



May 11, 2016

General Services Administration
Regulatory Secretariat Division (MVCB)
Attn: Ms. Hada Flowers
1800 F Street, N.W.
Washington, D.C. 20405

Subject: IC 3090-0235, Federal Supply Schedule Pricing Disclosures

Dear Ms. Flowers:

Thank you for the opportunity to provide comments in response to GSA's second notice of request for comments on the information collection requirements of Federal Supply Schedule (FSS) Pricing Disclosures published on April 11, 2016.

The Coalition for Government Procurement ("The Coalition") is a non-profit association of firms selling commercial services and products to the Federal Government. Our members collectively account for approximately 70% of the sales generated through the GSA Multiple Award Schedules (MAS) program and about half of the commercial item solutions purchased annually by the Federal Government. Coalition members include small, medium, and large business concerns. The Coalition is proud to have worked with Government officials for more than 35 years towards the mutual goal of common sense acquisition.

The Coalition appreciates GSA's inclusion of Commercial Sales Practice (CSP) disclosures in addition to the Price Reduction Clause (PRC) as part of the information collection burden for MAS contractors. The Coalition also appreciates the increases in GSA's PRC burden estimates since 2012 based on industry's feedback. GSA's acknowledgement of the extensive compliance burden of the PRC and CSP is a positive step towards increasing transparency in the public-private sector dialogue on pricing and data disclosures under the FSS program. While the Coalition appreciates GSA's efforts in this regard, we believe that the PRC and CSP information collection burdens continue

to be understated. These comments are intended to provide GSA with an explanation as to why we believe that the burden estimates should be increased.

Our comments in response to the notice primarily focus on GSA's requests for additional information regarding:

- I. Whether this information collection is necessary and of practical utility
- II. The information collection burden on small businesses
- III. Estimates of the upfront work contractors do to prepare a pre-award CSP
- IV. Whether or not PRC monitoring takes place outside of a compliance system
- V. Whether a compliance burden should be allocated over the full 20 year life of a contract or over a smaller period of time

I. Necessity and Practical Utility of the Information Collection

The Federal Register notice invites comments on whether the information collection is necessary and whether it will have practical utility. The CSP format and PRC require GSA schedule contractors to disclose voluminous amounts of commercial information in order to comply with the solicitation and contract provisions. GSA states that the disclosures are a means for GSA to meet its statutory obligation, which requires that FSS ordering procedures result in the lowest overall cost alternative to meet the needs of the Federal Government. GSA states that it is exploring alternatives to the CSP and PRC disclosures.

The Coalition believes that the CSP and PRC information collections are not necessary and limit the ability of innovative commercial companies to participate in the Multiple Award Schedule program. We urge GSA to use its authority to explore alternatives to implement procedures that deliver best value solutions to federal customers without unduly burdening government contractors. Too often it appears that GSA takes a restrictive view of its statutory authority for the program. GSA's authority to craft alternatives is in fact broad.

The MAS program operates pursuant to a separate authorizing statute that provides the GSA Administrator with the management authority for the program. The Competition in Contracting Act (CICA) defines "competitive" procedures to include the MAS so long as (1) participation in the program is open to all responsible sources, and (2) orders and contracts under the MAS procedures result in the lowest cost alternative to meet the government's needs. See 10 U.S.C 2302(2)(C); 41 U.S.C. 152(3).

This language is powerful. Changes need not be limited to ordering procedures. The statute vests GSA with authority to establish separate and distinct streamlined policies and procedures for the MAS program. And, the MAS program will be deemed a competitive procedure under CICA so long as the two conditions are met. In plain language, GSA has the authority to update the MAS policies and procedures to increase efficiency, enhance competition, further access commercial innovation, and achieve cost effective, best value solutions for customer agencies.

The Coalition has recently recommended two changes that would offer best value solutions to federal customers, without relying on the extensive disclosure of the CSP and the subsequent reporting and monitoring required by the PRC. First, GSA should consider a “Comprehensive, Competitive Services Schedule (CCSS)” for high tech products and professional services. This acquisition vehicle would focus on pricing at the task order stage. Upfront pricing disclosure could be minimized and the PRC could be eliminated. See Attachment 1.

Secondly, GSA should consider developing an internal government capability to obtain information needed to support the acquisition function. GSA’s new Technology Transformation Service (TTS) provides an ideal opportunity to launch such an effort. A TTS-led “Transactional Data Transformation Project” (TDTP) could focus on the transactional data elements that management believes may assist in improving acquisition planning, underlying requirements development, and contract pricing. The project could accelerate the government’s effort to organize and understand the data it already possesses to improve decision-making in many areas, including contract pricing. Importantly, these objectives could be obtained without imposing onerous, cost-intensive, non-commercial barriers to market participation on businesses of all sizes. See Attachment 2.

