



July 29, 2019

Jeffrey Koses
Senior Procurement Executive
General Services Administration
1800 F St. NW
Washington, DC 20405-0001

Subject: Information Collection 3090-0235 Federal Supply Schedule Pricing Disclosures and Sales Reporting

Dear Mr. Koses,

The Coalition for Government Procurement appreciates the opportunity to submit the following comments regarding the General Services Administration's (GSA) review of the information collection requirements for the Commercial Sales Practices (CSP) disclosures and the Price Reductions Clause (PRC).

The Coalition for Government Procurement (The Coalition) is a non-profit association of firms selling commercial services, products, and solutions to the Federal Government. Our members collectively account for tens of billions of dollars of the sales generated through the GSA Multiple Award Schedules (MAS) program, VA Federal Supply Schedules (FSS), the Government-wide Acquisition Contracts (GWAC), and agency-specific multiple award contracts (MAC). Coalition members include small, medium, and large businesses that account for more than \$145 billion in Federal Government contracts. The Coalition is proud to have worked with Government officials for 40 years towards the mutual goal of common-sense acquisition.

As requested in the information collection notice, the Coalition's comments focus on:

1. Whether FSS pricing disclosures are necessary and have practical utility; and
2. If GSA's estimates of the collection burden are accurate and based on valid assumptions and methodology.

The PRC serves as a restraint of trade, fundamentally limiting the ability of MAS contractors to compete in the private sector. As a restraint of trade, the PRC increases prices and operational costs while hindering innovation and competition in the commercial market. Perpetuating the PRC as a condition of doing business with the Government, will continue to negatively impact commercial opportunities for MAS contractors thereby reducing investments and job opportunities across the commercial market. All told, based on the significant burdens and limited benefits associated with pricing disclosures and information collection, which the Coalition has outlined below, GSA should eliminate the PRC and reform the CSP and their

pricing policies. Elimination of the PRC is a pro-competition, pro-growth, and pro-jobs opportunity for GSA.

I. Background

The PRC requires that a contractor reduce its Schedule contract price whenever it reduces its price to the commercial customer that was the basis of award. It was originally intended to assure that the Government maintained the benefit of the bargain that it negotiated during the initial Schedule contract award. In a multi-year contract, the PRC assured that Schedule prices and pricing offered in response to subsequent task and delivery orders remained competitive with the current market. The PRC, however, is a response for a time when the MAS program was a mandatory source for all federal agencies, competition at the order level was limited, contractors utilized commercial price lists, and most agencies used the Schedules to purchase commercial products.

The CSP disclosure requires that contractors provide a year of historical data on commercial sales for all products and services offered on the Schedule contract. Disclosure is required regardless of dollar value or terms and conditions. In addition, the CSP instructions require offerors to disclose their standard commercial sales and discounting practices, along with exceptions to such practices. Based on this information, GSA seeks to obtain the offeror's "best" price, which is the "best" price given to the offeror's most favored customer. The CSP disclosure requirement, however, does not account for the fact that there is a competition requirement for many Schedule orders.

II. The PRC and CSP Have no Practical Utility and are No Longer Necessary

The PRC and the CSP requirements no longer have practical utility in today's Schedules program. Pricing under Schedule contracts is driven by competition and market forces, not the PRC and CSP requirements. These compliance and data reporting mechanisms cause significant burdens for Schedules contractors, both in terms of time spent on compliance activities and the costs of those activities. Unfortunately, these investments do not result in increased value for customer agencies or taxpayers.

As a threshold matter, the Coalition is concerned about GSA's information collection notice. Despite the FSS pricing disclosures being one of GSA's most burdensome regulatory actions, the notice did not include an analysis of either the benefits of or the alternatives to these requirements, notwithstanding the fact that both analyses are crucial components of a regulatory impact analysis.

