



April 3, 2013

Houston Taylor
Assistant Commissioner, Office of Acquisition Management
Federal Acquisition Service
General Services Administration
2200 Crystal Drive
Arlington, VA

Dear Houston:

In the interest of promoting economic growth, achieving costs savings, and fostering competition, The Coalition for Government Procurement requests a waiver of application of the Price Reduction Clause (PRC) in all Multiple Award Schedule (MAS) contracts. We make this request in light of GSA's 2012 waiver of the PRC in connection with a major Air Force procurement for office furniture. See Attachment 1. It is apparent from the record of the furniture procurement that the Air Force requested a waiver in order to promote full and open competition for its requirements. GSA granted the waiver which provided the Air Force with the competitive environment necessary to conduct a procurement that essentially duplicates GSA Schedule 71.

The Coalition for Government Procurement 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 General Services Administration (GSA) Multiple Award Schedules and Government-wide Acquisition Contracts programs. Our membership is also responsible for about half of the commercial item solutions purchased annually by the federal government. Coalition members include small, medium and large business concerns located throughout the country that provide a significant number of jobs in the U.S. economy.

Air Force Furniture Procurement

The Air Force's Enterprise Sourcing Group used a two-tier strategy for the acquisition of office furniture that created a significant risk to some MAS contractors regarding compliance with the PRC. As you know, under the Air Force's acquisition strategy MAS contractors (manufacturers) are to be awarded first-tier IDIQ contracts. Their first-tier contractors are then required to provide pricing to second-tier small business contractors for subsequent competitions at over 70 Air Force installations nationwide. As a result, the pricing provided from the first tier contractors to the second tier small business contractors could trigger a price reduction under the terms of the applicable PRC. As such, MAS contractors (manufacturers) could be restricted by the terms of the PRC clause from competing for the first-tier IDIQ contracts. Prior to the receipt of proposals for the Air Force procurement a furniture schedule contractor filed a protest at the Government Accountability Office (GAO). See Attachment 2. Significantly, the protest raised the PRC's relationship to the Air Force two-tiered acquisition procurement as restricting the ability of the protester to compete for the first-tier IDIQ contracts. After filing of the protest, GSA issued

a September 7, 2012, memorandum to all GSA contractors on Schedule 71 waiving the PRC. The GSA memorandum states in part:

GSA recognizes that under the Enterprise Sourcing Group, there is the potential for some GSA contractors to trigger the Price Reduction Clause 552.238-75 of their Schedule 71 Multiple Award Schedule (MAS) contract. Therefore, solely for the purposes of the Enterprise Sourcing Group's solicitation, FA8057-12-R-0001, GSA will forbear enforcement of the Price Reduction Clause at 552.238-75, if the affected MAS vendor has requested and been granted a contract modification concerning its participation in an Air Force contract resulting from this solicitation.

See Attachment 1.

This waiver is a significant policy statement by GSA. GSA waived the PRC, apparently at the Air Force's request, in an effort to ensure the full benefits of competition for a customer agency. As validated by the waiver, the PRC restricts the ability of contractors to offer prices to commercial entities where the ultimate customer is the federal government. On this basis alone the PRC should be reformed to ensure customer agencies receive the full benefits of competition. However, beyond reform, there are compelling procurement and public policy reasons for immediately waiving the clause now for all MAS contractors. Moreover, reform of the PRC is consistent with Acting Administrator Tangherlini's new mission and priorities for GSA.

An Outdated, Costly Oversight Mechanism

The PRC is an outdated, costly oversight mechanism that increases costs for government and industry while restricting an MAS contractor's ability to compete in the federal and commercial marketplaces. The PRC concept dates back to the early 1980's. It reflects a time before the internet when the GSA MAS program was a mandatory source for all federal agencies and competition at the order level was limited. Today the MAS program is no longer mandatory. Task order competition for specific requirements is mandated by statute and regulation. See FAR Subpart 8.4 implementing section 863 of the 2009 National Defense Authorization Act. GSA's electronic tools (e-Buy, eLibrary) further promote task order competition and transparency for customer agencies. Simply put, the PRC is an impediment to the efficient, effective operation of the MAS program.

Moreover, the PRC increases transaction and overhead costs for the government and contractors. The government and contractors spend tens of millions of dollars a year negotiating, overseeing, reviewing and complying with the PRC. See Attachment 3. Contractors implement compliance infrastructures, including personnel and systems, to address compliance risk associated with the PRC. These costs are ultimately passed on in the form of higher prices. In turn the government maintains a costly infrastructure to oversee and review compliance with the PRC. The continuing irony is that prices paid by the government are driven by task order competition for specific requirements rather than the PRC.

Restrictions on Competition and Business Opportunities

The PRC also unduly restricts competition in the marketplace. Because a price reduction on a single completely unrelated commercial transaction may trigger a price reduction that could be effective for up to 20 years, contractors are restricted from effectively competing in the commercial marketplace. Indeed, the ultimate confirmation of the anti-competitive impact of the PRC is GSA's recent waiver of the PRC clause at the apparent request of the Air Force in order to increase competition for a series of Air Force furniture procurements. In this situation, the PRC essentially restricted MAS furniture contractors from competing for the Air Force furniture requirements. At the request of the Air Force, GSA waived the applicability of the clause to commercial transactions related to the Air Force's furniture procurement.

