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August 14, 2017

**VIA FEDERAL ERULEMAKING PORTAL**

Michael Downing  
Regulatory Reform Officer  
Office of the Administrator  
General Services Administration  
Regulatory Secretariat Division (MVCB)  
1800 F Street NW  
Washington, DC 20405

**Re: Notice–MV–2017–01, Evaluation of Existing Acquisition Regulations**

Dear Mr. Downing:

We are writing to submit comments on the U.S. General Service Administration’s (“GSA”) above-referenced request, issued May 30, 2017, 82 Fed. Reg. 24,653, seeking input on acquisition regulations, policies, standards, business practices and guidance issued by GSA across all of its acquisition, disposal, and sales programs, that may be appropriate for repeal, replacement, or modification. In our practice, we represent many small businesses that participate in the various procurement programs administered by GSA, in particular contract vehicles under GSA’s Federal Supply Schedule program. Although there are many issues that touch upon small business concerns that hold these contracting vehicles administered by GSA, we would like to comment on the utilization of contractor teaming arrangements (“CTA”) for Schedule opportunities, and special small business considerations arising under these CTAs.

First, we have seen great confusion arise over GSA’s policy allowing two Schedule contractors to form CTAs to pursue task orders issued under Schedule contracts. GSA does not have formal regulations governing the use of CTAs. However, it has issued guidance on its website outlining how Schedule contract holders may establish CTAs to pursue task order opportunities. See GSA Schedules, Contractor Team Arrangements (“CTA Guidance”), available at <https://www.gsa.gov/portal/category/100647>. CTAs are teaming arrangements between GSA Schedule contractors – a necessary precondition to participate in the CTA arrangement is that each team member must maintain its own current GSA Schedule contract. CTA team members enter into a written agreement (i.e., the CTA) to work together to meet customer agency contracting needs. This written CTA cannot conflict with the underlying terms and conditions of the team members’ separate Schedule contracts. Thus, even though the CTA members must select a “Team Lead” to lead negotiations and interface with the government, CTA members do not relate to each other in a prime contractor/subcontractor fashion.

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Indeed, the CTA Guidance makes clear that each CTA member is responsible to the ordering agency as a “co-prime.”<sup>1</sup> GSA’s guidance emphasizes the differences between a teaming relationship established under a CTA and that of a more traditional Prime Contractor/Subcontractor relationship. For example, GSA specifically states that “[e]ach [CTA] team member has privity of contract with the government and can interact directly with the government.” See CTA Guidance. And, each CTA team member’s individual Schedule contract terms, conditions, and rates apply: “The ordering activity is invoiced at each team member’s unit prices or hourly rates as agreed in the task or delivery order or GSA Schedule BPA.” Id.

Because all CTA team members are ostensibly “co-primers” for the task orders that are issued to the CTA, numerous practical issues arise regarding the formation of the CTA agreement, and the performance of the contract. For example, neither GSA nor the U.S. Small Business Administration (“SBA”) offer direct guidance regarding how CTA team members should allocate the revenues awarded to the CTA for a task order. This is a problematic issue for small business CTA team members, because they must properly allocate the portions of the task order’s revenues won by the CTA that should be attributed to each team member for size calculation purposes.

GSA has also recognized in its online guidance that there is an issue with regard to reporting the awards made to CTAs in the Federal Procurement Data System (“FPDS”), including issues related to the way agencies take credit in reporting their small business goals. While reiterating that “each contractor has privity of contract with the ordering activity” under a CTA, GSA recognizes that FPDS will only accept information relating to one contractor per order. Thus, GSA has directed ordering agencies to determine which CTA member “is realizing most of the revenue on an order and report that contractor’s information to FPDS.” See CTA Guidance. GSA indicates that it is working with both the Office of Federal Procurement Policy and SBA to provide future clarity regarding the use of CTAs and “anticipates issuing final guidance in the future.”

We have also heard anecdotal reports that ordering agencies are not adhering to the GSA Guidance when awarding task orders to CTAs. For example, the guidance holds that for small business or other socioeconomic set-aside orders, all of the CTA team members must meet the designation of the order. However, in practice, we have heard reports of small businesses forming “CTAs” with large businesses to pursue small business set-aside orders, and then the CTA will utilize the Schedule rates of the large business to fulfill portions of the order. This is

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<sup>1</sup> This policy has been reiterated by GSA’s Office of Inspector General (“OIG”), in an audit report published on the use of CTAs. See “Audit of Contractor Team Arrangement Use,” Report Number A130009/Q/A/P14004, at 3 (Sept. 8, 2014) (“CTA Audit Report”) (“[T]eam arrangement members are not subcontractors but equal prime contractors.”) (emphasis added).

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clearly not what GSA intended, and allows large businesses to impermissibly participate on small business set-aside opportunities.

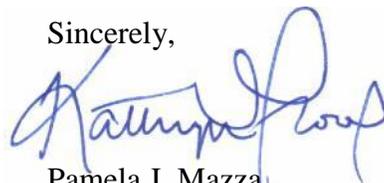
For these reasons, we believe that GSA should provide regulatory authority governing the formation and administration of awards made to CTAs by ordering agencies. With formal guidance contained in the Federal Acquisition Regulation or GSAR, for example, both contractors and ordering agencies will have greater confidence in entering into CTA relationships and issuing awards to these teams.

In this vein, we also believe that GSA should recognize SBA's enactment of a significant new program affecting numerous small businesses. Last year, SBA launched its All Small Mentor-Protégé Program ("ASMPP"), which was designed to accompany its existing Mentor-Protégé Program for participants in the 8(a) Business Development Program ("8(a) Program"). We believe that GSA should allow mentors and protégés that have SBA approved mentor-protégé relationships in either program to team together and pursue small business or other socioeconomic set-asides as a prime contractor team. Such a teaming arrangement can be effectuated through a CTA if both the mentor and the protégé hold the appropriate GSA Schedule contract.

Under both the ASMPP and the 8(a) Mentor-Protégé Program, a large business mentor and its approved small business protégé can form a joint venture or other teaming arrangement to pursue any type of federal small business contract, even if the mentor is a large business. This is because under SBA's regulations, a mentor-protégé joint venture is afforded an exemption from the normal rules of affiliation which would otherwise prohibit such a joint venture from pursuing a small business set-aside opportunity. See 13 C.F.R. § 121.103(h)(3). Since a CTA is a type of teaming arrangement akin to a joint venture for Schedule contractors, we believe that GSA should amend its regulations to allow CTAs that are formed between mentors and protégés holding the appropriate Schedule contract for the opportunity to pursue a small business or other socioeconomic set-aside for which the protégé is otherwise eligible to compete, and the protégé is designated as the CTA Team Lead. We understand that implementation of this rule may require coordination with SBA, and we request that you seek SBA's active input on this matter.

Please do not hesitate to contact Pam Mazza or Katie Flood at (202) 857-1000 if you have any questions about these comments.

Sincerely,



Pamela J. Mazza  
Kathryn V. Flood