

February 13, 2023

Mr. William F. Clark
Director, Office of Government-wide Acquisition Policy
Regulatory Secretariat Division
U.S. General Services Administration
1800 F Street N.W.
Washington, D.C. 20405

Submitted to the Federal eRulemaking Portal, www.regulations.gov

Re: Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 87 Fed. Reg. 68,312 (Nov. 14, 2022); FAR Case 2021-015

Dear Mr. Clark:

The National Rural Electric Cooperative Association (NRECA) respectfully submits these comments in response to the Federal Acquisition Regulatory (FAR) Council's Notice of Proposed Rulemaking regarding Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk.¹ NRECA appreciates the opportunity to provide comment on potential changes the FAR Council is considering. NRECA is concerned the proposal would adversely affect electric cooperatives that serve the federal government and requests its withdrawal for the reasons discussed below.

NRECA and Its Electric Cooperative Members

NRECA is the national trade association representing nearly 900 electric cooperatives that are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives deliver power to 42 million people and serve 92 percent of the nation's persistent poverty counties. NRECA members include 63 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. Cooperatives also serve more than 100 military or other federal facilities in 41 states and own, operate, and maintain the electric distribution grid at 33 military installations through Utility Privatization (UP) contracts. Virtually all cooperatives are small entities for the purposes of federal procurement and already face challenges securing government contracts because of their size.

Electric cooperatives operate at cost and without a profit incentive. Cooperatives do not have stockholders, and all costs are borne by the local cooperative consumer members. Therefore, cost-effective federal regulations and policies that minimize unnecessary burdens are important to cooperatives' ability to provide affordable and reliable electricity to their members. This proposal would increase the cost of providing

¹ 87 Fed. Reg. 68,312 (November 14, 2022).

service to the federal government without sufficient benefit. Some cooperatives may simply decide to let existing contracts expire and forego future contracting opportunities with the federal government.

The FAR Council's Proposal Would Establish Costly Burdens for Cooperatives Serving Federal Facilities, is Beyond Its Authority, and Undermines the Intent of Federal Procurement Laws

The FAR Council's proposal would require contractors with contracts of \$7.5 million or more (significant contractors) to inventory their Scope 1 and Scope 2 greenhouse gas emissions (emissions controlled and owned by the contractor and those associated with generation of electricity provided by a third party, respectively). It would also require contractors to develop an annual climate disclosure to be made available on a publicly accessible website. Further requirements are imposed on contracts of \$50 million or more (major contractors), including accounting for the emissions from third parties and the development of a target for reducing emissions.

NRECA anticipates its affected members would qualify as significant, rather than major, contractors. Still, the burdens associated with being a significant contractor will pose substantial challenges to those cooperatives. Most covered cooperatives are distribution cooperatives that have a relatively small number of employees and little expertise in accounting for the emissions described in the proposed rule. Accordingly, the proposed rule would add significant costs to contracting opportunities. Many cooperatives would likely choose to forego future contracting opportunities. Those that choose to stay as federal contractors would pass along their costs to the federal government. Since these costs will likely be disproportionately larger for cooperatives than larger federal contractors, their ability to compete would be diminished.

In addition to these concerns, the proposed rule has other major flaws. Current federal procurement laws do not grant the FAR Council the authority to require the type of disclosures and other mandates associated with rule, as other comments in the docket have thoroughly explained. The proposed rule's requirements would also increase the cost of procurement for the federal government, which runs counter to the procurement system's goal of low-cost, efficient service acquisition.

Conclusion

NRECA encourages the FAR Council to withdraw the proposal as it would saddle cooperatives serving federal facilities with expensive new requirements and reduce their ability to compete for federal contracts. NRECA appreciates the opportunity to comment on the FAR Council's proposed rule. Should you have any questions, please contact me at dan.bosch@nreca.coop or (703) 907-5861.

Sincerely,



Dan Bosch
Regulatory Affairs Director