A. Competition and Specific Requirements, not the PRC, are the Driving Forces to Lower Pricing

One of the most significant concerns associated with the PRC is that, despite its intense burden, it has limited utility for the Government. This reality about the PRC has been known and accepted by the procurement community for years. Indeed, over nine years ago, the MAS Advisory Panel found that few circumstances trigger the PRC, and that "[i]n the Panel's

opinion, this testimony raised the question of whether the Price Reduction Clause is an appropriate tool for the MAS program.”¹

Furthermore, even GSA, itself, recognized the limited utility of the PRC and noted in its proposed rule on Transactional Data Reporting:

[P]rices are reduced under the voluntary provisions of the price reduction clause as a result of market rate pricing changes, not under the mandatory tracking customer provisions. GSA recently analyzed modifications issued between October 1, 2013 and August 4, 2014 under nine of its [Schedule] contracts.... GSA found that only about 3 percent of the total price reductions received under the price reduction clause were tied to the “tracking customer” feature. The vast majority (approximately 78 percent) came as a result of commercial pricelist adjustments and market rate changes, with the balance for other reasons.²

Government and industry agree that competition at the task and delivery order level is the most effective tool for ensuring fair and reasonable pricing. Instead of the PRC, which has limited benefits, the Government should focus on expanding competition for Schedule task and delivery orders.

B. The PRC and CSP are Inappropriate for Services Contracts

In a 2011 plan for analyzing existing rules, GSA noted that the PRC is difficult to apply “to services contracts as services vary considerably unlike commodities and products.”³ The Coalition agrees with this analysis, and our members believe that the PRC and CSP are inappropriate for services contracts. The fact is that the CSP and the PRC simply do not reflect market reality. The CSP assumes that companies have commercial price lists, but pricing for services is driven by competition at the order level in response to a statement of work. This distinction is significant when it is recognized that almost 70 percent of spending on the Schedules is for services, rather than products.

C. The PRC and CSP do not Encourage Agencies to Use the Schedules

The Coalition is not aware of another commercial item contract in the Federal Government that uses the PRC or CSP. Because the Schedules are not mandatory, a decision by customer agencies to use (or not to use) the Schedules is a powerful statement by agency customers about the features they want in a contract. As an example, IT services spending on the GWACs for labor hour and fixed price task orders has increased by more than 75 percent over the last five years, despite the GWACs not containing a PRC or CSP requirement.⁴ Similarly, IT services spending government-wide for labor hour and fixed price contracts, excluding the GWACs and Schedules, increased by more than 18 percent.⁵ For comparison, IT services spending on SIN

¹ Multiple Award Schedule Advisory Panel Final Report, February 2010 at 10.

² General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting, March 4, 2015. 80 FR 11619.

³ Final Plan for Retrospective Analysis of Existing Rules, August 18, 2011. The General Services Administration.

⁴ As reported in the Federal Procurement Data System (FPDS)

⁵ As reported in FPDS

132-51 on Schedule 70 has increased 7 percent in that same time period.⁶ Government buyers have spoken through their choices, which manifest the fact that they do not see value in having a PRC or CSP.

III. PRC and CSP are Burdensome, and GSA’s Burden Estimate is Based on Invalid Assumptions

The burdens posed by the PRC and CSP on Schedule contractors are severe, and GSA’s estimate of the burden contains several questionable assumptions that operate to lower the burden. The Coalition has provided an updated burden estimate with valid assumptions.

A. GSA’s Burden Estimate is Based on Invalid Assumptions

As part of the information collection notice, GSA prepared a burden estimate for the FSS pricing disclosures. A summary of the estimate is included in the table below. According to the analysis, the estimated annual burden for the PRC and CSP is 1.2 million hours or \$94.2 million. GSA’s burden estimate was divided into four categories: sales reporting, PRC, CSP disclosures, and audits.

Category	Burden per Vendor (GSA)	Total Burden (GSA)	Hourly Rate (GSA)	Total Burden Cost (GSA)
Sales Reporting		111,281	\$55.19/hour	\$6,141,614
Quarterly Reporting		90,945		\$5,019,255
Initial Set-up		20,336		\$1,577,078
PRC		794,766	\$77.55/hour ⁸	\$61,634,109
Training (heavy lift)	40	97,208		\$7,538,480
Training (light lift)	20	194,416		\$15,076,961
Compliance Systems (heavy lift)	65	156,748		\$12,155,800
Compliance Systems (light lift)	357	341,995		\$26,521,745
Price Reduction Notifications	4.25	4,399		\$341,123
CSP Disclosure		319,978	\$77.55/hour	\$24,814,275
Pre-Award Disclosures (heavy lift)	82.96	41,532		\$3,909,407 ⁹
Pre-Award Disclosures (light lift)	64.82	129,801		\$10,066,090
Price Increases (heavy lift)	10.45	5,139		\$398,553
Price Increases (light lift)	9.71	18,039		\$1,398,942
Addition Modifications (heavy lift)	11.13	14,189		\$1,100,320
Addition Modifications (light lift)	10.65	54,306		\$4,211,468
Option Modifications (heavy lift)	26.14	12,903		\$1,000,605
Option Modifications (light lift)	22.32	44,069		\$3,417,521
GSA OIG Audits	455	21,840	\$77.55/hour	\$1,693,692
Total		1,247,865		\$94,283,689