GSA's actions make clear the anti-competitive impact of the clause. In essence, the PRC requires a prudent MAS contractor to create a compliance infrastructure designed to restrict its ability to compete in the marketplace. This is counterproductive, challenging and costly dynamic for businesses of all sizes but can have an especially negative impact on small businesses competing in the federal and commercial markets.

Rather than investing in compliance programs that restrict competition as required by the PRC, MAS contractors should be empowered to focus on investments to enhance their competitiveness in the federal marketplace. Eliminating the PRC would empower contractors to focus even more resources on improving performance and delivery outcomes for the American taxpayer. It would also result in more efficient and productive jobs; not jobs that focus on after the fact, oversight and review of irrelevant compliance requirements.

Significant Procurement and Public Policy Questions

The PRC impacts the MAS contractor's ability to enter into commercial agreements and, as demonstrated by the Air Force experience, can impact the ability of an agency to get a more favorable price. Here, the waiver was granted for purposes of a single agency's separate open market procurement.

The waiver raises a troubling double standard. The PRC was waived in order to provide FSS contractors with the ability to compete for certain federal work. However, the potential applicability of the PRC to all other competitive federal work as well as competitive commercial transactions remains, limiting competition and growth in the marketplace. Being able to fully compete for federal or commercial work means JOBS for American taxpayers. The waiver validated the PRC as an anti-competition, anti-growth provision. It also raises significant questions regarding the MAS audit process and the fairness for MAS contractors who have previously had to manage their contracts based on the limitations of the PRC.

The circumstances that resulted in GSA's waiver of the PRC for the Air Force generally apply to all MAS contractors. In the interest of an ensuring a robust, open, competitive and cost effective MAS program, we look forward to continuing the dialogue regarding fundamental reform of the MAS pricing policies.

We look forward to your response to the issues and questions raised in this correspondence.

Sincerely,

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

Roger Waldron
President

Cc: Joseph Neurauter, Senior Procurement Executive

Attachment 1



GSA Federal Acquisition Service

SEP 07 2012

MEMORANDUM TO ALL GSA CONTRACTORS ON SCHEDULE 71

FROM: JEFFREY A. KOSES *Jeffrey A. Koses*
DIRECTOR, OFFICE OF ACQUISITION OPERATIONS (QSA)
OFFICE OF GENERAL SUPPLIES AND SERVICES

SUBJECT: Price Reduction Clause 552.238-75 and Enterprise Sourcing
Group two tier strategy

GSA recognizes that under the Enterprise Sourcing Group, there is the potential for some GSA contractors to trigger the Price Reduction Clause 552.238-75 of their Schedule 71 Multiple Award Schedule (MAS) contract.

Therefore, solely for purposes of the Enterprise Sourcing Group's solicitation, FA8057-12-R-0001, GSA will forbear enforcement of the Price Reduction Clause at 552.238-75 if the affected MAS vendor has requested and been granted a contract modification concerning its participation in an Air Force contract resulting from this solicitation.

GSA MAS vendors participating in this particular Air Force solicitation and who believe that their GSA MAS contract will be impacted by sales to certain customers under an Air Force contract resulting from the solicitation should contact Ms. Helen Zivkoviche at 703-605-9293 or helen.zivkoviche@gsa.gov to discuss the appropriate language to be included in the vendor's Schedule contract modification request concerning forbearance of enforcement of the Price Reduction Clause and to coordinate timely collaboration to ensure that the contract modification is executed in a timely manner.

This one-time PRC forbearance is available for this unique procurement circumstance and will not affect any other sales to the category of customer that formed the basis of award of the MAS contract. This forbearance will not apply to schedule contractors who do not have a properly executed contract modification under their schedule contract.

U.S. General Services Administration
2200 Crystal Drive
Arlington, VA 20408-0008
www.gsa.gov

Attachment 2



Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Herman Miller, Inc.

File: B-407028

Date: October 19, 2012

Robert J. Conlan, Esq., Mathew H. Solomson, Esq., and Kyle J. Fiet, Esq., Sidley Austin LLP, for the protester.

Col. Mark S. Teskey, Behn M. Kelly, Esq., and Michaelisa Tomasic-Lander, Esq., Department of the Air Force, and Kacie A. Haberty, Esq., General Services Administration, for the agencies.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A solicitation with a two-tiered acquisition approach, under which manufacturers would receive contracts that include not-to-exceed prices for furniture systems and dealers would receive separate contracts for installation of the systems at prices not exceeding the manufacturers' prices, provided sufficient information to allow manufacturers to intelligently compete on an equal basis and does not place undue risk on the manufacturers.

2. GAO does not have jurisdiction to hear challenge to agency's selection of North American Industry Classification System (NAICS) code, nor jurisdiction to hear challenge that agency's two-tiered acquisition approach will preclude manufacturers' dealers from being considered small businesses under the Small Business Administration's regulations.