We urge GSA to consider these alternatives rather than continuing the costly information collections required by the CSP and PRC.

II. Small Business Burden of FSS Pricing Disclosures

The PRC and CSP create an immense burden for small business contractors. Again, the PRC and CSP have little practical utility for ensuring price reasonableness, but they still present a significant burden for contractor compliance. Small businesses in particular face a heavy compliance burden, but do not possess the resources that larger

contractors have to ensure compliance. As the Coalition stated in previous comments small businesses may not have the resources to invest in training, personnel and/or advanced electronic systems to track pricing or sophisticated sales practices, which makes compliance with the rules even more challenging. For these reasons, we believe that there are many small businesses that fall in GSA's "higher lift" category despite their FSS sales or number of contracts compared to larger businesses.

The PRC and CSP are a particular barrier to entry to the Schedules program for small, innovative firms. Among those firms already in the Federal market, small businesses face a heavy burden complying with the PRC and submitting CSP disclosures. In order for GSA to achieve its vision of "Making it Easier" for suppliers to do business with the government through the FSS program, these barriers must be reduced.

III. Contractor Preparation of a Pre-award CSP

The pre-award CSP disclosure estimates in the information collection notice are highly understated. GSA's current estimates of the time burden for contractors to prepare a pre-award CSP are based on the estimated time it takes contracting officers to review the CSPs—41.48 hours for "heavier lift" contractors and 32.41 hours for "lighter lift" contractors. The Coalition strongly disagrees with the assumption that the time it takes for a contracting officer to review a submitted CSP is equivalent to the time it takes for a contractor to prepare one.

As addressed in the Coalition's previous comments, GSA's estimates do not account for the work that contractors do to prepare a CSP before it is presented to a GSA contracting officer. Such tasks include for example, collecting data, analyzing sales from the previous year and identifying sales practices appropriate to the CSP. The contractor must conduct due diligence on all of its commercial practices consisting of different types of customers, discounts, deviations, and terms and conditions, for all proposed and awarded product and service offerings. The corporate team may include personnel from both its commercial and federal organizations, and outside consultants and/or attorneys. This team generally reviews individual sales agreements and associated invoices, and evaluates the pricing offered. Due to the risk involved for the contractor, multiple levels of leadership as well as legal counsel may review the CSP prior to submission to GSA.

Disclosure issues are even more complex for companies with decentralized pricing structures. The current CSP format is not conducive to the disclosure of some current

business models. Contractors often have to create separate CSP attachments to fully disclose and describe their commercial pricing structures. A Coalition member offering products estimated that in an effort to provide full transparency it took over 1,000 hours to best describe their pricing practices. A member offering services estimated that it took approximately 1,400 hours to complete a CSP.

Services firms that do not maintain standardized price lists often conduct detailed analysis on pricing patterns in order to make accurate disclosures. These firms may seek additional outside training and/or hire consultants to facilitate an accurate and complete CSP disclosure. Further, in some cases because of a lack of standard practices or where the federal government is their primary customer, a prospective FSS contractor may develop prices based upon their DCMA audited cost estimating systems. Translating “cost-build” pricing business practices into the language of GSA Schedule CSP disclosures is complex and time consuming. The “heavier lift” estimates for pre-award CSP disclosures should reflect the burdens for these companies as well. Finally, pre-award CSP disclosures for the Professional Services Schedule will be extremely complicated given that 7 Schedules have been merged into 1. A higher lift contractor reported that in this case, CSP preparation could take 400 to 800 hours.

As GSA found in its own survey of its FSS contracting officers, there is variance in the time that contractors estimate that it takes to complete pre-award CSPs (depending on the unique characteristics of their commercial business). However, Coalition members who provided feedback on the information collection notice *universally* reported that GSA’s estimates of the time required to conduct pre-award CSP disclosures were highly underestimated. The Coalition recommends that the pre-award CSP disclosure estimates be increased to reflect the public comments received.

IV. PRC Monitoring Outside Electronic Compliance Systems

In the initial information collection notice published in November 2015, GSA calculated the total annual burden of the PRC based on the cumulative estimated time spent on PRC “training, compliance systems, and audits, as well as a burden associated with notifying GSA of price reductions within 15 calendar days after their occurrence.” The Coalition provided feedback on GSA’s initial total annual burden estimate for the PRC of 1,056,774 hours. In our January 2016 public comments, the Coalition explained that this estimate was grossly understated because it applied the *annual* PRC burden of 1,100 hours, from a PRC survey of our members, across the 20-year contract period. As

a result, GSA's estimate of the PRC burden totaled 55 hours annually for higher lift contractors, whereas again, it should be 1,100 hours annually. Using the 1,100 hours annual estimate, the total PRC compliance burden for the 20 year contract period would be 22,190 total burden hours (1,290 hours¹ to establish a compliance system in year 1 and 1,100 hours each year thereafter for PRC compliance activities). The Coalition recommends that GSA revise the PRC burden estimate accordingly.

