

December 13, 2002

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVR), Room 4035
1800 F Street, NW
Washington, DC 20405

RE: FAR Case 2002-011, Federal Acquisition Regulation; Procurement of Printing and Duplicating through the Government Printing Office (67 Fed. Reg. 68914, November 13, 2002).

Dear Ms. Duarte:

The Office of Advocacy of the U.S. Small Business Administration was created in 1976 to represent the views and interests of small business in Federal policymaking activities.¹ The Office of Advocacy monitors agencies' compliance with the Regulatory Flexibility Act (RFA)² and works with Federal agencies to ensure that their rulemakings are supported by analyses of small business impact. On August 13, 2002, President Bush underscored the importance of agency compliance with the RFA and the Office of Advocacy's role in giving a voice to small businesses in the rulemaking process when he signed Executive Order 13272, titled "Proper Consideration of Small Entities in Agency Rulemaking." Because the Office of Advocacy is an independent entity within the U.S. Small Business Administration (SBA), these views expressed by the Office of Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Office of Advocacy is writing regarding FAR case 2002-011, Federal Acquisition Regulation; Procurement of Printing and Duplicating through the Government Printing Office. We commend the FAR Council for soliciting comments from small entities on this rule's impact. However, we note your failure to adequately justify a finding of no significant impact under the RFA.

This proposed regulation was published in the *Federal Register* on November 13, 2002. The proposed rule is designed to implement the policy set forth in Office of Management and Budget (OMB) Memorandum Number M-02-07, Procurement of Printing and Duplicating Through the Government Printing Office (GPO) (May 3, 2002). In order to induce competition, save taxpayer money and promote small business opportunities, the memorandum eliminates restrictions that mandated use of GPO as the single source and frees agencies to select printing from a wide array of sources that can demonstrate their

¹ Pub. L. No. 94-305 (codified as amended at 15 U.S.C. §§634a-g, 637).

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified as amended at 5 U.S.C. §§601-612).

ability to meet the Government's needs most effectively. Advocacy's comments are limited to the application of the RFA to the proposed rule.

RFA Certification Requires a Factual Basis

In the proposed rule, the Federal Acquisition Regulation (FAR) Council certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. While the FAR Council may be correct in its certification of no impact, the certification lacks a statement providing the factual basis for such determination as required by Section 605 (b) of the RFA.³

Availability of Data for Factual Basis Determination

Prior to certifying a rule under Section 605 (b) of the RFA, Advocacy recommends that an agency perform a preliminary analysis of the proposed rule's impact on small entities. The results of this analysis will likely provide the factual basis for the certification. In this case, the FAR Council may want to review information regarding contract awards made by the GPO to small businesses versus large businesses in the printing industry and determine how the proposed rule may affect small business participation in government printing. In addition, the FAR Council may want to explore how this proposal will impact small printers that do not receive contract awards from the GPO.

Steps to Cure Inadequate Certification

Without a statement explaining the factual basis, it is nearly impossible for small entities to evaluate the economic impact of the proposed rule. Thus, the Office of Advocacy recommends the following actions to cure this inadequate certification: **First**, if the FAR Council has factual data supporting its certification, then it should be published as supplemental note in the *Federal Register* with a period for public comment. **Second**, the Office of Advocacy encourages the FAR Council to review carefully the comments submitted regarding the impact of its proposed rule on small entities. Based on the comments, the FAR Council should take appropriate steps to bring this rulemaking into compliance with the RFA by either publishing the factual basis for the certification or by publishing an IRFA for public comment.

³ 5 U.S.C. §§605(b).

Thank you for the opportunity to comment on this important proposal. If you have any questions regarding this letter, please feel free to contact the Office of Advocacy at (202) 205-6533.

Sincerely,

/s/

Thomas M. Sullivan
Chief Counsel for Advocacy

/s/

Major L. Clark, III
Assistant Chief Counsel

Cc: Dr. John Graham, Administrator, Office of Information and Regulatory Affairs