

the FTC or state attorneys general from assessing whether Amazon has engaged in a broader pattern of unfair practices in violation of the antitrust laws.

Today's order provides substantial redress to the families victimized by Amazon's anticompetitive deception. However, this cannot be the only action we take to protect workers and families from dominant middlemen. The FTC will also need to carefully examine whether tech platforms are engaging in anticompetitive conduct that hoodwinks workers and crushes law-abiding competitors.<sup>11</sup>

The Commission has historically taken a lax approach to worker abuse, entering no-consequences settlements even in naked wage-fixing matters that are criminal in nature.<sup>12</sup> Despite broad pronouncements about a commitment to policing markets for anticompetitive conduct that harms workers,<sup>13</sup> the FTC has done little. I hope today's action turns the page on this era of inaction.

I also agree with Acting Chairwoman Slaughter and Commissioner Phillips that preying on workers justifies punitive measures far beyond the restitution provided here, and I believe the FTC should act now to deploy dormant authorities to trigger civil penalties and other relief in cases like this one.<sup>14</sup>

<sup>11</sup> I have previously outlined certain steps that regulators can take to address anticompetitive practices in labor markets. Comment Submission of Commissioner Chopra to Department of Justice Initiative on Labor Market Competition (Sept. 18, 2019), <https://www.ftc.gov/public-statements/2019/09/comment-submission-commissioner-chopra-department-justice-initiative-labor>.

<sup>12</sup> In 2019, the FTC agreed to a no-consequences settlement with respondents charged with blatant wage-fixing. See Dissenting Statement of Commissioner Rohit Chopra In the Matter of Your Therapy Source, Neeraj Jindal and Sheri Yarbray, Fed. Trade Comm'n File No. 1710134 (Oct. 31, 2019), <https://www.ftc.gov/public-statements/2019/10/dissenting-statement-commissioner-rohit-chopra-matter-your-therapy-source>. Respondent Neeraj Jindal was later indicted by the United States Department of Justice. Press Release, U.S. Dep't of Justice, Former Owner of Health Care Staffing Company Indicted for Wage Fixing (Dec. 10, 2020), <https://www.justice.gov/opa/pr/former-owner-health-care-staffing-company-indicted-wage-fixing>.

<sup>13</sup> See, e.g., Press Release, Fed. Trade Comm'n, FTC and DOJ Release Guidance for Human Resource Professionals on How Antitrust Law Applies to Employee Hiring and Compensation (Oct. 20, 2016), <https://www.ftc.gov/news-events/press-releases/2016/10/ftc-doj-release-guidance-human-resource-professionals-how>.

<sup>14</sup> Under its status quo approach, the FTC does not seek civil penalties for this type of abuse. But this can change. In the short term, the Commission can deploy its Penalty Offense Authority to apprise market participants, using existing administrative orders, that it is a penalty offense to recruit workers based on false earnings claims. See Rohit Chopra & Samuel A.A. Levine, *The Case for Resurrecting the FTC Act's Penalty Offense Authority* (Oct. 29, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3721256](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256). The Commission can also codify

Companies should succeed only when they compete, not when they cheat or abuse their power. While *Amazon.com* is one of the largest, most powerful, and most feared firms in the world, the company cannot be above the law. Regulators and enforcers in the United States and around the globe can no longer turn a blind eye.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0142; Docket No. 2021-0053; Sequence No. 4]

#### Information Collection; Past Performance Information

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning past performance information. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through April 30, 2021. DoD, GSA, and NASA propose that OMB extend its approval

existing precedent into a Restatement Rulemaking to trigger penalties and damages for this type of fraud. See Statement of Commissioner Rohit Chopra Regarding the Report to Congress on Protecting Older Consumers, Fed. Trade Comm'n File No. P144400 (Oct. 19, 2020) <https://www.ftc.gov/public-statements/2020/10/statement-commissioner-rohit-chopra-regarding-report-congress-protecting>. Such a rule would impose no burden on market participants, while ensuring real deterrence for practices that undercut workers and competitors.

for use for three additional years beyond the current expiration date.

