFPP
The Honorable John Graham, Director, OIRA
Emily Murphy, Chief Acquisition Officer, GSA