DECISION

Herman Miller, Inc., of Zeeland, Michigan, protests the terms of request for proposals (RFP) No. FA8057-12-R-0001, issued by the Department of the Air Force for systems and modular furniture. Herman Miller primarily challenges the solicitation's price evaluation scheme.

We deny the protest.

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BACKGROUND

The RFP, issued under the commercial acquisition procedures of Federal Acquisition Regulation (FAR) Part 12, provides for a two-tier acquisition process for acquiring systems and modular furniture for domestic Air Force installations. Under the first tier, the Air Force anticipates awarding four contracts with 5-year performance periods to furniture manufacturers on a lowest-price, technically acceptable basis. RFP at 22. The RFP provided five contract line items (CLIN) for annual program management reviews, and informed offerors that the contractors would receive \$1,000 for each CLIN.¹ RFP amend. 6, at 10; Contracting Officer's Statement at 44. Offerors were also required to provide not-to-exceed prices for furniture systems (and other related items) that the Air Force would later procure under separate contracts, under the second tier of the acquisition.

The second tier of the acquisition was set aside for small businesses, and identified North American Industry Classification System (NAICS) code 337215. Under this tier, small business dealers of the manufacturers that were awarded contracts under the first tier could compete for contracts for the installation of the systems and modular furniture.² To be considered for a second tier award, dealers must "honor the pricing, terms, and conditions established by the [respective] Tier I Manufacturer Contract." RFP at 77.

With respect to the evaluation of price under the first tier competition, the RFP provided a pricing matrix that identified systems and modular furniture for which offerors were to submit not-to-exceed prices. The RFP stated that an offeror's overall evaluated price would be the sum of its not-to-exceed furniture prices and the CLIN prices for the annual program management reviews. RFP amend. 6, at 17-20; RFP, attach. 10, Pricing Matrix.

Prior to the closing time for receipt of proposals, Herman Miller informed the Air Force that the firm was concerned that the agency's request for not-to-exceed prices from manufacturers in this two-tiered acquisition approach had implications with respect to the price reduction clauses contained in the manufacturers' General Services Administration (GSA) multiple award schedule contracts. See Protest at 19-22. The standard price reduction clause contained in GSA's multiple award contracts provides that, where a contractor offers price reductions to certain customers (basis of award customers), the contractor is required to offer the same price reductions to the government under that vendor's multiple award schedule

¹ The RFP also included CLINs for data reporting that were not to be priced.

² The agency estimates that purchase and installation of furniture under the second tier contracts will be [DELETED] million annually. Supp. Legal Memorandum, Sept. 14, 2012, at 21 n.21.

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contract for the same time period, as was provided to the basis of award customer. See General Services Acquisition Manual (GSAM) clause 552.238-75; see also GSA Legal Memorandum, Sept. 21, 2012, at 2. The Air Force responded that GSA was aware of the Air Force's two-tiered procurement scheme and had never indicated that the pricing scheme was "in any way inappropriate."³ See Protest at 21.

Herman Miller protested to our Office prior to the closing time for receipt of proposals. The Air Force received a number of proposals in response to the RFP, including Herman Miller's.

DISCUSSION

Price Reduction Clause

Herman Miller raises a number of challenges to the terms of the solicitation. First, the protester complains that the solicitation does not adequately inform manufacturers of the possible impact that the two-tiered acquisition may have on the firms' multiple award schedule contract pricing under the pricing reduction clause. Herman Miller contends that it and other firms will be unable to reasonably calculate not-to-exceed pricing for the systems and modular furniture. Protest at 23. In this regard, Herman Miller argues that the ambiguity with respect to the GSA price reduction clause and the agency's representations regarding the non-applicability of the clause would mislead offerors into offering "artificially low" prices that would be prejudicial to the protester. See Comments, Aug. 31, 2012, at 6, 7.

As a general rule, a procuring agency must give sufficient detail in a solicitation to enable offerors to compete intelligently and on a relatively equal basis. Richen Mgmt., LLC, B-406750, B-406850, Jul. 31, 2012, 2012 CPD ¶ 215 at 4; AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 13. Specifications must be free from ambiguity and describe the minimum needs of the procuring activity accurately. However there is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk for the contractor or that the procuring agency remove all uncertainty from the mind of every prospective offeror. American Contract Servs., Inc., B-256196.2, B-256196.3, June 2, 1994, 94-1 CPD ¶ 342 at 2.

³ In response to other requests about the impact of this clause, the Air Force also indicated that the price reduction clause was not implicated because the contractor was selling to a government agency. Protest at 20. The price reductions clause is not triggered for sales to government agencies. See GSAM clause 552.238-75(d)(2).