**DATES:** DoD, GSA, and NASA will consider all comments received by April 12, 2021.

**ADDRESSES:** DoD, GSA, and NASA invite interested persons to submit comments on this collection through <http://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

*Instructions:* All items submitted must cite OMB Control No. 9000-0142, Past Performance Information.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two-to-three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Zenaida Delgado, Procurement Analyst, at telephone 202-969-7207, or [zenaida.delgado@gsa.gov](mailto:zenaida.delgado@gsa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. OMB Control Number, Title, and any Associated Form(s)

9000-0142, Past Performance Information.

##### B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

*Preaward.* For responses during source selection.

- *FAR 15.305(a)(2)(ii).* This section requires solicitations describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and providing offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. Solicitations also must authorize offerors to provide information on problems encountered on their identified contracts and the offeror corrective actions. Per FAR 15.304(c)(3), past performance must be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold (SAT) unless the contracting

officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.

- *FAR 52.212-1, Instructions to Offerors—Commercial Items.* This provision requires offerors, per paragraph (b)(10), to submit past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information).

*Postaward.* For responses in the Contractor Performance Assessment Reporting System (CPARS).

- *FAR 42.1503(d).* Requires contractors be afforded up to 14 calendar days from the notification date that a past performance evaluation has been entered into CPARS to submit comments, rebutting statements, or additional information. Past performance information is relevant information regarding a contractor's actions under previously awarded contracts or orders, for future source selection purposes. Source selection officials may obtain past performance information from a variety of sources.

The contracting officer will use the information to support future source selection decisions.

### C. Annual Burden

*Respondents:* 65,373.

*Total Annual Responses:* 83,262.

*Total Burden Hours:* 166,524.

*Obtaining Copies:* Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202-501-4755 or emailing [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite OMB Control No. 9000-0142, Past Performance Information.

**Janet Fry,**

*Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0024; Docket 2020-0053; Sequence 10]

### Submission for OMB Review; Buy American, Trade Agreements, and Duty-Free Entry

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding Buy American, trade agreements, and duty-free entry.

**DATES:** Submit comments on or before March 12, 2021.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

Additionally, submit a copy to GSA through <http://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

*Instructions:* All items submitted must cite OMB Control No. 9000-0024, Buy American, Trade Agreements, and Duty-Free Entry. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

**FOR FURTHER INFORMATION CONTACT:** Zenaida Delgado, Procurement Analyst, at telephone 202-969-7207, or [zenaida.delgado@gsa.gov](mailto:zenaida.delgado@gsa.gov).

### SUPPLEMENTARY INFORMATION:

#### A. OMB Control Number, Title, and Any Associated Form(s)

9000-0024, Buy American, Trade Agreements, and Duty-Free Entry.

#### B. Need and Uses

This clearance covers the information that an offeror must submit in response to the requirements of the provisions and clauses in Federal Acquisition Regulation (FAR) part 25 that relate to the following:

- \* The Buy American statute (41 U.S.C. chapter 83, and Executive Order 10582).

- \* The Trade Agreements Act (19 U.S.C. 2501-2515), including the World Trade Organization Government Procurement Agreement and various free trade agreements.

- \* The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).

- \* Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

a. 52.225-2, Buy American Certificate. This provision requires the offeror to identify in its proposal supplies that do not meet the definition of domestic end product.

b. 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate. This provision requires a separate list of foreign products that are eligible under a trade agreement, and a list of all other foreign end products.

c. 52.225-6, Trade Agreements Certificate. This provision requires the offeror to certify that all end products are either U.S.-made or designated country end products, except as listed in paragraph (b) of the provision. Offerors are not allowed to provide other than a U.S.-made or designated country end product, unless the requirement is waived.

d. 52.225-8, Duty-Free Entry. This clause requires contractors to notify the contracting officer when they purchase foreign supplies, in order to determine whether the supplies should be duty-free. The notice shall identify the foreign supplies, estimate the amount of duty, and the country of origin. The contractor is not required to identify foreign supplies that are identical in nature to items purchased by the contractor or any subcontractor in connection with its commercial business, and segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible. In addition, all shipping documents and containers must specify