February 9, 2023

General Services Administration
Regulatory Secretariat Division (MVCB)
ATTN: Jennifer Hawes
Procurement Analyst
1800 F Street NW, 2nd Floor
Washington, DC 20405

Re: Federal Acquisition Regulation: Minimizing the Risk of Climate Change in Federal Acquisitions (FAR Case 2021-015)

Dear Ms. Hawes,

The undersigned coalition of technology and cyber organizations appreciates the opportunity to provide the following comments to the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) regarding its proposed rule to amend the Federal Acquisition Regulation (FAR).

Commenting Organizations

The Alliance for Digital Innovation (ADI) is a non-profit coalition of innovative, commercial companies whose mission is to bring IT modernization and emerging technologies to government. ADI engages with government thought leaders to share emerging commercial technologies and to advocate for the removal of institutional and bureaucratic barriers to the operation of a modern digital government.

Summary of Major Concerns

ADI appreciates the Administration's commitment to combating climate change and acknowledging the impact that its contracting decisions can have on reducing greenhouse gas (GHG) emissions. However, it is important that regulations balance the overall goal with the burden of compliance, provide clear classifications for different sized contractors, consider the negative impacts of relying on third-party standards, and provide contractors with enough time to familiarize themselves with changes to reporting requirements. As DoD, GSA, and NASA consider further rulemaking, we urge the agencies to consider the following concerns and recommendations.

First, tracking emissions on an annual basis is extremely challenging task that creates serious compliance burdens. The mandated GHG emissions reporting and disclosure requirements in the

proposed rule would likely require enlisting the support of technical consultants to assist with the complex calculations and ensure compliance with the rule. For larger entities, these resources would be required in addition to the company's other routine environmental, health, and safety compliance team. The burden is further amplified for major contractors who, under the proposed rule, will be required to start setting science-based reduction targets that are validated by the Science-Based Targets Initiative (SBTi). For mid-size to smaller entities, many of which may not have separate staff capable of addressing these matters, the resources required to comply with the proposed rule would be especially burdensome.

The proposed rule estimates that the cost of compliance with the proposed rule is $604,702,840 in the initial year of implementation. As detailed in the text of the proposed rule, this number was calculated by adding the cost of regulatory familiarization, making annual representations, completing inventory of Scope 1 and Scope 2 emissions, as well as the cost of setting science-based targets for major contractors. This involved multiplying the time the rule predicts each category will take to complete by the hourly rate of the staff members needed in each category. The proposed rule significantly underestimates the time necessary for compliance, and therefore also underestimates the financial resources that contractors will need to spend as a result of the proposed rule. For example, the proposed rule estimates that the individual tasked with reviewing the rule will spend approximately 6 minutes per page familiarizing themselves with the rule and another 6 minutes to determine whether a contractor meets the definition of a "significant" or "major" contractor. While the estimates are unrealistic for larger entities, they are especially unrealistic for mid-size to smaller entities who may not already have the necessary staff or resources available for a proper review. In practice, compliance with the rule will be much more costly than the rule predicts in terms of both dollars and time spent by the reporting contractor.

The additional resources and time required to ensure compliance with the proposed rule will be further exacerbated due to rapidly changing circumstances, such as technological innovations within each industry, updated (and, in some cases, competing) methodologies in GHG emissions calculations, and unpredictable geopolitical issues. Despite even a comprehensive and good-faith effort to do so, the quickly evolving underlying facts and methodologies would likely make the internal processes required to report data outdated soon after a final rule takes effect. The reporting mechanisms and standards will need to be regularly updated in order for the proposed rule to achieve its goal of monitoring and ultimately reducing GHG. This will likely force contractors to re-familiarize themselves with the standards, creating an ongoing burden for contractors of all sizes.

Second, the proposed rule's effort to distinguish between levels of federal contractors is unclear and could cause reporting confusion. The agencies propose using a contractor's "Federal contract obligations" to differentiate between "significant" and "major" contractors. The proposed rule says that "Federal contract obligations" is defined in the OMB Circular A-11. Despite this, it is unclear whether the threshold amounts are determined by contract awards or contract obligations. Given that the proposed rule says figures will be based on the amounts recorded in the System for Award Management (SAM), which does not record contract obligations, it would seem as though the calculation is based on contract awards. However, the proposed rule refers to threshold amounts as "contract obligations." The proposed rule's use of

the phrase “Federal contract obligations” and its omission of a clear definition leaves many unanswered questions. For example, how would indefinite delivery/indefinite quantity contracts be counted? This lack of clarity will result in many Federal contractors with contract obligations close to the proposed demarcations for levels of compliance guessing whether they are considered “major” or “significant” contractors, and, therefore, whether they must report Scope 3 emissions and submit STBi-validated science-based targets.

Finally, ADI urges the agencies to consider the potential consequences of utilizing third-party standards. The proposed rule requires contractors to use four standards – the GHG Protocol Corporate Accounting and Reporting Standards and Guidance, the 2017 Recommendations of the TCFD, the CDP Climate Change Questionnaire, and the SBTi criteria – in order to report emissions. The proposed rule also invites public comment on the use of these four standards. ADI appreciates the fact that leveraging existing third-party standards and systems may reduce the rule’s administrative burden on Federal contractors. However, since these standards are constantly being updated, ADI has concerns that using these third-party standards defeats the proposed rule’s goal of maximizing, “consistency, comparability, and accessibility of disclosure data for use in managing Federal procurements and supply chains.” The CDP Climate Change Questionnaire, for example, is updated annually. Utilizing reporting mechanisms that are constantly evolving will lead to outdated disclosures and data that cannot be compared over time. There is also an inherent risk associated with relying on reporting mechanisms that are dependent on the continued existence of third-party nonprofits.