⁶ According to GSA’s Schedule Sales Query Plus

⁷ In the text of the information collection, GSA stated that the burden was 35 hours per vendor, but later included a burden of 30 hours per vendor.

⁸ In the Information Collection, GSA stated that they used a rate of \$77.25/hour but used \$77.55/hour in calculations.

⁹ There is an arithmetical error in this calculation

There are three assumptions in this burden analysis:

- That the burden of CSP disclosure on industry is similar to the burden of CSP disclosure on GSA contracting officers;
- That contractor employees responsible for assuring compliance with the PRC are paid at a fully burdened labor rate of \$77.25/hour; and
- That the burden of the PRC (which was derived from a survey of Coalition members) can be divided across the life of a Schedule contract.

1. The Government's CSP Burden is not Similar to Industry

In calculating the burden of CSP disclosures, GSA relied on a survey of GSA contracting officers and doubled the value to account for the fact that contractors have a larger burden than the Government when preparing a CSP. The Coalition acknowledges that GSA has increased this estimate from its previous information collection (where GSA assumed that industry and Government bore an equal burden), and the Coalition believes this estimate is an accurate representation of the burden for a single contractor employee preparing a CSP.

Contractors often devote significant resources to preparing the CSP. Coalition members report that most CSPs require teams of compliance personnel. Frequently, companies need personnel from their legal, accounting, IT, and contracting teams in order to complete a CSP review. Coalition members also report that seven to ten employees will be responsible for developing and reviewing a CSP. GSA should acknowledge the number of contractor employees involved in a CSP review and multiply the CSP disclosure burden by a factor of seven.

2. Contractor Labor Rate

For the FSS pricing disclosure, GSA relied on two labor rates to monetize the burden for industry. For tasks related to quarterly sales reporting by vendors, GSA used a GS-12, Step 5 labor rate (\$55.19/hour) and for tasks related to compliance with the CSP and PRC by vendors, GSA used a GS-14, Step 5 labor rate (77.25/hour¹⁰). These rates do not account for the significant resources that the PRC and CSP require, particularly from lawyers, accountants, and consultants. Schedule contractors frequently rely on outside assistance to manage their contracts, and GSA's burden estimate should account for that cost.

According to the Department of Justice, the 2019 median hourly rate for a Washington, DC lawyer is \$417/hour.¹¹ This rate is used for recovering "reasonable" attorney's fees in civil cases. Additionally, research by the House Small Business Committee indicates that the average rate charged by GSA Schedule consultants is between \$15,000 and \$25,000, which, using GSA's burden estimate of 82.96 hours of burden for a contractor employee for heavy lift pre-award CSP disclosures, is equivalent to between \$180/hour and \$301/hour.¹² Feedback from Coalition

¹⁰ GSA stated the labor rate was \$77.25 but used \$77.55 in the final analysis.

¹¹ The United States Attorney's Office Attorney's Fees Matrix - 2015-2019.

¹² House Committee on Small Business Memorandum, "Hearing: 'GSA's Proposed Transactional Data Rule and its Effect on Small Businesses,'" at 2.

members indicates that the internal labor costs for contractors' employees average between \$105/hour and \$175/hour.

3. The PRC Burden

When calculating the burden of the PRC, GSA relied on a survey conducted by the Coalition. In the survey, the Coalition asked members, "What are the estimated total number of hours that your company spends on complying with the PRC on an *annual* basis?" [Emphasis added] According to respondents of the survey, the PRC burden is approximately 1,290 hours in the first year of a contract and 1,100 hours every year after, or, put another way, the start-up cost is 190 hours, and the annual burden is 1,100 hours.

