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CODSIA Case – 2022-002

Submitted electronically through www.regulations.gov

February 13, 2023

Federal Acquisition Regulatory (FAR) Council
Attn: Ms. Jennifer Hawes
General Services Administration
1800 F St., NW
Washington, DC 20006
Jennifer.hawes@gsa.gov

Ref: FAR Case 2021-015, *Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk*

Dear Ms. Hawes,

On behalf of the member associations of the Council of Defense and Space Industry Associations (CODSIA)¹, we are pleased to submit these comments in response to the proposed rule to amend the Federal Acquisition Regulation (FAR) to require certain Federal contractors to disclose their greenhouse gas emissions and set science-based reduction targets.

We support the Government's stated goal of reducing carbon emissions in the U.S. and mitigating climate-related financial risks while enhancing U.S. competitiveness and economic growth, promoting environmental justice, and creating well-paying jobs for American workers.

Our associations' member companies—spanning a wide range of industries—have by and large committed to improving their corporate sustainability practices, and many currently disclose their GHG emissions and set sustainability-related goals publicly. Nonetheless, in order to most effectively apply the proposed broad requirements to a large swath of the U.S. Federal supplier base, the FAR Council must clarify key aspects of the proposed rule, including how the information collected will be used in

¹ CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues at the suggestion of the Department of Defense. CODSIA consists of eight associations—Aerospace Industries Association (AIA), American Council of Engineering Companies (ACEC), Associated General Contractors (AGC), CompTIA, Information Technology Industry Council (ITI), National Defense Industrial Association (NDIA), and Professional Services Council (PSC). CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

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procurement decisions, and provide additional flexibility during the implementation process. Additionally, we urge the Government to prioritize consistency and alignment with other major carbon emission disclosure requirements for suppliers, such as the forthcoming Securities and Exchange Commission (SEC) requirements and other international obligations.

Our recommendations are below:

I. Allow for Compliance with Multiple Environment and Sustainability-Related Voluntary Consensus Standards and Avoid Limiting Reporting to Specified Third-Party Platforms and Targets.

CODSIA appreciates the Government’s interest in standardizing the basis for contractor compliance with the proposed rule. However, the selection of the CDP standard and system presents complications that may undermine the Government’s efforts. Mandating the use of a single third-party would be inconsistent with both Office of Management and Budget memorandum M-22-06 and the Partnership for Carbon Transparency (PACT) of the World Business Council for Sustainable Development (WBCSD).

In addition to the calculating and reporting mechanisms outlined in the notice of proposed rulemaking (NPRM), we respectfully suggest that applicable voluntary consensus standards that are substantially similar should also be accepted. The ISO 1404x series and ISO 14064-1 standards are viable methodologies that should be treated as equivalent to the Greenhouse Gas Protocol. Additionally, the Global Reporting Institute (GRI) and Task Force on Climate-Related Financial Disclosures (TCFD) offer viable and widely accepted reporting frameworks analogous to that of CDP. Companies making third party verified public disclosures of greenhouse gas emissions against the GRI and TCFD frameworks achieve a similar outcome to reporting on CDP. Regarding public disclosure of a science-based emissions reduction goal, it is important to recognize SBTi ‘or a sufficient alternative’, to ensure effectiveness of the ruling going forward. Singular reliance on any one method or solution is not necessary or appropriate.

M-22-06 encourages the use of “existing third-party standards and systems...” and recognizes the existence of other reputable options beyond those listed in the Memorandum. Opening the door to other options in this way would allow ongoing efforts endorsed by industry to continue. For example, the World Business Council for Sustainable Development (WBCSD) Partnership for Carbon Transparency (PACT), is a technical recommendation for the standardized exchange of carbon emissions data that has been established. This specification allows different emissions and accounting technology solutions to connect to and understand each other, making it easier for

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businesses to access data. This is an important development on the journey to carbon transparency, which is fundamental in helping businesses to decarbonize, and follows the first exchange of data by PACT in April of 2022. It sets the foundation for a harmonized data exchange system that fosters collaboration and integration across technology solutions and product value chains. Revising the proposed rule to expressly allow companies to utilize one of several equivalent third-party standards and systems would yield several benefits to the Government, including increasing competition and removing barriers to doing business with the Government, without penalizing companies that have voluntarily invested in similar capabilities.