Utilizing third-party reporting mechanisms may also undermine some of the expected benefits stated within the text of the proposed rule. One of these benefits is the rule’s ability to increase efficiency of disclosure via standardization. However, utilizing reporting mechanisms that are controlled by a third-party and constantly changing would arguably decrease efficiency; after each update the Federal government will need to review the changes and decide whether or not the new standards meet the objective of the proposed rule, and contractors will need to familiarize themselves with the changes and determine how it effects their reporting systems.

Specific Comments and Recommendations

1. Include a provision that allows a publicly-traded company’s compliance with the SEC’s proposed rule on reporting greenhouse gas emissions to fulfil the requirement of reporting under this proposed rule.

As discussed above, complying with the rule will place a burden on entities of all sizes. In an effort to minimize this burden, ADI recommends allowing reporting under this proposed rule to satisfy the reporting obligations under other rules with similar reporting goals and requirements. For example, as acknowledged in the text of this proposed rule, there are many similarities between this proposed rule and the Securities Exchange Commission’s (SEC) proposed rule on reporting greenhouse gas emissions, The Enhancement and Standardization of Climate-Related Disclosures for Investors. Furthermore, many of the publicly-traded companies that will be required to report under the SEC proposed rule will meet the minimum threshold for reporting under this rule as either a major or significant contractor. In the event that both the SEC’s proposed rule and this proposed rule become final, and a company meets the requirements to

report under both, ADI recommends that reporting under the SEC proposed rule satisfy an entity's obligation to report under this proposed rule.

Additionally, ADI recommends allowing entities that have already established science-based emissions reduction targets to use those targets to satisfy the requirement for this proposed rule. Alternatively, allow entities to use decentralized development and validation of science-based targets (e.g., alternative sources of validation or use of other third party companies). These methods will enable more entities 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. .

2. Contract amounts for classifying "significant" and "major" contractors .

Only FAR contracts should be considered when determining if a contractor is a "major contractor" or a "significant contractor." Non-FAR contracts and non-procurement awards (i.e., Other Transaction Agreements, Space Act Agreements, etc.) should not be factored into a contractor's size consideration as it relates to this rule, i.e. major or significant.

Only actual obligations should be used to determine if a company is a "major contractor" or a "significant contractor". Additionally, the dollar amounts used to classify contractors as "significant" and "major" should be updated to reflect industry standards more accurately. The minimum amount to classify a federal contractor as "major" should be more than $50 million.

3. The initial reporting deadline should be expanded beyond one- and two-year deadlines.

The proposed rule states, "[s]tarting one year after publication of a final rule, a significant or major contractor (itself or through its immediate owner or highest-level owner) must have completed a GHG inventory and the significant or major contractor must have disclosed the total annual Scope 1 and Scope 2 emissions from its most recent inventory in SAM." ADI recommends extending this deadline to provide entities with more time to familiarize themselves with the rule and hire management analysts and business specialists, as needed. For smaller entities who have not previously been required to report GHG emissions, this extra time will allow them to develop and implement effective reporting systems. Similarly, an entity that is on the border between "significant contractor" and "major contractor" will require additional time to determine its classification. Extending the initial reporting deadline will help ease the compliance burdens mentioned above.

4. Disclosure through Contractor or Immediate Owner or Highest-Level Owner using SAM

ADI supports the option for an entity to disclose as itself or through its immediate owner or highest-level owner. It is key that entities maintain optionality in disclosing to ensure the ability to report accurately and transparently. The proposed rule states, "Even if the "immediate owner" or "highest level owner" makes the necessary representations, "the significant or major contractor itself must report the results of the GHG inventory in SAM." Can the immediate owner, who has an already established SAM registration disclose GHG information for the

highest-level owner who does not have a SAM registration? Conversely, when disclosing the GHG information in SAM, can the highest-level owner disclose GHG for multiple subsidiary business lines?

5. Flexibility of GHG Disclosure Submission

ADI supports the Civil Agency Acquisition Council (CAAC's) objective to mitigate risks associated with the intensifying impacts of climate change while also enhancing U.S. competitiveness and economic growth, promoting environmental justice, and creating well-paying job opportunities for American workers. To achieve the aforementioned goal, ADI recommends the final rule allow flexibility of GHG disclosure submission, including allowing entities to submit emissions disclosures that have been submitted for compliance to other similar federal regulatory requirements. ADI also recommends the CAAC continue to maintain optionality of reporting disclosure by allowing contractors to disclose GHG on a public website. To comply with this proposed rule, entities can provide the website address for the company's GHG disclosure information in their proposal in response to the government's request for proposal, under the heading "GHG Disclosure" in lieu of disclosing the information via SAM.

Conclusion

The breadth of this proposed GHG reporting and disclosure rule has the potential to substantially increase compliance costs for most Federal contractors. ADI appreciates the opportunity to provide comments on this purposed rule. For the reasons discussed above, ADI respectfully urges DoD, GSA, and NASA to revisit several major elements of the proposed rule as reflected in the comments and recommendations provided in this letter.

Sincerely,

The Alliance for Digital Innovation