



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.

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!

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.

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.

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,

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

Roger Waldron
President