



August 10, 2016

Jeff Koses
Senior Procurement Executive
General Services Administration
1800 F Street, NW
Washington, DC 20002

Subject: Implementation of the Transactional Data Reporting Pilot

Dear Jeff,

Members of the Coalition for Government Procurement (“Coalition”) are commenting on the implementation of transactional data reporting (“TDR”) through an initial pilot. Based on the significant impact that this change will have on their commercial business operations, they have more than sixty questions that we request GSA address before the transactional data pilot is launched. Attached is a list of the questions received from Coalition members.

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 and GWAC programs. 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 Coalition appreciates GSA’s public outreach to date on the implementation of TDR and the potential elimination of Commercial Sales Practices (“CSP”) disclosures and the Price Reductions Clause (“PRC”) under the Schedules program. As you know, the transition from compliance with GSA’s current pricing policies to TDR is a **major** undertaking for both government and industry. We understand from information provided through GSA Interact and the transactional data webinar that the TDR pilots will be launched soon through a MAS modification and refreshes to certain Schedule solicitations. There remains, however, a great deal of uncertainty surrounding current implementation plans. This uncertainty directly impacts company business planning, operations, and costs as we approach Fiscal Year 2017.

There are critical questions that need to be answered before the launch of the TDR pilot. Until these questions and their associated issues have been addressed, Coalition members report that it will be difficult to accept participation in the voluntary TDR pilot. For example, during the first TDR webinar, GSA explained that FAS has yet to receive a determination from the Office of the Inspector General whether PRC and CSP compliance data could be requested during an audit of the pilot period. Indeed, discussions about this issue are still ongoing. Until this issue is resolved, prudent contractors will assume that they should continue to comply with current MAS pricing policies throughout the pilot period, raising significant concerns about whether the pilot is viable.

Further, as outlined in the attachment, GSA's industry partners have over sixty questions related to how transactional data will be used in price negotiations, the TDR systems reporting requirements and processes, the security of the pricing data and planned public data extract, and its practical applicability/utility for complex configured items and professional services.

In order to provide for an effective pilot, the Coalition requests that GSA respond to the attached questions raised by industry prior to implementation of the TDR pilot. In so doing, we ask that GSA answer the questions in writing, as well as through a series of "in-person" Industry Days so that clarifications can be made on critical issues, such as possible submission of PRC and CSP compliance data for audit purposes. Further, we believe that GSA's implementation schedule should consider the time required by contractors to make procedural and systems changes to comply with the new reporting requirements. In view of the foregoing, we request that the effective date for the TDR pilot rollout be no sooner than January 1, 2017.

Thank you for your attention to this matter. 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

Transactional Data Pilot

Member Questions

Use of the Data

1. Will GSA continue to provide updates and information early in the process regarding the actual sorting, analysis, and use of the data? GSA's industry partners are seeking reasonable assurances regarding the sound, appropriate use of the data.
2. How has GSA used similar information collected on GWACs? How have GSA's customer agencies used the data? To date, the feedback on usage of data via the GWAC is mixed, at best. What has GSA learned from the GWAC experience, and how has that learning informed this process?
3. It is our understanding that GSA contracts with a third party (contractor) to sort and analyze the data? Is GSA's third party contractor restricted from using the data for its own commercial interests independent of the TDR rule implementation? In the interests of transparency and confidence that the transactional data is not being used for separate commercial purposes, please publicly provide/post copies of the applicable contract clauses (and effective dates) addressing protection, use, and disclosure of the data, as well as the names of all vendors involved.
4. In the interests of transparency, when will GSA post all training materials for contracting officers and contractors for public review?
5. What are GSA's plans to release certain transactional data to the general public via a "public data extract?" Where and to whom will the transactional data be shared, and what is the process for safeguarding that data?

Pricing

6. How will baseline Schedule pricing be negotiated? What pricing data does a prospective contractor offer if it does not have an existing schedule contract? What pricing does a contractor offer at renewal time? How will the process change for fair and reasonable pricing determination?
7. What will the pricing template for a new offer look like? Are there samples available for public review, and if not, when will they be made available? What information will a new offeror have to submit to support proposed prices? Will the offeror have to certify the data as current, accurate, and complete and be subject to audit?

