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May 16, 2016

VIA EMAIL ONLY

Jonathan L. Kang
Senior Attorney
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Re: Comments on Proposed Rule Regarding Electronic Filing System and Filing Fee

Dear Mr. Kang:

We are writing to submit comments on the U.S. Government Accountability Office's ("GAO") proposed rule, issued April 15, 2016, 81 Fed. Reg. 22,197. Our firm represents small businesses operating across the government contracting spectrum, including many small businesses that participate in the GAO bid protest process. In general, we believe that the proposed rule's establishment of an electronic filing and document dissemination system will have a beneficial impact on streamlining the GAO process. Such a streamlined process will facilitate the filing and tracking of protests by small businesses.

Beyond our broad concurrence with the new rule, however, we did want to raise several areas of concern with respect to the effect of the proposed rule on small businesses. Specifically, as detailed below, we are writing to suggest additional revisions to the rule to mitigate the burden of the rule on small businesses.

Filing Fee

The new rule envisions imposing a filing fee of \$350 on protesters. We respectfully request that an exception to the fee be created for small businesses, as defined under the Small Business Act, in order to mitigate against the burden of this requirement. While we understand the need for implementing a filing fee in order to pay for the system, the proposed fee represents a significant amount of money for many small businesses. Such a fee could deter small businesses from filing protests in the first place, thus hindering the GAO's ability to effectively review procurement awards to small businesses. We note that an exception for small businesses would be consistent with the intent of Congress that "[t]o the maximum extent practicable, the Comptroller General shall provide for the inexpensive and expeditious resolution of protests under this subchapter." 31 U.S. § 3554(a).

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Redactions

The new rule appears to memorialize an obligation that the parties create and file redacted versions of every protected document filed at the GAO. Specifically, the new rule would amend 4 C.F.R. § 21.4(b) to state “[a]ny agency or party filing a document that the agency or party believes to contain protected material shall provide to the other parties (unless they are not admitted to the protective order) an initial proposed redacted version of the document within 1 day after the protected version is filed.” This rule goes beyond the current rule, which merely requires the filing of a redacted version of the initial protest document. See 4 C.F.R. § 21.1(g).

While we concur with the creation of a rule providing for a redaction process, we respectfully request that the rule allow the parties to opt out of creating redacted versions of protest documents should they wish to do so. Creating a redacted version of a protest filing can be a lengthy process involving a significant amount of attorney time spent not only reviewing and redacting the protest, but also in negotiating and reaching agreement with all of the parties. Because of these expenses, it is not uncommon for parties to jointly decide not to seek redacted versions of filings as a means of avoiding unnecessary legal costs.

The rule as currently drafted, however, seemingly takes away the parties’ ability to choose whether they want to create such a redacted document, resulting in parties being forced to pay for a document that they may or may not want. We therefore respectfully request that the GAO craft an exception to the new rule at 4 C.F.R. § 21.4(b) that includes the words, “Unless the parties agree otherwise,” before the operative language, quoted above, in the first sentence.

Please do not hesitate to contact the undersigned at (202) 857-1000 if you have any questions about these comments.

Very truly yours,



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