We urge the FAR Council to avoid adopting a “one size fits all” approach for assessing contractors’ progress towards the goals laid out in the proposed rule. Government acquisition professionals must receive adequate training to ensure they are able to assess the full range of bidders’ different approaches to greenhouse gas emissions and their associated social cost. For example, two companies may have different approaches to get to net zero carbon emissions. Company “A” may do so primarily through deploying renewable energy directly or a combination of renewable energy certificates (RECs) and carbon credits from a direct air capture project to reach net zero carbon emissions. Company “B” may reduce onsite emissions through efficiency improvements and then purchase high quality nature-based carbon removal credits. It is critical that the FAR Council allow contractors to identify the most efficient and effective pathways for them to decarbonize and reach net zero, within guardrails provided by the FAR Council.

Additionally, we urge the FAR Council to provide clear, standardized guidance to the acquisition workforce on what circumstances would merit a temporary exemption when contractors are making a sincere attempt to come into compliance with the rule’s requirements, while being as flexible as possible in the early years of the rule’s implementation. Furthermore, for many Federal contractors, the government customers’ use of products and services is among the most material categories of Scope 3 emissions. This could be a challenging figure to calculate for operational and national security reasons, especially when the calculation involves operationally sensitive information. With that in mind, the FAR Council should consider (1) clarifying the exception, exemption, and waiver process at proposed subparagraphs §23.xx04, §23.xx06 et seq. for these cases and (2) providing specific guidance to significant and major contractors, who have mandatory reduction targets for relevant Scope 3 emissions—but who also sell and distribute such products and services essential to emergency responses, national security, and other sensitive missions.

Promote federal supplier competition by avoiding a mandate to utilize only CDP’s methodology to analyze GHG emissions.

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While many companies voluntarily report on GHG emissions through the CDP disclosure portal, companies will of course avoid disclosing certain confidential business information. Further, in order to report through CDP, companies must agree to pay a fee, agree to CDP's terms and conditions regarding the sale and use of their data, and agree to have their disclosures rated using the CDP rating process.

The CDP Climate change questionnaire includes many more questions than what would be required to be disclosed under the proposed rule. And while CDP has included questions to align to the TCFD recommendations and guidance, the CDP questionnaire asks for additional detail that is not included in the TCFD recommendations. Most importantly, the CDP questionnaire and process change yearly based on the sole desires of the CDP organization that have not been vetted through a consensus-based standards development process, nor subject to a rulemaking process to which U.S. Federal agencies must adhere in promulgating regulations.

Additionally, the Government should allow contractors to utilize business to business cloud-based collaboration platforms and business networks accessible via public websites or mobile applications to satisfy the publication requirement. Collaboration platforms and business networks play an important role in global commerce. They link trading partners to each other and provide a centralized location for data transparency with the option for credential validation provided by multiple third-party extensions. Permitting the use of networks would allow contractors to 1) continue utilizing their existing business systems, 2) ease the ability for the US Government to find and access emission data, and 3) empower further implementation of the goals outlined by the proposed rule beyond the public sector industrial base.

Accordingly, the rule should allow companies to disclose required information through other existing disclosure bodies such as GRI and TCFD on any publicly available website, collaboration platforms, and business networks.

Avoid requirement to Validate Science-Based GHG Emissions Targets solely through SBTi.

The proposed FAR rule also requires that major contractors set science-based GHG emissions reduction targets and to have those emissions reduction targets validated by the Science-Based Targets initiative. While CODSIA supports requirements for Federal contractors to establish GHG emissions reduction targets and report progress against those targets, we have strong objections to the requirement of this rule to have targets validated solely by the SBTi organization. The SBTi organization does not have a monopoly on climate science, and many of their requirements reflect subjective points of view. This is particularly concerning within the context of Scope 3 emissions. As with CDP, SBTi criteria have not been vetted through a consensus-based standards process

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or through a federal rulemaking process, and we do not believe it appropriate for the Federal Government to require contractors to adhere to criteria or requirements of a third party or pay for the use of a third party's specific program and services to "validate" their targets. Moreover, CDP is one of several organizations that make up SBTi, and some of our members currently pay CDP to begin the science-based reduction target validation process even though their CDP score was impacted by whether the company had targets in place. We are concerned that this system reduces competition and limits the paths available for contractors to meet the proposed rule's requirements.

Finally, CODSIA is concerned that SBTi's role in the criteria setting, and validation of science-based targets may be an unconstitutional delegation of authority to a private entity. The proposed rule requires that major contractors include SBTi validated science-based targets in their annual climate disclosure. Therefore, the SBTi will be making significant policy decisions about what measures companies must take to meet climate requirements and regulating their progress through its validation program, with no oversight from the Federal agencies. We recommend the final rule allow validation of science-based targets by alternative sources or a third party of the company's choice, as opposed to mandating the validation be done through SBTi. Allowing for decentralized development and validation of science-based targets (e.g., alternative sources of validation or use of other third-party companies), will enable more companies to meet the intent of the proposed rule in a meaningful way and may accelerate the standardization of more refined science based methodologies across complex industry sectors.