8. How often will GSA review schedule holders' existing pricing (every five years at renewal, or options years, or other)? If not every five years at renewal, or at the options years, then how often? Has GSA sought any feedback from the public regarding the timing and frequency of pricing reviews? If not, when will GSA do so?
9. How will GSA distinguish between Schedule pricing and BPA pricing? How will GSA ensure that BPA pricing does not impact Schedule pricing, or will GSA be considering key terms that drive price in making fair and reasonable price determinations at the contract level? Please share specifics.
10. How will GSA distinguish between varying requirements and terms and conditions that impact pricing among a single Schedule holder's contract vehicles (BPAs, etc.) and among multiple Schedule holders?
11. What is the impact on, and process for both pre-award price audits, as well as post award price audits?
12. How will GSA distinguish between transactional data, which represents prices actually paid for an actual, firm requirement, and schedule contract pricing, which represents a contractor's price offer for a contract with only a \$2,500.00 guaranteed minimum over 20 years?
13. How does the Formatted Product Tool (FPT) impact transactional reporting, and what is the timing of the FPT Tool relative to transactional reporting? If contractors are required to load their pricing using the FPT tool immediately, will not the downward pressure on pricing that will also result from transactional reporting impact contractors immediately, regardless of whether they have opted into transactional reporting? If so, how will GSA address this distortion?
14. How does the TDR rule impact GSA's and customer agency's approach to "Best Value" under the Schedules program, which was a key factor making GSA Schedule purchasing attractive to customers in the past?
15. How will proposals for a new schedule contracts be evaluated after the implementation of the final rule? Will evaluation only be based upon the price proposal of the items listed? What, if any, additional information will be considered?
16. Will GSA develop standard formats that contracting officers will use to solicit additional data they believe is necessary to determine prices fair and reasonable? If so, when will GSA share those publicly for review and comment?
17. How will a contracting officer evaluate price reasonableness when comparing information from manufacturers with very different methodologies of producing products across the quality spectrum (e.g., where product quality and features affect pricing)? How does transactional data reporting take into consideration quality/best value?
18. Please explain how GSA will evaluate and use transactional data in circumstances where the items are not identical?

19. Will GSA commit that contractors will not see an increase in demands to lower pricing regardless of terms? If so, please address how GSA will ensure sound, reasonable price negotiations that do not lead to “low price regardless,” and if not, please release GSA’s market analysis demonstrating that vendor participation in this market space will not be affected by such circumstances.

Pilot Administration and Operations

20. Is it GSA’s intent to incorporate unilaterally the TDR clauses in FSS contracts subject to option exercise during the pendency of the pilot? Is so, please address how such an approach is consistent with FAR requirements for bilateral modifications of commercial item contracts.
21. The record does not show that the proposed rule put contractors on notice regarding the use IFF calculations/reporting/systems being included as part of the TDR process. Prior to the final rule, contractors were unaware that GSA designed the FAS Sales Reporting System to automatically calculate IFF and CAF based on the data reported and pursue payment from contractors. Consequently, the GSA’s decision to “tie in” IFF and CAF calculations to the TDR reporting system could require many companies to overhaul their IFF process. Therefore, our members request that GSA address the following concerns:
- a. Would GSA consider removing “services” from the “Pilot” altogether until one year after the reporting has commenced? This removal would allow GSA to assess what was reported to date, as well as clear up any reporting issues. More importantly, it would allow companies providing services to revisit their IFF reporting requirements and make needed adjustments, or develop new processes, in order to comply.
 - b. Please explain the need for a digital certificate requirement for entry and payment into the FAS Sales Reporting System? Due to the separation of roles within companies, this requirement could prove to be extremely difficult and burdensome.
 - c. Why did GSA wait reveal the inclusion of IFF and CAF calculations in the TDR reporting system until late in this process?
22. There is uncertainty as it relates to the need to maintain or not maintain a CSP/PRC:
- a. Some members feel that they will have to continue to monitor the CSP and the PRC basis of award tracking because of uncertainty related to audit requirements and as to whether the pilot will be continued. Consequently, the proposed rule does not reduce compliance burdens; it increases them.
 - b. Similarly, because the rule allows COs to request other types of financial data, there could be an added administrative burden for data maintenance and retrieval on an *ad hoc* basis.
 - c. As one member stated, “Ultimately, cost associated with the burden of complying with the heavy monthly reporting requirement, along with the potential risk for ‘non-compliance,’ could exceed the benefit of the proposed PRC and CSP waivers where requirement ‘elements’ of both could still exist.”