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Here, we find that the solicitation provides sufficiently detailed information to allow offerors to compete intelligently and on a relatively equal basis. In this regard, subsequent to Herman Miller's protest to our Office, GSA issued a memorandum stating that, solely for the purposes of this two-tiered procurement, GSA would "forbear" enforcement of the price reduction clause for vendors that request a contract modification from GSA.⁴ See GSA Memorandum, Sept. 7, 2012. The Air Force provided this memorandum to all offerors, and states that it will request revised proposals. Supp. Legal Memorandum, Sept. 14, 2012, at 11-12. Although Herman Miller continues to assert that there is an unacceptable level of risk associated with the application of the price reduction clause here that will potentially affect its pricing, this does not show that the solicitation poses unreasonable risk. Rather, this concerns Herman Miller's business judgment as to whether, and at what price, to propose in response to this RFP, considering what effect, if any, it believes its pricing may have on its obligations under its GSA contract. See Adams Magnetic Prods., Inc., B-256041, May 3, 1994, 94-1 CPD ¶ 293 at 3 n.2.

Meaningful Consideration of Price

The protester also complains that the RFP fails to provide for meaningful consideration of price in the award of the first tier contracts, because the price evaluation is based upon not-to-exceed furniture prices where furniture is not being procured under the first tier contracts. In this regard, Herman Miller states that the RFP does not provide for meaningful consideration of offerors' prices for the annual program management reviews and data reporting that is being procured under these contracts.

Agencies must consider price or cost to the government in evaluating competitive proposals. 10 U.S.C. § 2305(a)(3)(ii) (2006). While it is up to the agency to decide upon some appropriate, reasonable method for proposal evaluation, an agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. CW Gov't Travel, Inc.-Recon.; CW Gov't Travel, Inc., et al., B-295530.2 et al., July 25, 2005, 2005 CPD ¶ 139 at 4; Health Servs. Int'l, Inc.; Apex Env't'l, Inc., B-247433, B-247433.2, June 5, 1992, 92-1 CPD ¶ 493 at 3-4.

We find that the solicitation does provide for meaningful consideration of price. Contrary to Herman Miller's arguments, the first tier contracts will be for more than obtaining annual program management reviews and data reporting. Rather, these contracts also provide for promised not-to-exceed prices that will be relied upon by

⁴ Herman Miller questions whether GSA will actually agree to modifications of the vendors' GSA contracts to allow for forbearances of the price reductions clause. The record provides no basis to question GSA's statement that it will modify affected contracts, where asked to do so.

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the manufacturer's dealers in the second tier competitions. Although Herman Miller contends that such an acquisition approach should not be permitted, it cites to no law or regulation violated by this approach. In this regard, the FAR expressly recognizes that "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." FAR § 1.102(d).

Small Business Issues

The protester also challenges the NAICS code identified for the procurement and contends that the relationship identified for manufacturers and dealers in the two-tiered acquisition will preclude dealers from being considered small businesses. Protest at 26. We, however, lack jurisdiction to hear challenges of selected NAICS codes, and to hear size-status challenges. 4 C.F.R. § 21.5(b)(1) (2012). With respect to the NAICS code selected by the Air Force, the Small Business Administration (SBA) is given exclusive authority to review challenges to an agency's choice of NAICS code. See FAR § 19.303(c); Expeditions Int'l Travel Agency, B 252510, June 28, 1993, 93-1 CPD ¶ 497 at 4. We also do not agree with Herman Miller that we must accept its protest challenging the NAICS code, because it lacks standing, as a large business, to file a NAICS code appeal at the SBA.

Further, we do not agree that we have jurisdiction to decide whether the Air Force's two-tiered acquisition implicates the affiliation rules of SBA's size status regulations. Although Herman Miller asserts that our Office has previously heard similar challenges, the decisions to which Herman Miller cites are inapposite. For example, Herman Miller cites our decision in Med-South, Inc., B-401214, May 20, 2009, 2009 CPD ¶ 112, for the proposition that we have jurisdiction to determine whether a procurement should be set aside for small businesses. Here, however, Herman Miller is not asserting that the second tier competition cannot be set aside

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for small business competition, but is arguing that the approach may be considered an affiliation by SBA. For the same reason as stated earlier, this contention is more appropriately reviewed by the SBA, than by our Office.

We deny the protest.⁵

Lynn H. Gibson
General Counsel

⁵ Herman Miller's initial protest also asserted that this procurement was "fundamentally at odds" with standard commercial practices. Protest at 13-18. Herman Miller states that it is not pursuing these arguments, and therefore withdrew this ground of protest in its comments. See Comments, Aug. 31, 2012, at 3 n.1.

Attachment 3



February 27, 2012

General Services Administration, Regulatory Secretariat (MVCB)
1275 First Street NE.
Washington, DC 20417
ATTN: Hada Flowers

Re: Information Collection 3090-0235, Price Reduction Clause

Ms. Flowers:

On behalf of The Coalition for Government Procurement, the following comments are provided in response to GSA's notice of request for comments on the information collection requirements of the GSAR Price Reductions Clause. The notice was published in the Federal Register on December 29, 2011.

The Coalition for Government Procurement ("The Coalition") is a non-profit association of approximately 300 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 over the past 30 years towards the mutual goal of common sense acquisition.

Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will submit to the Office of Management and Budget a request to review and approve an extension of a previously approved information collection requirement regarding the GSAR Price Reductions Clause. This collection of information is neither needed nor has practical utility in today's government procurement system. A continuation of the Price Reductions Clause (PRC) is impractical and unnecessary due to the competitive environment in the current acquisition market, new economic realities, and the significant reporting burden on contractors which lacks any real public benefit.

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As noted in Executive Order (EO) 13563, "Improving Regulation and Regulatory Review" published on January 18, 2011, our regulatory system is one that must "promote economic growth, innovation, competitiveness, and job creation... It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative." If there was ever an acquisition regulation that deserved a retrospective analysis and review under the EO, it would be the PRC. The PRC has outlived its perceived benefit and fails to achieve any of these overarching goals outlined in EO 13563.

I. PRC No Longer Has Practical Utility

The collection and monitoring of commercial transactions pursuant to the PRC has no practical utility under the current competitive framework governing MAS contracts and orders. Competition at the task and delivery order level essentially drives pricing for requirements under the modern MAS program. GSA has invested heavily in electronic tools (GSA Advantage! and eBuy) to enhance transparency and competition for orders and Blanket Purchase Agreements (BPAs) under the MAS program. These enhancements along with the new statutory and regulatory competition requirements for the MAS orders render the PRC a costly, outdated oversight mechanism that is no longer relevant.

On March 16, 2011, an interim rule was issued implementing Section 863 of the Duncan Hunter National Defense Authorization Act (NDAA) of FY 2009. Section 863 extends the competition requirements of Section 803 of the National Defense Authorization Act of 2002 government-wide. The interim rule amended Federal Acquisition Regulation (FAR) subpart 8.4 incorporating the new statutory competition requirements for orders exceeding the simplified acquisition threshold. The new FAR 8.4 establishes new enhanced competition requirements at the task/delivery order level. For orders exceeding the simplified acquisition threshold, the new regulations require ordering activities to provide notice and opportunity to compete to all MAS contractors capable of meeting the requirement. Alternatively, ordering activities can provide notice to less than all so long as they provide notice to as many as practicable to reasonably ensure receipt of at least three offerors. If notice is provided to less than all, the file must be documented demonstrating the ordering activity's efforts in identifying the contractors necessary to receive at least three offerors. The new FAR 8.4 ordering procedures also support competitive pricing by directing contracting officers to, at a minimum, conduct additional market research, review contracts, and seek price reductions for orders or Blanket Purchase Agreements exceeding \$150,000.

The efficiency and effectiveness of the MAS program's competitive, streamlined ordering process is supported by a robust set of competitive electronic tools (GSA Advantage!, GSA e-library, and E-buy). FAR 8.402(d)(1) provides that, for all orders exceeding the acquisition threshold of \$150,000, posting a Request for Quote (RFQ) on e-Buy meets the requirement of providing notice and an opportunity to compete to all schedule contractors offering the required products and services under the appropriate schedules. GSA Advantage!

Attachment 3

and GSA e-library also provide a powerful online market research tools for program managers and contracting officers by offering access to MAS contract pricing and contract terms and conditions for millions of services and products.

Given new competitive requirements of Section 863 and FAR 8.4, combined with GSA's robust e-tools that provide real time competitive pricing for Schedule items, the PRC is outdated and no longer plays a meaningful role in driving pricing and value under the MAS program.

II. The PRC Limits MAS Schedule Contractors in the Commercial Market

Not only is the PRC outdated procurement policy, it is anti-competitive economic policy. Through the PRC, the government effectively limits a company's ability to compete in the commercial marketplace. Simply put, the PRC restricts an MAS contractor's ability to offer lower pricing to certain commercial customers. Due to the constraints of the PRC, companies are either discouraged from providing discounts to commercial customers or they may choose not to participate in the government market. As a result, MAS contractors forgo competing for the private requirements to the extent the transaction impacts PRC compliance. The limitations of the PRC are magnified for small businesses. The PRC's impact on the commercial market has a negative impact on innovation and job creation. To the degree that the PRC limits competition in the private sector, growth and job creation are negatively impacted as well. MAS Schedule contractors are refraining from investing in jobs, new services and products that would normally accompany growth fueled by competition in the marketplace.

III. PRC Reporting Burden

GSA's notice of request for comments estimates that the annual reporting burden for the Price Reductions Clause is 9,000 hours. This is based on an estimated 4,500 number of respondents, 4,500 annual responses, and an average of 2 hours that each MAS Schedule contractor spends on an annual basis complying with the PRC. The number of respondents and the burden hours are significantly understated. Currently there are approximately 16,000 MAS contractors holding roughly 19,000 MAS contracts. In addition, the estimated 2 hours per response annual reporting burden identified in the notice is also significantly understated. As such, the total annual paperwork burden associated with the PRC is far greater than the 9,000 burden hours referenced in the public notice

As demonstrated by the summary of the responses to the Coalition's survey set forth below, the public notice grossly underestimates the number of hours that companies spend complying with the PRC each year. Based on our current sampling of 25 companies holding MAS contracts, it is clear that, on average, PRC compliance involves significantly more than 2 hours annually. MAS Contractors invest time and money for PRC training, monitoring, systems development, oversight, self-audits, and compliance plans and personnel.