II. Clarify Certain Mechanics of the Disclosure and Reporting Process

Develop common framework for reporting and evaluation.

As contractors will be required to submit information through the System for Award Management (*SAM.gov*), we suggest that the information gathered should be through a standardized template for both significant contractors and major contractors. This allows contractors to input their disclosures directly into SAM if desired. Additionally, contractors should be allowed to show proof of disclosure through CDP, GRI, TCFD or other equivalent entities, without having to resubmit the data. If necessary to enable the collation of reported data, the Government should create additional mechanisms by which such data can be pulled from the equivalent entities directly rather than require additional direct reporting requirements. Where possible, the Government should encourage companies to adopt digitization and automation for data collection to more efficiently monitor GHG emissions and energy consumption.

Determine whether a significant and major contractor will be defined based on award or obligation.

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The proposed rule states “For the purposes of this rule, an offeror is considered a “significant contractor” if the offeror received \$7.5 million or more, but not exceeding \$50 million, in Federal contract obligations (as defined in OMB Circular A-11) in the prior Federal fiscal year as indicated in the System for Award Management (SAM).” OMB Circular A-11 defines “obligation” as “a legally binding agreement that will result in outlays, immediately or in the future.” The current version of the SAM system does not provide a website field for contractors to identify amounts obligated consistent with the OMB Circular A-11 definition. In addition, the proposed rule does not address whether non-procurement awards (i.e., Other Transaction Agreements, Space Act Agreements, etc.) should be included in the total amount of vendor revenue for purposes of defining a major or significant contractor. We recommend the final rule clarify how contractor status, major or significant, will be determined and where it will be recorded.

Delay new rules on disclosure until after SEC requirements have been finalized to avoid competing and inconsistent requirements being promulgated.

In early 2022, the SEC released proposed rules on *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, which would require registrants to include certain climate-related disclosures in their registration statements and periodic reports that are likely to have a material impact on their business operations. We are concerned that, as presently drafted, the proposed FAR requirements related to Scope 3 emissions reporting are inconsistent with proposed SEC requirements for reporting of emissions and climate-related risks. We note that requirements for reporting of Scope 3 emissions differ and that the organizational boundaries for reporting Scopes 1 and 2 GHG emissions do not align between the two proposals, with the FAR requiring reporting based on organizational boundaries of the GHG Protocol, and the SEC defining boundaries based on consolidated entities. Requirements for reporting GHG emissions and climate-related risks within the two rules need to be consistent.

As such, CODSIA recommends that the FAR Council delay new rules on disclosure until after the SEC requirements have been finalized to avoid competing and inconsistent requirements being promulgated. This timing adjustment would also enable the FAR rules to recognize GHG emissions reports and climate-related risk disclosures prepared in response to SEC regulations as being acceptable for use in responding to the FAR. Additionally, the FAR Council should consider how best to learn from the SEC’s rulemaking process and how to harmonize this proposed rule with that of the SEC. It is overly burdensome to expect Federal suppliers to prepare separate emissions reports and disclosures using differing methodologies and with differing reporting processes for SEC and FAR requirements covering the same issue.

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Limit Scope 3 reporting requirements

The proposed FAR language requires that major contractors report annually on “relevant” categories of Scope 3 emissions in alignment with the GHG Protocol Corporate Standard. This standard is undefined and further complicated, however, by the fact that the Scope 3 emissions reporting requirements are different than what is currently proposed in the SEC climate disclosure rules which require reporting of “material” emissions.

Scope 3 GHG emissions represent the upstream (e.g., raw materials, manufacturing) and downstream (e.g., product use, end-of-life processing) activities within a company’s value chain. To accurately measure and report Scope 3 GHG emissions involves a greater level of complexity and industry coordination than does the measure and reporting of a company’s Scope 1 and Scope 2 emissions which emanate from activities in a company’s owned and operated oversight.

It is worth noting second order impacts to the Government of the downstream implications of the proposed rule. For example, the Government has its own reporting role in Scope 3 GHG emissions with respect to major contractors’ products and services: as end users, agencies themselves would need to report their GHG emissions to their contractors because without this information, contractors cannot fully satisfy Scope 3 reporting requirements. In addition, the Government must determine whether those agency reports are subject to verification (e.g., by either the contractor or a third party). The Government should consider such impacts on *its own GHG emissions reporting to contractors* throughout this rulemaking process.

