



August 29, 2016

General Services Administration  
Regulatory Secretariat Division  
ATTN: Ms. Hada Flowers  
1800 F St. NW, 2<sup>nd</sup> Floor  
Washington, DC 20405

Re: Notice FAS–2016–01; Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting

Dear Ms. Flowers,

Thank you for the opportunity to provide comments in response to the Federal Register notice, *Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting*.

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 a significant percentage of the sales generated through General Services Administration (“GSA”) contracts including the Multiple Award Schedules program. Coalition members are also responsible for many 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.

The notice addresses the disclosure of collected transactional data through a “public data extract” for use by the general public per the Transactional Data Reporting (“TDR”) final rule.<sup>1</sup> This information is intended to be shared by GSA to “the maximum extent practicable.” The notice also provides that, of the eleven standard data elements required under the rule, GSA will exempt both the “Quantity of Item Sold” and “Price Paid Per

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<sup>1</sup> See GSAR Case 2013–G504; Docket No. 2014–0020; Sequence No. 1 (81 FR 41113 (June 23, 2016))

Unit.” Further, GSA will not release the “Total Price” data element, as it could reveal the price paid per unit.

### **Protection of Pricing Data and the Freedom of Information Act**

The Coalition strongly agrees with the protection of commercial information, including, but not limited to, pricing information, consistent with Exemption 4 and other provisions of the Freedom of Information Act (“FOIA”), as well as relevant case law associated with that act. Because TDR is being implemented pursuant to a rule, and because a rule cannot repeal an Act of Congress, affording the public this opportunity to provide comments in response to this notice does not substitute for the operation of FOIA and the procedures that the government is required to follow when a request is submitted for otherwise undisclosed data. For this reason, and to avoid any confusion, GSA should make clear that, in implementing TDR, it will follow standard FOIA procedures for any transactional data that is released to the public.

Further, the Government must not create a database that allows for the reverse engineering of commercial proprietary information by market competitors, as such engineering will undermine market participation and competition, reducing the government’s access to cutting-edge technology and mitigating the downward pressure on prices. For example, although the individual transactional data elements of specific orders may not be particularly instructive of a contractor’s pricing strategy, depending on the data disclosed and its format, GSA may create an unnecessary risk that commercial, proprietary pricing approaches and strategies for individual contractors will be reverse engineered. A compilation of data that permits a data recipient to note intervals in pricing would permit competitors to reverse-engineer to the unit price of the sold items. Such information that permits reverse-engineering to unit prices requires protection under FOIA and the Trade Secrets Act. GSA must ensure that commercial information provided through TDR is properly protected and that it is not vulnerable to such risks as a result of the public data extract.

Finally, GSA states in the public notice that:

The data released to the public will provide valuable market intelligence that can be used by vendors for crafting more efficient, targeted business development strategies that incur lower administrative costs. This will be particularly beneficial for small businesses, which often do not have the resources to invest in dedicated business development staff or acquire business intelligence through third-parties.

One might question whether this purpose falls within the legitimate role of government, especially in the context of contracting transactions with specific companies. Understanding the market and crafting business development strategies are part of running a business, not a service to be performed by government. In addition, there are market intelligence firms that perform this function as a business service, and they risk displacement by such government intervention. Moreover, the history of acquisition reform teaches us that firms have been reluctant to participate in the government space for fear of inappropriate access to their proprietary data. For the government now to take on this role, not only unfairly subsidizes the business activities of some firms, but also puts competition in the marketplace at risk.

### **Increase Transparency of the Public Data Extract**

The Transactional Data Reporting final rule indicated that more details about the public data extract would be available in the forthcoming Federal Register notice. Other than disclosing which data elements GSA plans to disclose to the public, however, the notice is not particularly informative as to what the public data extract will entail. For example, questions remain as to how the transactional data will be released, who will be provided access, the estimated timing of the data extract (*e.g.*, prior to or following the TDR pilots), and how GSA will ensure that FOIA procedures are followed in accordance with the law. Without this information, the public is not afforded the opportunity to provide comment on these aspects of the data release. The Coalition requests that GSA increase the transparency of the planned data extract by providing this information in advance of any release of TDR outside the government.

As always, the Coalition stands ready to work with the government to ensure that the procurement process is efficient and effective for both government and industry. Should you have any questions regarding this matter, please contact me at (202) 315-1053 or [rwaldron@thecgp.org](mailto: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