The Coalition appreciates GSA's willingness to listen to industry about the burden of the PRC. However, when calculating the burden of the PRC, GSA used the first-year burden derived from the Coalition's survey and divided the burden by 20, assuming that the PRC burden should be divided over the life of a 20-year Schedule contract.

The Coalition's survey question explicitly asked for the *annual* burden, not the 20-year burden. Instead of using a burden of 65 hours per respondent, the burden of 1,100 hours per respondent plus an additional burden of 9.5 hours per respondent should be used, which accounts for the 190-hour start-up cost divided over the life of a 20-year contract. GSA had calculated the light lift burden to be about 53 percent of the heavy lift burden. Therefore, a burden of 583 hours (53 percent of 1,100 hours) plus the 9.5 hour start up cost for a total of 592.5 hours is used for the light lift burden.

The Coalition has prepared a table with updated estimates for the burden of the FSS pricing disclosures. Changes from GSA's estimates are noted in italics. Differences between the estimates that are not italicized are the results of rounding.

Category	Burden per Vendor	Total Burden	Hourly Rate	Total Burden Cost
Sales Reporting		111,281	\$55.19/hour	\$6,141,614
Quarterly Reporting		90,945		\$5,019,255
Initial Set-up		20,336		\$1,577,078
Priced Reductions Clause		9,877,002	\$77.55/hour	\$678,701,799
Training (heavy lift)	40	97,200		\$7,537,860
Training (light lift)	20	194,420		\$15,077,271
Compliance Systems (heavy lift)	1,109.5	2,696,085		\$209,081,392
Compliance Systems (light lift)	592.5	5,759,693		\$446,664,153
Price Reduction Notifications	4.25	4,399		\$341,123
CSP Disclosure		1,690,874	\$105/hour to \$471/hour (average)	\$486,971,755
Pre-Award Disclosures (heavy lift)	580.72	290,941		\$83,790,927
Pre-Award Disclosures (light lift)	453.74	908,387	\$288/hour	\$261,615,594
Price Increases (heavy lift)	10.45	5,141		\$1,480,723
Price Increases (light lift)	9.71	19,100		\$5,500,676
Addition Modifications (heavy lift)	11.13	14,191		\$4,086,936

Addition Modifications (light lift)	10.65	54,304		\$15,639,653
Option Modifications (heavy lift)	182.98	90,392		\$26,032,931
Option Modifications (light lift)	156.24	308,418		\$88,824,315
GSA OIG Audits	455	21,840	\$105/hour to \$471/hour (average \$288/hour)	\$6,289,920
Total		10,575,791		\$1,178,105,088

The Coalition’s estimate of the burden for the FSS pricing disclosures is \$1.1 billion per year. While this estimate is significantly larger than GSA’s estimate, it is worth noting that this estimate averages to about \$85,000 per GSA Schedule contractor per year (based on 13,809 reported Schedule contractors in 2018).

B. Additional Qualitative Burdens of the PRC and CSP

Beyond the quantitative burdens discussed in the previous section, there are additional qualitative burdens related to the PRC and CSP, which GSA should consider.

1. The PRC Limits Contractors Ability to Compete in the Private Sector

Foremost among these burdens is that the PRC, as a requirement of doing business with the Government, limits contractors’ ability to compete in the private sector. The PRC is designed to ensure that the Government receives discounts that companies grant in the commercial market to their basis of award customer. However, the PRC also forces companies into a compliance system that actively discourages discounting in the commercial market, which negatively impacts American consumers and Government agencies. To put this impact in context, were a dominant private sector market player to seek to exercise such disruption of commercial agreements, it would be considered a restraint of trade.

2. There are Significant Ambiguities in the CSP

There are several terms in the CSP that are not defined, including: standard practices, deviations from standard practices, non-standard practice, best price, best discount, exceptions, and basis of award. All the terms are critical to the interpretation of the CSP, and yet, leaving them undefined presents an additional burden for industry. These ambiguities create risks for contractors in the form of OIG audits and potential civil False Claims Act (FCA) cases arising from misunderstandings of ambiguous terms.

3. GSA’s Pricing Policy

GSA’s pricing policy for the Schedules as stated in GSAR 538.270 is to seek the price offered to the contractor’s “most favored customer.” This negotiation goal ignores crucial market realities about the Schedules program and creates another cost for industry. Ultimately, Schedule contracts represent an opportunity to compete and a guaranteed \$2,500 contract minimum. Low prices are driven by competition on orders in response to known requirements.