Determining Scope 3 emissions across a company’s value chain in a factual, reliable manner is extremely challenging due to the lack of primary source data across multiple entities that can be credibly attributed to the company in question. As such, Scope 3 emissions cited by companies may be built upon layers of assumptions and generic substitutes for primary source data with widely varying degrees of credibility and completeness. If there are too many inherent assumptions made, these numbers will not be suitable for comparing products, services, or performance in a manner that can be reasonably evaluated for its impact on climate change.

Accordingly, we believe that Scope 3 emissions reporting, if required, should be consistent between the SEC and FAR rules. Specifically, contractors who are not required to disclose Scope 3 emissions under the SEC Rule, should not be required to disclose Scope 3 emissions under this proposed rule, or be required to set Scope 3 science-based targets (which would then force those contractors to make Scope 3 emissions disclosures under the SEC rule they otherwise would not be required to

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make). In other words, this rule should not be used as a vehicle to indirectly expand the scope of the SEC Rule.

Provide additional information on timing for disclosure requirements.

The proposed rule requires significant contractors to have completed within their current or previous fiscal year a GHG inventory; and to disclose their Scope 1 and Scope 2 emissions in SAM. However, we would like clarity on how many months after the close of a company's fiscal year such a disclosure would need to be uploaded into SAM. Similarly, for the CDP disclosures required from major contractors, does the rule merely defer to the timeline that CDP sets in a given year? Clarity on this point would be appreciated.

Provide guidance on application of Rule to varying business models for selling to the U.S. Government

Many companies conduct their Federal contracting-related business through a dedicated subsidiary or affiliate. CODSIA urges the FAR Council to consider the following revisions to the rule for significant and major contractors:

- Allow flexibility in reporting for significant and major contractors in SAM.gov for the inventory of Scope 1 and 2 emissions at either.
 - the Federal subsidiary or affiliate, or
 - the immediate owner or highest-level owner, inclusive of the subsidiary or affiliate.
- Clarify if major contractors must report Scope 3 emissions in SAM.gov.

If a SAM-registered entity's parent company has already completed Scope 1, Scope 2, or Scope 3 disclosures or has publicly posted science-based reduction targets, the FAR Council should allow the entity to impute this information into meeting the requirements of this rule, including its annual SAM representation. The FAR Council should provide guidance to contracting officers to ensure that companies who conduct GHG disclosures at the parent level are not unfairly penalized, as the number of emissions reported is likely to be much higher than if this disclosure was conducted at the subsidiary level. Guidance is also needed as to whether an immediate owner who has an established SAM registration can disclose GHG information for the highest-level owner who does not have a SAM registration and whether the highest-level owner can disclose GHG emissions for multiple subsidiary business lines. Providing this flexibility will remove the burden of a company having to create a SAM registration just to report disclosures, while the company could disclose through an affiliate or subsidiary that already has a SAM registration.

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Additionally, guidance is needed regarding the impact of this rule on product manufacturers that conduct their Federal sales through third parties. What reporting is expected from either party, and for what emission-generated operations?

The FAR Council must consider that the quickly changing nature of businesses and industries themselves will complicate companies' efforts to disclose greenhouse gas emissions. For example, a company that acquires another company is also acquiring the new company's carbon footprint, which has an immediate impact on the acquiring company's greenhouse gas emissions and associated metrics overnight. Small businesses in particular change ownership frequently, which can make tracking true progress or change challenging and administratively burdensome. It can take time to obtain and generate emissions data for new operations. Thus, future iterations of the rule should clarify that an entity is not required to update its reporting and/or SAM registration due to changes like a merger or acquisition, until the annual reporting cycle that follows, after a specified duration is afforded to determine emissions for the new operations.

Finally, over time, a company may decide to change its inventory and reporting methodology for improved reporting. CODSIA requests that the FAR Council clarify whether companies will be allowed to disclose this change in *SAM.gov* and report the new methodology going forward.

III. Provide Additional Context and Flexibility During Implementation Process

Extend timeline for disclosure of Scope 3 emissions.

CODSIA appreciates the Government's view that assessing the Scope 3 emissions of its major suppliers is an important component of understanding the U.S.'s carbon output at the national level. However, requiring the disclosure of Scope 3 emissions will place a substantial burden on contractors, some of which will be undertaking this task for the first time once the rule goes into effect. To minimize this burden, the FAR Council should provide further accommodation and supporting resources.

