



January 19, 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 notice of request for comments on the information collection requirements of Federal Supply Schedule (FSS) Pricing Disclosures.

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.

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

As described in GSA's notice, the term "Federal Supply Schedule Pricing Disclosures" covers the information collection burdens associated with both the Price Reductions

Clause (PRC) and Commercial Sales Practices (CSP) disclosures. The Coalition appreciates GSA's inclusion of CSP disclosures in the notice and its efforts to calculate the associated burdens throughout the life of a FSS contract including offer submission, contract modifications, training, compliance systems, audits, and exercising options. 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.

I. Necessity and Practical Utility of FSS Disclosures

The PRC and the CSP no longer have practical utility in today's FSS program. These compliance and data reporting mechanisms cause significant burdens for Schedule contractors, both in terms of time spent on compliance activities and the costs of those activities. These costs are inevitably passed on to customer agencies in the form of higher pricing for services and products offered under GSA and VA Schedules. Unfortunately, these investments do not result in increased value for customer agencies or taxpayers. Today "fair and reasonable" pricing under FSS contracts is primarily driven by competition and market forces, not the PRC and CSP.

a. Practical Utility of the PRC

The current competitive framework governing MAS contracts and orders renders the collection and monitoring of commercial transactions pursuant to the PRC without practical utility. Pricing under today's MAS program is primarily driven by competition at the task and delivery order level.

Recent statutory and regulatory measures mandating competition at the task and delivery order level have rendered the PRC a costly, outdated, and irrelevant pricing mechanism. The new competition requirements are reflected in FAR 8.4. These changes established an ordering framework that drives competitive pricing and streamlines the acquisition process. In support of these competition requirements, GSA has invested in eTools that provide even greater transparency in the procurement process. eBuy, GSA Advantage!, and GSA eLibrary are all designed to facilitate market research in support of increased competition at the task/delivery order level for the Schedules program. Further, GSA has made significant investments in training the acquisition workforce on current competition requirements and available eTools, which has contributed to increased rates of competition under the

Schedules program. For example, as GAO noted in its July 2015 report on Federal Supply Schedules, 75% of FSS orders were competed in its sample of orders from FY2014—much higher than rates of competition in the open market.

Perhaps the most powerful statement of the PRC's utility in driving price reductions at the contract level comes from GSA's Transactional Data proposed rule published on March 4, 2015. In the Background section of the proposed rule, GSA notes that based on an analysis of modifications from 9 Schedule contracts between October 1, 2013 and August 4, 2014:

“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.”

[Emphasis added.]

Moreover, schedule contractors report that price reductions are further driven in response to specific requirements at the task order level. In fact, when the Coalition asked its members about what drives price reductions for their Federal customers under the FSS program, **member companies of all sizes overwhelmingly reported that competition in response to known requirements is the most significant driver of reduced pricing for customer agencies.** Despite FSS contractors' constant effort monitoring the basis of award customer for potential price reductions to the government, actual price reductions as a result of the PRC rarely materialize.

Based on GSA's public statement in the transactional data reporting rule and Coalition member feedback, there is agreement between GSA and its MAS contractors that market conditions/changes and competition are the significant drivers of price reductions under the FSS program.

PRC Limits FSS Contractors in the Commercial Market

In addition to its irrelevance to driving price reductions, the PRC undermines competition in the commercial market. Coalition members report that the PRC restricts a FSS contractor from offering lower pricing to certain commercial customers for fear that the price reduction would trigger deleterious effects

under that contractor's schedule contract. In essence, because of the PRC's constraints, companies are left with two less-than-optimal choices: avoid providing discounts to commercial customers, or avoid participating in the government market. In effect, the PRC limits competition and drives higher pricing for commercial transactions.

b. Practical Utility of the CSP

The CSP is also an outdated data reporting and compliance mechanism that has little practical utility in today's FSS program. The current CSP format for disclosures does not provide for consideration of the existing GSA Schedule ordering procedures, creates ambiguity in disclosure requirements, and requires the release of data that exceeds the needs of the government to negotiate fair and reasonable prices.

Again, current competition requirements for Schedule orders (as described above) negate the need for the detailed pricing disclosures and historical pricing analysis for all commercial transactions required in the CSP.

The CSP format was developed at a time when prices in the commercial market were less volatile than they are today, and contractors generally had standard prices and price lists to which they adhered. Today, however, that is not the case, especially for many services and high tech industry sectors. Consequently, Coalition members report that it is difficult to determine how to respond to and appropriately disclose information requested in the CSP format. Terminology used in the form (like "standard" practices, "deviations" and "non-standard practices") is ambiguous and increases risk; and typically there is no "most favored customer" due to extremely decentralized pricing in the commercial marketplace. Based on member feedback, addressing these issues in the CSP is most burdensome when completing pre-award disclosures and submitting modifications for additional SINs.