The second information collection notice on FSS Pricing Disclosures includes a request for "additional comments on whether monitoring activities would take place outside of a compliance system." A compliance system in the notice is defined as:

A compliance system encompasses how a contractor maintains compliance with the PRC. Some contractors may invest in an electronic system that requires high upfront investments but automates ongoing monitoring, while others may opt to manually compare their GSA prices to other classes of customers.

GSA clarified that they were especially interested in comments on whether all monitoring activities would flow through that compliance system or whether there are separate monitoring activities that would occur in addition to what is handled with the compliance system.

Coalition members report that they conduct additional monitoring activities outside of GSA's described compliance system. For example, companies offering services often go well beyond the parameters of their electronic monitoring systems to ascertain necessary information. A compliance system may be able to provide a report on prices charged. However, because all individuals with the same title are not created equal, a great deal of manual effort goes into reviewing report data and reaching out for additional information. For example, these contractors may need to ascertain if the prices in the report are Government-Site or Contractor-Site. Further the contractor may need to conduct additional research regarding staff qualifications, terms and conditions, etc. Additionally, these contractors may have to review the Basis of Award team reported data, go through a certification process, provide periodic compliance reports to internal leadership and conduct annual IT system updates. Schedule contractors that offer products also report that they conduct additional monitoring outside of their compliance systems.

¹ 1,290 hours is the average annual estimate received in response to the Coalition's PRC Compliance Survey in 2012.

V. Whether a compliance burden should be allocated over the full 20 year life of a contract

An annual estimate of the information collection burdens of FSS pricing disclosures is sufficient from the Coalition's perspective. However, if annual estimates of time and cost burdens are allocated over the 20 year life of a FSS contract, these estimates should be multiplied by the number of contract years (versus divided, as was done in the November 2015 and April 2016 FSS Pricing Disclosures notices). This approach resulted in significantly understated estimates of the burdens associated with PRC compliance and CSP disclosures.

In future information collection notices, the Coalition suggests that GSA increase transparency by sharing additional formulas used to calculate FSS Pricing Disclosure burdens, such as the "compliance systems" burden. This information would help the public to provide more specific comments on the time and cost burdens of these activities.

The Coalition sincerely appreciates GSA's consideration of these comments on FSS Pricing Disclosures. If there are any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Waldron", with a long horizontal flourish extending to the right.

Roger Waldron
President

Attachment 1

FAR & Beyond Blog: How GSA can make it easier to deliver best value Services and Solutions through the Federal Supply Schedule (FSS) Program. (April 21, 2016)

The General Services Administration's (GSA's) Multiple Awards Schedule (MAS) program is positioned uniquely to provide streamlined government access to the commercial marketplace on behalf of customer agencies. By doing so, it enhances value for taxpayers and helps improve service to the citizen.

The MAS program operates pursuant to a separate authorizing statute that provides the GSA Administrator with the management authority for the program. In addition, the law expressly recognizes that it operates competitively. Specifically, the Competition in Contracting Act (CICA) defines "competitive procedures" as including MAS program procedures so long as (1) participation in the program is open to all responsible sources, and (2) orders and contracts under the MAS procedures result in the lowest overall cost alternative to meet the government's needs. Here is the CICA language: the term competitive procedures means procedures under which an executive agency enters into a contract pursuant to full and open competition. The term also includes — . . . (3) the procedures established by the Administrator of General Services for the multiple awards schedule program of the General Services Administration if — (A) participation in the program has been open to all responsible sources, and (B) orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government See 41 U.S.C. 152(3); cf. 10 U.S.C 2302(2)(C).