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IV. Results of Contractor Survey

In response to GSA's notice of request for comments, the Coalition asked MAS Schedule contractors about the number of hours and costs involved in PRC compliance on an annual basis. The activities that these businesses commented on include training, systems development and monitoring, contract negotiations, and audit preparation. The following is an overview of the PRC's annual reporting burden as described by the 25 companies that responded. The Coalition is still receiving responses and requests an extension to provide updated estimates.

a. Training

MAS Schedule contractors were asked to estimate the number of hours and the costs involved in PRC training, as well as the number of employees involved. The companies indicated that they conduct internal PRC training for senior executives, the sales force, and compliance personnel. Costs include designing a training program, review by outside consultants, use of online training systems, tracking attendance and completion, and external training for some members of the company. The 25 companies that responded to the Coalition's inquiry spent an average of 80 to 90 hours on these PRC training activities on an annual basis per contractor with an average cost of approximately \$5,500 a year. Some contractors due to their size, indicated that they spent significantly more time than the average. Further, the respondents trained 110 employees on average, ranging from 2 to 500 employees each year.

b. Compliance Systems

In order to monitor compliance with the PRC, companies often need complex IT systems that connect with internal contracting systems and that provide information about potential PRC violations. Respondents indicated that monitoring can be done on a continuous basis or can be downloaded periodically, as on a weekly basis. The analysis may be automated or may require a manual review of contract and proposal documents. The average investment in compliance systems by the MAS Schedule respondents is over \$90,000 annually per contractor. The average number of hours invested in a one year period is more than 1,100 per contractor. In one instance, it was estimated that in the first year alone it took over 8,000 personnel hours to setup and monitor the new PRC compliance system—just short of the 9,000 Annual Reporting Burden hours that GSA estimated for *all* MAS Schedule contractors.

c. Negotiations

MAS Schedule respondents indicated that the costs associated with PRC compliance begin as they prepare an offer. Many factors must be considered in order to determine the Basis of Award customer and pricing relationships during the initial offer submission. Because the PRC affects all services and products on a contract and discount ratios may differ for each, preparing and analyzing the initial offer is a significant investment and may involve finance, business units, sales, and legal. The respondents indicated that they spent up to 1,700 hours on MAS Schedule contract negotiations at an average of 272 hours. The average cost of these negotiations was more than \$45,000 and was more for newly established contracts.

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d. Audits

MAS Schedule contractors spend a significant amount of time preparing for audits involving the PRC— GSA contractor assistance visits, pre-award and post-award audits. Companies may also conduct their own internal audits to assess contract compliance. Respondents estimated annual audit costs from \$2,500 to over \$2 million. The average annual investment in audits for responding companies was over \$100,000. The average number of hours spent preparing for audits involving the PRC was between 440 and 470 hours a year, which equates to approximately 2 months of full time work hours.

e. Total Annual Burden

Again, GSA's notice of request for comments estimates that the annual reporting burden for the PRC is 9,000 hours. In the Coalition's survey, companies were asked about the estimated total number of hours spent complying with the PRC on an annual basis and the associated cost. GSA's request for comments estimated that companies spend 2 hours a year complying with the PRC, while the respondents to the Coalition's survey indicated that they spent roughly 1,200 hours annually on PRC compliance. The average cost of these activities is between \$126,000 and \$135,000. As indicated by this sampling of small, medium, and large MAS Schedule contractors, the notice of request for comments far underestimates the regulatory burden of PRC compliance on commercial businesses.

Given that the PRC is based on an outmoded acquisition philosophy that is not relevant in today's MAS federal marketplace, the Coalition urges GSA to reconsider whether the immense reporting burden on commercial companies is still justifiable.

It would be our pleasure to meet with GSA's Office of Acquisition Policy to discuss this issue further. As we are continuing to get additional responses to our survey, the Coalition respectfully requests an extension to provide additional information on the burdens associated with PRC compliance. If you have any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Sincerely,



Roger Waldron
President

Attachment 3



April 16, 2012

General Services Administration, Regulatory Secretariat (MVCB)
1275 First Street NE
Washington, DC 20417
ATTN: Hada Flowers

Re: Information Collection 3090-0235, Price Reduction Clause

Ms. Flowers:

Thank you for the opportunity to provide additional comments on GSA's notice of request for comments on the information collection requirements of the GSAR Price Reductions Clause. An extension to the original notice was published in the Federal Register on March 15, 2012.

The Coalition for Government Procurement ("The Coalition") is a non-profit association of approximately 300 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 over the past 30 years towards the mutual goal of common sense acquisition.

Under the provisions of the Paperwork Reduction Act, the GSA Regulatory Secretariat will submit to the Office of Management and Budget a request to review and approve an

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extension of the previously approved information collection requirement regarding the GSAR Price Reductions Clause. As described in our previous comments submitted February 27, 2012, it is clear that the Price Reductions Clause (PRC) is impractical and unnecessary based on the competitive environment in the current acquisition market, new economic realities, and the significant reporting burden on contractors which lacks any real public benefit.