Coalition members that are small companies report that like large businesses, they invest in consultants and attorneys to assist in the completion of pre-award CSP formats. As a result, their estimates in terms of the time and cost burdens are closer in alignment to the higher versus lighter lift numbers in the notice. Further, the compliance burden of a reseller with 100 manufacturers is

different than of a reseller with 500 manufacturers. Therefore, we do not believe that the “higher lift” versus “lighter lift” assumptions based on sales are appropriate.

c. Practical Utility of Transactional Data Reporting

The FSS Pricing Disclosures notice references the Transactional Data proposed rule (GSAR case 2013-G504) in which GSA proposed amending the GSAR to require FSS vendors to report transactional data including prices paid. As a result, many Coalition members submitted additional feedback on transactional data. Although we acknowledge that the purpose of the FSS Pricing Disclosures notice is not to collect feedback from the public on transactional data, we would like to share these comments with GSA to promote further dialogue on this important matter. In short, Coalition members are very concerned that:

1. The requirement to submit transactional data would not:
 - a. Improve the acquisition workforce’s ability to conduct meaningful price analysis and reduce price variability.
 - b. Validate fair and reasonable pricing.
 - c. Improve GSA customers’ ability to compare prices.
2. Prices paid data without the associated terms and conditions is inadequate for decision-making.
 - a. Unique requirements for products that have to be taken into account in order to appropriately interpret prices paid data include, but are not limited to, volume commitments, shipping requirements, location, certifications, labeling, compatibility with other systems, and the context of pricing within an entire catalogue.
 - b. For services, to perform “price reasonableness” assessments on labor categories for complex services, a substantial amount of contextual information has to be provided in order to understand the basis for the reported rates (e.g. unique task requirements, market conditions, and build-up price justification taking into consideration job duties, complexity of the task, geographic location, volume commitments, blended rates, concessions, work location, clearance and certification requirements).

3. Transactional data will lead to a system that continually drives down prices without regard to terms and conditions resulting in a “race to the bottom” that negatively impacts the supplier base (particularly small businesses) and the Federal customer.
 - a. A recent example is the OS3 IDIQ for office supplies in which data reporting has not led to successful outcomes for GSA or participating contractors. In FY 2015, sales for OS3 were \$97,230,566 and Schedule 75 sales were \$518,403,586. Of total sales for these contract vehicles, OS3 accounted for only 15.8% of the total spend on office supplies and Schedule 75 accounted for 84.2% of the total spend on office supplies.
4. Existing commercial systems currently are not designed to collect and report the requested transactional data.
 - a. One member explained that reporting transactional data on a monthly basis for multiple FSS contracts would require their IT systems as long as *24 hours* to identify the relevant fields of data and then staff manually would have to sort through this information and report one million lines of transactional data to GSA.
 - b. In addition to placing an unreasonable burden on contractors by requiring the recreation of data that already should be in the government’s possession, the demand for this data, itself, may be so inconsistent with customer commercial practices as to conflict with statute and regulations, as well as recent case law.

II. Estimates of the PRC and CSP Collection Burden

The Coalition applauds GSA’s progress in better identifying and categorizing the operational and compliance burdens of the PRC and CSP. The public notice demonstrates a greater understanding of the burdens, especially as compared to previous estimates, that industry faces when complying with these rules. However, Coalition members maintain that the burdens are underestimated and have serious concerns about the continuing burdens of the PRC and the CSP in a marketplace where other major IDIQ contracts do not impose similar requirements.

According to the public notice, GSA estimated the burden of the PRC by examining the following operational categories: training, compliance systems, GSA OIG pre-award audits, and price reduction notifications. The CSP burden was calculated using the following categories: pre-award disclosures, price increase modifications, adding items or SINs, and options modifications. The total PRC burden is estimated at 1,056,774 hours, while the total CSP burden is estimated at 267,570 hours, making the total FSS pricing disclosure burden 1,324,344 hours per year.

a. The PRC Burden is Underestimated

The Coalition received feedback from its members on the burdens associated with the PRC and the CSP. Collectively, these respondents hold GSA and VA Schedules and represent both large and small businesses. The Coalition believes that the PRC and the CSP burdens are significantly underestimated. In particular, the monitoring of the PRC (even after compliance systems are installed) is a large cost associated with the rule, the estimated burden of the PRC is spread out over the life of the contract, and contractors face a different burden than contracting officers when managing a CSP.

The estimated PRC burden does not account for monitoring activities associated with the rule. Coalition members noted that once electronic systems are in place to track pricing, there are still employees who must be involved in PRC compliance monitoring on a daily basis. Our members reported that this aspect of the PRC has a sizable impact that would significantly change the estimates for the burden. Members indicated that this monitoring could result in a potential annual burden of 2,000 hours per heavy lift contractor.