23. How should complex configured items be reported? Individual parts numbers are virtually meaningless, as it is the sum of the parts that really matters. How will this information be used by the government? TDR does not address complex products, services, or solutions.
24. Will GSA be able to accommodate alternative payment (*e.g.*, paper check) of IFF on the new site replacing the 72A system? The FAS Sales Reporting system is not an ACH setup or a wire transfer. It actually is a web-based account debit system (online check). Many of our members representing larger firms expressed concerns that their accounting departments are responsible for cash management, and they would be unlikely to approve the use of this process as a method of payment. Please explain GSA's analysis of private sector payment practices that underpins the development of the new site.
25. If a fixed price for a project/solution is reported, please explain how that information is useful for evaluating contract-level pricing? Specifically, how will a fixed price service/solution order be reported, analyzed, and used by the government?
26. Industry is concerned that the amount of transactional data GSA receives will far exceed expectations. Even small orders of component-based solutions will add up to hundreds, if not thousands, of line items. How will GSA manage/utilize this information?
27. The data GSA is requesting is different from what the Navy and other agencies are requesting. This redundant information gathering with different reporting requirements and formats is going to be very time consuming. How will GSA address this with customer agencies? Also, please explain how this situation is consistent with the Office of Federal Procurement Policy ("OFPP") December 14, 2014 memorandum, *Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings*, wherein OFPP Administrator Rung stated that, "greater attention must be paid to regulations related to procurements of commercial products and services, as the Government is typically not a market driver in these cases and the burden of Government-unique practices and reporting requirements can be particularly problematic, especially for small businesses."
28. How would GSA handle redundant/duplicate data? If a packaged office (furniture) holder and the manufacturer report the transaction data for the products in question, we, in essence, have two sets of different information for the same order. Over time this duplication will create serious discrepancies that will need to be resolved.
29. How will the IOA's be brought into the mix to insure their processes are consistent with any waivers the transactional data requirement offers?
30. Has the IG signed-off on this pilot, and if not, will it have to be delayed until that sign-off is obtained?
31. How will inadvertent errors or omissions be handled?
32. How does this rule and related pricing approach impact the EPA clause; does this new rule, for all intents and purposes eliminate the EPA clause? Will price increases continue to be granted? What is necessary to obtain a price increase with TDR in place?

33. What amendments will be required to modify existing Schedule contracts particularly related to contract pricing? As contract pricing is impacted over time from downward price pressure, how will the contract reflect the contractor's new pricing? For example, in lieu of discounts off a list price, now pricing will be based on transactional data comparisons. How will that pricing be reflected in the contract? Against what price structure or methodology will contractors be audited, particularly for contractors with in excess of 500K items on their contracts?
34. Does GSA have a view regarding the use of third party providers (*e.g.* SenSoft) to create reporting processes/data to meet GSA's transactional data requirements? The third party provider would be using the Schedule contractor's data to report.
35. With regard to BPA's, where the customer agency established BPA labor categories, how does a company handle reporting TDR if the BPA instructs the company to bill the BPA labor categories on its invoices?
36. There is no meaningful data that can be reported on FFP orders other than milestone payments. Under these circumstances, how will the rule apply to T&M contracts?
37. How will bottom line discounts be handled under TDR? Will a price reduction at the contract level impact pricing for existing BPAs and orders?
38. When will GSA provide advance notice of the templates/formats for reporting? This information is mandatory for companies who have to make changes to their accounting systems.
39. How is GSA going to perform a price analysis of services when every company has unique labor categories and descriptions for their service base? Moreover, each service requirement includes unique features, like geographic location, quality/service levels, level of effort, and expertise/labor mix. Please address.
40. If a vendor currently does not use UPC, how will that effect the reporting requirement? In addition, regarding the Manufacturer Part Number, is this simply the manufacturer's own configured item/model number as stated in a price list?
41. If an OEM opts in, but not all their Level of Service partners opt in, will the OEM still have to complete CSPs to support their partners?
42. Under a Contractor Teaming Arrangement, who reports the transactions?
43. If a contractor opts IN to the TDR clauses, can the contracting officer still reach back and ask or require CSPs from suppliers (manufacturers or distributors), even if the CSP is no longer required by the contractor? Or, are CSPs completely off the table for any companies supplying the contractor?
44. Are vendors at risk of being handicapped in the Federal marketplace if they choose not to opt into the pilot?