As discussed above, data estimation, accounting, and tracking tools for Scope 3 emissions are still being developed. Currently, there are constraints on the quality and availability of Scope 3 GHG data across the value chain for many sectors. For example, many companies in the IT sector have an overwhelmingly large volume (in some cases tens of thousands) of upstream suppliers from whom they would need to gather and assess data. Many of our associations' members purchase very small amounts of material from a large number of global suppliers, often concentrated in regions where disclosure of data is not required or encouraged. These suppliers do not have the

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resources or staff to prepare GHG inventories, and our members have limited leverage to require this data. Because processes and technologies to gather and transmit downstream and upstream emissions data are still evolving, the FAR Council should allow contractors to use estimating tools to calculate their Scope 3 emissions.

CODSIA urges the FAR Council to extend the timeline for major contractors to disclose their Scope 3 emissions to three years after the publication of the final rule. This would allow standards bodies, industry working groups, and other stakeholders to more clearly refine relevant best practices in tracking, assessing, validating, and reporting Scope 3 emissions and the time needed for companies to collect the necessary data from suppliers.

Provide flexibility for major contractors to develop science-based reduction targets.

The implementation timeline for the supplemental requirements for major contractors should be flexible based on whether the contractor has an existing SBT in place. Given that developing an SBT will be a significant undertaking for many businesses that will be impacted by the rule, and requires measurement of “relevant” Scope 3 emissions, the FAR Council should consider extending the deadline for this requirement to three years after the publication of the final rule to allow for the development of an SBT after determining and calculating “relevant” Scope 3 categories. Moreover, we urge that specific organizational-related goals such as SBTi not be mandated by the government, as these programs are not led and managed by the government, but by civil society instead. We urge the government to allow companies flexibility with regard to how they arrive at the most reasonable timeline for net zero goals aligned with the Paris Agreement based on company and technology sector growth.

Additionally, industry has concerns with the SBTi organization having the capability to review and validate contractors’ science-based targets within the two-year lead time. Extending the timeline will allow for the organization to have more science-based targets validated by the implementation deadline.

Amend SAM.gov to include a field where contractors may enter comments.

CODSIA recommends that the FAR Council specify that a comment field be available for use in SAM.gov reporting. The purpose would be to allow contractors to inform contracting officers and other government users of SAM of pertinent information on the contractors’ reporting and disclosures. Examples of how a contractor may use the comment field include:

- Stating that the data reported was for the highest-level owner,

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- Stating that they submitted their science-based target to the Science-Based Target Initiative for validation and are awaiting review, or
- Disclosing a change in their reporting methodology.

Amend the FAR to allow alternatives to the Electronic Product Environmental Assessment Tool (EPEAT)

CODSIA appreciates the FAR Council's stated willingness to draw on a variety of voluntary consensus standards in the development of the requirements associated with Executive Order 14030. We believe that this principle should be applied consistently across all aspects of the Federal government's environment-related purchasing policy.

EPEAT is an ecolabel and a registered trademark owned by the Global Electronics Council (GEC), a non-governmental organization. For targeted technology products, the FAR currently requires executive agencies to acquire EPEAT-registered products. Though many of our member companies' products are EPEAT-registered, we are concerned that this requirement unnecessarily limits competition in the federal marketplace because it places GEC in a "gatekeeper" role wherein a manufacturer can be shut out of Government business opportunities if it does not meet requirements established by GEC.

As a solution to this problem, we suggest that the Government expedite the release of FAR Case 2022-006 for industry comment to amend the FAR regarding the EPEAT requirements in FAR subparts 39.101, 23.704, and 23.705, to instead instruct the EPA to apply its existing process and the EPA Guidelines for Environmental Performance and guidelines to determine additional acceptable ecolabels and voluntary consensus standards based on review by its assessment guidelines. We encourage the Government to allow offerors of product categories selected by the GEC to demonstrate compliance with one or more accepted ecolabels or standards, rather than limiting procurement to only EPEAT-registered products. This will advance the U.S. Government's policy goals of procuring sustainable products while opening opportunities for federal suppliers to demonstrate compliance to accepted voluntary consensus standards.

Reconsider Requirement to Re-Validate Science-Based Target Every Five Years

As currently drafted, the proposed rule (perhaps inadvertently) requires contractors to re-validate their SBTs every five years. This is contrary to general industry practice where companies establish long-term emissions targets and then work towards achieving them. Consequently, we believe the rule should simply require that the SBTs be validated, and not establish a recurrence frequency requirement.

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Thank you for your attention to these comments. We welcome the opportunity to discuss them with you and/or the drafting team. If you have any questions or need any additional information, please do not hesitate to contact CODSIA's lead on these comments, Kelsey Kober, Senior Manager of Policy, Public Sector for the Information Technology Industry Council. She can be reached at (202) 570-1177 or kkober@itic.org.

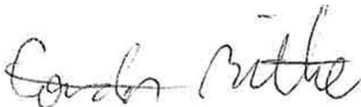
Sincerely,




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