Significantly, the Schedules are designed to foster this competition at the task order level. As GSA Administrator Emily Murphy noted in her confirmation hearing:

[W]e set a price on our GSA Schedule contracts. It is, more or less, like the rack rate on the back of the hotel room door. It is the most you are ever going to pay. We want to make sure that GSA's contracting officers and our policies support really vigorous competition at the task order level, because that is the amount we are actually going to spend, and so we get the best deal there, that we get the most competition we can there.¹³

The ability for customers to negotiate additional discounts from the Schedule price is an important feature of the Schedules program. GSA's pricing policies should encourage industry participation in the Schedules, reduce the burden of negotiating pricing at the contract level, and encourage greater competition at the order level.

4. Limiting Competition

As was already discussed, the best way to ensure fair and reasonable pricing is through competition for task and delivery orders. The burdens and associated risks of the PRC and CSP, however, are so high that some companies choose not to compete in the market. In fact, several Coalition members have stated that the main reason they choose not to hold a Schedule contract is the burden associated with the PRC and CSP is too large to justify the benefits. By continuing to utilize the PRC and CSP, GSA is limiting competition and access to innovation through the Schedules, which negatively impacts agency buyers.

IV. Recommendations

The Coalition recommends that GSA make the following changes.

1. Eliminate the PRC. GSA has indicated that the PRC has minimal benefits for Government customers, and the PRC is extremely burdensome to contractors, costing more than \$1 billion every year.
2. As an alternative to the PRC, increase competition for task and delivery orders. GSA has already indicated, the alternative to the PRC is increased competition for task and delivery orders.¹⁴ In order to increase competition, GSA should reduce the burdens of the Schedules to attract more companies, modernize e-Buy (GSA's request for quotes tool), and provide additional resources for marketing the Schedules to Government and industry.
3. Reform the CSP.
 - a. Provide an alternative CSP format for companies that do not utilize commercial price lists. Allow companies the flexibility to submit their disclosures in formats that appropriately match their internal systems and commercial practices.
 - b. Eliminate the terms most favored customer, best price, and best discount.

¹³ Senate Committee on Homeland Security & Governmental Affairs Transcript "Nominations of Jeff T.H. Pon, Michael J. Rigas, and Emily J. Murphy," at 30.

¹⁴ General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting, March 4, 2015. 80 FR 11619.

- c. Define ambiguous terms such as basis of award, standard practice, non-standard practice, and exceptions.
 - d. Limit CSP disclosures to commercial transactions below the Simplified Acquisition Threshold (SAT). Commercial transactions above the SAT should require only a general explanation of sales practices over that amount. Government orders above the SAT are subject to additional competition requirements, and CSP disclosures are unnecessary because of the additional level of competition.
4. Establish the goal of MAS pricing negotiations as a fair and reasonable price, rather than most favored customer pricing. As Administrator Murphy correctly pointed out, competition occurs at the order level, and the MAS price should be considered a “rack rate.” Instead of expending Government and industry resources negotiating the “best” contract price (which may not be achievable given the dynamic nature of pricing in today’s market), the purpose of MAS contract negotiations should be to establish a ceiling price on Schedule contracts that is fair and reasonable. Competition at the order level in response to known requirements will provide customer agencies with lower pricing. GSAR 538.270-1 and GSAR 515.408 should be updated accordingly.
5. Implement the authority to offer “unpriced” services on Schedule. Section 876 of the 2019 National Defense Authorization Act allows Federal agencies to award multiple award contracts for services priced as labor hours without considering price as an evaluation factor. GSA should move swiftly to implement this authority for the Schedules. “Unpriced” services would streamline the program for Government buyers and remove significant burdens for industry. DoD, which received a similar authority from Congress in 2016, issued a class deviation to implement the change within a year of receiving Congressional approval. GSA should consider similar approach to implementation.

Thank you for considering the Coalition’s comments in response to the request for comments on the information collection for the FSS Pricing Disclosures. If there are any questions, please contact me at RWaldron@thecgp.org or (202) 331-0975.

Sincerely,



Roger Waldron
President