45. Please confirm the nature of the transactional data being sought. Does GSA seek data from federal sales only (contract sales) and not all sales to all customers of stock numbers on contract?
46. Will the information collected pursuant to the rule be connected to the Formatted Product tool? If so, how?
47. When GSA says “renewal,” does that mean options or when you are up for your option year audit?
48. Because GSA does not commit to a buying anything from vendors, is it correct that vendors could offer GSA suggested retail price (SRP) pricing? If not, how does GSA justify seeking a lower contract price where the commitment is \$2,500.00 over 20 years?
49. How should the pricing of “bundled” products be reported, and how would this pricing be used to negotiate contract prices, as it would only be relevant to subsequent transactions for the identical bundle?
50. How will FFP and cost type orders be reported, and how will the data be used?
51. Contractors used the CSP to communicate to the contracting officer regarding unique pricing practices that might impact the pricing proposal to the government. How will a contractor communicate such information to the contracting officer under the TDR pilot?
52. Please address potential issues associated with the False Claim Act as it relates to the TDR.
53. Is it possible that the rule may spark litigation to challenge whether its terms are, to the maximum extent practicable, commercial, as required by the Federal Acquisition Streamlining Act (FASA)? Please address the commerciality of requiring suppliers to report transactional data and provide GSA’s market research in this regard.
54. To clarify, at this time, is GSA only seeking/reviewing horizontal price comparisons for exact manufacturer part numbers, not similar items? How will similar items be evaluated for price comparison purposes?

Public Disclosure of Information

55. FOIA data extract – Most task orders under GSA Schedules are based upon competition, with many factors considered during the pricing (extent of competition, risk, geographic area of work performed, quantity, *etc.*). This type of pricing is considered proprietary information. If this information is now required to be reported, in light of the protections provided under the Freedom of Information Act (FOIA) and associated case law, it is imperative that companies understand what information will be released. Public disclosure of information could have a serious impact on the GSA Schedules programs, as companies may choose to take customer requirements to different, other government-wide IDIQ platforms, rather than risking having their competitive pricing information shared with the general public. Please explain how these matters are addressed under the rule.

56. Please address whether it is GSA's position that the recent public notice exercise regarding the intent to release TDR information via a public website meets the reverse-FOIA procedural requirements.
57. How will the security of the transactional data be protected? More details beyond GSA's standard IT security policies would be helpful. What are the restrictions of use/disclosure on GSA's current contractor, XSB?
58. What internal processes/protections are in place to assure any publication of FOIA-protected information is consistent with FOIA and provides opportunity for redaction and reverse-FOIA?
59. On July 7th, GSA published a notice in the Federal Register entitled, "Notice FAS-2016-01; Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting," outlining the various TDR data elements that could be exempt under FOIA. Comments are to be submitted for GSA's review by August 29, 2016. On July 26th, however, GSA announced through GSA Interact that the TDR pilot would begin rolling out starting in August 2016. GSA later clarified in its training webinars for industry that the first MAS modification for the TDR pilot was expected to be released on August 26, 2016. Please address how GSA expects industry to agree to participate in the TDR pilot given that the pilot will begin a full three days in advance of the deadline for comments regarding what information can and cannot be released publicly through the pilot?

Evaluating the Pilot

60. Have evaluation metrics for the pilot been developed and finalized? Do they include direct and indirect costs, including, but not limited to, administrative costs and the costs of delay, to the government and vendors? On what analysis was the development of these metrics based?
61. In the interests of transparency and accountability, when will GSA publicly share the evaluation metrics for the pilot before its launch? If the metrics are not being shared publicly, please address the rationale for not doing so?
62. What factors will GSA use to determine if the pilot is successful and will be expanded?
63. What happens if transactional data reporting is not continued after the pilot? Does that put the vendor in jeopardy if the PRC and CSP disclosures are reinstated for the prior 12 months of commercial sales? Will accommodation, such as a grace period during which such information not be required, be instituted?
64. Does GSA plan to assess whether the pilot has increased or decreased burden to contractors in determining if the pilot has been successful?
65. Does GSA plan to assess the ability of the schedules program to support complex solutions and services when determining whether to expand the pilot?