In the Coalition's original PRC comments, we shared a summary of the results received in response to a survey of members on the burdens of PRC compliance. The Coalition asked MAS Schedule contractors about the number of hours and costs involved in PRC compliance on an annual basis. The notice estimated that MAS Schedule contractors spend an average of 2 hours annually complying with the PRC. However, the 25 respondents indicated that they spent roughly 1,200 hours annually on PRC compliance. Attachment 1 shows the responses received from 17 of these MAS Schedule contractors that agreed to provide this information anonymously.

The responses to the Coalition's survey also demonstrate the huge cost burden associated with PRC compliance for MAS contract holders. Large, medium, and small firms were asked about the investments involved in monitoring PRC compliance. Based on a review of the responses to the Coalition's survey, the average total cost of these activities is between \$126,000 and \$135,000 on annual basis, which inevitably impacts service and product pricing available to Federal agency customers and is ultimately paid by the American taxpayer. In addition, the PRC has a chilling impact on competition in the commercial market place. Prudent MAS contractors must always consider the impact of a commercial transaction in relation to PRC compliance. As a result, competitive flexibility is lost, limiting the ability of MAS contractors to compete in the commercial market place.

The collection and monitoring of commercial transactions pursuant to the PRC has no practical utility under the current competitive framework governing MAS contracts and orders. Statutory and regulatory competition requirements at the task and delivery order level essentially drive pricing for orders under the modern MAS program. GSA has also invested heavily in electronic tools (GSA Advantage! and eBuy) to enhance transparency and competition for orders and Blanket Purchase Agreements (BPAs) under the MAS program. These enhancements along with the statutory and regulatory competition requirements for

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MAS orders under Section 863 and FAR 8.4 render the PRC a costly and outdated oversight mechanism that is no longer relevant.

In the current acquisition environment, the burden of the PRC far outweighs any benefit. Rather than requiring contractors to conduct PRC reporting, it would be more efficient and effective to continue encouraging robust competition at the task order level. A fundamental first step in restoring balance to MAS contracts, recognizing the central role competition and price reductions at the task order now play driving pricing under the MAS program, would be to lower the maximum order threshold (MOT) to \$150,000. This change would recognize the statutory requirement for competition above the MOT and would eliminate the burdensome paperwork and oversight of by MAS contractors for all commercial transactions over \$150,000. This simple step will reduce costly paperwork burdens on MAS contractors while maintaining the competition requirements for MAS orders exceeding \$150,000. After this initial step, GSA should further review the practical utility of the PRC and work towards elimination of the clause.

Again, it would be our pleasure to meet with GSA's Office of Acquisition Policy to discuss this issue further. If you have 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

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Yorktown Financial Holdings, Inc.*, Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of CNBO Bancorp, Inc., and thereby indirectly acquire Century Bank of Oklahoma, both in Pryor, Oklahoma.

In connection with this application, Applicant also has applied to acquire Century Home Mortgage of Oklahoma, LLC, Tulsa, Oklahoma, and thereby indirectly engage in mortgage lending activities, pursuant to section 225.28(b)(1).

Board of Governors of the Federal Reserve System, September 17, 2012.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2012-23200 Filed 9-19-12; 8:45 am]

BILLING CODE 8210-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0235; Docket No.2011-0016; Sequence 10]

General Services Administration Acquisition Regulation; Submission for OMB Review; Price Reductions Clause

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the GSAR Price Reductions Clause. A notice was published in the *Federal Register* at 76 FR 89141, on December 29, 2011. One respondent submitted comments.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: October 22, 2012.

ADDRESSES: Submit comments identified by Information Collection 3090-0235, Price Reduction Clause, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0235, Price Reduction Clause". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0235, Price Reduction Clause" on your attached document.

- *Fax:* 202-501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090-0235, Price Reduction Clause.

Instructions: Please submit comments only and cite Information Collection 3090-0235, Price Reduction Clause, in

all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, General Services Acquisition Policy Division, GSA, (202) 357-9652 or email Dana.Munson@gsa.gov.

SUPPLEMENTARY INFORMATION:**A. Purpose**

The clause at GSAR 552.238-75, Price Reductions, used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated. The reason for the burden increase is based on the results of comments received.

B. Discussion and Analysis

The Coalition for Government Procurement provided comments on behalf of its members. The comments are insightful and provide a foundation on which to counter-estimate annual burden hours.

The comments provided included an analysis of the practical utility of the Price Reductions Clause (PRC); the perceived limitations placed on MAS contractors in the commercial market due to the PRC; an estimate of the PRC reporting burden; and the results of the Coalition survey issued to its members on the burden hours of training, compliance systems, contract negotiations, and audit preparation.

GSA appreciates the comments provided and agrees that the reporting burden was underestimated. The PRC is included in the retrospective analysis and review under Executive Order 13563, as part of GSA's modernization effort.