This language is powerful, if not visionary, because, under the aforementioned conditions, it vests GSA with the authority to establish separate and distinct policies and processes to manage the MAS program and promote streamlined acquisition. Citing this provision of CICA, the Government Accountability Office (GAO) affirmed that the procedures established for the award of schedule contracts, and orders under those contracts, satisfy these two statutory conditions. See *Affirmative Solutions, LLC*, B-402996, Sept. 8, 2010, 2010 CPD ¶ 212 at 1 (citing *Sales Res. Consultants, Inc.*, B-284943 et al., June 9, 2000, 2000 CPD ¶ 102 at 3.). Moreover, the Court of Federal Claims rejected the argument that the requirements of FAR Part 15 apply to the Schedule program. See *Cybertech Grp., Inc. v. United States*, 48 Fed. Cl. 638, 647 (2001) ("FSS procurements are not subject to the requirements of FAR Part 15 and . . . Part 8 [of the

FAR] governs agency acquisitions made pursuant to the FSS program.”) (citing *Ellsworth Assoc., Inc. v. United States*, 45 Fed. Cl. 388, 393-94 (1999)).

In plain language, GSA has the authority to update its MAS policies and procedures to increase efficiency, enhance competition, further access to commercial innovation, and achieve cost effective, best value solutions for customer agencies. Specifically, GSA can establish a new “Comprehensive, Competitive Services Schedule (CCSS)” for IT and professional services. Here’s how.

Under this new CCSS, GSA and offerors would negotiate basic agreements establishing key terms and conditions (e.g. the Industrial Funding Fee, the Commercial Supplier Agreement, small business subcontracting plans and other applicable commercial and/or government-unique terms) that would govern at the subsequent task order competition. The CCSS would allow for Other Direct Costs (ODCs) at the order level, consistent with FAR 52.212-4. Offerors would be required to post their hourly rates via GSA Advantage, and the Price Reduction Clause and the Commercial Sales Practices Format would be eliminated.

Entering into the agreement, itself, would be a condition for participating/competing at the task order level. Further, audits under this MAS would mirror standard commercial practice. Specifically, they could be performed focusing on task order performance of the service requirement.

Too often, as seen here, we in procurement appear to take a restrictive view of our authority. It is at moments, like these, that it might be useful to turn the guiding principles for the federal acquisition system set forth in the FAR. FAR 1.102 states:

The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

...

In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case

law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

The new CCSS will “make it easier” for customer agencies, GSA and commercial firms competing in the federal market place by streamlining the initial entry point to the MAS program. As a result, competition will be enhanced, transactional/administrative/compliance costs will be reduced, and access to commercial innovation and best value solutions will be increased.

It is not too hard to “make it easier;” in fact, GSA has taken this approach in the past, as evidenced by its exercise of authority for Blanket Purchase Agreements under the MAS program. The key tool in GSA’s toolbox is its statutory authority to manage the MAS program. The Coalition supports GSA’s use of this tool as the agency seeks to deliver best value to customer agencies and the American people.

Attachment 2

FAR & Beyond Blog: Job One for the New Technology Transformation Service: The Transactional Data Transformation Project (May 5, 2016)

This week, Administrator Denise Turner Roth announced the creation of a third service, the Technology Transformation Service (TTS), joining GSA's other two services, the Federal Acquisition Service (FAS) and the Public Building Service (PBS). The new service combines GSA's Office of Citizen Services and Innovative Technologies, the Presidential Innovation Fellows, and 18F.

According to Administrator Roth, the "new service will provide the foundation for our government's digital transformation and also partner with other agencies to assist them in their own attempts to transform. . . . Creating the Technology Transformation Service builds a great foundation for the federal government's modernization efforts." GSA sees the new service as an opportunity to "better deliver on our mission to provide the best value in real estate, acquisitions[,] and technology to government and the American people."

GSA's industry partners share GSA's goal of delivering best value in real estate, products, services, and solutions to government customers and the American people. Coalition members look forward to hearing more about TTS, in particular, its role in delivering best value to customer agencies, the metrics against which that value will be measured, as well as the organization's vision for engagement with commercial technology firms, its philosophy regarding technology standards, and commitment to commercial practices and market competition. It is only through such engagement and dialogue between GSA, TTS, and industry that we can work together effectively and efficiently in delivering best value to customer agencies and the American people.

To this end, the critical first priority for the TTS in supporting digital modernization government-wide should be a comprehensive data management modernization that facilitates the efforts of customer agencies to aggregate, manage, and analyze internally their respective transactional data. A TTS-led "Transactional Data Transformation Project" (TDTP) first could focus on the transactional data elements that management believes may assist in improving acquisition planning and underlying requirements development. Aside from accelerating the government's effort to organize and understand the data it already possesses to improve decision-making, internally identifying, compiling, and managing each agency's transactional

data will assist the government's implementation of Category Management without imposing on businesses of all sizes onerous, cost-intensive, non-commercial barriers to market participation.

The TDTP has the potential to be an investment in good government for all and is worthy of exploration. Coalition members look forward to a dialogue on this fundamental digital modernization opportunity for GSA, OMB, customer agencies, industry, and the American people.