In calculating the compliance systems burden of the PRC, GSA used the Coalition estimate of 1,100 hours per contractor (originally from the Coalition's 2012 survey on the PRC) and spread out the burden over the life of the 20 year contract. However, the survey question¹ asked for the *yearly* burden, not the burden over the contract life. An updated estimate would be *20 times* larger than GSA's estimate—bringing the total burden for the PRC up from 1,056,774 hours to 12,562,414 hours annually.

¹ The wording of the 2012 Coalition survey asked: "What is the estimated total number of hours that your company spends on complying with the PRC on an annual basis?"

b. The CSP Burden is Underestimated

The CSP estimate in the notice was calculated using an internal GSA survey of contracting officers to determine the burden of the CSP. The CSP burden is underestimated because it does not account for the work that contractors do to prepare a CSP before it is presented to a contracting officer. This includes: analyzing sales from the previous year, identifying sales practices appropriate to the CSP, and for service contractors describing pricing practices for services that are highly customized to each commercial customer. Contractors providing products may also face issues with identifying a Most Favored Customer (MFC) particularly if they have a decentralized pricing structure. The estimated burden for the CSP should account for the considerable time that contractors spend developing their CSPs.

Several of the Coalition's members (most of whom fall under the heavy lift category) indicated that the burden for preparing a CSP for a new contract could exceed 400 hours and that preparing a modification could take as much as 185 hours, while GSA estimated that each respective process would take 41.48 hours and 11.13 hours for heavy lift contractors.

Furthermore, firms that do not maintain standardized price lists often conduct detailed analysis on pricing patterns in order to make accurate disclosures. Often these firms must seek additional outside training and/or hire consultants to facilitate compliance. These companies must complete CSPs despite the fact that they do not have standardized commercial price lists and the amount of time spent working on the CSP reflects this difficulty.

Given the results of the Coalition's 2012 survey and in light of the factors described above, the estimate for the total burden for the PRC and the CSP is significantly understated.

c. Small Businesses: Heavy Burden with Light Sales

The Coalition that there are differences in the burden of the PRC and the CSP across Schedule contractors. However, the method of using sales to determine the categories (i.e. heavier versus lighter lift) may not capture all of the heavier lift contractors. There are many small businesses that do not have the resources to easily and efficiently comply with the rules, even though they are categorized as lighter lift companies in terms of sales. Small business members report that the compliance with the PRC and CSP are particularly challenging and burdensome

because unlike larger vendors they do not have the resources to invest in training, personnel and/or advanced electronic systems to track pricing or sophisticated sales practices. As a result the PRC and CSP are barriers to entry to the schedule program for small, innovative firms.

d. Measuring the Burden in Dollar Value

The Coalition believes that the GSA estimated hourly rate used to measure the PRC and CSP is understated. The estimate of \$68/hour as the hourly salary is for government contractors. As such it does not take into account the attorneys, accountants, and outside consultants (all of whom are often hired by companies to assist with compliance) who may get paid upwards of \$200 per hour. Moreover, because of the importance of compliance to government contracting, many contractors will pay their internal compliance employees a higher salary. These factors make the \$68/hour figure inaccurate when looking at burden for the PRC and CSP. The Coalition recommends that GSA continue its previous practice of measuring the PRC and CSP in burden hours, or determine a more accurate hourly payment rate for government contracting compliance employees.

e. Costs and Benefits of the PRC

As explained above the Coalition estimates that the total burden of the PRC is somewhere in the range of 12.5 million hours per year. This estimate was created using the same methodology as GSA, along with the responses from the 2012 Coalition PRC survey (as explained in the previous section). GSA has estimated that government contractors will make approximately \$68/hour, which gives the burden a monetary cost of \$850 million² (the Coalition believes this is lower than the actual burden). While this burden is quite large on its own, it is important to consider the “benefits” of the PRC – does the PRC create a comparable or larger benefit than the cost?

GSA stated in their FSS Pricing Disclosure notice that there were 2,148 price reductions in FY2014. In the Transactional Data proposed rule, GSA also stated that in a survey of 9 schedules only 3% of all price reductions were the result of the tracking customer feature of the PRC. The rest of the reductions were the result of commercial pricelist adjustments and market rate changes. *Using GSA's estimates, in order for the PRC's benefits to outweigh its costs the value of these*

² The Coalition believes that this estimate of \$68/hour reflects the overall hourly salary for government contracting, but does not accurately represent the hourly salary for contracting personnel who manage PRC compliance.

price reductions caused by the PRC would have to exceed approximately \$850 million annually.

In a time of scarce budget dollars, and in light of the government's desire to partner with industry and attract nontraditional vendors to the Federal market, we do not understand how undertaking the burdens of the PRC and the CSP benefits the government.

Thank you for considering the Coalition's comments in response to the information collection extension notice 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