Using the results of the contractor survey conducted by the Coalition relative to the burden hours associated with collection of information on the PRC, GSA has reevaluated and revised the total annual burden. An analysis of the evaluation is as follows:

Training—GSA believes that costs and hours allocated to training have a direct link to the size, business structure and product offerings of the company. Further, the investment of hours for design and development of a training program far exceed those aligned with conducting the training itself. We estimate that training activity for design and development of this type of training can be accomplished in approximately 80 hours, with an additional 5 hours to

administer the training on an annual basis. The estimated burden hours for developing and design of training are:

Number of Respondents: 16,000.

Responses per Respondent: 1.

Total Annual Responses: 16,000.

Average Burden Hours per Response: 4 (80 hours/20 yrs).

Total Burden Hours: 64,000.

The estimated burden hours to administer training:

Number of Respondents: 16,000.

Responses per Respondent: 1.

Total Annual Responses: 16,000.

Average Burden Hours per Response: 5.

Total Burden Hours: 80,000.

Compliance systems—Reduced expenditures should occur after the initial investment. The average dollar investment and the number of hours invested to set-up and monitor a compliance system will vary per vendor based on offerings, basis of award, participation in government or commercial marketplace, and the company's business structure. As a result, compliance system burden hours are broken down to address the diverse MAS vendor base. We estimate approximately 20% of the 16,000 MAS vendors have all invested more heavily in the federal marketplace and therefore may require more burden hours to set up and monitor PRC compliance. The remaining estimated 80% have fewer offerings and less complex business structures resulting in reduced burden hours to setup and monitor compliance. Additionally, compliance systems are used to monitor other requirements in addition to the PRC. Therefore, the average number of hours invested to set up and monitor the system, as well as the cost of the system must be distributed over a larger base than just the PRC.

The estimated burden hours for vendors with heavier investments in the federal marketplace are as follows:

Number of Respondents: 3,200 (20% of 16,000).

Responses per Respondent: 1.

Total Annual Responses: 3,200.

Average Burden Hours per Response: 55 hours (1100 hrs/20 yrs).

Total Burden Hours: 176,000.

The estimated burden hours for vendors with less heavy investments in the federal marketplace are as follows:

Number of Respondents: 12,800 (80% of 16,000).

Responses per Respondent: 1.

Total Annual Responses: 12,800.

Average Burden Hours per Response: 30 hours (600 hrs/20 yrs).

Total Burden Hours: 384,000.

Negotiations—The PRC is one of many areas negotiated with MAS

contractors. We attribute pricing data to constitute over 1/2 of the negotiations, with administrative and technical data comprising the remainder. Based on industry experience, it is estimated that no more than 140 hours are expended on PRC negotiations. Thus, the estimated 272 hours is reduced to 140 hours over 20-year lifespan of the contract (140hrs/20) to an annual burden hours of 7.

Number of Respondents: 19,000.

Responses per Respondent: 1.

Total Annual Responses: 19,000.

Average Burden Hours per Response: 7 (140 hrs/20 yrs).

Total Burden Hours: 133,000.

Audits—Over the past three years (FY10, FY11, FY12) an average of 70 FSS contracts were audited by the IG each year. The respondent estimated that approximately 440–470 hours were spent preparing for audits involving the PRC. Thus, GSA took the average of the respondent's estimate (445) and multiplied it by 70, which is the consistent number of contracts audited during the last three fiscal years, to reach the sum of 31,150 hours expended preparing for audits.

Number of Respondents: 70.

Responses per Respondent: 1.

Total Annual Responses: 70.

Average Burden Hours per Response: 445.

Total Burden Hours: 31,150.

C. Annual Reporting Burden

Number of Respondents: 19,000.

Responses per Respondent: 1.

Total Annual Responses: 19,000.

Average Burden Hours per Response: 45.7 hours.

Total Burden Hours: 868,150.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501-4755. Please cite OMB Control No. 3090-0235, Price Reductions Clause, in all correspondence.

Dated: September 14, 2012.

Joseph A. Neurauter,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2012-23137 Filed 9-19-12; 8:45 am]

BILLING CODE 8820-61-P

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will meet on Monday,

October 15, 2012 through Thursday, October 18, 2012, in Arlington Virginia. The sessions will take place from 8 a.m. to 5:30 p.m. on Monday through Thursday. The meeting will be held at the Doubletree Hotel Crystal City, located at 300 Army Navy Drive, Arlington, VA. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The sleeping rooms available at the Doubletree Hotel will be at the Government rate of \$ 226.00 (plus applicable state and local taxes, currently 10%) a night for a single or double. The Doubletree is in compliance with the requirements of Title III of the Americans with Disabilities Act and meets all Fire Safety Act regulations.

Davita Vance-Cooks,

Acting Public Printer of the United States.

[FR Doc. 2012-23015 Filed 9-19-12; 8:45 am]

BILLING CODE 1520-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).
ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from Clarksville Modification Center, Ft. Campbell, in Clarksville, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On August 23, 2012, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Clarksville Modification Center, Fort Campbell, in Clarksville, Tennessee, from August 1, 1949, through December 31, 1967, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on September 22, 2012, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the