
GSA May Abolish the Price Reduction Clause

By John E. Jensen and Clare M. Cavaliero

On March 4, 2015, the U.S. General Services Administration (GSA) issued a proposed rule that could abolish the long-standing price reduction clause (PRC) from the GSA Schedule program. GSA is proposing to eliminate the clause and to use, instead, the submission of “transactional data reporting” to help achieve its goal of fair and reasonable pricing on all orders. The rule would require contractors to report transactional data for orders placed against GSA Federal Supply Schedule (FSS) and other GSA contracts. The proposed rule is designed to improve GSA’s ability to conduct meaningful price analysis and more efficiently and effectively validate fair and reasonable pricing. It is also intended to reduce the burden on contractors imposed by the current GSA PRC.

Twin hallmarks of the GSA FSS program since the 1980s have been the disclosure of commercial sales practices (CSP) data and the PRC. These unique facets of the FSS program have served as GSA’s tools for achieving fair and reasonable pricing, while creating areas of potential contract and false claims liability—sometimes significant—for the contractors. GSA now has concluded that the PRC is not a very effective means of keeping prices down, noting that the PRC accounts for only about 3 percent of all price reductions (the rest attributable to market forces) and acknowledging the common view that it is one of the most complicated and burdensome requirements in Federal contracting. GSA believes that its proposed change could reduce the annual burden on contractors by \$51 million in administrative costs. Abolishment of the clause certainly would be a historical marker in the history of FSS contracting.

In place of the PRC, GSA is proposing a transactional data reporting clause, one for GSA FSS contracts and a similar one for other GSA Government-wide Acquisition Contracts and Government-wide Indefinite-Delivery, Indefinite-Quality contracts. The transactional data reporting clause would require contractors to report the prices paid for products and services delivered during the performance of the contract. Contractors would be required to electronically report contract sales monthly through an online reporting system. The report would include transactional data elements such as unit measures, quantity of item sold, universal product code, price paid per unit, and total price.

The data submission would make the prices paid by Government buyers more transparent for new buyers, informing the Government in its price reasonableness determinations while reducing price variation across Government purchases. In the Federal Register notice of the proposed rule, GSA stated that it “believes the collection and use of transactional data may be a more efficient and effective way for driving price reductions on FSS buys than through use of the [PRC] tracking customer mechanism.”

For FSS contract vehicles, the new transactional data reporting clause would be introduced in phases, beginning with a pilot for select products and commoditized services. For non-FSS contract vehicles, the rule would go into effect immediately once finalized. (Notably, this rulemaking does not apply to Department of Veterans Affairs FSS contracts.)

This rule change would not lessen the CSP disclosure obligations. In fact, GSA stated, “GSA would maintain the right throughout the life of the FSS contract to ask a vendor for updates to the disclosures made on its commercial sales format ... if and as necessary to ensure that prices remain fair and reasonable in light of the changing market conditions.” This statement suggests that GSA may begin asking for CSP updates during a period of performance, the burden and risks of which might outweigh the benefits from deletion of the PRC. GSA’s intentions in this respect are hazy.

GSA explained that, in the FSS pilot, it would modify select existing contracts and conduct solicitation refreshes to implement the changes. Contractors, therefore, could see GSA unilaterally removing the PRC from their contracts while simultaneously adding a transactional data reporting clause.

GSA invites public comments on the impacts of the proposed rule, and plans to hold a public meeting on Friday, April 17, 2015, at 9:00 a.m. The deadline for comments on the proposed rule is May 4, 2015. Information regarding attending the meeting or submitting comments can be found in the Federal Register notice at 80 Fed. Reg. 11619 (Mar. 4, 2015).

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

John E. Jensen [\(bio\)](#)
Northern Virginia
+1.703.770.7560
john.jensen@pillsburylaw.com

Clare M. Cavaliero [\(bio\)](#)
Washington, DC
+1.202.663.8156
clare.cavaliero@pillsburylaw.com

About Pillsbury Winthrop Shaw Pittman LLP

Pillsbury is a full-service law firm with an industry focus on energy & natural resources, financial services including financial institutions, real estate & construction, and technology. Based in the world's major financial, technology and energy centers, Pillsbury counsels clients on global business, regulatory and litigation matters. We work in multidisciplinary teams that allow us to understand our clients’ objectives, anticipate trends, and bring a 360-degree perspective to complex business and legal issues—helping clients to take greater advantage of new opportunities, meet and exceed their objectives, and better mitigate risk. This collaborative work style helps produce the results our clients seek.

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2015 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.